

ALL FA PROJECTS (STEEL & IRON PRODUCTS)

SPECIAL ATTENTION

BUY AMERICA

In accordance with the **BUY AMERICA** requirements of the Federal regulations, all manufacturing processes for steel and iron materials furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.

Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail and steel supports for signs, signals and luminaires. Products of iron include, but are not limited to, such products as cast iron frames and grates. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.

A Certificate of Compliance, conforming to the requirements of Section 106.04, shall be furnished for steel and iron materials. Records to be maintained by the contractor for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Special Attention. The lack of these certifications will be justification for rejection of the steel or iron product.

The requirements of said law and regulations do not prevent a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

Upon completion of the project, the Contractor shall certify in writing as to compliance with this Special Attention and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the project. The form for this certification is entitled "Buy America Certificate of Compliance" and can be found at www.NHDOT.com.

SPECIAL ATTENTION**SHIPPING**

In accordance with the **Title 46 - Shipping** requirements of the Federal regulations (46 CFR 381.7), contractors must comply with the Cargo Preference Act (CPA) requirements and implementation regulations for all Federal-aid projects awarded after February 15, 2016. **Title 46 - Shipping** reads as follows:

Title 46 - Shipping

Volume: 8

Date: 2014-10-01

Original Date: 2014-10-01

Title: Section 381. 7 - Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

Context Title 46 - Shipping. CHAPTER II - MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER J - MISCELLANEOUS. PART 381 - CARGO PREFERENCE-U.S.FLAG VESSELS.

§ 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381 .3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) *Agreement Clauses.* Use of United States-flag vessels:

- (1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(b) *Contractor and Subcontractor Clauses.* Use of United States-flag vessels: The contractor agrees

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

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills--of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

SPECIAL ATTENTION**CONVICT PRODUCED MATERIAL**

In accordance with the requirements of the Federal regulations (23 U.S.C. 114(b)(2), 23 CFR 635.417), essentially all convict produced material is prohibited from Federal-aid highway construction projects. More specifically, materials produced after July 1, 1991, by convict labor, may only be incorporated in a Federal-aid construction projects if: 1) such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or 2) such material has been produced in a qualified prison facility, e.g., prison industry, with the amount produced during any 12-month period, for use in Federal-aid projects, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987*.

* Because the Department, Federal Highway Administration, nor New Hampshire Correctional Industries can produce documents to meet condition 2 above, this condition cannot be met for New Hampshire convict produced material.

1/2001
Supersedes 3/90
ALL FA PROJECTS

SPECIAL ATTENTION

LOBBYING

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SUBJECT: LIMITATION ON USE OF GRANT OR CONTRACT FUNDS FOR LOBBYING

The lobbying restrictions were established by Section 319 of Public Law 101-121 (Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990).

The law prohibits Federal funds from being expended by the recipient or any lower tier subrecipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement. The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement is also covered.

Federal-aid contractors, and consultants, as well as lower tier subcontractors and subconsultants are also subject to the lobbying prohibition. To assure compliance, a certification provision is included in all Federal-aid construction solicitations and contracts, and consultant agreements exceeding \$100,000 in Federal funds.

The Contractor shall be aware that by signing and submitting this proposal, he or she is attesting to the requirements of the certification provisions.

During the period of performance of a grant or contract, recipients and subrecipients must file disclosure form (Standard Form LLL) at the end of each calendar year quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

Lower tier certifications should be maintained by the next tier above (i.e., prime contractors will keep the subcontractors' certification on file, etc.). Copies of Standard Form LLL will be included in the subcontract package for distribution to successful bidders.

December 24, 1998
Supersedes Spec. Attn. dated 3/29/88 & 12/5/90

FHWA Projects

SPECIAL ATTENTION

**CONTRACT AFFIDAVIT - CERTIFICATION REGARDING DEBARMENT
SUSPENSION**

The separate form entitled, CONTRACT AFFIDAVIT (As Required by Section 112(c) of Title 23 USC) has been deleted from this proposal.

Bidders are advised that the last page of the bidding proposal has been revised to include the same reference, **IN BOLD PRINT**, relative to the non-collusion statement included on the discontinued form.

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The Contractor is advised that 49 CFR 29.510, Appendix A, requires that the Contractor, including all principals, certify that they are not currently under debarment or suspension or have not been under debarment or suspension within the past three years. (For certification instructions see next page).

The certification has been added, **IN BOLD PRINT**, onto the next to the last page of the bidding proposal.

The Contractor is further advised that Appendix B of 49 CFR 29.510 regarding certification of lower tier transactions has been added to Form FHWA-1273.

Appendix A - Certification regarding Debarment, Suspension, and other Responsibility Matters -
Primary Covered Transactions.

Instruction for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective 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 primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.
6. The prospective primary 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.
7. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 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.

SPECIAL ATTENTION

SUMMARY OF REQUIREMENTS FOR FEDERAL-AID PROJECTS

1. Subletting on Federal-aid Contracts:

- a. On Federal-Aid projects, the following documents are required to be incorporated in, and made a part of, every subcontract agreement; including lower-tier subcontract agreements:
 - NHDOT Subcontracting Procedures
 - Required Contract Provisions (FHWA-1273)
 - Disadvantaged Business Enterprise (DBE) Program Requirements (Standard Specification 103.06)
 - Prompt Payment to Subcontractors (Standard Specification 109.09)
 - 41 CFR 60-4 Affirmative Action Requirements
 - Applicable only to contracts or subcontracts in excess of \$10,000
 - U.S. Department of Labor (USDOL) wage rates entitled “GENERAL WAGE DECISION” (as contained in the contract)
 - Does not apply to companies performing Davis-Bacon exempt work (such as testing, monitoring, and inspection services).
- b. Subcontractor Approvals for Companies Who Perform Testing, Monitoring, Inspection Services:
 - 1) Companies and/or independent contractors performing testing, monitoring, or inspection, such as ground penetrating radar, erosion control monitoring, video inspection, SWPPP, environmental testing/monitoring or vibration monitoring, require subcontractor approval.
 - 2) The following subcontractor approval documentation is required:
 - OFC Form 15 - Transmittal Request
 - 15a for State managed projects, or
 - 15b for Local Public Agency (LPA) municipal projects
 - OFC Form 14 - Contractor Acknowledgment Certification
 - OFC Form 26 - Work Certificate
 - Certificate of Insurance showing Workers’ Compensation coverage
Office of Federal Compliance (OFC) staff will verify coverage with the NH Department of Labor (NHDOL).
- c. Contractors will not be approved or authorized to work until all OFC’s Annual Assurance requirements have been fulfilled.
- d. Per NH RSA 228:4-b, Workers’ Compensation Insurance must cover all individuals performing work on site and shall remain in effect for the duration of the contractor’s work on the project. No excluded individual, owner, or officer may perform work on site without exception. All persons working on site must have Workers’ Compensation coverage on file with the NHDOL.

- e. Prime Contractors shall submit consent to sublet packages to the NHDOT at least 5 working days prior to said subcontractor (or lower-tier subcontractor) performing work on site. On LPA projects, the Prime Contractor shall also provide a courtesy copy to the town or the town's consultant, if applicable.
- f. LPA Projects Only: OFC is the sole approval authority for all LPA construction projects. Consents to sublet shall be submitted directly to the OFC.

2. FHWA Form 1273, Required Contract Provisions:

- a. The Prime Contractor shall insert in each subcontract all the stipulations contained in the Required Contract Provisions. Primes shall further require their inclusion in any lower-tier subcontract or purchase order that may in-turn be made. The Required Contract Provisions shall not be incorporated by reference in any case.
- b. In accordance with Section I, Paragraph 1, the Prime Contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. This shall include any unpaid wages found to be owed that is not paid by a subcontractor or lower-tier subcontractor.
- c. In accordance with Section I, Paragraph 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."

3. Certified Payrolls and Time Sheets:

- a. Submission Format: Payrolls, as required by FHWA Form 1273, shall be submitted electronically (email) as a pdf document to the NHDOT Contract Administrator, consistently named in the following format: Contractor's name (abbreviated is acceptable) followed by the "week ending" date (yyyy/mm/dd). The Contractor's and each Subcontractor's payroll shall be submitted as separate, individual files.

Example: Plow Brothers Inc 2017-12-09

- b. Multiple Counties/States or Categories (Highway/Building/Heavy): Whenever contracts have multiple wage determinations, contractors shall indicate, on each payroll submission, which wage determination is applicable to the work.
- c. Project Specific: Except for weekly gross pay, deductions, and weekly net pay, all information shown on certified payrolls shall be project specific. Please reference FHWA Form 1273 for additional payroll requirements and limitations.
- d. Time Sheets: Every contractor shall create and maintain time sheets for every worker performing work on the project. This includes salaried employees who perform work in a classification, either intermittently or full time. Time sheets shall record all work performed during the work week, both Federal and non-Federal, shop time, travel time considered work time, including any time considered "hours worked" as described under the Fair Labor Standards Act, Part 785. When requested, Contractors shall provide copies of time sheets to the OFC in support of certified payroll report information being provided. Time sheets, payroll records, and other basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years from final invoice for all laborers and mechanics working at the site of work.

4. Sign-In Sheets:

- a. State Managed Projects: The use of daily sign-in sheets is required for subcontractors performing asbestos abatement. The OFC may also direct the use of daily sign-in sheets on other State managed projects for any contractor who does not accurately report all workers performing work on site on their payrolls. The sign-in sheets shall be administered as described below.
- b. LPA Projects: The use of daily sign-in sheets is **mandatory** on all LPA projects. Every worker must sign in, on a daily basis, prior to performing work on site. The OFC Form 20- Daily Sign-In Record shall be used for this purpose. The Prime Contractor is responsible to ensure all sign-in sheet requirements are met and that sign-in sheets are turned in to the Contract Administrator on a daily basis. Contract Administrators shall review and initial sign-in sheets daily; cross matching what employees have indicated for their work classification and what employers are indicating on certified payroll reports, and also verifying employers of workers signing in have been approved to work by the NHDOT. Sign-in sheets shall be co-located with certified payrolls and filed in a 3-ring binder; newest sign-in sheets on top. Sign-in sheets are an inspection item.

5. Requesting Work Classifications, Classifying Workers, and/or Payment of Wages.

- a. The Prime Contractor is required to submit an additional request to the NHDOT for any classification of labor/equipment that they or their subcontractors shall be utilizing under the contract that is not contained in the Proposal's Federal General Decision.
- b. Conformance submissions shall be in accordance with U.S. Department of Labor Memorandum No. 213, dated March 22, 2013. A copy of the Memorandum can be found at <http://www.wdol.gov/aam/aam213.pdf>.
- c. Unless otherwise instructed by the OFC, a SF 1444 shall be used for this purpose.
- d. Requests must be submitted to the NHDOT prior to any work being performed in the classification(s).
- e. Contractors who do not receive a USDOL conformance decision from the OFC within 45 days of submission should follow-up with the OFC.
- f. Once a decision is received from the USDOL, the OFC will notify the Prime Contractor. In cases when the USDOL stipulates a higher rate of pay than the one proposed by the Contractor, and the Contractor elects not to submit an appeal, restitution, if due, shall be paid to employees within 10 calendar days of being notified by the OFC. Restitution requirements of the NHDOT shall apply.
- g. Appeals shall be filed with the USDOL within 30 calendar days and a courtesy copy forwarded to the OFC at the same time. Restitution, if applicable, does not need to be paid during the time the appeal is under review by the USDOL.
- h. Contractors shall immediately inform the OFC whenever appeal decisions (including reconsideration requests) are received from the USDOL.

- i. In cases when a contractor indicates to the OFC he/she plans to appeal the USDOL decision but fails to provide the OFC proof of submission within 30 calendar days, the contractor shall comply with the original USDOL decision. The OFC will subsequently notify the Contractor that proof of an appeal was not received within 30 days and restitution, if applicable, must be paid to workers within 10 calendar days. Contractors who fail to provide restitution will be deemed “in non-compliance.”
- j. OFC payment release authorization letters (Okay to Pay letters) cannot be accomplished until all wage conformances have been deemed closed (USDOL responses have been received), any pending contractor wage appeals have been finalized, with restitution paid if applicable, and all Prompt Pay requirements have been met.
- k. Job Classifications Descriptions (Laboring Category): While most of skilled and unskilled crafts appearing in Wage Determinations are self-explanatory, the below classifications (not all inclusive) have been described by the NHDOT and are consistent with USDOL requirements. Questions involving correct classification of workers should be addressed prior to performing work on the project. Workers performing in these classifications, according to the description, will be classified by contractors accordingly:
 - 1) Asbestos Abatement: All work associated with asbestos abatement shall be classified as “Laborer,” unless said work involves piping that will be reinsulated. In these cases, “Asbestos Abatement Worker” shall be used.
 - 2) Blaster: Supervises and assists in locating, loading, and firing blast holes with explosives to break up hard materials. This work includes any of the following duties on-site: determining the spacing and depth of drilled holes; determining the amount of explosives, timing and placement of detonators; handling blasting materials in the work area; loading holes with detonators, primers and explosives; tamping and stemming holes; directing the placement of blasting mats or other flyrock controls; and detonating the charges.
 - 3) Brick Mason (also called Brick Layers): Builds and repairs walls, floors, paths/sidewalks, partitions, fireplaces, chimneys, and other structures with brick, pavers, precast masonry panels, concrete block, and other masonry materials, with or without mortar.
 - 4) Carpenter (Form Work Only): Formwork carpenters build the molds that retain wet concrete in the construction of bridges, foundations and other concrete structures. This also includes pre-manufactured forms made of steel, wood or heavy plastic. Work under this class also includes bracing required to hold the forms in place.
 - 5) Carpenter (Excluding Form Work): Involves all carpentry work not directly related to the pouring of concrete. This includes, without limitation, scaffolding, safety rail, platforms, walkways, stairs, demo containment, buildings, and bracing that is not in direct contact with concrete.

Note 1: Any work to dismantle where workers can simply “tear it apart” and where no safety concerns are present can be performed by Common or General Laborers.

Note 2: Questions involving these classes should be addressed prior to performing work on the project.

- 6) Drill Operator: Unless a hand-held tool, which can then be classified and performed as a Common/General Laborer, all drill work shall be performed in the “Drill Operator” classification. Conformances, if needed, shall be consistent with this requirement.
- 7) Guardrail Installer: Except for the “pounder,” each person performing guardrail installation work shall be classified as “Guardrail Installer.”
- 8) Ironworker (Reinforcing): Positions and secures steel bars to placement of reinforced concrete; determines number, size, shape, and location of reinforcing rods from plans, specifications, sketches and/or oral instructions; places and ties reinforcing steel using wire and pliers, sets rods in place, spaces and secures reinforcing rods. May bend steel rods with hand tools or operate a rod-bending machine; may reinforce concrete with wire mesh; may perform other related duties.
- 9) Ironworker (Structural): Performs any combination of the following duties to set beams, hang diaphragms, install bolts, torque bolts, test bolts, raise, place and unite girders, columns and other structural steel members to form completed structures or structure frameworks, working as a member of a crew; sets up hoisting equipment for raising and placing structural steel members; fastens steel members to cable of hoist using chain, cable or rope; signals worker operating hoisting equipment to lift and place steel members. Guides member using guy line (rope) or rides on member to guide it into position. Reads plans; rigs, assembles and erects structural members requiring riveting or welding. May perform other related duties.
- 10) Lead Abatement Worker: All work associated with lead abatement shall be classified as “Lead Abatement Worker”.
- 11) Stone Mason: Builds stone walls, as well as set stone exteriors and floors, lays/sets all cut stone, marble, slate, or stone, with or without mortar. They work with natural cut stone, such as marble, granite, limestone and artificial stone made of concrete, marble chips, or other masonry materials.
- 12) Sweeper/Broom Operators: Whenever Sweeper or Broom does not appear in the Wage Determination, contractors may use the Truck Driver classification for this service if the equipment used is of the over the road type (only). However, anytime the contract has an established classification/rate for “Sweeper or “Broom,” this classification must be used and the minimum rate, as it appears in the contract, shall apply.
- 13) Traffic Coordinator: Performs sign placement and maintenance, including proper set up and relocation of construction sign packages and message boards; designs lane closures in accordance with local, state, and Federal requirements. Please do not confuse this classification with Flagger.

6. Prompt Pay: Prompt pay requirements are outlined in the NHDOT Standard Specifications Section 109.09. Submissions are due no later than the 10th calendar day of each month.

- a. State managed projects: Contractors may use the OFC Form 18 or utilize their own document that contains the same required information unless otherwise instructed by the OFC.

- If no payments were made during the reporting period, contractors shall submit a certification indicating “no payments made to subcontractors.”
- b. LPA projects: Contractors shall use the OFC Form 12.
7. **Mandatory Training**: Prime Contractors who fail to obtain an annual average (based on the calendar year) of at least 60% “Satisfactory” ratings on all OFC Compliance Field Audit Reports may be required to attend a mandatory 4-hour Contractor Compliance Training Class each spring (as scheduled by the OFC). A principal owner or executive officer of the company, and his/her payroll accountant shall attend.
- a. Compliance ratings will be averaged over all projects if a Prime Contractor has multiple projects.
 - b. The OFC has at least two Contractor Compliance Training Seminars each year. Every contractor participating on Federal-aid construction projects is encouraged to attend.
8. **Restitution**: If required, restitution shall be performed in accordance with the OFC guidelines. The OFC Form 8 - Restitution Worksheet and Affidavit shall be used.
9. **Temporary Suspensions**:
- a. Any Contractor, Subcontractor, or Lower-tier Subcontractor found to be in violation of FHWA Form 1273, Required Contract Provisions, made part of its contract, or has failed to comply with OFC Field Audit requirements, will be required to take corrective action before participating in future projects funded by the Department. Corrective action will include, but not limited to, the submission of certified payrolls or other records and reports necessary to verify compliance with the Provisions.
 - b. Any Contractor, Subcontractor or Lower-tier Subcontractor found to have repeatedly violated the FHWA Form 1273, Required Contract Provisions, may be required to complete 4-hours of Federal Contract Compliance Training conducted by the OFC. When mandated, a principal owner and/or company executive and his/her payroll accountant shall attend. Federal Contract Compliance Training must be completed before participation on future projects is authorized. This requirement does not relieve the Contractor of its obligations under the prime contract, nor does it prevent the Department from seeking other remedies or enforcement action, as provided by the governing Rules, Laws, and Federal Regulations.
 - c. Companies will be notified of suspensions in writing. Actions the company must take to have participation privileges restored will be clearly indicated. Companies will also be advised that if a satisfactory response is not received within 30 days of receipt of the suspension notice, the company will be considered “non-responsive.” In cases where companies are non-responsive, and unpaid wages on the part of the subcontractor or lower-tier subcontractor are involved, the matter will then be deferred to the Prime Contractor for payment of wages as provided in Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 3.

10. Right to Withhold Payment: The Department may withhold payments claimed by the Contractor on account of:

- a. Failure of the Contractor to make payments to Subcontractors for materials or labor.
- b. Regulatory non-compliance or enforcement.
- c. Failure to comply with OFC Field Audit Report requirements.
- d. Failure to comply with monthly reporting requirements, as applicable.
- e. For projects with an On-The-Job Training (OJT) requirement, failure to submit OJT Form 1 - On-The-Job Training Acknowledgement and Statement of Intent within 30 days of the project start date.
- f. Failure to submit closeout documentation.
- g. All other causes that the Department reasonably determines negatively affect the State's interest.

11. Final Payment Release: Once final project records are transferred to the OFC, a final review shall be performed to determine compliance with the Federal provisions. Release of any final payment shall not be made to the Contractor until the OFC issues a payment release letter (Okay to Pay) certifying:

- a. All required payrolls, labor, and Equal Employment Opportunity (EEO) documentation have been received and deemed complete and correct.
- b. DBE requirements stipulated in the Contract and/or the Required Contract Provisions have been fulfilled.

12. Deposits in Escrow: Every attempt is made to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, however, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, the project can proceed to final closing provided the Prime Contractor, from payments already provided him/her, provides written evidence a deposit of an amount equal to the potential liability for wage restitution and liquidated damages, if applicable, has been deposited in an escrow account. When a final decision is rendered, the Prime Contractor makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- a. Where the parties have agreed to amounts of wage restitution that are due but the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, an amount corresponding to the documentation is returned to the depositor. Amounts for any workers who cannot be located are held in the escrow account for three (3) years. Amounts remaining in the account not disbursed by the end of this three-year period shall be returned to the Prime Contractor.
- b. Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow

- will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained for a period of three (3) years and subsequently disbursed to the depositor as described above in Paragraph 12a.
- c. Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated dates, if applicable, that have been determined to be due. Once the final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Please direct questions relating to any information in this document to the OFC. See the OFC website for forms, documents, training schedules, contact information, and other helpful material: www.nh.gov/dot/org/administration/ofc/index.htm.

SPECIAL ATTENTION

Disadvantaged Business Enterprise (DBE)

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the New Hampshire Department of Transportation (NHDOT) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBE's) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. Policy. It is the policy of the United States Department of Transportation to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 Code of Federal Regulation (CFR) Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 applies to this contract.

2. Disadvantaged Business Enterprise (DBE) Obligation. The State and its Contractor agree to ensure nondiscriminatory opportunity for disadvantaged business enterprises, as defined in 49 CFR Part 26, to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. **Prime Contractors and subcontractors who further sublet must include this assurance in every subcontract:** *The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by any 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 NHDOT deems appropriate.*

3. Sanctions of Non-Compliance. The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this Contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and, after notification of the United States Department of Transportation, may result in termination of this Contract or such remedy as the State deems appropriate.

Overall Statewide DBE Goals. The NHDOT currently employs a race/gender neutral DBE policy to attain its overall statewide DBE goals. This means that unless otherwise stated in the Contract, the NHDOT relies on the voluntary cooperation of all contractors to utilize DBE's on every project, sufficient to meet or exceed the current statewide DBE goal. Although the majority of statewide DBE goals are currently voluntary, failure of the NHDOT to meet or exceed the overall statewide DBE goal as required by the Federal Highway Administration (FHWA), could necessitate placement of mandatory DBE participation requirements on all future statewide projects.

Disadvantaged Business Enterprise (DBE) Program Goals. The New Hampshire Department of Transportation is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBE's who submitted bids for transportation related projects, compared as a percentage of all available contractors who submitted bids for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the NHDOT website at www.nh.gov/dot.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

- A. "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by an individual determination of social disadvantage as described in 49 CFR 26 appendix E, determinations of social and economic disadvantage.
- B. "Owned and controlled" means a business which is:
 - (1) A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - (2) A partnership, joint venture or limited liability Company in which at least 51% of the beneficial ownership interests is legitimately held by a disadvantaged person(s).
 - (3) A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests are legitimately held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real economic interest and must include proportionate control over management, capital, and earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current New Hampshire Unified Disadvantaged Business Enterprise (DBE) Directory is available online at www.nh.gov/dot. This directory contains all currently certified DBE's available for work in New Hampshire, and is updated monthly. Only firm's listed in this directory are eligible for DBE credit on NH Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Coordinator at (603) 271-6612 for assistance.

Counting DBE Participation For Project Goals. In order for payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices. This means that:

- A. The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- B. The DBE must perform work commensurate with the amount of its contract;
- C. The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- D. The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own work force;
- E. None of the DBE's work can be subcontracted back to the Prime Contractor, nor can the DBE employ the prime's, or other subcontractor's supervisors currently working on the project;

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- F. The DBE's labor force must be separate and apart from that of the Prime Contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- G. The DBE owner must hold a Public Works license and any other professional or craft licenses required for the type of work he/she performs on the project;
- H. The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project.

Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies (CUF) requirements at the following rate.

- A. A DBE Prime Contractor; count 100% of the value of work performed by own forces, equipment and materials count towards DBE goals.
- B. An approved DBE subcontractor; count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- C. A DBE owner-operator of construction equipment; count 100% of expenditures committed.
- D. A DBE manufacturer; count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Prime Contractor.
- E. A regular DBE dealer/supplier; count 60% of expenditures committed.
A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long term agreement, and not by a contract by contract basis.
- F. A DBE Broker; count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- G. A DBE renter of construction equipment to a contractor; count 20% of expenditures committed, with or without operator.
- H. A bona fide DBE service provider; count 100% of reasonable fees or commissions.
Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.
- I. A trucking, hauling or delivery operation, count 100% of payments when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of payments when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- J. Any combination of the above.

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Reporting Requirements for Payments Made To DBE's: On all Federal-aid projects, the Prime Contractor is required to report payments made to DBE's during the life of the contract, on a quarterly basis, for the periods covering January 1st–March 31st, April 1st-June 30th, July 1st-September 30th and October 1st-December 31st, The NHDOT will provide the Prime Contractor with a quarterly DBE payments report, detailing all DBE's subcontracted by the Prime Contractor, per project. The Prime Contractor shall report any payments made to DBE's during the requested reporting period. This documentation shall be submitted to the Office of Federal Compliance within the time period stated on the NHDOT quarterly request. Failure of the Prime Contractor to submit this information may result in the Department withholding progress payments.

Removal of Approved DBE From Transportation Related Project: Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the NHDOT.

MUNICIPAL PROJECTS ONLY: Timely submission of invoices to Municipalities: Prime Contractors must submit all invoices received for satisfactorily completed work, from any subcontractor/lower-tier subcontractor/material supplier, to Municipalities for payment within 30 days of receipt.