

WYOMING DEPARTMENT OF
TRANSPORTATION

**EMERGENCY
RELIEF MANUAL**
*PROCEDURES FOR ADMINISTERING
FEDERAL EMERGENCY RELIEF*



2018



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Chief Engineer*



The Federal Highway Administration (FHWA), Wyoming Division, and the Wyoming Department of Transportation (WYDOT) agree to administer the FHWA Emergency Relief (ER) program pursuant to the guidance herein. This manual is a living document that, when needed, can be modified with the agreement of both parties.



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TABLE OF CONTENTS

1. Introduction.....	1
1.1 Purpose of Manual	1
1.2 Program Overview	1
1.3 FHWA ER Manual.....	1
2. Emergency Repair and Permanent Restoration	2
2.1 General.....	2
2.2 Disaster Start Date	2
2.3 Emergency Repairs	2
2.4 Permanent Restoration	4
2.5 Permanent Restoration Done Concurrently with Emergency Repairs.....	5
2.6 Eligible Items	6
2.7 Ineligible Items	7
2.8 Betterments	8
3. Damage Types	9
3.1 Traditional Damage.....	9
3.2 Local Conditions	9
3.3 Grade Raises	9
3.4 Slides.....	10
3.5 Erosion and Sediment Control Guidelines for Emergency Grade Raises.....	10
Scenario 1.....	11
Scenario 2.....	11
Scenario 3.....	11
4. Detailed Damage Inspection Report (DDIR).....	11
4.1 Site Inspection.....	11
4.2 DDIR.....	12
5. Sequence of Events.....	14
6. Construction Contracts & Contract Requirements.....	15
6.1 WYDOT Emergency Repairs Bid at District.....	15
6.2 WYDOT Permanent Restoration Done Concurrently with Emergency Repairs	17
6.3 WYDOT Permanent Restoration	19
6.4 Consultant Engineering Services	20
7. Regulatory Compliance and Environmental Guidelines.....	2020
7.1 USACE Regulatory Compliance	20

7.2 Categorical Exclusions Categories.....	21
8. Roles and Responsibilities	22
8.1 FHWA.....	22
8.2 WYDOT.....	22
9. Acronyms and Definitions	23
10. Additional FHWA Guidance	24
Appendix A: Site Inspection Checklist	
Appendix B: Emergency Repair Checklist	
Appendix C: Emergency Contract Checklist	
Appendix D: Emergency Contract Requirements	
Appendix E: DDIR Form	
Appendix F: Selection Evaluation Form	

1. INTRODUCTION

1.1 PURPOSE OF MANUAL

This manual provides state-specific guidance regarding eligibility determination and administration for the Federal Highway Administration (FHWA) Emergency Relief (ER) program authorized by CFR 23 § 668. Additionally, this manual serves as a supplement to the FHWA ER Manual. The Wyoming Department of Transportation (WYDOT) is responsible for assessing all damage to Federal-aid (FA) highways eligible for ER funds and then reporting to FHWA. This manual **only** applies to FA highways and **not** to roads or highways off the FA system.

1.2 PROGRAM OVERVIEW

The ER program is intended for repairing or restoring FA highways (roads not functionally classified as local or rural minor collectors) that have suffered serious damage as a result of natural disasters or catastrophic failure from an external cause.

The eligibility threshold for an ER event is a \$700,000 Federal share with a \$5,000 minimum total cost for each ER site.



Note



ER funds are **not** intended to cover all damage costs, so WYDOT can expect additional expenditures to restore routes to pre-disaster conditions.

The ER program's applicability is based on a natural disaster's extent and intensity. Damage to highways must be severe, occur over a wide area, and result in unusually high expenses to the highway agency. Failures resulting from an inherent flaw in the facility **do not** qualify for ER assistance.

1.3 FHWA ER MANUAL

For more information on the FHWA ER program, please refer to the Emergency Relief Manual (Federal-Aid Highways) found at:

<http://www.fhwa.dot.gov/reports/erm/er.pdf>



The FHWA ER Manual supersedes this manual in any areas of conflict.

2. EMERGENCY REPAIR AND PERMANENT RESTORATION

2.1 GENERAL

As stated previously, the ER program is used to restore routes to pre-disaster conditions. ER funds are not intended to replace normal Federal, state, or local funds for new construction to increase capacity, correct non-disaster-related deficiencies, or otherwise improve highway facilities. Added protective features, commonly referred to as betterments, are only eligible for ER funding when justified. (Betterment eligibility is discussed in [Section 2.8](#).)

2.2 DISASTER START DATE

The start date for a traditional disaster event is the first day a disaster occurs. From this start date, WYDOT has 180 days to complete emergency repairs while remaining eligible for 100 percent FHWA reimbursement. In situations where the emergency repair process is delayed because of accessibility concerns for site inspections, FHWA may extend the 180-day window (see [Section 2.3](#) for more information on extensions).

2.3 EMERGENCY REPAIRS

Emergency repairs occur during and immediately following a disaster to ensure safety, restore essential traffic, minimize the extent of damage, or protect remaining facilities. Prior FHWA approval is not required to begin emergency repairs. Emergency work completed within the 180-day window may qualify for 100 percent FHWA reimbursement (at eligible sites). If FHWA determines a site or event is ineligible, WYDOT is responsible for all costs.

Under the Moving Ahead for Progress in the 21st Century (MAP-21) Act, the 180-day window for emergency repairs may be extended if a site cannot be physically accessed for inspection. In such cases, WYDOT will submit a site-specific request to FHWA for an extension. The FHWA Wyoming Division will evaluate and approve extensions case by case for specific, inaccessible locations. Such extensions will not be granted for all sites in the disaster area unless all are inaccessible. Extensions will not be granted for sites that can be physically accessed but were not inspected in a timely manner for other reasons.

Emergency repairs are awarded in accordance with [Section 6.1](#) of this manual.

When economically feasible, certain permanent restoration work may be completed concurrently with emergency repairs. Concurrent permanent restoration must comply with the requirements in [Section 2.5](#).



Typical Examples of Emergency Repairs



- ❖ Roadway surface re-grading, roadway fills, and embankments damaged by sheet flow that threatens roadway integrity (see [Section 3.2](#))
- ❖ Emergency grade raises of inundated roadways (see [Section 3.3](#))
- ❖ Temporary paving on high volume roads where the permanent restoration will not be completed until the following year, under the following conditions:
 - Prior FHWA approval is **not** required for the National Highway System (NHS)
 - Prior FHWA approval is required for all other state highways, emergency traffic control (including law enforcement assistance), erecting and removing barricades and detour signs, flagging, and pilot cars used during the emergency period
- ❖ Placing riprap on the downstream slopes of approach fills to prevent scour during overtopping the fill
- ❖ Placement of riprap along roadway shoulders to prevent loss of road.
- ❖ Initial slide correction if the slide is affecting safety and mobility of traffic and associated bypasses
- ❖ Temporary or emergency bypass and detour construction
- ❖ Temporary detour bridge erection
- ❖ Temporary drains and pumping, for which:
 - WYDOT will obtain applicable permits from US Army Corps of Engineers (USACE), Local Water Board, State Water Commission, and so on
- ❖ Relaying washed out culverts
- ❖ Placing riprap around piers and bridge abutments to relieve severe, on-going scour action that may affect structural integrity

- ❖ Debris removal under the following conditions, types, and wage rate requirements
 - Eligible debris removal conditions:
 - The governor declares the event an emergency, but the president has not issued an emergency declaration
 - The president declares an emergency, but the Federal Emergency Management Agency (FEMA) has determined that debris removal is not eligible for its assistance
 - MAP-21 placed limits on debris removal eligibility for ER funds, leaving most debris removal eligible for FEMA funding instead.
 - The governor's emergency declaration includes counties that the president's emergency declaration excluded
 - Eligible debris removal types:
 - Debris within roadway shoulder limits
 - Debris that presents an imminent threat
 - Ice flow removal and associated debris that is damaging a roadway or structure or impeding the flow of water
 - Prevailing wage rate requirements do not apply to contracts where the scope of work is solely for debris removal and related clean up; however, if the debris removal is performed in conjunction with other repair or reconstruction work, prevailing wage rate requirements apply.

2.4 PERMANENT RESTORATION

Permanent restoration is intended to restore the roadway to pre-disaster conditions and typically occurs after emergency repairs are completed. Permanent restoration work performed before FHWA authorization is *not eligible* for ER funding, and FHWA approval of the Detailed Damage Inspection Report (DDIR) does not constitute

authorization. FHWA authorizes permanent restoration once WYDOT identifies and assigns funding for the work. This restoration must proceed to construction before the end of the second fiscal year following the ER event. If permanent restoration cannot advance to construction within two years, FHWA may grant time extensions in one-year increments given sufficient justification.

Permanent restoration work shall comply with **Section 6** in this manual.

In certain cases, permanent restoration may be completed concurrently with emergency repairs (the work must comply with the requirements in **Section 2.5**).

If completed independently, permanent restoration is administered using normal Federal-aid contracting procedures.

The two main permanent restoration categories are (1) restoration-in-kind and (2) replacement-in-kind, but work may fall under one or both categories.



Permanent Restoration Categories



- ❖ Restoration-in-Kind: repairs any damage within roadway right-of-way to pre-disaster conditions
- ❖ Replacement-in-Kind: replaces damaged roadway sections, structures, or culverts with new sections that function at pre-disaster levels
 - A larger structure or culvert may be eligible if warranted by the hydraulic analysis.
 - Relocating a roadway may be eligible to avoid high water or slide areas.

2.5 PERMANENT RESTORATION DONE CONCURRENTLY WITH EMERGENCY REPAIRS



Allowing permanent restoration to be completed concurrently with emergency repairs restores the site to pre-disaster conditions in a cost-effective and timely manner. If minor permanent work is required (e.g. seeding) that would not be cost effective to bid as a separate project, it can be bid with the emergency repairs if it meets the following requirements:

1. Emergency repair work must exist at the site.
2. The economic feasibility of completing the work concurrently is identified in the DDIR.

3. The permanent restoration work is awarded in accordance with **Section 6.2**.
4. The proposal and contract documents (found in **Appendix D**) shall include the most current versions of all of the required Federal provisions and documents.
5. The permanent restoration must meet the requirements of a categorical exclusion category CE1 or CE2 as described in **Section 7.2**.



2.6 ELIGIBLE ITEMS

All highway elements within the highway right-of-way damaged as a direct result of a disaster are eligible for repair under the ER program. This eligibility includes repairing pedestrian or bicycle trails and facilities inside the FA highway right-of-way *whether or not* the highway itself is damaged.


Examples of Eligible Items in Highway Right-of-Way


❖ Pavement	❖ Guardrail	❖ Riprap, cribbing, or other bank control features
❖ Shoulders	❖ Traffic control devices	❖ Bike and pedestrian facilities
❖ Slopes	❖ Bridges	❖ Fencing
❖ Embankments	❖ Culverts	❖ Retaining walls

Additionally, preliminary engineering (PE), construction engineering (CE), right-of-way necessary for permanent restoration, and project features resulting from the National Environmental Policy Act (NEPA) process (such as wetland mitigation sites, equipment lease or rental rates, and equipment operating costs) are also eligible for reimbursement under the ER program.


Note


Consultant engineering services must be acquired in accordance with **Section 6.4** of this manual.

Traffic damage may also be eligible when caused by:

- ❖ Vehicles making repairs to FA highways,
- ❖ Traffic on an officially designated detour route, and
- ❖ Vehicles responding to a disaster.

Damage outside of the highway right-of-way may also qualify if these three criteria are met:

- 1 The work is directly related to protecting the highway facility.
- 2 No other agency has responsibility for funding or completing such work.
- 3 WYDOT agrees to accept future maintenance of all work performed.

Additional documentation may be required showing how the above conditions have been satisfied.

2.7 INELIGIBLE ITEMS

ER funds are only intended to cover work that exceeds routine maintenance and will restore pre-disaster service. Activities that are *not* eligible for ER funding include:

- ❖ Regular maintenance activities;
- ❖ Damage to sites with an estimated total cost under \$5,000;
- ❖ Traffic damage (except as noted in **Section 2.6**);
- ❖ Frost heaving;
- ❖ Damage caused by weak or insufficient sub-grade, base, or pavement;
- ❖ WYDOT-owned material (e.g. destroyed or damaged stockpiles or equipment);
- ❖ Erosion damage from rainfall;
- ❖ Prior scheduled work (such as deficient bridges that are scheduled for replacement with other funds prior to suffering damage during a disaster. A bridge is considered scheduled when the construction phase is in the current FHWA-approved Statewide Transportation Improvement Program [STIP]);
- ❖ Snow and/or ice removal (except as specified in **Section 2.3**);
- ❖ Emergency transportation services and first responders;

- ❖ Mitigation and preventive work and evacuation before a disaster;
- ❖ Emergency transit operations and maintenance costs;
- ❖ Damage to shared-use paths or trails located outside of the highway right-of-way;
- ❖ Projects not included in WYDOT's ER application; and
- ❖ Incidental costs (such as project delay costs).

2.8 BETTERMENTS

Betterments can be incorporated into ER projects only if they are justified through cost savings to the ER program should future ER-eligible disasters occur. Betterments typically associated with ER work include the following.



Typical Betterments Associated with ER Work



- ❖ Adding riprap where none previously existed or extending limits of existing riprap
- ❖ Scour protection at bridges
- ❖ Stabilizing embankments, slopes, and landslide areas that have no history of instability
- ❖ Relocating a facility to a higher elevation or raising roadway grades
- ❖ Providing additional hydraulic capacity by lengthening or raising bridges, adding additional culverts, replacing culverts with bridges, and/or deepening channels in traditional damage situations
- ❖ Grade raising that reduces future cost to the ER program (see [Section 3.3](#) for more detail).



Note



Grade raises that safely open roads to traffic **do not** qualify as betterments.

3. DAMAGE TYPES

3.1 TRADITIONAL DAMAGE

Traditional damage in Wyoming typically occurs as a consequence of fast flowing water from excessive spring runoff or heavy rainfall. This damage results in erosion and surfacing material displacement from sheet water flows that usually cause the scouring and washing out of bridges, pipes, roadways, approaches, embankments or riprap; land or mud slides and associated damage; and haul roads or other infrastructure damage resulting from levee construction or other efforts to protect transportation facilities.

3.2 LOCAL CONDITIONS

Fore-slope damage is typically caused by flowing waters in a traditional damage scenario. When fore-slope damage occurs within the clear zone or threatens the roadway integrity, it may be eligible for emergency repairs. Any additional protective measure, typically riprap, that was not in place before the disaster may be added as a betterment in permanent restoration to prevent future damage.

On the interstate system, temporary dirt- or water-filled tube levees are eligible for funding to prevent imminent inundation.

3.3 GRADE RAISES

Emergency grade raises occur as soon as possible after an event and help restore essential traffic. These grade raises, including the installation of cross overs, are not intended to restore the original cross section; rather, they are constructed to temporarily open essential routes, typically at lower speeds, until a disaster event concludes.

Temporary grade raises are allowed at inundated traditional damage sites. These grade raises are meant to restore essential traffic and are removed once the water subsides. The cost to remove temporary grade raise material may be eligible for ER reimbursement if it is removed within two Federal fiscal years of the disaster.

Grade raises eligible for ER funds must meet the following four criteria:

1. The route affected must be critical.
 - a. WYDOT and the FHWA Wyoming Division must mutually agree and determine that a lost facility is critical.
2. No acceptable alternate or detour route exists.
3. The route must have long-term loss of use.
 - b. Loss of use is the flood water encroaching upon the edge line of the traveled lane (24 feet road top or edge of gravel lane). The anticipated duration

(number of days and weeks) must also be taken into account. The acceptable duration depends on the roadway's functional classification.

4. The damage at each individual site must exceed \$5,000.

When loss of use is imminent, grade raises are allowed on the NHS (including interstate) with prior FHWA approval. After-the-fact documentation must be provided demonstrating that the water would have inundated the road or otherwise led to road closure. This documentation shall be thorough and include calculations, pictures, and reasoning for ER eligibility. ER eligibility cannot be based on an anticipated rain or a similar future event.

Where shallow water is expected to remain for only a few days on the traveled portion of the roadway, the eligibility for ER funds, subject to minimum site threshold criteria, would be limited to the traffic control necessary to warn motorists of the hazard or to temporarily re-route traffic



Note



Standing water in the clear zone is **not** a criterion for ER eligibility.

3.4 SLIDES

When a slide that is directly attributable to an eligible ER event causes damage to a FA route, the work required to remove the material and repair the roadway is eligible for reimbursement. If proven cost effective, efforts to stabilize slide areas or to relocate roadways away from slide areas are also eligible as betterments under the ER program.

3.5 EROSION AND SEDIMENT CONTROL GUIDELINES FOR EMERGENCY GRADE RAISES

Erosion and sediment control guidelines for emergency grade raise projects have been separated into three scenarios defined by the project's scope of work. Erosion and sediment controls for these projects may consist of any acceptable best management practice.



Examples of Erosion Controls



- ❖ Riprap
- ❖ Turf reinforcement mat
- ❖ Erosion control blanket
- ❖ Articulated concrete block mat



Examples of Sediment Controls



- ❖ Flotation silt curtain
- ❖ Silt fence
- ❖ Fiber rolls

Erosion and sediment control implementation is conducted as follows:

SCENARIO 1

When aggregate fill is placed within the shoulders on top of the roadway, sediment control installations are *not* required before or during fill placement. Instead, install erosion and sediment controls (where appropriate) *after* the fill has been placed to maintain the fill material's structural integrity and minimize erosion and sediment movement impact.

SCENARIO 2

When fill is placed outside the top of the roadway but within the existing roadway footprint, install sediment controls *before* the fill is placed if the installation will not significantly delay the fill placement operation. Place fill rapidly, and place erosion controls immediately as the fill work progresses. If a situation arises that prevents the rapid fill placement and protection, install sediment controls with all deliberate speed to minimize impacts of erosion and sediment movement.

SCENARIO 3

When fill is placed outside the top of the roadway and outside the existing roadway footprint, install sediment controls *before* fill placement or with all deliberate speed immediately after the beginning of the fill placement operation. Place fill rapidly, and place erosion controls immediately as the fill work progresses.

4. DETAILED DAMAGE INSPECTION REPORT (DDIR)

4.1 SITE INSPECTION

SITE INSPECTION OBJECTIVES:

1. Gather information for determining eligibility.
2. Assign natural disaster (ND) project number.

3. Describe damage.
4. Discuss corrective measure options for emergency repairs and permanent restoration.
5. Map site location.
6. Photograph site.
7. Complete site inspection checklist (found in **Appendix A**).

SITE INSPECTION PERSONNEL

Site inspection should occur as soon as practical after the disaster, and the following parties should be present:

- ❖ WYDOT personnel in the following programs (as applicable to the type of damage:
 - District,
 - Geology,
 - Bridge,
 - Hydraulics,
 - Environmental Services, and
 - Highway Development.
- ❖ FHWA staff will be invited and attend at their discretion.
- ❖ Land management agencies that may be effected (USFS, BLM, etc.)

4.2 DDIR

REQUIRED DDIR INFORMATION AND DOCUMENTATION

The following types of information and documentation are required to complete a DDIR:

- ❖ The specific location, type of FA highway, cause, nature and extent of damage (including mileposts where available);
- ❖ The most feasible and practical repair method;
- ❖ The type of work that was or will be accomplished from the following categories:

- Emergency repairs (completed and remaining),
- Permanent restoration completed concurrently with emergency repairs, and
- Permanent repairs;
- ❖ Detailed estimates including materials, quantities, unit costs, and who will be completing the work (state or local forces, contract, etc.);
- ❖ Potential environmental and historical impacts;
- ❖ Photographs supporting the environmental and historical impacts;
- ❖ A location map and field site sketch; and
- ❖ Any other supporting documentation.

DDIR COMPLETION

Complete and submit DDIRs to FHWA as soon as feasible after sites are accessible for inspection. Following are the steps for completing a DDIR:

1. WYDOT district staff, working with the appropriate design program(s), completes the DDIR.
2. WYDOT Maintenance staff review the DDIR and submit it to FHWA for approval.
3. A copy of the DDIR and other supporting information will be placed in the project directory.

DDIR REVISION

WYDOT will revise and re-submit the DDIR for review if the scope of work changes substantially during project development or construction.



Note



DDIR revisions are **not** required for project cost increases from the DDIR estimate as long as the project scope has not changed.

5. SEQUENCE OF EVENTS

1. The disaster occurs.
 - a. Emergency repairs can begin.
 - b. District requests ND number from Budget office.
 - i. Budget records new ND number, date requested, requested by, and brief description of disaster in ND spreadsheet.
 - c. If a contractor or consultant is needed for immediate repairs, complete the following (see **Section 6** for more information):
 - i. The district submits the E-113 Project Authorization for STIP Projects,
 - ii. The district obtains approval to solicit bids from the chief engineer and works with appropriate design program(s) and requests bids, and
 - iii. The chief engineer approves the award.
2. Site documentation begins.
 - a. Documentation includes photos, timesheets, expenses, contracts, materials used, and so on.
 - b. District enters project information into ND spreadsheet
3. The chief engineer sends a Letter of Intent to the FHWA Wyoming Division.
4. The President or Governor issues an emergency declaration.
 - a. If an emergency declaration does not occur, no costs will be reimbursable through the ER program.
5. FHWA Wyoming Division sends a Letter of Acknowledgement to WYDOT.
6. Site inspection occurs.
7. WYDOT completes the DDIR.
8. WYDOT Maintenance staff submits DDIRs to FHWA for approval.
9. FHWA Wyoming Division reviews and approves DDIRs.
10. WYDOT submits summary of DDIRs (Program of Projects) and requests ER funds.

11. FHWA Division Administrator reviews WYDOT's request.
12. FHWA Division Administrator submits request to FHWA Headquarters (HQ) for fund allocation.
13. FHWA HQ allocates funds.
14. The district submits E-113 Project Authorization for STIP Projects for each ND project.
15. The Transportation Commission approves project authorization.
16. ER permanent restoration projects are programmed.
17. FHWA approves projects as programmed.
18. Permanent restoration can begin (if WYDOT chooses to Advance Construct [AC] a project, this step can move forward prior to ER fund allocation).
19. WYDOT Maintenance staff, working with Highway Development, will add DDIR and other information collected to the appropriate project directory so all programs have access to the information.
20. The Highway Project Delivery section will include all ND projects in the project control system so that they can be monitored.
21. Districts, programs, and highway project delivery ensure the ND project spreadsheet is kept up-to-date on project status and estimated costs.
22. Budget office will work with FHWA Wyoming Division on status of funds.

6. CONSTRUCTION CONTRACTS & CONTRACT REQUIREMENTS

6.1 WYDOT EMERGENCY REPAIRS BID AT DISTRICT

APPROVAL

Chief engineer approval is required prior to soliciting bids. Prior approval from FHWA is not required to complete emergency repairs.

AUTHORIZATION

Prior authorization in the Fiscal Management Information System (FMIS) from FHWA is not required to complete emergency repairs

BUDGET

The district submits form E-113 Project Authorization for STIP Projects with estimated costs (including costs for all work like PE, CE, materials, etc.) to WYDOT's Budget Program and Programming Section.

CONTRACTING METHODS

1. Solicited Contract:

- a. WYDOT shall make a good faith effort to contact a minimum of three contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file.
- b. Pursuant to Wyoming Statute § 24-2-108, when an emergency arises requiring immediate expenditure of funds for the repair or rebuilding of bridges, approaches to bridges, and any roadway, the commission may enter into contract for rebuilding of bridges, approaches, or roadway without advertising for the letting, provided the amount of the contract shall not exceed \$1 million dollars, and WYDOT requests proposals from at least two contractors capable of performing the emergency construction or repair.

2. Add Repairs to Existing Project:

- a. If a construction project is near the damage location, a change order may be considered to include the needed repairs.

ADVERTISING PERIOD

There is no required minimum advertising period.

CONTRACT DOCUMENTS REQUIRED

The following documents must be given to the contractor prior to requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- ❖ Contract (scope of work, submittal requirements, completion date, etc.),
- ❖ Insurance certification,
- ❖ 10 percent bid bond if cost are over \$7,500,

- ❖ FHWA-1273,
- ❖ Equal Employment Opportunity (EEO) Affirmative Action Requirements,
- ❖ Race-neutral Disadvantage Business Enterprise (DBE) Participation Certification Form,
- ❖ WYDOT Supplementary Specifications (SS) 100E and 100F,
- ❖ Contracts and Estimates Bid Form,
- ❖ Wage determinations,
- ❖ Prompt Payment,
- ❖ Buy America, and
- ❖ Performance Bond (after award and if cost is greater than \$25,000).

See **Appendix D** for additional information.

CHIEF ENGINEER APPROVAL

The chief engineer will award the projects and contact the chair of the Transportation Commission for award concurrence.

CONTRACT ADMINISTRATION

The district oversees construction, inspection, and documentation of work.

6.2 WYDOT PERMANENT RESTORATION DONE CONCURRENTLY WITH EMERGENCY REPAIRS

Permanent restoration completed concurrently with emergency repairs shall comply with the requirements in **Section 2.5**.

APPROVAL

Chief engineer approval is required prior to soliciting bids. Prior approval from the FHWA is not required to complete emergency repairs.

AUTHORIZATION

Prior authorization in FMIS from FHWA is not required to complete emergency repairs.

BUDGET

The district submits form E-113 Project Authorization for STIP Projects with estimated costs (including cost for all work such as PE, CE, materials, etc.) to the Budget Program and the Programming Section.

CONTRACTING METHODS

1. Solicited Contract:

- a. WYDOT shall make a good faith effort to contact a minimum of three contractors to complete these repairs. If any of the contractors contacted are unable to provide a quote or perform the work, a written response from that contractor must be received and stored in the project file.
- b. Pursuant to Wyoming Statute § 24-2-108, when an emergency arises requiring immediate expenditure of funds for repairing or rebuilding bridges, approaches to bridges, and any roadway, the commission may enter into contract for rebuilding bridges, approaches, or roadway without advertising for the letting, provided the amount of the contract shall not exceed \$1 million dollars, and WYDOT requests proposals from at least two contractors capable of performing the emergency construction or repair.

2. Add Repairs to Existing Project:

- a. If a construction project is near the damage location, a change order may be considered to include the needed repairs.

ADVERTISING PERIOD

There is no required minimum advertising period.

CONTRACT DOCUMENTS REQUIRED

The following documents must to be given to contractors before requesting a quote or asking them to perform the work. The contractor is required to sign a certification statement that they received, reviewed, and will comply with the following documents (the contractor's signed certification statement must be stored in the project file):

- ❖ Contract (scope of work, submittal requirements, completion date, etc.),
- ❖ Insurance certification,
- ❖ 10 percent bid bond if cost are over \$7,500,
- ❖ FHWA-1273,

- ❖ Equal Employment Opportunity (EEO) Affirmative Action Requirements,
- ❖ Race-neutral Disadvantage Business Enterprise (DBE) Participation Certification Form,
- ❖ WYDOT Supplementary Specifications (SS) 100E and 100F,
- ❖ Contracts and Estimates Bid Form,
- ❖ Wage determinations,
- ❖ Prompt Payment,
- ❖ Buy America, and
- ❖ Performance Bond (after award and if cost is greater than \$25,000).

See **Appendix D** for additional information.

CHIEF ENGINEER APPROVAL

The chief engineer will award the projects and contact the chair of the Transportation Commission for award concurrence.

CONTRACT ADMINISTRATION

The district oversees construction, inspection, and documentation of work.

6.3 WYDOT PERMANENT RESTORATION

Permanent restoration is bid like a regular WYDOT Federal-aid project.

APPROVAL

FHWA approval of the DDIR is required to complete these repairs. If eligibility of the damaged roadway or facility is immediately unknown, proceed as if all Federal requirements need to be met until approval or denial is known.

AUTHORIZATION

Prior authorization in FMIS from FHWA is required to complete these repairs. For authorization, WYDOT will need to identify a funding source. Funding options include:

- ❖ Advanced Construction with ER funds (when available),

- ❖ Regular Federal funds (if available) converted to ER funds (when available), and
- ❖ ER funds (if available).

CONTRACTING METHODS

WYDOT will use competitive bidding through the normal bid process.

ADVERTISING PERIOD

A minimum of three weeks is required. If WYDOT desires to advertise a project for less than three weeks, a shortened period may be approved by the assistant chief engineer for engineering and planning.

6.4 CONSULTANT ENGINEERING SERVICES

Consultant engineering services for emergency repairs and permanent restoration must be acquired in accordance with the WYDOT Operating Policy (OP) 40-1 and the Consultant Services Agreements Procedures Manual.

http://employees.dot.state.wy.us/files/live/sites/employees/files/shared/Engineering_Services/PM%20Final%20April%202017.pdf

7. REGULATORY COMPLIANCE AND ENVIRONMENTAL GUIDELINES

Environmental clearance will follow the most recent Programmatic Agreement between the FHWA and WYDOT regarding the processing of actions classified as a Categorical Exclusions (CatEx) for Federal-aid Highway Projects.

7.1 USACE REGULATORY COMPLIANCE

Work shall be completed in accordance with the USACE Nationwide Permit (NWP) 3 for maintenance activities. Paragraph (a) of the permit provides repair, rehabilitation, or replacement of structures or fills; preconstruction notification is not required. Paragraph (c) of the permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. The NWP 3 applies provided that impacts are minimal. The following general conditions, as appropriate, must be complied with:

- ❖ Avoid work in spawning areas during the spawning season to the maximum extent practicable. Place turbidity control measures to minimize effects.
- ❖ Fills within 100-year floodplain cannot exceed the original footprint.

- ❖ Use and maintain erosion and sediment control measures in effective operating conditions during construction, and permanently stabilize all exposed soil and other fills to prevent erosion and sedimentation.
- ❖ Remove temporary structures in their entirety and return the affected areas to preconstruction elevations and re-vegetate as necessary.
- ❖ Obtain material sources (fill, gravel, riprap, etc.) from a preapproved or previously established source. New material sources must be cleared.
- ❖ Compliance with the Endangered Species Act (ESA) is addressed by limiting the work to preexisting conditions and by coordinating with the US Fish and Wildlife Service (USFWS) during the material source clearance process.
- ❖ Compliance with the National Historical Preservation Act is addressed by limiting the work to preexisting conditions and by coordinating with the State Historical Preservation Office (SHPO).

7.2 CATEGORICAL EXCLUSIONS CATEGORIES

CE1 – WYDOT BATCHED CATEx

WYDOT can use this level of documentation for emergency slides, in accordance to 23 CFR 771.117(c)(9), where the repair would prevent further damage to a roadway or is needed to maintain traffic on the roadway. Examples of work include removing debris from roadway surface and emergency repairs within the roadway template.

WYDOT Environmental Services can process and approve these documents with as little as a project location and rough scope of work noted in the approved DDIR.

CE2 – WYDOT APPROVED CATEx

Emergency repairs that do not qualify as a CE1 and do not exceed thresholds identified in the Programmatic Categorical Exclusion agreement with FHWA can be processed as a CE2. This level of documentation requires more NEPA review and may require environmental investigations and/or permits. Examples of this work would include work outside the roadway template, minor alterations, or betterments.

WYDOT Environmental Services can process and approve these documents with the project location and proposed alterations or betterments based on an approved DDIR. Once NEPA is completed, Environmental Services can apply for any required permits (i.e. USACE Nationwide Permits).

CE3 - FHWA APPROVED CATEx

Emergency repairs that exceed the CE2 thresholds must be completed as a CE3, which requires FHWA signature. This level of documentation will require more NEPA review and is likely to require environmental investigations and permits. CE3 projects typically involve work outside the right-of-way on Federal land or impacts that are over identified thresholds.

WYDOT Environmental Services can process these documents for FHWA concurrence with the project location and more detailed proposed alterations or betterments. Once FHWA has concurred with the CE, Environmental Services can apply for any required permits.



Examples of CE3 Projects



- ❖ Work on Federal land
- ❖ Work on reservation land
- ❖ Projects that impact 4(f) properties
- ❖ USACE individual permit
- ❖ Encroachment on flood plains

8. ROLES AND RESPONSIBILITIES

8.1 FHWA

FHWA is responsible for the following:

- ❖ Reviewing and determining eligibility of an ER event based on the Letter of Intent,
- ❖ Issuing the Letter of Acknowledgement,
- ❖ Reviewing and determining eligibility of DDIRs, and
- ❖ Requesting and distributing ER funds to WYDOT after project approval.

8.2 WYDOT

WYDOT is responsible for the following:

- ❖ Ensuring safe operations of roadway and traveling public,
- ❖ Submitting the Letter of Intent,
- ❖ Inspecting damage sites,
- ❖ Preparing and submitting the DDIR to FHWA,

- ❖ Requesting ER funds from FHWA,
- ❖ Bidding and awarding emergency and permanent projects,
- ❖ Selecting contractors and consultants, and
- ❖ Completing the emergency repairs.

9. ACRONYMS AND DEFINITIONS

DDIR: Detailed Damage Inspection Report

EPA: Environmental Protection Agency

ER: Emergency relief

Federal-Aid Highway System: State and local roads that are eligible for Federal-aid administered through FHWA (roads classified as major collector and above)

FHWA: Federal Highway Administration

FHWA Approval: For ER purposes, FHWA approval happens when FHWA signs the DDIR approving the project as eligible for ER funds.

FHWA Authorization: For ER purposes, FHWA authorization occurs once FHWA has approved the project in FMIS.

FMIS: Fiscal Management Information System

Heavy Maintenance: Work typically performed by highway agencies to repair damage normally expected from seasonal and occasionally unusual natural conditions or occurrences

Loss of Use: For ER purposes, loss of use is the flood water elevation above the edge line of the traveled lane.

NEPA: National Environmental Policy Act of 1969

NHS: National Highway System

OP: Operating Policies

USACE: United States Army Corps of Engineers

USFWS: United States Fish and Wildlife Service

WYDOT: Wyoming Department of Transportation

10. ADDITIONAL FHWA GUIDANCE

More information on the ER program and answers to frequently asked questions about the program can be found at the following link:

<http://www.fhwa.dot.gov/map21/qandas/qaer.cfm>

**APPENDIX A:
SITE INSPECTION CHECKLIST**

Site Inspection Checklist

Site Information		
ND No.		Location:
Hwy & RM		
Damage Description:		

Damage Detail	Dimensions – include figures, sketches, photographs, etc. to help document damage	Repairs Needed (Emergency and/or Permanent)
Embankment		
Washout / Scour		
Debris		
Inundation		
Slide Area		
Other		

Site Inspection Personnel:

**APPENDIX B:
EMERGENCY REPAIR CHECKLIST**

Emergency Repair Checklist

ND Number:	Date:
Route and RM:	
Location:	
Damage:	

<u>Site Inspection:</u>	Site inspection performed by and documented	Date	Yes	N/A
1.	District			
2.	Design Program (Geology, Hydr, Bridge, etc.)			
3.	FHWA			
4.	Land Management Agencies (USFS, BLM, etc.)			
5.	DDIR Completed			

<u>Repairs:</u>	Repair option determined and who does the work	Date	Yes	N/A
1.	Repair work can be accomplished by state maintenance forces (If yes, skip steps 3 - 5)			
2.	District enters project information into ND project spreadsheet			
3.	Repair to be done by emergency contract [See Emergency Contract Checklist and Emergency Contract Requirements]			
4.	Repair to be designed and let through normal PCS process			
5.	District notifies Budget and Programming Sections that additional funding will be needed for repairs (Submit E-113)			

<u>Regulations:</u>	Yes	N/A
1.	Can work be limited to original footprint of roadway in order to be in compliance with: National Historic Preservation Act, Endangered Species Act, Floodplain Permits. Spawning areas should be avoided.	
2.	Will impacts outside original footprint need to be assessed and mitigated after work is complete (example: fill placed during emergency grade raise that widens footprint)	

<u>Documentation:</u>	Required documents to be completed	Date	Yes	N/A
1.	DDIR			
2.	Cost estimate and quantities of work			
3.	Initial scoping document – work to be done and by who			
3.	E-113 – Project Authorization for STIP Projects			
4.	Completion report for work done by district Maintenance forces			

Signed: _____ Date: _____

**APPENDIX C:
EMERGENCY CONTRACT CHECKLIST**

Emergency Contract Checklist

ND Number:		Date:	
Route and RM:			
Location:			
Damage:			

<u>Budget:</u>		Date	Yes	No
1.	Submit E-113 to Budget and Programming Include the following: <ul style="list-style-type: none"> Estimated PE, Construction, and CE costs Date when contractor needs to be on board 			

<u>Contract Requirements:</u>		Date	Yes	N/A
	Proposal package provided to contractors.			
1.	This information may include: location and event description, maps, photos, drill logs, "as constructed plans", scope of work, and other pertinent information (traffic control, available materials, work to be done by WYDOT, etc.).			
2.	The proposal will also include: Emergency Contract Requirements (See Appendix D) and the documents noted in the appendix			

<u>Environmental:</u>		Date	Yes	N/A
1.	Verify with Environmental Services that repair work will comply with the requirements of the National Environmental Policy Act (NEPA)			

<u>Advertisement:</u>		Date	Yes	No
	Contact with Contractors [Minimum of 3 preferred]			
1.	Site Showing to Contractors			
2.	Contractor _____ Wants to bid			
3.	Contractor _____ Wants to bid			
4.	Contractor _____ Wants to bid			
5.	Contractor _____ Wants to bid			

<u>Selection and Award:</u>		Date	Yes	N/A
	District or Design Program Evaluation			
1.	Contractors provide bid price, materials, assumptions, and certify that they will comply with the contract documents.			
2.	Submitted proposals evaluated based on their technical merit (determine if the proposed remediation meets the requirements of the project) and the timeline to complete the work. – Use evaluation form to document selection			
3.	The proposal which meets the technical requirements of the project that has the lowest cost estimate will be selected. Contractor Selected: _____			
4.	Selected Proposal reviewed and approved for DBE compliance by the EEO officer.			
5.	Selected Proposal approved by the Chief Engineer.			
6.	Selected Contractor notified.			

7.	Contractors not selected notified of the results.			
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<u>Construction:</u>		Yes	N/A
1.	Received signed contract from selected firm.		
2.	Received contract bond from selected firm. (Work with Contracts and Estimates)		
2.	Notice to proceed will be given by the responsible District personnel to contractor.		
3.	The contract administration will be conducted by District personnel with technical support provided by appropriate design program (Geology, Bridge, etc.) Program. Documentation for compliance with all federal regulations (wage rates, buy American, etc.) will be according to standard construction procedures.		
4.	P.O setup to pay for work completed [The remediation work will be paid for through the P.O. process, so it will not be necessary for quantities and new specialty bid items to be put in the CMS.]		

<u>Documentation:</u>	Required documents from Contractor	Date	Yes	N/A
1.	Material certifications			
2.	Buy America certification			
3.	Prompt payment to subs			

Signed: _____

Date: _____

**APPENDIX D:
EMERGENCY CONTRACT REQUIREMENTS**

Emergency Contract Requirements

Project Number:

Location:

The Contractor shall perform all work in accordance with the Wyoming Department of Transportation Standard Specifications for Road and Bridge Construction and the most current Supplemental Specifications unless otherwise noted in the proposal. The Contractor's signature and initials below indicated they have received or will obtain via the provided links and will abide by the policies and regulations of each of the following:

_____ FHWA 1273 – Required Contract Provisions (attached)

_____ WYDOT Proposal for Highway Construction – Form ER-91A (attached)

_____ 10% Proposal Guaranty Bid Bond (attached)

_____ WYDOT DBE Requirements

DBE Participation Certification (attached)

SS-100F - Disadvantaged Business Enterprise

<ftp://wydot-filestore.dot.state.wy.us/Construction/2010SupplementalSpecifications>

You are to contact and list those DBE firms that do the types of work you might be subcontracting in your bid documents. List all of the DBE firms you have contacted for quotes and the type of work for which you want quotes. Also list any additional DBE firms that may have contacted you to provide quotes. Of those firms contacted, when a quote is provided, list the dollar amount of the quote. If a quote is not provided, fill in the Contact Result with, "No Response" or "Not Interested".

_____ Wage Determinations (Attached)

WYDOT Contracts & Estimates Program will provide the latest values

http://www.dot.state.wy.us/home/engineering_technical_programs/prevaling_wage.html

_____ EEO Affirmative Action Requirements

SS-100E

<ftp://wydot-filestore.dot.state.wy.us/Construction/2010SupplementalSpecifications>

_____ Buy America Provision

See Section 106.10 Requirements for Steel and Iron of the Wyoming Department of Transportation Standard Specifications for Road and Bridge Construction.

_____ Contract Addendum (Attached)

Contractor Representative

Date

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

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

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 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

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 \$10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions

made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(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 utilized 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) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the

laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the

“Statement of Compliance” required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. 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 he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the

overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 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.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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" 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:

(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.

2. 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. 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.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting

agencies may establish their own self-performance requirements.

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 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.

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 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).

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 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 1, 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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

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.

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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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. 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) 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;

(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; and

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

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

2. 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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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.

ER-91A
Rev. 6-18

Project No. _____

WYOMING DEPARTMENT OF TRANSPORTATION

PROPOSAL

FOR

HIGHWAY CONSTRUCTION

Proposal of _____
(Company Name)

(Address)

(City) (State) (Zip)

For the

Located on Highway Number _____ in the County of _____
State of Wyoming.

The undersigned, hereinafter referred to as bidder, hereby proposes to furnish all materials except materials furnished by the Transportation Commission of Wyoming, machinery, tools, equipment, and supplies, and perform all labor necessary to complete the work described in the caption hereof, in accordance with the plans, current Standard Specifications and special provisions, for the prices set forth in the following schedule:

ER-91A
Rev. 6-18
Page 2

Project No. _____

WYOMING DEPARTMENT OF TRANSPORTATION P R O P O S A L

In accordance with the Invitation to Bid, Drawings, Special Provisions, Specifications, Job-Site Inspection and Addenda (if any), in consideration of the prices set forth in the schedule below. We the undersigned agree to furnish for the

DESCRIPTION	QUANTITY	UNIT	TOTAL LUMP SUM
	1	JOB	\$ _____

BID AMOUNT (WRITTEN) _____

CERTIFICATION FOR FREE COMPETITIVE BIDDING

The person, or persons, signing this Proposal certify that

(Company Name)

has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submission of said Proposal.

This Certification of Free Competitive bidding is made subject to the penalty of perjury in accordance with the laws of the U.S. Government and the State of Wyoming.

REGISTRATION WITH THE WYOMING SECRETARY OF STATE

The person, or persons, signing this Proposal certify that:

1. _____
(Company Name)
is a corporation or limited liability company? **YES () NO ()**

2. Has the above mentioned corporation or limited liability company registered with the Wyoming Secretary of State to do business in the State of Wyoming? **YES () NO ()**

Reference Wyoming Statute 17-16-1630.

CERTIFICATION OF SUSPENSION OR DEBARMENT

(Company Name)

or any person or persons associated therewith in the capacity of owner, partner, director or officer authorized to sign contracts certifies by signing this Proposal that the response(s) to the following questions is (are) true:

- * Is any interested party currently under suspension, disqualifications, debarment, voluntary exclusion, or determination of ineligibility by any state or federal agency?
- * Has any interested party been suspended, debarred, disqualified, voluntarily excluded or determined ineligible by any state or federal agency within the past three years?
- * Has any interested party have a debarment pending?
- * Has any interested party been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years?

APPLICABLE: **YES () NO () If the answer is YES to any of the four items above, insert Suspension or Debarment actions below:

Suspension or Debarment actions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any Suspension or Debarment noted, indicate below to whom it applies, initiating agency and dates of action.

SUSPENSION OR DEBARMENT LISTING

APPLIES TO WHOM	INITIATING AGENCY	DATES OF ACTION
_____	_____	_____
_____	_____	_____
_____	_____	_____

The person or persons signing this Proposal do hereby certify, under penalty of perjury, that this CERTIFICATION OF SUSPENSION OR DEBARMENT is a true and accurate statement.

CERTIFICATION OF PREVIOUS EEO PERFORMANCE

Certification with regard to the Performance of Previous Contracts or Subcontracts subject to the Equal Opportunity Clause and the filing of Required Reports.

Does the Bidder hereby certify that they have participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246? **YES () NO ()**

Has the bidder filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements? **YES () NO ()**

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or less are exempt).

Currently, FHWA Form PR-1391 is the only report required by the Executive Orders or their implementing regulations, per FHWA 1273.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 23 CFR 230.121 prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

By signing this Proposal the Bidder signifies that he/she has complied with the provisions of "CERTIFICATION FOR FREE COMPETITIVE BIDDING, REGISTRATION WITH THE WYOMING SECRETARY OF STATE, CERTIFICATION OF SUSPENSION OR DEBARMENT, and CERTIFICATION OF PREVIOUS EEO PERFORMANCE", and FHWA 1273 as they apply to this project.

LOBBYING ACTIVITIES

CERTIFICATION FOR FEDERAL AID CONTRACTS

The prospective participant certifies, by signing and submitting this Bid or Proposal, to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant also agrees by submitting his or her Bid or Proposal that he or she shall require that the language of this Certification be included in all lower tier subcontracts, that exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION CERTIFICATION

_____ certifies,
(Company Name)

That:

- a. It has taken affirmative action to seek out and consider Disadvantaged Business Enterprises as potential subcontractors.
- b. It has taken affirmative action to seek out and consider Disadvantaged Business Enterprises as potential suppliers.

Further, the Contractor shall:

- c. Specifically describe, on separate lines of this form, each component of work of the contract to be subcontracted to each Disadvantaged Business Enterprise Firm is being used as a supplier of materials and for othersubcontract work (e.g. furnish sign materials as a supplier and traffic control as a subcontractor) the firm must be shown twice, once asa supplier and once performing subcontract work.
- d. List all contacts and follow-up contacts made with the potential Disadvantaged Business Enterprise subcontractors and Disadvantaged Business Enterprise material suppliers. (If necessary, use additional sheets).
- e. List the dollar amount quoted by each responding Disadvantaged Business Enterprise subcontractor for the work described in accordance with c. above and the dollar amount quoted by each Disadvantaged Business Enterprise material supplier for the materials described in accordance with c. above.
- f. Indicate responding Disadvantaged Business Enterprises that will be used, and those that will not be used.
- g. Only those Disadvantaged Business Enterprises possessing current certification by the Wyoming Department of Transportation will be eligible to meet the requirements of the DBE program.

_____ hereby covenants and agrees as follows:
(Company Name)

1. The Bidder is the only person or party interested in this Proposal, and that this Proposal is made without collusion with any person, firm or corporation. That the Bidder has carefully examined the plans, Standard Specifications, supplementary specifications and special provisions governing the work included in this Proposal, and has inspected the site of the work and fully understands the physical conditions under which the work must be performed.
2. That the Bidder will perform all extra work that may be required subject to the provisions set forth in the Standard Specifications.
3. That the quantities for items shown in the schedule are approximate only and subject to increase or decrease, and that increased or decreased quantities will be paid for at the unit prices bid therefore, subject to provisions of the Standard Specifications.
4. To execute a contract within 30 day after the date of award covering the work and to furnish a performance bond in the form and penalty provided for in the plans and Standard Specifications.
5. To commence contract time in accordance with subsection 108.02 "Notice to Proceed" of the current SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION and to complete all of the work on or before ** _____ **.
6. That as evidence of good faith and as a guaranty that the Bidder will enter into the contract and furnish the performance bond mentioned above, there is enclosed herewith a proposal guaranty on a proposal guaranty bid bond, cashier's check, certified check or bank money order, in the amount of 10 PERCENT OF THE CONTRACTOR'S BID, payable to the Transportation Commission of Wyoming
7. That the cashier's check shall remain in the possession of the Director, Wyoming Department of Transportation until delivered to the Bidder in person or to his agent, to return such cashier's check by registered U. S. Mail. Provided, however, that the return date of the Cashier's check shall be governed by the current Standard Specifications.
8. LUMP SUM PAY ITEMS - A nondivisible whole unit comprising everything necessary to complete the item as specified and may be broken out in the proposal as Bill of Material items for bidding purposes and tracking purposes ONLY. They will not preclude or override the main bid item for which they are included. Measurement and Payment will be as a whole.

Project No. _____

FAILURE TO COMPLETE AND SUBMIT THIS BID IN ITS ENTIRETY OR FALSIFICATION OF BID DOCUMENTS WILL RESULT IN THE ENTIRE PROPOSAL BEING CONSIDERED IRREGULAR AND MAY BE REJECTED BY THE WYOMING TRANSPORTATION COMMISSION. THOSE WHO SIGN AND THE FIRM FOR WHICH THEY ARE AUTHORIZED TO SIGN, DO SO UNDER THE PENALTY OF PERJURY AS SPECIFIED BY THE LAWS OF THE UNITED STATES AND THE STATE OF WYOMING.

Authorized Official of Bidder Title Date

having been first duly sworn on oath deposes and says that statements made on the CERTIFICATION FOR FREE COMPETITIVE BIDDING and CERTIFICATION OF SUSPENSION OR DEBARMENT are true, and I also hereby certify that I have the authority to submit this bid.

(Company Name)

Subscribed in my presence and sworn to before me this _____ day of _____, 20____.

Notary Public

(SEAL) My commission expires: _____

PROPOSAL GUARANTY BID BOND

KNOW ALL MEN BY THESE PRESENT, that we _____
(Bidders Prequalified Name)

_____ as Principal, hereinafter called the Principal, and

(Surety Name)

_____,
a corporation duly organized under the laws of the State of _____ as Surety, hereinafter
called the Surety, are held and firmly bound unto the **TRANSPORTATION COMMISSION OF
WYOMING** as Obligee, hereinafter called the Obligee, in the sum of _____
Dollars (\$ _____), for the
payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves,
our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS, the Principal has submitted a bid for _____.

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and if the Principal agrees to and
does enter into a contract with the Obligee in accordance with the terms of such bid, and gives such bond
or bonds as specified in the bidding documents with good and sufficient surety for the faithful
performance of the contract and for the prompt payment of labor and material furnished in the prosecution
of the contract, then, in the event of the failure of the Principal to execute and enter into such contract and
give such bond or bonds, the Principal shall pay to the Obligee the difference between the low bid and
such larger amount, not to exceed the ten percent penalty, at which time the Obligee may in good faith
contract with another party to perform the work covered by said bid; in that event, this obligation
represented by this bond shall be null and void, otherwise it shall remain in full force and effect.

Signed and sealed this _____ day of _____ A.D. 20 ____.

_____) _____ (SEAL)
) (Principal-Signature Required)
)
_____) _____
(Witness) (Title)

_____) _____ (SEAL)
) (Surety)
)
_____) _____
(Witness) By: _____
(Attorney-in-fact)

ADDENDUM

SUPPLEMENTAL AGREEMENT BETWEEN _____ AND THE WYOMING
DEPARTMENT OF TRANSPORTATION ON PROJECT NO. _____

The purpose of this Addendum is to supplement and/or replace terms and conditions contained in the Agreement or Terms and Conditions referred to above, entered into by the parties. In the event of any inconsistencies between the terms and conditions contained in the Agreement or Terms and Conditions referred to above and this Addendum, the terms and conditions in this Addendum shall supersede and replace the terms contained in such Agreement or Terms and Conditions referred to above.

General Provisions

- A. Amendments. Any changes, modifications, revisions or amendments which are mutually agreed upon by the parties shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
- B. Applicable Law/ Jurisdiction. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming and jurisdiction shall lie therein, for any and all purposes.
- C. Assignment/Agreement Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. Contractor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Customer.
- D. Attorney Fees. Each party shall be responsible for their own attorney fees, and do not agree to be responsible for the attorney fees, if any, of the other party.
- E. Compliance with Laws. Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.
- F. It is expressly agreed that the terms of this Addendum shall supersede the terms in the contract.
- G. Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail express mail, or delivery in person.
- H. Prior Approval. This Agreement shall not be binding upon either party, no services shall be performed under the terms of this Agreement, and the State of Wyoming shall not draw warrants for payment on this Agreement, until this Agreement has been reduced to writing, approved as to form by the Office of the Attorney General, and approved by the Governor of the State of Wyoming if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).
- I. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may re-negotiate the terms affected by the severance.
- J. Sovereign Immunity. The State of Wyoming and its Agencies do not waive sovereign immunity by entering into this Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

- K. No indemnification. The State of Wyoming and its Agencies do not accept, undertake or agree to indemnification for any purpose by entering into this Agreement unless such indemnification is provided for under the laws of the State of Wyoming.
- L. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.
- M. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.
- N. Waiver. The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.
- O. Signatures. In witness thereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

Wyoming Department of Transportation

[Name, Title] _____
Date

Insert contractor's name

[Name and Title] _____
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Michael T. Kahler, Senior Assistant Attorney General _____
Date

**APPENDIX E:
DDIR FORM**

<div style="display: flex; justify-content: space-between;"> <div style="width: 20%;"> <p>U.S. Department of Transportation Federal Highway Administration</p> </div> <div style="width: 50%; text-align: center;"> <h2 style="margin: 0;">DETAILED DAMAGE INSPECTION REPORT</h2> <p style="margin: 0;">(Title 23, Federal-aid Highways)</p> </div> <div style="width: 20%; text-align: right;"> <p>Report Number</p> </div> </div>	<p>Sheet _____ of _____</p>
	<p>FHWA Disaster Number</p>
<p>Location (Name of Road and Milepost)</p>	<p>Inspection Date</p>
<p>Description of Damage</p>	<p>Federal-aid Route Number</p>
	<p>State _____ County _____</p>

Cost Estimate

	Description of Work to Date (Equipment, Labor, and Materials)	Unit	Unit Price	Quantity	Cost	
					Completed	Remaining
Emergency Repair						

Method	<input type="checkbox"/> Local Forces	<input type="checkbox"/> State Forces	<input type="checkbox"/> Contract	Subtotal PE/CE	
Emergency Repair Total					

Permanent Restoration						

Method	<input type="checkbox"/> Local Forces	<input type="checkbox"/> State Forces	<input type="checkbox"/> Contract	Subtotal PE/CE	
Perm. Repair Totals					

Environmental Assessment Recommendation <input type="checkbox"/> Categorical Exclusion <input type="checkbox"/> EA/EIS	Estimated Total	
Recommendation <input type="checkbox"/> Eligible <input type="checkbox"/> Ineligible	FHWA Engineer	Date
Concurrence <input type="checkbox"/> Yes <input type="checkbox"/> No	State Engineer	Date
Concurrence <input type="checkbox"/> Yes <input type="checkbox"/> No	Local Agency Representative	Date

**APPENDIX F:
SELECTION EVALUATION FORM**

