

STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION



# PROPOSAL CONTRACT

FOR THE CONSTRUCTION OF

**Contract No. CNQ043**

SUMNER COUNTY

Project No. HSIP-109(36), 83011-3233-94 (PIN 121823.00)

The miscellaneous safety improvements on S.R. 109 at the intersection of Old S.R. 109 in Gallatin (L.M. 7.53), including grading, drainage and paving.

Project Length - 0.316 miles

Completion Time - On or before 11/30/2016 (See Special Provision 108B)

The DBE goal for this contract is 9%.

AT AN ESTIMATED COST OF \$\_\_\_\_\_

By \_\_\_\_\_

City, St. \_\_\_\_\_

Surety \_\_\_\_\_

(June 18, 2012)  
(December 12, 2012)  
(June 14, 2013)

**STATE OF TENNESSEE**

**DEPARTMENT OF TRANSPORTATION**

**INSTRUCTIONS TO BIDDERS**

**BIDS TO BE RECEIVED**

**April 1, 2016**

Bids for the construction or maintenance of the following projects will be received via the Internet until 10:00 A.M. April 1, 2016, opened publicly in the Construction Division, Suite 700, James K. Polk Office Building, Nashville, Tennessee, 37243-0326 and posted to the Tennessee Department of Transportation Construction Division website <http://www.tn.gov/tdot/section/bid-letting> at that hour.

The proposed construction shall be performed in accordance with the Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation, dated January 1, 2015, which are incorporated herein by reference and made a part hereof. In addition, only the Special Provisions contained within the applicable Contract Proposal will be considered binding. Any reference to the Standard Specifications dated prior to January 1, 2015 shall be disregarded. In addition, any reference to any Special Provision not contained within the applicable Contract Proposal shall be disregarded. All questions related to the Contract Proposal, Plans, Specifications or Special Provisions shall be directed to the Headquarters Construction Office (615-741-2414). Information received from other offices of the Tennessee Department of Transportation is strictly advisory.

**IMPORTANT NOTICE TO BIDDERS:**

Prospective bidders should read the following instructions carefully before submitting their bids. Special attention is called to the regulations of the Tennessee Department of Transportation (Department) that total bids, rather than unit prices, will be posted. Proposals shall be rejected as being irregular if they fail to contain a unit price for each item listed.

After a bidder has submitted a bid via Internet Bidding, he can withdraw it using the electronic bidding program up until the time set for the opening of bids.

On all projects which are financed in whole or in part by funds received through Federal agencies and other third parties, the awarding of contracts by the Department will be subject to approval by the party or parties through which funds are received. The Department reserves the right to reject any bid proposal which is not acceptable to any such third party set out above, although such bid proposal would otherwise qualify as the lowest and best bid under the Standard Specifications of the Department. It shall be the responsibility of the bidder to determine which projects are so financed in part by third parties, such information being available upon request from the Department.

The awarding of the contract or rejection of all proposals will be made within thirty (30) days after the bid opening. Upon award, a detailed letter of instructions will be forwarded along with appropriate documents to the low bidder.

The Tennessee Department of Transportation hereby notifies all bidders, that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business

enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the basis of age, race, color, religion, national origin, sex or disability in consideration for an award.

The Tennessee Department of Transportation is an equal opportunity affirmative action employer, drug-free, with policies of nondiscrimination on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service. For more information call: (615) 741-5996.

#### **PREQUALIFICATION OF BIDDERS:**

Each prospective bidder and subcontractor will be required to file a document entitled "Prequalification Questionnaire." The foregoing shall be filed on a form provided by the Department. The form must be filled out completely, and the truth and accuracy of the information provided must be certified by a sworn affidavit signed by an officer, partner, owner or other authorized representative of the applicant who has authority to sign contracts or other legal documents on behalf of the applicant. A prospective bidder must be prequalified by and in good standing with the Department prior to being given authorization to bid. A prospective subcontractor must be prequalified by and in good standing with the Department prior to being approved as a subcontractor. Each prospective bidder or subcontractor shall notify the Department if there is any subsequent change in the name, organization or contact information provided.

Prospective bidders' "Prequalification Questionnaire" shall be filed with the Department at least fourteen (14) days prior to the date of opening bids on any letting in which the applicant intends to submit a bid to the Department, or at least fourteen (14) days prior to the date on which the applicant requests approval as a subcontractor under a contract awarded by the Department. Bidders intending to submit proposals consistently shall complete and submit the prequalification application annually; however, this document may be changed during such period upon submission of additional favorable reports or upon receipt by the Department of substantiated evidence of unsatisfactory performance. The Department reserves the right to request additional information and documentation to clarify and/or verify any information submitted in an applicant's prequalification application.

The prequalification form can be found at the web address  
<http://www.tn.gov/assets/entities/tdot/attachments/prequal.pdf>

#### **PRIME CONTRACTOR LICENSING REQUIREMENTS**

The Department shall require that all prime contractors, except mowing and litter removal contractors, are to be licensed with the State of Tennessee, Department of Commerce and Insurance (TDCI), Board for Licensing Contractors (BLC). The prime contractor must be licensed in the general classification (e.g. Heavy Construction (HC), Highway, Railroad, Airport Construction (HRA), Specialty (S), Municipal and Utility Construction (MU), or Electrical Contracting (CE)) for the type of work in the project which they will perform. Bidders may submit a proposal without having a license and will be considered for award for twenty-one (21) days after proposals are opened. If the Bidder does not have a license with the TDCI, on or before twenty-one (21) days after proposals are opened, the Bidder will be considered non-responsive and their proposal will be rejected.

#### **SECRETARY OF STATE REQUIREMENTS**

Title 48 of Tenn. Code Ann. requires all contractors and subcontractors that are domestic or foreign Corporations, Limited Liability Companies, Limited Partnerships, or Limited Liability Partnerships to be in good standing with the Secretary of State. This includes being duly incorporated, authorized to transact business, and/or in compliance with other requirements as

detailed by the Secretary of State. Please contact the Secretary of State should you have any questions at (615) 741-2286 or visit [http://www.tn.gov/sos/bus\\_svc/index.htm](http://www.tn.gov/sos/bus_svc/index.htm).

The Department will not execute any contracts or approve subcontracts with contractors that are domestic or foreign Corporations, Limited Liability Companies, Limited Partnerships, or Limited Liability Partnerships, who are not in good standing with the Secretary of State (i.e. have a valid Certificate of Existence/Authorization). If a Bidder is not in good standing with the Secretary of State (i.e. have a valid Certificate of Existence/Authorization) on or before twenty-one (21) days after proposals are opened then the Bidder will be considered non-responsive and their bid will be rejected.

### **ISSUANCE OF BIDDING DOCUMENTS**

All sales of bid documents, such as Plans, Bid Authorization, and Standard Specifications, must be paid at the time of purchase.

TDOT no longer issues hard copy Proposal Contracts and will only accept Internet bids and bid bonds. The Internet bid and electronic bid bond executed by the Contractor and their Surety will be considered as a complete bid and will be printed at the time of the letting. All requests for authorization to bid via the Internet using Bid Express must be submitted on the Bidding Authorization Form. This form is available at the web address [http://www.tn.gov/assets/entities/tdot/attachments/Bid\\_Authorization\\_Form.pdf](http://www.tn.gov/assets/entities/tdot/attachments/Bid_Authorization_Form.pdf). Adobe Reader 8.0 or newer is needed to use this form. This form must be complete before authorization to bid is given. Bidding authorization will be obtainable until 4:00 P.M. the day before the letting. A charge of \$25.00 will be made for each authorized Proposal. Any bid submitted via the Internet that is not authorized will not be considered.

Addenda to the Proposal and amendments to the electronic bidding file will be posted on the Bid Express website. Addenda will be acknowledged by all bidders through the electronic bidding program. It is the bidder's responsibility to monitor the Bid Express website for Addenda until 4:00 P.M. the day before the letting. The bidder will not be notified by the Department unless Addenda are issued after 4:00 P.M. the day before the letting. Failure to acknowledge receipt of Addendum Letters or to apply any applicable amendments to the electronic bidding file is grounds for rejection.

Standard Specifications for Road and Bridge Construction, dated January 1, 2015, and Supplemental Specifications, are available for review and printing at the following site <http://www.tn.gov/tdot/article/transportation-construction-2015-standard-specifications>. The charge for Plans and/or Cross-sections can be found on the Plans Order form on the TDOT Construction website. This charge will be applicable before the letting and for three months after the letting. Plans ordered after the three month period will be furnished at \$2.00 per sheet. Individual Plan sheets and individual Standard Drawings will be furnished at \$2.00 per sheet. Tabulations of bids will be furnished at \$0.50 per sheet. Standard Drawing Books will be furnished at \$100.00 per book.

A sales tax of 9.25% will be added to the above charges when there is in-state delivery. There will be a minimum charge of \$2.00 on any purchase. All documents will be furnished without refund and transmitted at your risk.

When two or more contractors wish to bid together in a joint venture, each contractor will be required to make a written request for such a proposal to the Construction Division. This request shall be signed by an authorized signatory of each firm.

Requests for joint venture proposals may be made in person or by telephone. However, the proposal for said joint venture will not be issued until the request in writing, as set forth above, is received by the Construction Division.



### **ALTERNATE BID ITEMS**

There will be projects that will have numerous alternates. The Contractor will be required to bid on only one alternate for each construction item. The proper procedure for entering alternate bids is to enter prices for the intended alternate item(s) of construction and leave the undesired alternate item(s) of construction blank.

### **SUBCONTRACTOR BIDDERS LIST**

The apparent low bidder for each project must provide a list of all subcontractors who provided a quote to perform work. The list shall be provided electronically on the TDOT form "Certification Regarding Subcontractor Bid Quotes" (Bidders List). The apparent low bidder shall submit this form before the close of business (4:30 PM, Central Time) five (5) calendar days after the date on which bids are required to be submitted (e.g., if bids are required to be submitted on a Friday, then the completed form is due by 4:30 PM on the following Wednesday). Emergency contracts will not require a bidders list. Failure to complete and submit this form within the time period required may result in the rejection of the bid.

### **BID GUARANTY**

Each bid must be accompanied by an electronic bid bond or a Cashier's or Certified Check made payable to the Department of Transportation or Irrevocable Letter of Credit naming the Department as beneficiary (for Mowing and Litter projects only) in an amount equaling not less than five percent (5%) of the amount bid.

If the bidder's bond is offered as guaranty, the bond must be submitted electronically via Internet Bidding, must be made by a surety company qualified and authorized to transact business in the State of Tennessee and must be acceptable to the Department.

If a check is offered as guaranty, the check must be in the Department's possession by 10:00 A.M. the day of the bid opening and must be attached to the signed Proposal Guarantee Form, which is available at the web address <http://www.tdot.state.tn.us/construction>. The check of the successful bidder will be cashable at the discretion of the Commissioner, pending the satisfactory execution and acceptance of the contract and the contract bond.

**Mowing and Litter Projects Only:** If an Irrevocable Letter of Credit is offered as guaranty, the Proposal Guaranty Irrevocable Letter of Credit Form must be signed by an authorized official of an authorized financial institution and in the Department's possession by 10:00 A.M. the day of the bid opening. The form is available at the web address <http://www.tn.gov/tdot/section/tdot-construction-division>.

John Schroer  
Commissioner

The following information applies to Federal-Aid construction projects:

### **NOTICE TO ALL BIDDERS**

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid

rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

## T A B L E O F C O N T E N T S

## Instruction to Bidders

## Supplemental Specifications to The Standard Specifications

Revision  
Date

Supplemental Specification to Section 100 -----	11/16/15
Supplemental Specification to Section 200 -----	11/16/15
Supplemental Specification to Section 300 -----	11/16/15
Supplemental Specification to Section 400 -----	11/16/15
Supplemental Specification to Section 500 -----	11/16/15
Supplemental Specification to Section 600 -----	11/16/15
Supplemental Specification to Section 900 -----	11/16/15

## Special Provision Regarding:

Special  
Provision No.Revision  
Date

Unbalanced Bids -----	102 B	02/17/15
Employing and Contracting with Illegal Immigrants -----	102 I	
Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction -----	102 LC	03/30/15
Buy America Requirements -----	106 A	
Water Quality & Storm Water Permits -----	107 FP	12/22/14
Project Specific Water Quality Permits		
Specialty Items -----	108 A	
Project Completion and Liquidated Damages -----	108 B	
Payment Adjustment for Fuel -----	109 A	01/03/13
Price Adjustment for Bituminous Material -----	109 B	01/07/13
Equal Employment Opportunity -----	1230	
Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) -----	1231	
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) -----	1232	10/19/12
Disadvantaged Business Enterprise Participation -----	1246	11/10/08
DBE Contract Goals -----	1247	10/19/15
Required Contract Provisions (Federal-Aid Construction Contracts) -----	1273	05/01/12
Labor (State Projects Only) -----	1280	05/01/95
Non-Discrimination in Employment -----	1290	
Tennessee Department of Transportation Minimum Wage Scales For Federal-Aid Construction and State Funded Construction	1320	01/11/16

Federal Wage Rates

State Wage Rates

Proposal

Proposal Certification

Proposal Guaranty Bond

Proposal Guarantee

Contract

Contract Payment and Performance Bond

S T A T E

O F

T E N N E S S E E

SHEET 2 of 2

PROJECT NO. 83011-3233-94

(REV. )

COUNTY SUMNER

A T T E N T I O N

It shall be the bidders responsibility to confirm that the Contract Proposal contains all the documents indicated on the Table of Contents.

Should any omissions occur, the appropriate documents may be obtained from the Construction Division, upon request.

**STATE****OF****TENNESSEE**

January 1, 2015

(Rev. 3-30-15)

(Rev. 11-16-15)

**Supplemental Specifications - Section 100****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015**

**Subsection 102.11** (pg. 18), 3-30-15; Add the following to the second paragraph “The Department may retain the Proposal Guaranty, not as a penalty, but as liquidated damages in the event a bidder does not have a license at the time of award.”

**Subsection 104.04** (pg. 27), 3-30-15; Add the following as the first full paragraph on page 27: “If a holiday falls on Saturday or Sunday, do not close lanes or restrict traffic from the preceding Friday at 6 am to the following Monday at 6 am.”

**Subsection 105.06** (pg. 40), 3-30-15; Replace 2<sup>nd</sup> sentence of 1<sup>st</sup> paragraph with “The contractor must attend a preconstruction conference arranged by the Engineer.”

**Subsection 109.01** (pg. 98-100) **11-16-15**; Measurement of Quantities, E. Weight Remove and replace the following:

The scales shall be checked by an independent certified scale company. The check shall be performed on a semiannual basis; January through June and July through December. The results shall be maintained onsite and made available for review to Departmental personnel. If deficiencies are reported, all corrections shall be performed, documented, and verified prior to supplying material for TDOT projects.”

**Subsection 109.04** - C, 4 (pg. 106), 3-30-15; Replace c. “Idle or standby cost will be not be paid for more than 8 hours in a day or 40 hours in a week” with “Idle or standby cost will not be paid for more than 8 hours in a day or 40 hours in a week”.

**STATE****OF****TENNESSEE**

(Rev. 5-18-15)  
(Rev. 11-16-15)

January 1, 2015

**Supplemental Specifications - Section 200**  
**of the**  
**Standard Specifications for Road and Bridge Construction**  
**January 1, 2015**

**Subsection 204.06 – 2** (pg.152-154), 5-18-15; Replace Tables 204.06 with the following:  
1. General Use Flowable Fill

**Table 204.06-2: Specification Limits for General Use Flowable Fill**

<b>Property</b>	<b>Specification Limit</b>
Load Application (ASTM D6024)	24 hours maximum in any condition
Consistency	15 inches minimum tested as specified in this <a href="#">204.06.B.1</a>

Page 153

2. Excavatable Flowable Fill (EFF)

**Table 204.06-3: Specification Limits for EFF**

<b>Property</b>	<b>Specification Limit</b>
Air content (ASTM D6023)	Maximum 30% <sup>(1)</sup>
Load Application (ASTM D6024)	24 hours maximum in any condition
Consistency	15 inches minimum as tested per <a href="#">204.06.B.1</a>
Compressive strength (ASTM D4832) <sup>(2)</sup>	30 psi minimum at 28 days
<sup>(1)</sup> When using air entrained mixture design	
<sup>(2)</sup> ASTM D4832 4 x 8 inch cylinder molds may be used. The preferred capping method to be used is wetsuit neoprene restrained in rigid retainers.	

## 3. Early Strength Flowable Fill (ESFF)

**Table 204.06-4: Specification Limits for ESFF**

Property	Specification Limit
Air content (ASTM D6023)	Maximum 30% <sup>(1)</sup>
Load Application (ASTM D6024)	6 hours maximum in any condition
Consistency	15 inches minimum as tested per <a href="#">204.06.B.1</a>
Compressive strength (ASTM D4832) <sup>(2)</sup>	30 psi minimum at 24 hours
<sup>(1)</sup> When using air entrained mixture design	
<sup>(2)</sup> ASTM D4832 4 x 8 inch cylinder molds may be used. The preferred capping method to be used is wetsuit neoprene restrained in rigid retainers.	

**Subsection 204.06** (pages. 153-154) 11-16-15; Delete the following sentence:

“2. Excavatable Flowable Fill -

“3. Early Strength Flowable Fill -

**STATE****OF****TENNESSEE**

(Rev. 11/16/15)

January 1, 2015

**Supplemental Specifications - Section 300****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015****Subsection 307.03** (pg. 246) 11-16-15; Modify the following:

B. Recycled Asphalt Pavement for Bituminous Plant Mix Base, Table 307.03-3

**Table 307.03-3: Mixtures Using RAP**

<b>Mix Type</b>	<b>% RAP (Non-processed)<sup>(1)</sup></b>	<b>Maximum % RAP (Processed)<sup>(2)</sup></b>	<b>Maximum % RAP Processed &amp; Fractionated <sup>(3)</sup></b>	<b>Maximum Particle Size (inches)</b>
307- ACRL	0	00	-	-
307-AS	0	00	15	-
307-A	15	20	35	1-1/2
307-B	15	30	35	1-1/2
307-BM	15	30	35	3/4
307- BM2	15	30	35	3/4
307-C	15	30	35	3/8
307-CW	15	30	35	1/2
307-CS	0	15	25	5/16

<sup>(1)</sup> "Non-processed" refers to RAP that has not been crushed and screened or otherwise sized prior to its use.

<sup>(2)</sup> "Processed" refers to RAP that has been crushed and screened or otherwise sized such that the maximum recycled material particle size is less than that listed in Table 307.03-3 prior to entering the dryer drum.

<sup>(3)</sup> "Fractionated" refers to RAP that has been processed over more than one screen, producing sources of various maximum particle sizes (e.g., 3/4 to 1/2 inch, 1/2 inch to #4, etc.). The Contractor may use



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the larger percentages of fractionated RAP specified only if individual fractions of two different maximum particle size are introduced into the plant as separate material sources for increased control.

<sup>(4)</sup> RAP for 307-AS must be processed in a manner such that the minimum particle size is no smaller than 3/4" prior to solvent extraction. For RAP containing gravel as coarse aggregate, the maximum allowable RAP content shall be 10%.

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2. Recycled Asphalt Shingles (RAS) RAS may be included to a maximum of 3% of the total weight of the mixture.

**Subsection 313.03** (pg. 273) 11-16-15; B. Bituminous Treated Permeable Base, Add the following sentence: "Recycled Asphalt Pavement (RAP) meeting the requirements of 307.03.B may be incorporated into asphalt treated permeable base up to 15% by weight of aggregate. RAP must be processed in a manner such that the minimum particle size is no smaller than 3/4" prior to solvent extraction. Treated permeable base mixtures containing RAP shall contain at least 65% virgin asphalt binder. For RAP containing gravel as a coarse aggregate, the maximum allowable RAP content shall be 10%"

**STATE****OF****TENNESSEE**

(Rev. 5-18-15)

(Rev. 7-13-15)

(Rev.11-16-15)

January 1, 2015

**Supplemental Specifications - Section 400****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015**

**Subsection 403.02** (pg. 285-286) 11-16-15; Bituminous Materials, add the following:  
 “Emulsified Asphalt, SS-1, SS-1h, CSS-1, CSS-1h, TST-1P, CQS-1h, CQS-1hp, TTT-1, TTT-2,  
 TTT-3 .....904.03”

**Table 403.02-1: Tack Coat Application Temperatures**

<b>Material</b>	<b>Temperature Range</b>
SS-1, SS-1h, CSS-1, TST-1P, CQS-1h, CQS-1hp and CSS-1h	60 to 140 °F
TTT-1	160 to 180 °F
TTT-2	120 to 160 °F
TTT-3	100 to 180 °F

**Subsection 403.05** (pg. 286) 11-16-15; A. Emulsified Asphalt, Add the following paragraph at the end of the subsection:

“Take a minimum of 3 cores throughout the length of the project for informational tack coat shear testing. Include the underlying layer. Not required for mats less than one inch thick.”

**Subsection 403.05** (pg. 287) 11-16-15; ) B. Test Strip, modify the following:

“If placing the bituminous material upon a milled surface, apply the tack material at a rate of between 0.08 and 0.12 gallons of applied emulsion per square yard.”

**Subsection 407.02** (pg. 300) 11-16-15; Materials, add the following at the end of the fourth paragraph:

“If anti-stripping additive, other than hydrated lime, meeting **921.06.B.1** is required, use approved in-line blending equipment, as specified in **407.04.A.6**, to add it at the mixing plant or inject it at the asphalt terminal. Provide manufacture’s documentation ensuring asphalt binders

will continue to meet requirements listed in Subsection **904** after anti-stripping additives are added.”

**Subsection 407.06** (pg. 327), 5-18-15; - A. Pavers. Replace the entire first paragraph with the following:

“Bituminous pavers shall be self-contained, power-propelled units provided with an activated screed, equipped to be heated, and capable of spreading and finishing courses of bituminous plant mix material in lane widths applicable to the specified typical section and thickness shown on the Plans. All screed extensions shall be full assembly extensions, including activated and heated screeds. Pavers shall include throw-back blades, reverse augers, or equivalent to place mix beneath the auger gearbox. Auger extensions shall be incorporated in a manner such that the maximum distance from the augers to the end plate shall be 18 inches. Screed extensions may extend beyond the 18-inch maximum from auger extensions only when extending for short-term temporary deviations in pavement width such as driveways. Do not use strike-off boxes, with the exception of sections with continuously varying width.”

**Subsection 407.15** (pg. 340) 11-16-15; C. Test Strips. Add the following paragraph after the 7<sup>th</sup> paragraph:

“Take an additional 3 cores after placement of the surface layer on the tack coat test strip described in subsection **403.05.B**. Include the underlying pavement layer for shear testing. These cores will be for informational testing only. Not required for mats less than one inch thick”

**Subsection 407.20** (pg. 346) 5-18-15; Basis of Payment; B. Acceptance of Mixture; Modify the last paragraph as follows:

“When the total plan quantity of any mix is less than 1000 tons, the Department will accept the mix on the basis of visual inspection and Contractor Quality Control certification. The Department may run extraction, gradation analysis, or other tests deemed necessary for acceptance purposes.”

**Subsection 407.20** (pg. 348) 11-16-15; Table 407.20 – 2, make the following change:

**Table 407.20-2: Acceptance Schedule of Payment  
(Asphalt Plant Mix Characteristics)**

Characteristics	Pay Factor	Average Arithmetic Deviation of the Lot Acceptance Test from the JMF	
		1 Test	2 Tests or more
Asphalt Cement Content <sup>(1)</sup>  (Extraction or ignition oven)	1.00	0.00-0.30	0.00-0.25
	0.95	0.31-0.35	0.26-0.30
	0.90	0.36-0.40	0.31-0.35
	0.80 <sup>(2)</sup>	over 0.40	over 0.35
Gradation  3/8 inch sieve and larger	1.00	0.00-6.50	0.00-5.70
	0.95	6.51-7.08	5.71-6.20
	0.90	7.09-7.66	6.21-6.69
	0.80 <sup>(2)</sup>	over 7.66	over 6.69

Characteristics	Pay Factor	Average Arithmetic Deviation of the Lot Acceptance Test from the JMF	
		1 Test	2 Tests or more
Gradation	1.00	0.00-4.62	0.00-4.00
No. 4 sieve <sup>(3)</sup>	0.95	4.63-5.20	4.01-4.50
	0.90	5.21-5.77	4.51-5.00
	0.80 <sup>(2)</sup>	over 5.77	over 5.00

**Subsection 407.20** (pg. 350) 11-16-15; B. 5. Acceptance for Mix Density on the Roadway, Replace the entire 2<sup>nd</sup> paragraph with the following:

“For density testing purposes, the Department will divide the pavement into lots of 1,000 tons. Five density tests will be performed in each lot and the average results compared with the requirements specified in Tables 407.15-1 to 407.15-4. At the beginning of a project or at any time it is deemed advisable, the Department may consider smaller lots to evaluate compaction methods or for other reasons as approved or directed by the Engineer.”

**Subsection 411.03** (pg. 363) 11-16-15; 2. Recycled Asphalt Shingles (RAS), change the following: “Recycled Asphalt Shingles (RAS) may be included to a maximum of 3% of the total weight of mixture.”

**Subsection 414.02** (pg. 369) 11-16-15; Materials, add the following paragraph:

“Ensure that no deleterious material is introduced into aggregate stockpiled at project site.” -

**S T A T E****O F****T E N N E S S E E**

(Rev. 5-18-15)

(Rev. 11-16-15)

January 1, 2015

**Supplemental Specifications - Section 500****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015**

**Subsection 501.03** (pg. 395), 5-18-15; 3. Mix Design Submittal, Replace the first paragraph with the following: “Instead of the above mix design submittal, a request to use an existing design may be submitted for approval provided the design has been used on a state funded project within the last six (6) months. The approval of this concrete design submittal will not relieve the Contractor of the responsibility of providing concrete meeting the requirements of these Specifications. A temporary mix design may be issued if the 7-day or 14-day compressive strengths exceed the required 28-day strengths.”

**Subsection 501.03** (pg. 399-402) 11-16-15; B. Quality Control and Acceptance of Concrete, adjust the following:

“1. Test to determine aggregate gradations (AASHTO T 27 with AASHTO T 11 when required). Conduct a combined belt gradation before work starts and at least daily to verify consistency if using a dynamic, multi-aggregate feed system.

3. Calibrate the weighing systems, aggregate feed flow rate and weigh bridges, water meters, and admixture dispensing systems before starting production.

4. Ensure accurate weighing or flow rate of the aggregates and cement, the proper metering of water and admixtures, and the quality of water.

6. Adjust mix proportions due to actual moisture content of both coarse and fine aggregates, with moisture content determined according to AASHTO T 255. If using a dynamic aggregate weighing system, multi-aggregate proportioning adjustments are to be made by using an in-bin moisture sensor.”

7. Conduct slump (AASHTO T119) or slump flow (ASTM C1611) and air tests (AASHTO T152).

Page 401- “Make, cure, and transport all early break cylinders (7-14 day, etc.) according to AASHTO T 23, and deliver to the Regional laboratory or other established satellite laboratories

for testing. **Make all early break cylinders (7-14 day, etc.) for self-consolidating concrete according to ASTM C1758, and deliver to the Regional laboratory or other established satellite laboratories for testing.**

Page 402 - “Correct batch weights or aggregate feed flow rates to compensate for surface moisture on the aggregate at the time of use. The Contractor...”

**Subsection 501.04** (pg. 402) 11-16-15; replace the following:

**“A. Batching Plant, Multi-Aggregate Feed System, and Equipment,**

1. General. The batching plant shall include bins, weighing hoppers or belt feeds with weigh bridges and load cells, and scales. If using cement in bulk,...

2. Bins and Hoppers- Add the following new paragraph under the existing paragraph

For multi-aggregate feed systems, provide bins as noted with variable size openings and variable speed belts. Each bin must have a calibrated moisture sensor to adjust aggregate feed flow rates. Assure consistent, uninterrupted aggregate flow and consistent belt speeds once aggregate feed system is calibrated.

3. Scales- Add the following new paragraph under the last paragraph in the section.

For multi-aggregate feed systems, provide a dual idler weight bridge with load cells to accurately weigh the actual aggregate flow rate.”

**Subsection 501.04** (pg. 404) 11-16-15; B. Mixers, removed the complete 4th paragraph:

“

**Subsection 501.17** (pg. 424) 11-16-15; A. Surface Testing, modify the following:

“3. Ramps where the design speed is greater than 40 miles per hour

(a) Test sections shall terminate 100 feet from a stop or slow speed yield condition

(b) Superelevated sections greater than 40 miles per hour design speed must be ground in accordance with **Table 501.17-1**

4. Ramps where the design speed is 40 miles per hour or less

(a) Test sections shall terminate 100 feet from a stop or slow speed yield condition

(a) Superelevated sections with a design speed of 40 miles per hour or less must be ground in accordance with **Table 501.17-2**

**Subsection 501.17** (pg. 425) 11-16-15; B. Pay Factors and Required Corrective Action, modify the following:

“Payment factors and required corrective actions relative to profile indexes for ramps with design speeds of 40 MPH or less shall conform to Table 501.17-2.

Table 501.17-2: Pay Factors & Corrective Action for Ramps with Design Speeds of 40 mph or less

Profile Indexes	Pay Factor	Corrective Action
-----------------	------------	-------------------

<10 inches per mile	105%	None
10 to < 20 inches per mile	100%	None
20 to < 23 inches per mile	98%	Grind to 20 inches per mile
23 plus inches per mile	95%	Grind to 20 inches per mile

**STATE****OF****TENNESSEE**

(Rev. 5-18-15)

(Rev.11-16-15)

January 1, 2015

**Supplemental Specifications - Section 600****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015**

**Subsection 604.02** (pg. 519) 11-16-15; C. 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence:

“Prior to construction, submit for approval shop drawings of the proposed precast structure and design calculations for any details which deviate from the standard box culvert drawings.”

**Subsection 604.03** (pg. 522 and 523), 5-18-15; 2. Mix Design Submittal; Replace the first sentence of the last paragraph on page 522 with the following:

“Instead of the above mix design submittal, an existing design may be submitted for approval provided the design has been used on a state funded project within the last six (6) months.”

**Subsection 604.03** (pg. 519-522) 11-16-15; A. Classification and Proportioning and Quality Assurance, modify the following:

**“1a. Design and Production Parameters.** Proportion the concrete based on a pre-determined minimum cement content, and a water-cement ratio that does not exceed the maximum shown in **Table 604.03-1**. Below this limit, adjust the quantity of water to meet the slump requirements. The fine aggregate shall not exceed 44% by volume calculation of the total aggregate, with the exception of slip formed Class A concrete incorporated into parapets and median barriers. For slip formed parapet and median barriers exclusively, the percentages of fine and coarse aggregate in an approved concrete mix design may be adjusted plus or minus 2%, such that the....

**1b. Self-Consolidating Concrete (SCC) Design and Production Parameters.** Proportion the concrete based on a pre-determined minimum cement content, and a water-cement ratio that does not exceed the maximum shown in **Table 604.03-4**. The fine aggregate shall not exceed 50% by volume calculation of the total aggregate volume. Maximum size of coarse aggregate shall not exceed a No. 67 stone. The Contractor may elect to use SCC as an alternate/option in replacement of Class A concrete.

Document mixture adjustments in the field book and daily concrete report. Ensure that the adjusted mix complies with all of the performance criteria specified in **Table 604.03-4**.



**Table 604.03-4: Composition of Self-Consolidating Concrete**

Class of Concrete	Min 28-Day Compressive Strength (psi)	Min Cement Content (pound per cubic yard)	Maximum Water/Cement Ratio (pound/pound)	Air Content % (Design $\pm$ production tolerance)	Slump Flow (inches)
SCC (2,3,4,5)	3,000 <sup>(1)</sup>	564	0.45	6 $\pm$ 1	25 $\pm$ 4

(1) Or as shown on the Plans or approved shop drawings.

(2) Acceptance range for the T50 test in accordance with ASTM C1611 shall be between 2-7 seconds.

(3) Passing ability in accordance with ASTM C1621 shall be less than 2 inches for acceptance.

(4) Visual Stability Index (VSI) shall not exceed 1.0 as per ASTM C1611 for acceptance.

(5) Static segregation as measured by ASTM C 1610 shall not exceed 20%.

Include chemical admixtures in the self-consolidating concrete mixture as specified in Table 604.03-5 based on the ambient air temperature and expected weather conditions. Approved viscosity modifying admixtures (VMA) may be used as part of the chemical admixtures if they are shown in the approved mixture design.

**Table 604.03-5: Use of Chemical Admixtures**

Class of Concrete	Temperature less than 85 °F and falling	Temperature 85 °F or greater and rising
SCC	Type A or F Type S (Viscosity Modifying)	Type D or G or A and B Type S (Viscosity Modifying)

Dosage rates for any admixtures incorporated into the concrete shall be stated during the mix design submittal process. All admixtures shall be compatible and from the same manufacturer.

2. Mix Design Submittal. Submit the proposed concrete design to the Engineer for approval. Develop the design using saturated surface dry aggregate weights and trial batches meeting the requirements of these Specifications....

As a minimum, include the following information in the proposed concrete design submittal:

1. Source of all aggregates
2. Brand and type of cement
3. Source and class of fly ash (if used)
4. Source and grade of ground granulated blast furnace slag (if used)

5. Specific gravity of cement
6. Specific gravity of the fly ash (if used)
7. Specific gravity of the ground granulated blast furnace slag (if used)
8. Admixtures (if used)
9. Gradations of aggregates
10. Specific gravity of aggregates (saturated surface dry)
11. Air content (if air entrainment is used)
12. Percentage of fine aggregate of the total aggregate (by volume)
13. Slump
14. Weight per cubic yard
15. Yield
16. Temperature of plastic concrete
17. Water/cement ratio (pound/pound)
18. 7-day compressive strength (minimum of three 4-inch x 8-inch cylinders)
19. 14-day compressive strength (minimum of three 4-inch x 8-inch cylinders)
20. 28-day compressive strength (minimum of three 4-inch x 8-inch cylinders)
21. Weight of each material required to produce a cubic yard of concrete

In addition to the above mentioned items, for self-consolidating concrete include as a minimum the following information in the proposed SCC design submittal:

22. Slump flow, VSI, and T50, in accordance with ASTM C1611, shall be required in place of the slump test.
23. Passing ability in accordance with ASTM C1621.
24. Static segregation in accordance with ASTM C1610.
25. 7-day compressive strength (minimum of three 4-inch x 8-inch cylinders), in accordance with ASTM C1758.
26. 14-day compressive strength (minimum of three 4-inch x 8-inch cylinders), in accordance with ASTM C1758.
27. 28-day compressive strength (minimum of three 4-inch x 8-inch cylinders), in accordance with ASTM C1758.

Self-consolidating concrete (Classes SCC and P-SCC) shall be verified prior to placement either at the ready mix facility or prestressed plant. The submitted mix design shall be reviewed by Headquarters Materials and Tests for specification compliance. The concrete producer shall then perform a trial batch verification of the submitted mix design in the presence of Regional Materials and Tests. The trial batch will ensure that all batch quantities and target admixture dosage rates are acceptable and meet TDOT specification prior to full mix design approval. If using a previously approved SCC design additional verification of the trial batch is not required. All quantities and identified admixture target dosage rates shall meet the tolerances specified in **501.09**.

**Subsection 604.14** (pg. 542) 11-16-15; Consistency of Concrete, modify the following: “The slump of the concrete when measured according to AASHTO T 119 shall meet [604.03 - 1A](#). The slump flow of self-consolidating concrete when measured according to ASTM C1611 shall meet **604.03 1B**.”

**Subsection 604.15** (pg. 542-543) 11-16-15; B. Concrete Acceptance Cylinders, modify the following:

“The Department will test the specimens for compressive strength according to AASHTO T 22. Provide the necessary concrete for making test specimens and adequate curing and storage facilities at no additional cost to the Department.

Concrete cylinders submitted for testing beyond 28 days shall comply with the strength requirements specified in Table 604.15-1.

**Table 604.15-1: Strength Requirements**

Class of Concrete	Compressive Strength (psi) at:			
	Less than 31 days	31 to 42 days	43 days to 56 days	
A, S, CP, SCC	3,000	3,300	3,500	
D, L	4,000	4,400	4,600	
X	Plans Requirement (Req)	Req. + Req. * (10%)	Req. + Req. * (15%)	

If the acceptance cylinders fail to meet the specified strengths, the Contractor may drill core samples from the hardened concrete as verification of concrete strength instead of using the concrete cylinders. The Contractor must provide QC data from companion cylinders that meet or exceed the required strength, and TDOT Materials and Test shall perform a nondestructive test using a Swiss Hammer on the concrete to prove required strength is achieved. If the above mentioned requirements are met, the Contractor may then elect to drill a maximum of three core samples per set of cylinders from the hardened concrete. The Contractor shall obtain the cores in accordance with the Department’s Standard Operating Procedure 4-2, and bear all costs of obtaining the cores and repairing the core holes.”

**Subsection 604.27** (pg. 560) 11-16-15; Rideability of New or Resurfaced Bridge Decks and Roadway Approaches, A. General, modify the following:

“On all highway sections with a posted speed greater than 40 miles per hour, the following rideability provisions shall apply to new or resurfaced bridge decks and roadway approaches, ”

**Subsection 615.09** (pg. 644) 11-16-15; Proportioning and Mixing of Concrete, modify the following:

Table 615.09-1: Composition of Prestress Concrete Classes

Class of Concrete	Minimum 28-Day Compressive Strength (psi)	Minimum Pounds Cement per Cubic Yard	Maximum Water/Cement Ratio (pound/pound)	Air Content %	Slump or Slump Flow (inches)
P	5,000 <sup>(1)</sup>	658	0.45	0-8 <sup>(2)</sup>	2 ± 1 <sup>(3)</sup>
P-SCC <sup>(4)</sup>	5,000 <sup>(1)</sup>	658	0.45	0-6 <sup>(2)</sup>	25 ± 4

<sup>(1)</sup> Or as shown on the Plans or approved shop drawings.  
<sup>(2)</sup> Air entraining is optional with the Contractor, unless otherwise shown on the Plans or shop drawings.  
<sup>(3)</sup> Not to exceed 3 inches before the addition of high range admixtures, and not to exceed 10 inches after the addition of high range admixtures. If water-cement ratio is equal to or less than 0.35 then the maximum slump is 10 inches. If the water-cement ratio is 0.36 – 0.45, the maximum slump is 8 inches.  
<sup>(4)</sup> Maximum coarse aggregate size of a No. 67 stone.

Comply with all applicable provisions of **604.03** except as modified herein.

Submit a concrete design to the Department for review and approval. In addition to the proportions, identify in the design submittal the source or brand of all materials and the type of cement to be used. The Contractor may use Type I or Type III cement, unless otherwise specified. Do not use calcium chloride. Use a retardant admixture when the ambient temperature is 75 °F or higher.

The slump of the concrete shall be 2 inches with a tolerance of ±1 inch at the time of placement. When an approved superplasticizer is to be used, the slump of the concrete shall be the same as above before the superplasticizer is added to the mix. After the addition of the superplasticizer, the slump may be increased to a maximum of 8 inches at the time of placement.

The slump flow of self-consolidating concrete shall be determined and within the design and production tolerances stated in **Table 615.09-1**. Include chemical admixtures in the self-consolidating concrete mixture as specified in **Table 604.03-5** based on the ambient air temperature and expected weather conditions. Approved viscosity modifying admixtures (VMA) may be used as part of the chemical admixtures if they are shown in the approved mixture design.

*Handle, measure, and batch materials; mix concrete; and comply with the limitations of mixing as specified in 501.09, 501.10, and 501.11, respectively.*

Make concrete test specimens for **Class P** and **Class P-SCC**, in accordance with AASHTO T 23 and **ASTM C1758** respectively, to determine the adequacy of the concrete design and the minimum time at which the stress may be applied to the concrete. Cure the test specimens used to determine the time at which stress may be applied in the same manner and under the same conditions as the bridge members. The initial curing of specimens to determine the

design strength of the concrete shall be as specified above with additional curing water, as provided in AASHTO...

**Subsection 615.17** (pg. 652), 5-18-15; Table 615.17-1: Manufacturing Tolerances in Standard Sections, Replace the following:

**Table 615.17-1: Manufacturing Tolerances in Standard Sections**

Description	Tolerance	
	I-Sections	Box Sections
Nominal Depth	$\pm 1/2$ inch	$\pm 1/2$ inch
Nominal Width	$\pm 1/2$ inch	$\pm 1/2$ inch
Nominal Length	Computed Elastic Shortening $\pm 1/2$ inch	Computed Elastic Shortening $\pm 1/2$ inch
Variation in Straightness, inches	$1/4$ inch x (Total Length in feet)/10	$1/4$ inch x (Total Length in feet)/10
Variation in Camber, inches	Beams in any 1 span not more than: $1/8$ inch x (Total Length in feet )/10	Beams in any 1 span not more than: $1/8$ inch x (Total Length in feet )/10
Location of Voids	-----	Length $\pm 1/2$ in Wall Thickness $\pm 1/2$ in
Bearing	Full Bearing - Full Width of Beam	Full Bearing on at Least $2/3$ of Width of Beam
Tendon Placement	$\pm 1/2$ inch	$\pm 1/2$ inch
Reinforcing Steel Placement	$\pm 1/2$ inch	$\pm 1/2$ inch
Reinforcing Steel Concrete Cover	$\pm 1/2$ inch	$\pm 1/2$ inch
Reinforcing Steel Splice Lengths	Minus $1-1/2$ inches	Minus $1-1/2$ inches

**STATE****OF****TENNESSEE**

(Rev. 5-18-15)  
(Rev. 11-16-15)

January 1, 2015

**Supplemental Specifications - Section 900****of the****Standard Specifications for Road and Bridge Construction****January 1, 2015**

**Subsection 903.01** - Table 903.01-1 (pg. 920) , 5-18-15; Replace Note (1) with the following:

“(1) If the fine aggregate is manufactured from crushed stone and if material finer than the No. 200 sieve consists of the dust of fracture, essentially free from clay or shale, this limit may be increased to 5%.

**Subsection 903.03** (pg. 922-923) 11-16-15; Coarse Aggregate for Concrete, modify the following:

“Coarse aggregate in Portland cement concrete bridge decks and overlays on interstates and four or more lane highways consisting of Size No. 57 shall meet 903.24.

The coarse aggregates for travel lanes and bridge decks shall be crushed and consist of stone, slag, gravel, quartzite, gneiss, or combination thereof with an absorption of plus 4 material not to exceed 5%. Do not use uncrushed gravel, pea gravel, or any other uncrushed particles. Crushed gravel, if used, shall consist of siliceous washed particles after processing, of which at least 70% by count of the material retained on the No. 4 sieve contains a minimum of two fractured faces. One face shall be fractured for the approximate average diameter or thickness of the particle. ”

**Table 903.03-1: Coarse Aggregate Sizes**

<b>Application</b>	<b>Coarse Aggregate Size <sup>(1)</sup></b>
Structural concrete	No. 57
Self-Consolidating concrete	Maximum-No.67
Prestressed concrete	No. 57 or 67
Precast concrete	Any size fraction
Concrete curbing placed by machine-extrusion methods	No. 7, 57, 67, or 78
Cement treated permeable base <sup>(2)</sup>	No. 57
<sup>(1)</sup> Gradation shall conform to <a href="#">903.22</a> .	
<sup>(2)</sup> Aggregate shall meet the quality requirements specified below.	

**Subsection 903.05** – B. Type B Aggregate (pg. 927), 5-18-15; Replace 3. With the following:  
“Do not use material having a clay content greater than 12%, as determined by hydrometer analysis performed in accordance with AASHTO T 88. Material may be used having a clay content exceeding 12% if a plasticity index-fines product does not exceed 3 when calculated by the following formula:

**Subsection 903.06** (pg. 930) 11-16-15; C. Combined Aggregate Grading, Add the following sentence at the end of the first paragraph:

“For mixtures including recycled asphalt pavement, RAP, and/or recycled asphalt shingles, RAS, stockpiles will not be considered as contributing to the required minimum of three stockpile sizes.”

**Subsection 903.11** (pg. 934) 11-16-15; Aggregate for Asphaltic Concrete Surface Coarses (Hot Mix), add the following sentence at the end of the first paragraph:

“For mixtures including recycled asphalt pavement, RAP, and/or recycled asphalt shingles, RAS, stockpiles will not be considered as contributing to the required minimum of three stockpile sizes.”

**Subsection 903.11** (pg. 934) 11-16-15; A. Coarse Aggregate (retained on a No. 4 sieve), modify the following:

“Provide aggregate, consisting of crushed stone, crushed slag, crushed gravel, crushed granite, crushed quartzite, crushed gneiss, or natural combinations of these materials.”, “3. Combined aggregate shall consist of siliceous particles processed from washed material, of which at least 70% by count of the material retained on the No. 4 sieve shall have a minimum of two fractured faces, one of which must be fractured for the approximate average diameter or thickness of the particle. Do not add pea gravel or uncrushed particles. The absorption of the crushed aggregate retained on the No. 4 sieve shall not exceed 5% when tested in accordance with AASHTO T 85.”

**Subsection 903.11** (pg. 934), 5-18-15; A. Coarse Aggregate (retained on a No. 4 sieve) Replace with the following:

“2. Material retained on the No. 4 sieve shall contain a maximum of 10% elongated pieces (length greater than five times the average thickness)”

**Subsection 903.12** (pg. 938) 11-16-15; A. Aggregate for Slurry Seal, delete as shown:

“the aggregate shall be crushed slag, crushed granite, or crushed stone (crushed stone as specified in 90.24), meeting the requirements of ASTM D692, except the gradation shall be as specified in Table 903.12-1...”

**Subsection 903.12** (pg. 939) 11-16-15; B. Aggregate for Micro-Surface: delete as shown:

“of the aggregate shall be crushed slag...”

**Subsection 903.24** (pg. 946), 5-18-15; *Modify the following:*

*“Provide coarse aggregate consisting of crushed gravel, crushed granite, crushed slag, crushed quartzite, crushed gneiss, or crushed sandstone. Other crushed aggregate may be used provided it has the chemical, physical, and performance characteristics specified in Table 903.24-1.”*

**Subsection 904.01** (pg. 948) 11-16-15; Asphalt Cements, add the following between the 4<sup>th</sup> and 5<sup>th</sup> paragraphs:

“Polyphosphoric acid may be used as a modified not exceeding 0.5% by weight of asphalt binder and may only be used when the primary modifier is one of the styrene-based products listed above.”

**Subsection 904.01** ( pg 955-956) 5-18-15; Modify the following:

“Only obtain asphalt cement for use on Department projects from Certified Asphalt Cement Suppliers that have an approved Quality Control Plan in accordance with the Department’s Standard Operating Procedures.

Asphalt cement shall conform to AASHTO M 320 and Department procedures. Direct Tension testing is not required.

Instead of PG 64-22, the Contractor may use asphalt cement graded to PG 67-22. PG 67-22 shall conform to the requirements of AASHTO M 320 when the applicable tests are conducted at 67 °C and -12 °C, and the dynamic shear of the rolling thin film, pressure aged vessel sample is tested at 26.5 °C.

To modify the asphalt cement high-temperature grade properties, properly blend styrene butadiene (SB), styrene butadiene styrene (SBS), or styrene butadiene rubber (SBR) to a PG 64-22 or PG 67-22 base asphalt.

In addition to the above requirements, asphalt cements shall meet the requirements specified in Table 904.01-1.



**Table 904.01-1: Requirements for Asphalt Cement**

Property*	PG 64-22, PG 67-22	PG 70-22	PG 76-22	PG 82-22
Non-recoverable creep compliance at 3.2kPa, Jnr(3.2), kPa <sup>-1</sup> at 64°C, Max	4.5	1.0	0.5	0.5
% Difference in Non-Recoverable Creep Compliance, Jnr(diff) at 64°C, %, Max	75	75	75	75

\* Tested in accordance with AASHTO T350.

All modified grades shall meet the requirements for Indication of Elastic response as defined in Appendix X1 of AASHTO M332.

Furnish a certification to the Engineer on each project stating that the asphalt cement provided meets the Department's specification. Ensure that quality control and compliance testing are completed in accordance with the asphalt supplier's approved quality control plan and Department procedures.

In addition, the asphalt cement supplier shall provide a temperature-viscosity curve for PG 64-22 and PG 67-22 asphalt cements with a recommended mixing temperature range. In order to develop a temperature-viscosity curve, it may be necessary to run the viscosity test at a higher temperature, based on the softening point of the modified asphalt cement.

**Subsection 904.03** (pg. 951) 11-16-15; Emulsified Asphalts, Add "TTT-3" to 904.03-1 with the following requirements:

Saybolt-Furol Viscosity @ 77 °F, seconds	10-100
Particle Charge	Positive
Sieve Test, %	0.1 Max
Residue by Distillation <sup>(1)</sup>	
Residue, %	50 Min
Demulsibility, %	65 Min
Penetration	40-90

<sup>1</sup>-Distill at 350°F

**Subsection 904.03** (pg.954), 5-18-15; Replace with the following:

**Subsection 904.03, Table 904.03-1(c). Modify** as follows for TTT-1:

**Table 904.03-1(c): Test Requirements for Emulsified Asphalt**

Practices	AASHTO Test Method	CRS-2P	RS-2	RS-1	TTT-1	TTT-2
Saybolt-Furol Viscosity @ 77 °F, seconds	T59	n/a	n/a	20-100	20-100	10-100
Saybolt-Furol Viscosity @ 122 °F, seconds	T59	100-400	75-400	n/a	n/a	n/a
Storage Stability Test, 24- h, %	T59	1 Max	1 Max	1 Max	1 Max	1 Max
5-day Settlement, %	T59	n/a	n/a	n/a	n/a	n/a
Particle Charge	T59	Positive	n/a	n/a	n/a	Positive
Sieve Test, %	T59	0.1 Max	0.1 Max	0.1 Max	0.1 Max	0.1 Max
Residue by	T59	<i>Evaporation</i>	Distillation	Distillation	Distillation	Distillation <sup>(1)</sup>
Residue, %	T59	65 Min	63 Min	55 Min	50 Min	50 Min
Demulsibility, %	T59	40 Min	60 Min	60 Min	n/a	n/a
Distillate, %	T59	n/a	n/a	n/a	n/a	n/a
Oil Test, %	T59	n/a	n/a	n/a	n/a	n/a
Stone Coating	T59	n/a	n/a	n/a	n/a	n/a
Float Test, seconds	T50	n/a	n/a	n/a	n/a	n/a
Penetration	T49	75-175	100-200	100-200	0-20	40-90
Elastic Recovery, % <sup>(2)</sup>	T301	50 Min	n/a	n/a	n/a	n/a
Ductility @ 77 °F, cm	T51	40 Min	40 Min	40 Min	n/a	n/a
Ductility @ 40 °F, cm	T51	n/a	n/a	n/a	n/a	n/a
R&B Softening Point, °F	T53	125 Min	n/a	n/a	60-75	n/a
Original G*/sind @ 82 °C	T315	n/a	n/a	n/a	1.0 Min	n/a

<sup>(1)</sup> Distill at 350 °F

<sup>(2)</sup> Straight-sided mold, 20-cm elongation, 5min hold, 25 °C

**Subsection 908.04** (pg. 968), 5-18-15, High Strength Bolts, A. Specifications; Add the following to the first paragraph:

“Unless otherwise shown on the Plans, mechanically galvanize all bolts, nuts and washers in accordance with ASTM B695 Class 50.”

**Subsection 921.01** (pg. 1049), 5-18-15, Water; Replace with the following:

For mixing concrete, use water that is reasonably clean and free of oil, salt, acid, alkali, sugar, vegetable matter, and other substances injurious to the finished product. Water provided by a municipal utility may be used without testing.

All other water shall have quality results submitted in accordance with the frequency listed in Table 921.01-01. All water quality results shall adhere to Table 921.01-2.

**Table 921.01-1 Testing Frequency for Mixing Water**

Water Source	Testing Frequency <sup>(1)</sup>
Municipal	NA
Non-Municipal	Every 3 months; tested annually after 4 consecutive passing tests

(1) The frequency may vary at the discretion of the Department.

**Table 921.01-2 Quality Requirements for Mixing Water**

Maximum Concentration in Mixing Water	Limits	ASTM Test Method <sup>(1)</sup>
Chloride Ion Content, ppm	500	C114
Alkalies as (NaO2 + 0.658 K2O), ppm	600	C114
Sulfates as SO4, ppm	3000	C114
Total Solids by mass, ppm	50000	C1603
pH	4.5-8.5	<sup>(2)</sup>
Resistivity, Minimum, kohm-cm	0.500	D1125
Soluble Carbon Dioxide, ppm	600	D513
Calcium and Magnesium, ppm	400	D511
Iron, ppm	20	<sup>(2)</sup>
Phosphate, ppm	100	D4327

(1) Other methods (EPA or those used by water testing companies) are generally acceptable.

(2) No ASTM method available.

**Subsection 921.06** (pg.1051) 11-16-15; B. Bituminous Additives - 1. Anti-Stripping Additive, modify the following: “Use hydrated lime conforming to AASHTO M 303 or other heat-stable asphalt anti-stripping additive containing no ingredient harmful to the bituminous material or the workmen and that does not appreciably alter the specified characteristics of the bituminous material when added in the recommended proportions.”

**S T A T E****O F****T E N N E S S E E**

(Rev. 2-17-15)

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****UNBALANCED BIDS**

The Department will review all unit prices submitted by the apparently lowest responsible bidder and will decide whether any of the unit prices are excessively above or below a reasonable cost analysis value determined by the Engineer.

In the event any unit prices are determined to be unbalanced and contrary to the interest of the Department, the right is reserved to reject such bid at the discretion of the Department or to award the Contract and limit progress payments on units of work performed on any excessively priced items to costs that are satisfactorily documented by the Contractor plus 20 percent, until 85 percent of the Contract has been completed. Upon completion of 85 percent of the Contract, the Contractor will be reimbursed in accordance with **Subsection 109.08** of the Standard Specifications for the accepted quantities of work performed on the excessively priced items. |

**S T A T E****O F****T E N N E S S E E**

January 1, 2015 |

REV: 2/5/07 |

**SPECIAL PROVISION****REGARDING****EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS**

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of Governor's Executive Order #41, An Order Regarding Compliance with Federal and State Laws Related to Employing and Contracting with Illegal Immigrants, and the requirements of Public Acts of 2006, Chapter Number 878 of the State of Tennessee (codified at *Tennessee Code Annotated*, Title 12, Chapter 4, Part 1).

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.
2. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.
3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
4. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and

Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, “illegal immigrant” shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration’s Policy on “Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors”.

**S T A T E**

**O F**

**T E N N E S S E E**

January 1, 2015

(Rev. 03-30-15)

**SPECIAL PROVISION**

**REGARDING**

**TENNESSEE DEPARTMENT OF TRANSPORTATION STANDARD**

**SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION**

**DESCRIPTION**

Any and all references concerning the March 1, 2006 Standard Specifications for Road and Bridge Construction shall be interpreted as the January 1, 2015 Standard Specifications for Road and Bridge Construction.

The following Special Provisions have been incorporated into the January 1, 2015 Standard Specifications for Road and Bridge Construction:

- 107SHP
- 407G
- 411TL
- 411TLD
- 411OGFC
- 716ST

Any reference to these Special Provisions shall refer to the January 1, 2015 Standard Specifications for Road and Bridge Construction.

**STATE****OF****TENNESSEE**

(Rev. 6-19-95)

(Rev. 6-1-04)

(Rev. 06-20-2011)

January 1, 2015

**SPECIAL PROVISION****REGARDING****BUY AMERICA REQUIREMENTS**

All manufacturing processes for iron and steel products, and coatings applied thereon, used in this project shall occur in the United States except that if the proposal has bid items for furnishing domestic and foreign iron and steel, the bidder will have the option of (1) submitting a bid for furnishing domestic iron and steel, or (2) submitting a bid for furnishing domestic iron and steel and a bid for furnishing foreign iron and steel. If option (2) is chosen the bid will be tabulated on the basis of (a) the total bid price using the bid price for furnishing domestic iron and steel and, (b) the total bid price using the bid price for furnishing foreign iron and steel.

For the total bid based on furnishing foreign iron and steel to be considered for award, the lowest total bid based on furnishing domestic iron and steel must exceed the lowest total bid based on furnishing foreign iron and steel by more than 25 percent. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for the steel or iron products.

Iron and steel products are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from iron and steel made in the United States. Iron products are included, however, pig iron and processed, pelletized, and reduced iron ore may be purchased outside the United States.

Manufacturing begins with initial melting and continues through the coating stage. Any process which modifies chemical content, physical size or shape, or the final finish is considered a manufacturing process. Coatings include epoxy, galvanizing, painting or any other surface protection that enhances the value and/or durability of a material.

The contractor shall provide a certification to the Engineer with each shipment of iron and steel products to the project site that the manufacturing processes for the iron and steel products occurred in the United States. No steel shall be placed until the contractor ensures the requirements of this Special Provision are met.

The above requirements do not prevent a minimal use of foreign materials, if the cost of such materials used does not exceed 0.1 percent of the total contract cost or \$2,500.00, whichever is greater. If steel



not meeting the requirements of this Special Provision is used, the contractor shall provide a written statement to the Department prior to its use indicating where the steel will be incorporated in the work, the value of the steel, the percentage of the contract amount, and the appropriate invoices shall be submitted as documentation.

The contractor shall be responsible for all cost associated with any steel that is permanently incorporated into the project that does not meet the requirements of this Special Provision without prior written approval from the Department, up to and including removal and replacement.

**S T A T E****O F****T E N N E S S E E**

January 1, 2015

Rev. 11-22-11

Rev. 02-13-12

Rev. 12-22-14

**SPECIAL PROVISION****REGARDING****WATER QUALITY AND STORM WATER PERMITS****Scope**

The conditions of this Special Provision apply to all construction on this project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and
2. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 1200-4-10, and Aquatic Resource Alteration permits in Chapter 1200-4-7; and
3. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304; and
4. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1.), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake; and
5. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

**Responsibility**

It is understood and agreed that the Contractor assumes all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

It is also understood and agreed that the Contractor shall be responsible for obtaining any additional permits required by the Contractor's method of construction, including without

limitation haul roads, temporary channels or temporary ditches, or off-site waste and/or borrow areas.

It is also understood that the Contractor shall be responsible for implementing the provisions of the Water Quality (including, but not limited to, TDEC ARAP, USACE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), Statewide Stormwater Management Plan (SSWMP)] Permits and requirements that pertain to construction activities.

The Contractor by signing this contract is indicating that the Contractor has reviewed a copy of the permit provisions, including NPDES Permit provisions at <http://www.tdot.state.tn.us/construction/permits/npdes.pdf>, the site specific SWPPP, the contract plans, Standard Specifications and contract Special Provisions and finds the permit requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

It is also understood that the Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Construction Supervisor. The NOT is a certification that the construction project site is permanently stabilized and that all construction related discharges have ceased. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface water conveyances or to waters of the state is no longer necessary. Furthermore, it means that permanent controls, hard surfaces and/or vegetation, employed at the site are deemed adequate to prevent erosion and sediment transport and no other potential sources of construction-related pollution are on the project.

It is also understood that the Contractor shall not be released from any warranty provided for EPSC plantings, including sod and trees. If the entire project is complete as outlined in **Subsection 105.15** of the **Standard Specifications**, the Contractor shall be required to supply a performance bond as outlined in **Subsection 802.15** of the **Standard Specifications** to cover any warranty for EPSC plantings.

### **NPDES Permit Required Action**

The Contractor (or their representative) shall accompany the EPSC inspector (TDOT personnel or TDOT hired consultant) on all EPSC inspections of the entire construction project including permitted locations and potentially impacted streams as well as attend all QA/QC Project Assessments.

EPSC Inspections shall be conducted as required in the most current TN Construction General Permit.

EPSC inspections shall be performed on the schedule established in the TN Construction General Permit until the site is permanently stabilized to determine if the permit requirements are being met. Where sites or portion(s) of construction sites have been temporarily stabilized, or runoff is unlikely due to winter conditions (e.g. site covered with snow or ice), such inspection only has to be conducted once per month until thawing or precipitation results in runoff or construction activity resumes. Written notification of the intent to change the inspection frequency and the justification for such request must be submitted to the TDOT Project Supervisor and the TDEC Central Office before proceeding.

An individual representing the Contractor, who holds a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification shall accompany the EPSC inspector on all required EPSC inspections. The Contractors project supervisor(s) shall also hold

a current TDEC “*Fundamentals of Erosion Prevention and Sediment Control Level I*” certification. Proof of required personnel training for the individual(s) shall be provided to the TDOT Project Supervisor prior to beginning of construction.

The TDOT EPSC inspector shall document all deficiencies on the required TDOT EPSC Inspection Report form (provided in the SWPPP). The Contractor (or their representative) shall sign the TDOT EPSC Inspection Report form and any supporting documentation indicating that he is in agreement with the report, recommendations and repair schedule as stated within the documentation.

Additionally, the Contractor shall make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within twenty-four (24) hours after an inspection identifies the maintenance or repair need, and/or when directed to do so by the TDOT Project Supervisor, unless conditions make a particular activity impracticable. Any such conditions that make immediate repairs impracticable shall be documented and provided to the TDOT Project Supervisor, via the inspection report, and be accompanied by an expected repair schedule based on forecasted weather conditions.

The Contractor further agrees that he will execute two (2) copies of the Notice of Intent (NOI) form of the permit (provided by the Department), indicating his acceptance of the stipulations contained therein. The Contractor further agrees, that should he fail to execute said copies and return them to the TDOT Construction Division within ten (10) calendar days after submittal of the contract proposal to him, that the Department may at its discretion cancel the award with the Contractor forfeiting his bid bond.

Further, the Contractor agrees to review the site specific Stormwater Pollution Prevention Plan (SWPPP) that will be made available prior to or at the pre-construction conference, for any additional EPSC requirements. The Contractor shall sign and submit two copies of the SWPPP signature page (provided by the Department within the site specific SWPPP). The Contractor may submit for review and approval changes/revisions to the SWPPP to better prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals does not relieve the contractor of any liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. The Contractor shall comply with the new requirements within thirty (30) days of the Department notification.

If at any time the Contractor becomes aware that sedimentation is occurring or has occurred in streams impacted by the specified project, the Contractor shall immediately notify the TDOT Project Supervisor to evaluate the EPSC measures employed. A determination of the cause for sedimentation will be made by the Department. The Contractor shall immediately repair or replace defective EPSC measures, and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation. Once a remediation plan is provided by the Department, the Contractor shall, within twenty-four (24) hours after notification, begin the remediation as required. Based on the cause of sedimentation, the Department will determine if the cost of remediation will be performed at the Contractor’s expense.

**Failure to Comply**

In the event a Notice of Violation (NOV) or Order pursuant to the Tennessee Water Quality Control Act or the Federal Clean Water Act is issued on this project, any and all fines will be the

sole responsibility of the Contractor as outlined in **Subsection 107.01** of the **Standard Specifications for Road and Bridge Construction**.

Failure of the Contractor to comply with this Special Provision or take immediate corrective actions required within twenty-four (24) hours (unless documented conditions make a particular maintenance or repair activity impracticable immediately) shall be reason for the TDOT Project Supervisor to suspend all other work on the Project, except erosion prevention and sediment control (EPSC) and traffic control, applying non-refundable deductions of monies from the Contract per calendar day from monies due to the Contractor for any EPSC work on the Project. This deduction can be made for each location, as determined by the TDOT Project Supervisor, for each calendar day that the deficiency is allowed to remain and charged as item description "*Failure to Comply with Permit Deduction*". A deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **Subsection 108.07** of the **Standard Specifications for Road and Bridge Construction January 1, 2015**, as amended. |

If the Contractor does not make necessary corrections/adjustments in a timely manner as required above, the Department will implement the provisions of **Subsection 209.07 and Subsection 109.08** of the **Standard Specifications for Road and Bridge Construction** that provides for the Department making repairs and recovering the costs thereof from the Contractor. The Department will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage, to remedy the violations stated within the NOV, required by the TDOT Project Supervisor as stated in **Subsection 105.01** of the **Standard Specifications for Road and Bridge Construction**.

## Claire Sichko

---

**From:** Claire Sichko  
**Sent:** Tuesday, February 02, 2016 1:01 PM  
**To:** Jamie Fitzpatrick; Mike Brown; David Sizemore; Vicky Forrest; Michael Horlacher; Shawn Allen; Jim Nikahd; Brad Abel; Greg Hamilton; Jacob Brooks; Scott Johnson; Ryan Sweeney  
**Cc:** Ronnie Porter; John Hewitt; DJ Wiseman; Anthony Myers; Dennis Crumby; Ben Brown; Trenton Thomas; Shane Hester; Chuck Graves; Joe Deering; Rachel Gentry; Jon Zirkle  
**Subject:** Permit Distribution, PIN 121823.00  
**Attachments:** PIN 121823.00 NRS15.352PermitIssued.pdf

### Water Quality Permit Distribution

TDOT Project # 83011-1233-94  
PIN 121823.00  
Federal Funding # HSIP-109(36)  
State Route 109  
Intersection at Old State Highway 109  
Sumner County

**The Department received the following permit:**  
Individual Aquatic Resource Alteration Permit (NRS # 15.352)

A copy of the permit is enclosed for your information and use. Construction forces should be made aware that this permit is applicable to the contract.

It is our understanding that the TDOT contractors will not be relocating utilities. Therefore, this permit does not include utility relocation impacts. If utilities are expected to be relocated by TDOT contractors, please contact the TDOT Environmental Division, Permits Section immediately.

All permits required for this project have been received except the NPDES Notice of Coverage. It will be sent to you as soon as we obtain it.

If you have any questions or we can provide further assistance, please contact me or Anthony Myers at (615) 532-9945.

Thank you,



**Claire Sichko** | Consultant  
Environmental Division  
Natural Resources Office, Permits Section  
James K. Polk Building, 9<sup>th</sup> Floor  
505 Deaderick Street  
Nashville, Tennessee 37243  
p. 615-741-2613  
[claire.sichko@tn.gov](mailto:claire.sichko@tn.gov)  
[tn.gov/tdot](http://tn.gov/tdot)



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**DIVISION OF WATER RESOURCES**

William R. Snodgrass - Tennessee Tower  
312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243-1102

January 27, 2015

TN Dept of Transportation  
c/o Anthony Myers  
505 Deadrick St. #900  
Nashville, TN 37243

**Subject: Individual ARAP Permit/§401 Water Quality Certification**  
NRS15.352 PIN #121823.00  
State Route 109  
Old Hickory Lake Watershed  
Sumner County, TN

Contacted Vena Jones on  
2/2/2016 via phone. Only  
one (1) stream will be  
impacted. Permit remains  
valid with additional  
temporary impacts listed.

Dear Mr. Myers:

We have reviewed your proposal to modify the intersection of State Route 109 and Old State Highway 109 in Sumner County which will impact five (5) streams. One stream, an unnamed tributary to East Camp Creek, will have permanent impacts from encapsulation and length loss totaling 78 linear feet. The applicant proposes to offset these impacts through the Tennessee Stream Mitigation Program in the East Lower Cumberland Service Area. Four of the streams will have temporary impacts that include temporary road crossings, stabilization and temporary channel diversions.

The attached Aquatic Resource Alteration Permit/§401 Water Quality Certification authorizes the work you have proposed in your application.

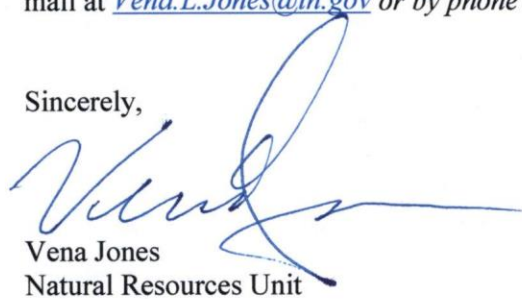
This activity is governed by the enclosed permit. The work must be accomplished in conformance with accepted plans and information submitted in support of application NRS15.352 and the limitations and conditions set forth in the permit (enclosed). It is the responsibility of the permittee to ensure that all contractors involved with this project have read and understand the permit conditions before the project begins.

**Coverage Termination**

Authorization under this permit cannot be extended beyond the expiration date. If all work is not completed on or before January 26, 2021 it is the applicants responsibility to apply for additional coverage.

Thank you for your time and consideration. If you have any questions please contact me by e-mail at [Vena.L.Jones@tn.gov](mailto:Vena.L.Jones@tn.gov) or by phone at (615) 253-5320

Sincerely,

A handwritten signature in blue ink, appearing to read 'Vena Jones', with a long horizontal flourish extending to the right.

Vena Jones  
Natural Resources Unit

Encl: copy of permit  
CC: DWR, Nashville Environmental Field Office  
U.S. Army Corps of Engineers, Nashville Regulatory Branch  
Anthony Myers, TDOT  
Eric Chance, TSMP  
File copy





### **AQUATIC RESOURCE ALTERATION PERMIT NRS15.352**

Pursuant to §401 of *The Federal Clean Water Act* (33 U.S.C. 1341), any applicant for a Federal license or permit to conduct any activity which may result in any discharge into the waters of the U.S., shall provide the federal licensing or permitting agency a certification from the State in which the discharge originates or will originate. Accordingly, the Division of Water Resources requires reasonable assurance that the activity will not violate provisions of *The Tennessee Water Quality Control Act of 1977* (T.C.A. §69-3-101 et seq.) or provisions of §§301, 302, 303, 306 or 307 of *The Clean Water Act*.

Subject to conformance with accepted plans, specifications and other information submitted in support of the application, pursuant to 33 U.S.C. 1341 the State of Tennessee hereby certifies the activity described below. This shall serve as authorization under T.C.A. §69-3-101 et seq.


**PERMITTEE:** TN Dept of Transportation  
c/o Anthony Myers  
505 Deadrick St. #900  
Nashville, TN 37243

**AUTHORIZED WORK:** The Tennessee Department of Transportation is authorized to modify the intersection of State Route 109 and Old State Highway 109 in Sumner County which will impact five (5) streams. One stream, an unnamed tributary to East Camp Creek, will have permanent impacts from encapsulation and length loss totaling 78 linear feet. The applicant proposes to offset these impacts through the Tennessee Stream Mitigation Program in the East Lower Cumberland Service Area. Four of the streams will have temporary impacts that include temporary road crossings, stabilization and temporary channel diversions.

**LOCATION:** State Route 109, Intersection at Old State Highway 109  
Sumner County, TN  
Latitude 36.4278° Longitude -86.4625°

**EFFECTIVE DATE:** January 28, 2016

**EXPIRATION DATE:** January 27, 2021

  
Tisha Calabrese Benton  
Director, Division of Water Resources

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## **PART I**

### **Authorized Work:**

#### STR-1: Unnamed tributary to East Camp Creek

Latitude 36.4278° Longitude -86.4625°

Extension of a 12' x 8' box culvert

Current box is 217 linear feet

Extension of box is 62 linear feet

16 linear feet of channel length loss

Impacts to be mitigated through the TN Stream Mitigation Program

62 linear feet @ 1:1 plus 16 linear feet @ 1:1 = 78 credits are required

### **Special Conditions:**

1. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of application NRS15.352 and the limitations, requirements and conditions set forth herein.
2. The bottom of culverts shall be constructed below the stream bed elevation, in a manner that allows natural substrate to reestablish.
3. Culverts shall not be constructed in a manner that would permanently disrupt the movement of fish and aquatic life.
4. All riprap areas shall be placed as to mimic the existing/proposed contours of the stream channel. Riprap shall be countersunk and placed at the grade with the existing stream substrate.
5. Voids within the riprap shall be filled with suitable substrate to prevent loss of stream within the riprap areas. Do not over-excavate for placement of riprap. Grouting of riprap is prohibited.
6. Construction and removal of bridges and culverts shall be in the dry to the maximum extent practicable, by diverting flow utilizing cofferdams, berms, and/or temporary channels or pipes. Temporary diversion channels shall be protected by non-erodible material and lines to the expected high water level.
7. The use of monofilament-type erosion control netting or blanket is prohibited.
8. This does not authorize the removal of riparian trees or shrubs along the banks of the streams outside the limits of disturbance for activity authorized under this permit along Richland Branch, Britton Branch, and Smithson Branch or any of the tributaries to those streams. Authorization may need to be obtained through the local jurisdiction before riparian zones are modified in any way.
9. Best Management Practices (BMPs) shall be stringently implemented throughout the construction period to prevent sediments, oils, or other project-related pollutants from being discharged into the East Camp Creek or its tributaries.
10. Streambeds shall not be used as transportation routes for construction equipment. Temporary stream crossings shall be limited to one point in the construction area and erosion prevention and sediment control measures shall be utilized where stream banks are disturbed.

11. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater, should a spill occur.

**General Conditions:**

1. It is the responsibility of the permittee to convey all terms and conditions of this permit to all contractors. A copy of this permit, approved plans and any other documentation pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.
2. Work shall not commence until the permittee has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority or authorization under a Tennessee NPDES Storm Water Construction Permit where necessary. The permittee is responsible for obtaining these permits.
3. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 0400-40-03-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 0400-40-04. These uses include fish and aquatic life (including trout streams and naturally reproducing trout streams), livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation.
4. Impacts to waters of the state other than those specifically addressed in the plans and this permit are prohibited. All streams, springs and wetlands shall be fully protected prior, during and after construction until the area is stabilized. Any questions, problems or concerns that arise regarding any stream, spring or wetland either before or during construction, shall be addressed to the Division of Water Resource's Nashville Environmental Field Office (615-687-7000), or the permit coordinator in the division's Natural Resources Unit (615-253-5320).
5. Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
6. This permit does not authorize adverse impacts to cultural, historical or archeological features or sites.

**PART II**

**Mitigation Requirements**

**Third Party Mitigation:**

1. The permittee is required to offset losses from stream impacts that total 78 linear feet of stream debits. The permittee will purchase credits for stream impacts from the Tennessee Stream Mitigation Program (TSMP) in the East Lower Cumberland Service Area. The payment must be made to the in-lieu fee program within sixty (60) days of invoice. Please be advised that this conditional permit is not valid until this compensatory mitigation requirement has been fulfilled. Legal liability for completion and success of the compensatory mitigation is transferred to the TSMP through the purchase of stream mitigation credits. A copy of the purchase agreement shall be submitted to this office.



### **PART III**

#### **Duty to Reapply**

Permittee is not authorized to work after the expiration date of this permit. In order to receive authorization beyond the expiration date, the permittee shall submit such information and forms as are required to the Director of Water Resources. Such applications must be properly signed and certified.

#### **Property Rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

#### **Other Information**

If the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, then he/she shall promptly submit such facts or information.

#### **Changes Affecting the Permit**

##### **Transfer/Change of Ownership**

- a. This permit may be transferred to another party, provided there are no activity or project modifications, no pending enforcement actions, or any other changes which might affect the permit conditions contained in the permit, by the permittee if:
- b. The permittee notifies the Director of the proposed transfer at least 30 days in advance of the proposed transfer date;
- c. The notice includes a written agreement between the existing and new permittees containing a specified date for transfer of permit responsibility, coverage, and contractual liability between them; and
- d. The Director does not notify the current permittee and the new permittee, within 30 days, of his intent to modify, revoke, reissue, or terminate the permit, or require that a new application be filed rather than agreeing to the transfer of the permit.
- e. The permittee must provide the following information to the division in their formal notice of intent to transfer ownership:
  - i. the permit number of the subject permit;
  - ii. the effective date of the proposed transfer;
  - iii. the name and address of the transferor;
  - iv. the name and address of the transferee;
  - v. the names of the responsible parties for both the transferor and transferee;
  - vi. a statement that the transferee assumes responsibility for the subject permit;
  - vii. a statement that the transferor relinquishes responsibility for the subject permit;
  - viii. the signatures of the responsible parties for both the transferor and transferee, and;

- ix. a statement regarding any proposed modifications to the permitted activities or project, its operations, or any other changes which might affect the permit conditions contained in the permit.

#### **Change of Mailing Address**

The permittee shall promptly provide to the Director written notice of any change of mailing address. In the absence of such notice the original address of the permittee will be assumed to be correct.

#### **Noncompliance**

##### **Effect of Noncompliance**

All discharges shall be consistent with the terms and conditions of this permit. Any permit noncompliance constitutes a violation of applicable State and Federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

##### **Reporting of Noncompliance**

###### ***24-Hour Reporting***

- a. In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the Division of Water Resources in the appropriate Environmental Field Office within 24-hours from the time the permittee becomes aware of the circumstances. (The Environmental Field Office should be contacted for names and phone numbers of environmental response personnel).
- b. A written submission must be provided within five (5) days of the time the permittee becomes aware of the circumstances unless this requirement is waived by the Director on a case-by-case basis. The permittee shall provide the Director with the following information:
  1. A description of the discharge and cause of noncompliance;
  2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  3. The steps being taken to reduce, eliminate, and prevent recurrence of the non-complying discharge.

###### ***Scheduled Reporting***

For instances of noncompliance which are not reported under subparagraph a. above, the permittee shall report the noncompliance by contacting the permit coordinator, and provide all information concerning the steps taken or planned to reduce, eliminate, and prevent recurrence of the violation and the anticipated time the violation is expected to continue.

##### **Adverse Impact**

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from noncompliance with this permit, including but not limited to, accelerated or additional



monitoring as necessary to determine the nature and impact of the noncompliance. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## **Liabilities**

### **Civil and Criminal Liability**

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Notwithstanding this permit, the permittee shall remain liable for any damages sustained by the State of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge of pollutants to any surface or subsurface waters. Additionally, notwithstanding this Permit, it shall be the responsibility of the permittee to conduct its discharge activities in a manner such that public or private nuisances or health hazards will not be created.

### **Liability under State Law**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or the Federal Water Pollution Control Act, as amended.

This permit does not preclude requirements of other federal, state or local laws. This permit also serves as a State of Tennessee Aquatic Resource Alteration Permit (ARAP) pursuant to the Tennessee Water Quality Control Act of 1977 (T.C.A. §69-3-101 et seq.).

### **Reopener Clause**

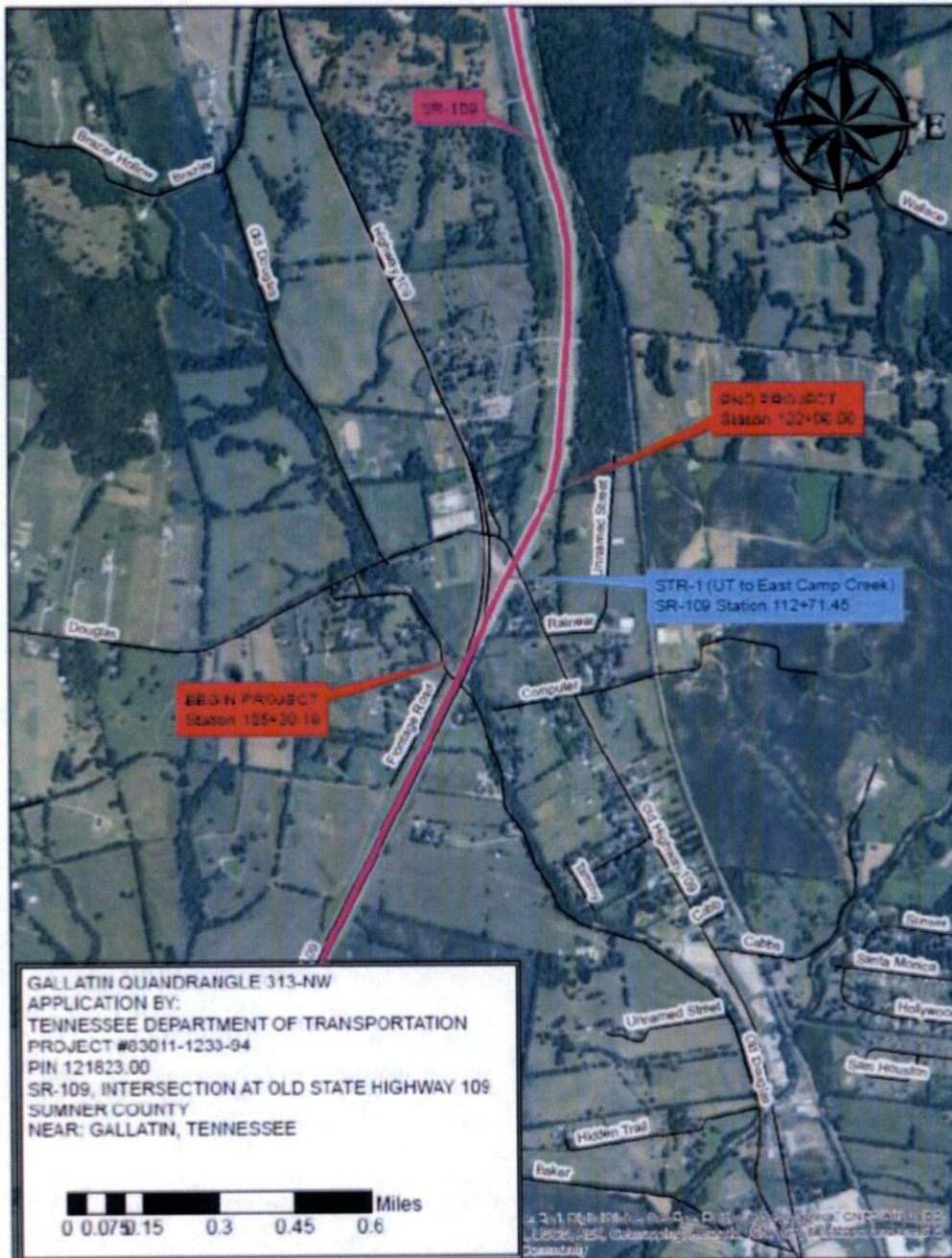
This permit may be revoked, suspended, or modified for cause, including:

1. Violation of any of the terms or conditions of this permit or of T.C.A. § 69-3-101 et. seq.;
2. Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts;
3. A change in any condition that requires either a temporary or permanent change in the conditions of this permit.

An appeal of this action may be made as provided in T.C.A. §69-3-105(i) and Rule 0400-40-05-.12 by submitting a petition for appeal. This petition must be filed within THIRTY (30) DAYS after public notice of the issuance of the permit. The petition must specify what provisions are being appealed and the basis for the appeal. It should be addressed to the technical secretary of the Tennessee Board of Water Quality, Oil and Gas at the following address: Tisha Calabrese Benton, Director, Division of Water Resources, William R. Snodgrass - Tennessee Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243-1102. Any hearing would be in accordance with T.C.A. §§69-3-110 and 4-5-301 et seq.

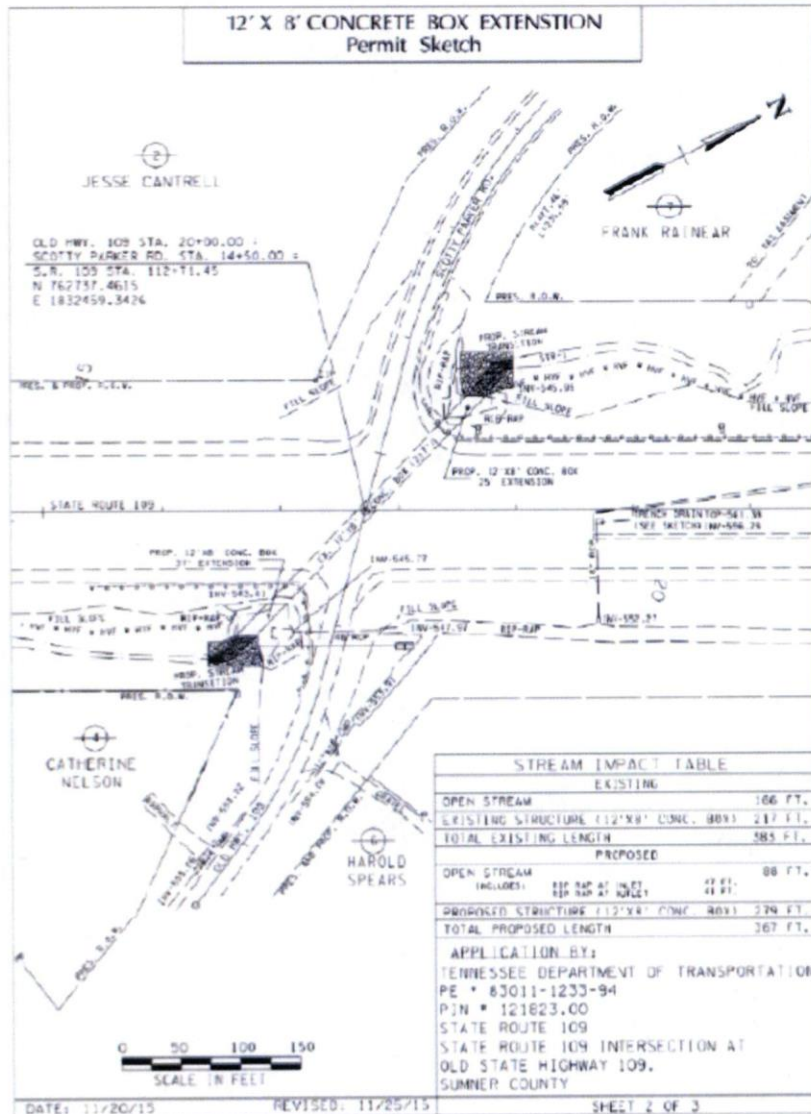
## APPENDIX I

### Location/Topographic Map





## Site Designs



**S T A T E**

**O F**

**T E N N E S S E E**

January 1, 2015  
Contract No.: CNQ043  
County: Sumner

**SPECIAL PROVISION**

**REGARDING**

**“SPECIALTY ITEMS”**

In accordance with the provisions of Subsection 108.01, *Standard Specifications for Road and Bridge Construction*, 2015, all construction items included in the following described work are hereby designated as “Specialty Items”:

Item 105-01 - Construction Stakes, Lines and Grades

Item 209 - EPSC Items

Item 411-12.\*\*Shoulder Scoring

Item 705 - Guardrail, Anchors, etc.

Item 706 - Guardrail Items

Item 707 - Fencing Items

Item 712 - Traffic Control Items

Item 713 - Signing Items

Item 716 - Pavement Marking Items

Item 801 - Seeding

Item 803-01 - Sodding

Item 805 - Erosion Control

**S T A T E****O F****T E N N E S S E E**

April 1, 2016  
Project No. HSIP-109(36);  
83011-3233-94  
County: Sumner  
Contract No. CNQ043

**SPECIAL PROVISION****REGARDING****PROJECT COMPLETION AND LIQUIDATED DAMAGES**

This project shall be completed in its entirety on or before November 30, 2016.

All lane closures must be approved in advance by the Engineer. A minimum of seven days notice must be provided in advance of any closure. One lane must remain open at all times in each direction. No lane closures will be allowed during Special Events, Holidays or Holiday weekends in accordance with the plans and specifications.

All lane closures for traffic shifting operations, including the setting and resetting of portable barrier rail, shall be done at night between 8:00 PM and 5:00 AM.

The contractor will be allowed to close the intersection to traffic for 9 straight days beginning at 8:00 PM on Friday and ending at 5:00 AM on Monday. One lane of traffic in each direction on State Route 109 must be maintained at all times during that time.

All lane closures and operations must be coordinated with existing construction contracts in the area.

No partial payments, including payment for stockpile materials, shall be made before work begins.

**STATE****OF****TENNESSEE**

(Rev. 10-01-06)

(Rev. 11-03-08)

(Rev. 01-03-13)

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****PAYMENT ADJUSTMENT FOR FUEL**

This special provision covers the method of payment adjustment for fuel price increases or decreases. Payment adjustments will be made in monthly increments based on the estimated fuel consumed on major items of work, the estimated price per gallon of fuel at the time of letting, and the percentage change of the Producer Price Index for Light fuel oils, Series ID Number WPU0573, published by the U.S. Department of Labor, Bureau of Labor Statistics.

The estimated price per gallon of fuel for this contract is **\$ 1.15** |

The January 2016 Price Index (Ib) for light fuel oils shall be used for this contract. Adjustments |  
will be based on the price index in effect for the month in which the item was installed.

Fuel consumption for payment adjustment shall be based on the following:

Item Number	Description of Work	Gall ons per unit	Unit of measure
203	Any Road and Drainage Excavation	0.25	Cubic Yard
203	Any Borrow Excavation (Rock)	0.36	Cubic Yard
203	Any Borrow Excavation (Other than Solid Rock)	0.25	Cubic Yard
203	Any Borrow Excavation (Rock)	0.16	Ton
203	Any Borrow Excavation (Other than Solid Rock)	0.11	Ton
203-05	Undercutting	0.25	Cubic Yard
203	Any Embankment (in-place)	0.25	Cubic Yard
303, 309, 312	Any Aggregate Base	0.79	Ton
313, 501	Treated Permeable Base or Lean Concrete Base	0.10	Square Yard
307	Any Bituminous Plant Mix Base (HM)	2.98	Ton
411	Any Bituminous Concrete Surface (HM)	2.98	Ton
501	Any Portland Cement Concrete Pavement		
	≤ 10 in. thickness	0.25	Square Yard
	> 10 in. thickness	0.30	Square Yard

No payment adjustment for fuel shall be made on any item of work which is not listed above.

No payment adjustment for fuel shall be made unless the price index varies 5% or more from the index indicated in this Special Provision.

Where the price index varies 5% or more, the payment adjustment will be made as follows:

$$PA = [(Ic \div Ib) - 1] \times Fe \times Fp$$

Where:

PA = Payment Adjustment (may be plus or minus)

Ic = Index for Current Month

Ib = Index for Bidding

Fe = Estimated Fuel in Gallons used based on above table and work paid for during adjustment month.  $[\sum (\text{Pay quantity} \times \text{Gallons per unit}) = Fe]$

Fp = Fuel Price for Bidding

The Project Engineer will compute the payment adjustment for fuel on work sheets similar to the one attached and will furnish a copy of the calculations upon request to the prime contractor and approved subcontractors.

Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Change Order, payment adjustments for fuel will continue to be made only when the "Index for Current Month" is **less** than the "Index for Bidding" and varies 5% or more.

Payment adjustment, for fuel provided after the expiration of the allocated working time and where the "Index for Current Month" **exceeds** the "Index for Bidding", will **not** be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, fuel payment adjustments shall be calculated for each month where the allocated working time has expired, the "Index for Current Month" **exceeds** the "Index for Bidding", and the indices vary 5% or more. The calculation of the fuel payment adjustment shall be made using the "Index for Current Month" or the "Index for Contract Completion Date" in accordance with the following formulas:

The "Index for Contract Completion Date" is the fuel index in effect on the allocated Contract Completion date or the completion date as extended by Change Order.

"Index for Current Month" is **less** than "Index for Contract Completion Date"

$$PA = [(Ic \div Ib) - 1] \times Fe \times Fp$$

"Index for Current Month" is **greater** than "Index for Contract Completion Date"

$$PA = [(Icd \div Ib) - 1] \times Fe \times Fp$$

Where:

PA = Payment Adjustment (may be plus or minus)

Ic = Index for Current Month  
Ib = Index for Bidding  
Icd= Index for Contract Completion Date (or as extended by Change Order)  
Fe = Estimated Fuel in Gallons used based on above table and work paid for during  
adjustment month.  $[\sum (\text{Pay quantity} \times \text{Gallons per unit}) = \text{Fe}]$   
Fp = Fuel Price for Bidding

Payment Adjustment for fuel will be made under:

Item No.	Description	Pay Unit
109-01.01	Payment Adjustment for Fuel	Dollar

## Monthly Payment Adjustment for Fuel Worksheet

Project No. \_\_\_\_\_

Contract No. \_\_\_\_\_

County \_\_\_\_\_

Fuel Price (Fp) \_\_\_\_\_ Price Index Bidding (Ib) \_\_\_\_\_ Current Price Index (Ic) \_\_\_\_\_

Index for Contract Completion Date (or as extended by Change Order) (Icd) \_\_\_\_\_

Estimate Period: Work Performed \_\_\_\_\_ Adjustment Paid \_\_\_\_\_  
(Month/Yr)

Item	Unit	Quantity	Fuel Factor		Total Fuel
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____
_____	_____	_____	X	_____ =	_____

Total Fuel for Month (Fe) \_\_\_\_\_

$$PA = [(Ic \div Ib) - 1] \times Fe \times Fp$$

$$PA = [(Icd \div Ib) - 1] \times Fe \times Fp$$

**S T A T E****O F****T E N N E S S E E**

(Rev. 06-01-00)

January 1, 2015 |

(Rev. 08-01-00)

(Rev. 08-02-00)

(Rev. 01-07-13)

**SPECIAL PROVISION****REGARDING****PAYMENT ADJUSTMENT FOR BITUMINOUS MATERIAL**

This Special Provision covers the method of payment adjustment for bituminous materials.

**100% Virgin Bituminous Material**

A payment adjustment will be made to compensate for increases and decreases of 5% or more in the contractor's bituminous material cost. The normal bid items in the contract covering the bituminous material shall not be changed. Payment adjustments (+/-) shall be paid under "Payment Adjustment for Bituminous Material" and calculated as described herein:

A "Basic Bituminous Material Index" will be established by the Tennessee Department of Transportation prior to the time the bids are opened. This "Basic Bituminous Material Index" is the average of the current quotations on P.G. 64-22 from suppliers furnishing asphalt cement to contractors in the State of Tennessee. These quotations are the cost per ton f.o.b. supplier's terminal.

The "Basic Bituminous Material Index" for this project is \$388.64 per ton. |

The "Monthly Bituminous Material Index" is also established on the first day of each month by the same method. A payment adjustment shall be made provided the "Monthly Bituminous Material Index" varies 5% or more (+/-) from the "Basic Bituminous Material Index".

Where the price index varies 5% or more, the payment adjustment will be made as follows:

$$PA = [Ic - Ib] \times T$$

Where:

PA =	Price Adjustment for Adjustment Month
Ib =	Basic Bituminous Material Index
Ic =	Monthly Bituminous Material Index
T =	Tons bituminous material for Adjustment Month

Payment adjustment will be applied to all asphalt cement, asphalt emulsion, or bituminous material used for paving on this project.

Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Change Order, payment adjustments for bituminous material will continue to be



made only when the "Monthly Bituminous Material Index" is **less** than the "Basic Bituminous Material Index" and varies 5% or more.

Payment adjustment, for bituminous material used after the expiration of the allocated working time and where the "Monthly Bituminous Material Index" **exceeds** the "Basic Bituminous Material Index", will **not** be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, payment adjustments for bituminous material shall be calculated for each month where the allocated working time has expired, the "Monthly Bituminous Material Index" **exceeds** the "Basic Bituminous Material Index", and the indices vary 5% or more. The calculation of the bituminous payment adjustment shall be made using the "Monthly Bituminous Material Index" or the "Bituminous Material Index for Contract Completion Date" in accordance with the following formulas:

The "Bituminous Material Index for Contract Completion Date" is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The "Monthly Bituminous Material Index" is **less** than the "Bituminous Material Index for Contract Completion Date".

$$PA = [Ic - Ib] \times T$$

The "Monthly Bituminous Material Index" is **greater** than the "Bituminous Material Index for Contract Completion Date".

$$PA = [Icd - Ib] \times T$$

Where:

PA =	Price Adjustment for Adjustment Month
Ib =	Basic Bituminous Material Index
Ic =	Monthly Bituminous Material Index
Icd =	Bituminous Material Index for Contract Completion Date (or as extended by Change Order)
T =	Tons

### **Mixes Containing Recycled Bituminous Material**

The quantity of virgin asphalt cement in tons subject to payment adjustment in recycled mixes shall be the product of the total tons of each mix multiplied by the difference between (1) the percent of asphalt cement specified for bidding purposes and (2) the percent of asphalt cement obtained from the recycled asphaltic material (RAP) used in each mix. No payment adjustment under this special provision for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be allowed for asphalt cement content in excess of the percent specified for bidding purposes, as all payment adjustments for asphalt cement in the

mix design of recycled mixes in excess of the percent of asphalt cement specified for bidding purposes will be made in accordance with the Standard Specifications.

No payment adjustment for bituminous material containing RAP shall be made unless the "Monthly Bituminous Material Index" varies 5% or more from the "Basic Bituminous Material Index" indicated in this Special Provision.

Where the price index varies 5% or more, the payment adjustment will be made as follows:

$$PA = \frac{[Ic - Ib] \times [BA - RA] \times Tm}{100}$$

PA = Price Adjustment for Adjustment Month  
Ib = Basic Bituminous Material Index  
Ic = Monthly Bituminous Material Index  
BA = Percent asphalt specified for bidding purposes  
RA = Percent asphalt obtained from recycled asphaltic material used in each mix  
Tm = Tons asphalt mix for adjustment month

Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Change Order, payment adjustments for bituminous material containing RAP will continue to be made only when the "Monthly Bituminous Material Index" is less than the "Basic Bituminous Material Index" and varies 5% or more.

Payment adjustment, for bituminous material containing RAP provided after the expiration of the allocated working time and where the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", shall not be made until after the contract records have been approved by Final Records (FR)/Materials & Tests (MT) and a Final Estimate is ready to be processed. Upon contract record approval by FR/MT, payment adjustments for bituminous material containing RAP shall be calculated for each month where the allocated working time has expired, the "Monthly Bituminous Material Index" exceeds the "Basic Bituminous Material Index", and the indices vary 5% or more. The calculation of the bituminous payment adjustment shall be made using the "Monthly Bituminous Material Index" or the "Bituminous Material Index for Contract Completion Date" in accordance with the following formulas:

The "Bituminous Material Index for Contract Completion Date" is the Monthly Bituminous Material Index in effect on the allocated Contract Completion Date or on the completion date as extended by Change Order.

The "Monthly Bituminous Material Index" is less than the "Bituminous Material Index for Contract Completion Date".

$$PA = \frac{[Icd - Ib] \times [BA - RA] \times Tm}{100}$$

The “Monthly Bituminous Material Index” is **greater** than the “Bituminous Material Index for Contract Completion Date”.

$$PA = [Ic - Ib] \times \frac{[BA - RA]}{100} \times Tm$$

Where:

PA =	Price Adjustment for Adjustment Month
Ib =	Basic Bituminous Material Index
Ic =	Monthly Bituminous Material Index
Icd =	Bituminous Material Index for Contract Completion Date (or as extended by Change Order)
BA =	Percent asphalt specified for bidding purposes
RA =	Percent asphalt obtained from recycled asphaltic material used in each mix
Tm =	Tons asphalt mix for adjustment month

**S T A T E****O F****T E N N E S S E E**

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****EQUAL EMPLOYMENT OPPORTUNITY**

## Reference:

Federal-Aid Highway Program Manual

Transmittal 147, June 26, 1975

Replaces FHWA Order Interim 7-2(1)

**Specific Equal Employment Opportunity Responsibilities****GENERAL**

- a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA-1273 or PR-1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
- b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, exceeding \$10,000, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors). The contractor will include these requirements in every subcontract exceeding \$10,000 with such modification of language as is necessary to make them binding on the subcontractor.

**Equal Employment Opportunity Policy**

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, sex, national origin or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**Equal Employment Opportunity Officer**

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**Dissemination of Policy**

- (a) 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 equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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:
  - (1) 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
  - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

- (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.
- (b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:
  - (1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (2) The contractor's equal employment opportunity 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.

**Recruitment**

- (a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- (b) 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 minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- (c) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).
- (d) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**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 age, race, color, religion, sex, national origin 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 his 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 his avenues of appeal.

**Training and Promotion**

- (a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- (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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.
- (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 minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**Unions**

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- (b) The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, religion, sex, national origin 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 Tennessee Department of Transportation 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 minority and women 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 age, race, color, religion, sex, national origin or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). 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 Tennessee Department of Transportation.

**Subcontracting**

- (a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.



- (b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

**Records and Reports**

- (a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
  - (1) The number 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 to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force).
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
  - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.
- (c) Each contractor and subcontractor shall submit to the Tennessee Department of Transportation an annual report for every July during which work is performed 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 PR 1391 and is to be received by the Department not later than the 20th of the month following the reporting period.
- (d) The contractor and/or sub-contractor will be required to complete other reports as instructed by the Engineer.
- (e) Current estimates may be withheld by the Project Engineer when reports are not received within the above specified time limits.

**S T A T E****O F****T E N N E S S E E**

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY****CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

- 1) As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941
  - d. "Minority" includes:
    - I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);
    - III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining indentifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals (including goals and time tables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goal set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and the trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the

Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.
- (c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- (f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.
- (m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of age, race, color, religion, sex, national origin or disability.
- 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**STATE****OF****TENNESSEE**

Revised 10-19-2012

January 1, 2015

**SPECIAL PROVISION****REGARDING****NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION****TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

<u>County</u>	Goals for Female Participation <u>in each Trade</u>
All Counties	6.9
<u>County</u>	Goals for Minority Participation <u>for each Trade</u>
Lincoln	11.2
Hamilton, Marion, Sequatchie	12.5
Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea	8.6
Carter, Hawkins, Sullivan, Unicoi, Washington	2.6
Greene, Hancock, Johnson	3.2
Anderson, Blount, Knox, Union	6.6
Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier	4.5



<u>County</u>	<u>Goals for Minority Participation for each Trade</u>
Montgomery	18.2
Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford	15.8
Bedford, Cannon, Clay, Coffee, DeKalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White	12.0
Shelby, Tipton	32.3
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley	26.5

These goals are applicable to all the Contractor's construction work whether or not it is Federal or federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs at the following address within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation:

U.S. Department of Labor – Regional Office  
Office of Federal Contract Compliance Program  
61 Forsyth Street, Room 7B75  
Atlanta, GA 30303

The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

**STATE****OF**Sheet 1 of 1  
**TENNESSEE**

(Rev. 06-01-03)

(Rev. 06-23-08)

(Rev. 11-10-08)

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of contracts let by the Department. Consequently, the disadvantaged business enterprise requirements of 49 CFR Part 23/26 apply to this contract.

Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23/26 to ensure that disadvantaged enterprises, including enterprises owned and controlled by women, have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of age, race, color, religion, national origin, sex or disability in the award of subcontracts.

The Contractor shall submit to the Civil Rights Office Small Business Development Program copies of any agreements with DBE/WBEs upon execution.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy deemed appropriate by the Department.

STATEOFTENNESSEE

January 1, 2015

(Rev. 04-17-15)

(Rev. 10-19-15)

SPECIAL PROVISIONREGARDINGDBE CONTRACT GOAL

All contractors shall pursue affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises as set forth in this specification which is imposed pursuant to 49 CFR Part 26. The bidder shall arrange for the percentage of the work specified on the cover of the Proposal Contract to be performed by Tennessee Uniform Certification Program (TNUCP) Disadvantaged Business Enterprises (DBEs) or clearly demonstrate adequate good faith efforts as described herein. All payments must follow the conditions set by the most current TCA 12-4-707.

**A. Disadvantaged Business Enterprise Policy**

The Contractor shall accept as operating policy and include in all subcontract agreements the following statement, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

*The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-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 Department deems appropriate.*

**B. Counting DBE Participation toward Meeting Goals**

The Contractor shall count DBE participation toward goals in accordance with 49 CFR Part 26. The Contractor may count toward the goals only expenditures to DBEs that perform a commercially useful function of a contract, including those functions as a subcontractor. A DBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material,

installing (where applicable) and paying for the material itself. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a commercially useful function. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. The bidder may count the following DBE expenditures towards the DBE commitment:

1. **Projects where the DBE is the Prime Contractor** - The portions of the contract to be completed by certified DBE firms will be counted toward meeting the goal. Items of the contract subcontracted to non-DBE firms will not be counted in the commitment.
2. **Portions of a bid from a Joint Venture** - A bid from a joint venture, between a DBE and non-DBE Contractor, shall include an explanation of DBE commitments on DBE Form 1247A, which must be approved by the Department's Civil Rights Office - Small Business Development Program (CRO - SBDP) prior to the Letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to the awarding of the contract.
3. **DBE Subcontractors** - The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. Cost of materials purchased from or the cost of equipment leased from the Contractor will not count toward the project DBE commitment. Prior written approval must be obtained from the CRO - SBDP for any DBE use of the Prime Contractor's personnel or equipment.
4. **Manufacturers** - The Contractor may count toward the DBE commitment 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE firm produces and supplies goods manufactured from raw materials or substantially alters them before resale.
5. **Regular Dealers (e.g. Material Suppliers)** - The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the DBE firm performs a commercially useful function in the supply process. For purposes of this section, a regular dealer is a firm that owns; operates; or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates the distribution equipment. If the DBE supplier does not own the distribution equipment, a lease containing the terms of the agreement shall be available and must be approved in writing by the CRO - SBDP.

6. **Brokers and Packagers** - Brokers and packagers will not be regarded as regular dealers within the meaning of this section. Only the amounts charged for fees and commissions may be used towards meeting the DBE commitment.
7. **Transportation or Hauling of Materials** –The Department will continue to utilize the trucking regulations under 49 CFR Part 26.55. This regulation allows for DBE goal hauling-credit in either DBE trucks or in trucks leased to or by DBE firms. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations.
  - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
  - f) For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. Leases cannot be Department contract-specific, must be long term, and must be approved by the CRO - SBDP Staff. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
  - g) Prior to hauling, the Contractor and DBE shall provide the Department's Project Supervisor a complete list of trucks that will be used on the project for DBE goal participation. The Department will provide a form that shall be used by the Contractor and the DBE to identify the trucks. A revised list will be required any time the trucks used changes. The Contractor and DBE must be able to adequately document the actual amount of hauling eligible for DBE goal participation.
8. **Contracted Labor / Temporary Employment Agencies** – utilization of these services via subcontract will be allowed to count toward DBE goal commitment, in accordance with 49 CFR Part 26.55. The Department will count the entire amount of

fees or commissions charged by a DBE for providing a bona fide service. Provided, the Department must find the fee to be reasonable and not excessive as compared to the fees customarily allowed for similar services.

9. **Other Commercially Useful Functions** - The fees paid to certified DBE firms, which are necessary for the completion of the contract and commonplace outside of the DBE program, may be counted towards the commitment.

## **C. Contract Award Procedures**

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage of participation goals set by the Department, the bidder shall, within three (3) business days from the bid openings, propose sufficient additional DBE participation to meet the goal or shall clearly demonstrate by documentation that good faith efforts were made to meet the goal.

### **1. Bidder's Responsibility**

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

The Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

### **2. DBE's Responsibility**

In order to receive goal credit on a TDOT project, a DBE must perform a commercially useful function through execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself.

Before bidding and subsequently entering into a contract (as a contractor or subcontractor), the DBE should consider the scope and size of the project, as well as whether it is certified to receive credit for the type of work performed. As with any contract, this is a legally binding document and should be performed to the best of one's ability. However, should a DBE ever have to withdraw from a contract, it should provide the CRO-SBDP and Prime Contractor with written documentation. A DBE should only withdraw when there is no other option, as non-completion of its duties may result in temporary disqualification of a prequalified bidder or subcontractor by suspending the privilege of bidding on Department contracts or

becoming an approved subcontractor, as outlined in Chapter 1680-5-3 of the Rules of the Tennessee Department of Transportation.

### **3. Proposals with Established Project DBE Goals**

For proposals with established project goals, the bidder will be required to complete the computer generated DBE Form 1247A. The bidder shall list the following information on each DBE Form 1247A that is submitted:

- a. All DBE firms being used or being considered for use as part of the bidder's DBE commitment.
- b. The work classification(s) for each DBE on the contract; and
- c. The "Amount to DBE" which has been committed to each DBE firm for use on the contract.

The completed DBE Form 1247A form shall be submitted within three (3) business days of the Letting. Failure to provide a completed form or documentation clearly evidencing a good faith effort, as detailed in Section 4 below, within three (3) business days of the Letting may cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access this information on the DBE list by viewing the Department's website or the certified DBE listing.

**When** DBE goal projects are involved and the Prime Contractor subcontracts to a non-DBE, and the non-DBE subcontractor in turn subcontracts to a DBE as a second tier subcontractor, the Prime Contractor must affirm in writing his/her knowledge and approval of such an arrangement. Recognition of a second tier arrangement with a DBE subcontractor for goal work must be forwarded to the Director of the CRO - SBDP for verification, in writing, prior to any work performed by the DBE which will be counted toward the **goal**.

### **4. Bidder Selection and Good Faith Efforts**

- a. Bidders shall submit proposals that meet the DBE goal or shall submit documentation clearly evidencing that they made a good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as Prime Contractors will be considered to have met the goal.
- b. The following are illustrative of factors which will be considered in determining whether the bidder has made adequate good faith efforts:
  - 1) Whether the bidder selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.
  - 2) Whether the bidder provided notice to a reasonable number of specific DBEs, including those not regularly used by the bidder, that their



participation in the contract is being solicited in sufficient time to allow them to participate effectively.

- 3) Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
  - 4) Whether the bidder advertised in general circulation, trade association, or minority-focus media concerning participation opportunities or effectively used the services of available minority, community organizations, minority contractors groups, local, state or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.
  - 5) Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
  - 6) Whether the bidder made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.
  - 7) Whether the bidder submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet contract goal.
  - 8) Whether the bidder has adequate records of its contacts and negotiations with DBEs
- c) If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award.
- d) Failure of the bidder to meet the DBE goal in its bid or failure to provide documentation clearly evidencing good faith efforts to meet the goal, may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but in liquidation of damages sustained.

As soon as practical after award of the contract, the Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the respective Project Supervisor and the CRO- SBDP Director. No progress estimate shall be processed until this information is received.

**5. Joint Checking Allowance for DBE**

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted, by the DBE, to the CRO - SBDP prior to the contract agreement.

The following are some general conditions that must be met regarding joint check use:

- a. The second party (typically the prime contractor) acts solely as a guarantor.
- b. The DBE must release the check to the supplier.
- c. The use of joint checks must be a commonly recognized business practice in the industry.
- d. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1)
- e. The DBE is not required to use a specific supplier nor the prime contractor's negotiated unit price.
- f. The DBE shall submit receipt/copy of cancelled checks to the CRO - SBDP.

**D. Construction Period Requirements****1. Process for Removal of a DBE -**

At no time shall a DBE be terminated or substituted without prior written consent from the CRO-SBDP. Before terminating and/or substituting a DBE subcontractor on a project with SP1247 included in the Contract Proposal, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's CRO-SBDP, of its intent to request to terminate and/or substitute, and the reason for the request.

The Prime Contractor must then give the DBE five (5) days to respond to the Prime Contractor's notice. The DBE shall then advise TDOT's CRO - SBDP and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the CRO - SBDP should not approve the Prime Contractor's action. If approval is granted for removal, the TDOT CRO - SBDP will submit a letter to the Contractor and the DBE. Good faith efforts shall then be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established.

The Prime Contractor has the responsibility to comply with 49 CFR Part 26.53(f) and all applicable policies and regulations

Reasons for termination and/or substitution must meet the reasons for good cause as outlined in the current 49 CFR Part 26.53(f), which include, but are not limited to, the following circumstances:

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;

- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
  - (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
  - (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
  - (vi) The Department determined that the listed DBE subcontractor is not a responsible contractor;
  - (vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
  - (viii) The listed DBE is ineligible to receive DBE credit for the type of work required;
  - (ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
  - (x) Other documented good cause that the Department determines to compel the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.
2. Brokering of work by DBEs is not allowed and is a material breach of contract. A DBE firm involved in brokering of work may have their certification removed or suspended. Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 100.20. Contractor shall place this provision in all subcontracts with DBEs.
3. A Department Project Supervisor/Inspector shall complete a Commercially Useful Function (CUF) Checklist to document the first date of work, work items, equipment, and forces of each DBE.

4. The Contractor shall provide a monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide the Contractor with a computer generated Prompt Payment Certification Form. An officer of the Contractor shall provide an electronic signature to the Prompt Payment Certification Form and return via email to [DBE.Runningtally@tn.gov](mailto:DBE.Runningtally@tn.gov). The Department will hold estimate payments if information is not submitted. Reasons for non-payment to a DBE could include the following:

- a) Whether the DBE is performing satisfactorily;
- b) Whether Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps Contractor is taking to rectify the situation.

In the event the Contractor promptly reports questions on the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering Contractor compliance measures as described below. Payments must abide by the conditions set in TCA 12-4-707.

#### **E. Post Construction Requirements**

Prior to receiving final payment, the Contractor shall provide to the Project Engineer and CRO-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in the suspension of bidder qualifications. The final estimate will not be paid to the Contractor until proper certifications have been made.

#### **F. Required Records**

The Prime Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

#### **G. Contractor Compliance**

1. It is the intent of this Special Provision to require the Contractor to take full responsibility for the performance of a commercially useful function by all DBE subcontractors, manufacturers and materials suppliers who work on the project and are counted by the Contractor toward the project DBE goal. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved (49 CFR Part 26).

2. If the Contractor fails to comply with Special Provision 1247, the Department may take one or a combination of the following steps:
  - 1) Require the Contractor to have its entire management staff attend DBE training arranged by the Department and paid by the Contractor.
  - 2) The next bid when the Contractor is the low bidder on a DBE goal project, require that Contractor to achieve a DBE participation that is twice the stated goals.
  - 3) For the Contractor's failure to find another DBE subcontractor to substitute a DBE that is terminated or fails to complete its work on the contract for any reason or to provide the CRO - SBDP documentation clearly evidencing good faith efforts, as detailed in D.1. above, then the Department may withhold from the Contractor an amount not to exceed the amount of money originally committed to the non-complying DBE subcontractor, not as a penalty but as liquidated damages.
  - 4) Suspend the Contractor from participation in Department bid lettings pursuant to rules promulgated by the Department.
  - 5) For repeated failures to comply, debar the Contractor pursuant to rules promulgated by the Department.
  - 6) Invoke other remedies available by law and/or in the contract.
  - 7) Invoke remedy agreed upon by the Commissioner and the Contractor in writing.

## 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.

**S T A T E****O F****T E N N E S S E E**

(Rev. 5-1-95)

January 1, 2015 |

**SPECIAL PROVISION****REGARDING****LABOR (STATE PROJECTS ONLY)**

The contractor will be required to comply with the provisions of Title 12, Chapter 4, Part 4, Tennessee Code Annotated, relative to payment of prevailing wages and also the following rules and regulations as established by the Tennessee Department of Labor:

- (1) Classify all laborers and mechanics conformably with schedule of classification in the contract.
- (2) Apprentices may be employed only under a bona fide apprenticeship program, registered with the Bureau of Apprenticeship, U.S. Department of Labor.
- (3) Wages rates must be posted in a prominent place on the site of construction and must be made available to all mechanics and laborers employed on the project at all times.
- (4) Pay all laborers and mechanics unconditionally and not less often than once each week the full wages earned.
- (5) Pay hourly rates which are not less than those listed for the class of labor being employed.
- (6) Pay overtime compensation as required by any applicable federal or state laws, rules or regulations.
- (7) Make no deductions from wages other than those authorized by law.
- (8) The contractor shall submit each week in which any contract work is performed a certified copy of all payrolls to the contracting agency. The address and social security number of each employee shall be shown the first time the employee appears on a payroll, and on any subsequent payroll when the employee's address changes.

The certifications will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Commissioner of Labor, and that the classifications set forth for each laborer and mechanic conform with the work performed. The contractor will make his employment records available for inspection by representatives of the contracting agency and the Department of Labor, and will permit such representatives to interview employees during working hours on a project.

Failure to submit payrolls within one week or to resubmit corrected payrolls within one week after notification may be reason to withhold progress payments.

The rates of pay for each classification of labor employees on this project as set out by the Labor Department of the State of Tennessee and made a part of this proposal contract, shall remain unchanged for the life of this contract.

Watchman and clerical employees are not to be covered by the Wage Scale, therefore, may be paid at or above the National Wage and Hour Law Rates.

**STATE**

**OF**

**TENNESSEE**

January 1, 2015

**SPECIAL PROVISION**

**REGARDING**

**NON-DISCRIMINATION IN EMPLOYMENT**

Bidders are cautioned as follows:

By signing this bid, the bidder will be deemed to have signed and agreed that all persons, firms or corporations supplying goods, material, equipment or service of any kind to the State of Tennessee will not discriminate against any employee or applicant for employment on the basis of handicap, race, religion, national origin or sex and further, that while under contract with the State will show proof upon request that all employment practices including, but not limited to, promotion, rates of pay, transfers, recruitment, recruitment advertising, terminations, layoffs and training and apprenticeship programs are not discriminatory in nature. Each contractor shall be required to post in conspicuous places, available to all employees and applicants for employment, notices of non-discrimination.

**STATE**

**OF**

**TENNESSEE**

January 1, 2015

(Rev. 01-03-14)  
(Rev. 09-08-14)  
(Rev. 01-06-15)  
(Rev. 01-11-16)

**SPECIAL PROVISION**

**REGARDING**

**TENNESSEE DEPARTMENT OF TRANSPORTATION**

**2016 MINIMUM WAGE SCALES FOR FEDERAL-AID CONSTRUCTION** |

**& 2016 MINIMUM WAGE SCALES FOR STATE FUNDED CONSTRUCTION** |

This Contract contains "Tennessee Department of Transportation 2016 Minimum Wage Scales for State Funded Construction", Tennessee Department of Labor Decision No. T-40189, dated January 1, 2016, and Tennessee Department of Transportation 2016 Minimum Wage Scales for Federal-Aid Highway Construction, U. S. Department of Labor Decision No. TN160002 (dated January 8, 2016). |

The Contractor is required to pay the greater of the two (2) rates for each classification

Note: Minimum Wage Scales for Federal-Aid Heavy Construction are on file with the Department, and will be included in all applicable Contract Proposals

**TENNESSEE DEPARTMENT OF TRANSPORTATION**  
**MINIMUM WAGE SCALES FOR FEDERAL AID HIGHWAY CONSTRUCTION**

General Decision Number: TN160002 01/08/2016 TN2

Superseded General Decision Number: TN20150002

State: Tennessee

Construction Type: Highway

Counties: Tennessee Statewide.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016

\* SUTN2010-002 03/24/2014

	Rates	Fringes
BRICKLAYER.....	\$ 21.99	
CARPENTER.....	\$ 16.85	
CEMENT MASON/CONCRETE FINISHER...	\$ 15.22	

ELECTRICIAN.....\$ 24.69

IRONWORKER

Reinforcing.....\$ 15.91

Structural.....\$ 17.97

LABORER

Common/Unskilled.....\$ 12.89

Skilled

Air Tool Operator,  
Asphalt Raker, Chain Saw  
Operator, Concrete Mixer  
(less than 1 yd),  
Concrete Rubber, Edger,  
Fence Erector, Form  
Setter (steel), Guard  
Rail Erector, Mechanic's  
Tender (tire changer or  
oiler), Mortar Mixer,  
Nozzleman or Gun Operator  
(gunite), Pipelayer,  
Sign Erector.....\$ 14.88

PAINTER (INCLUDES SANDBLASTER)...\$ 26.23

POWER EQUIPMENT OPERATOR:

GROUP 1

Backhoe/Hydraulic  
Excavator (3/4 yd &  
over), Crane (less than  
20 Tons), End Loader (3  
yd & over), Motor Patrol  
(finish), Piledriver,  
Dragline.....\$ 18.62

GROUP 1A

Drill Operator (Caisson)...\$ 25.04  
Farm Tractor Operator  
(Power Broom).....\$ 13.21

GROUP 2

Backhoe/Hydraulic  
Excavator (less than 3/4  
yd), Bulldozer or Push  
Dozer, End Loader (less  
than 3 yd), Motor Patrol  
(rough), Tractor  
(crawler/ utility), Truck  
Driver (Heavy Duty, Off  
Road) Scraper, Shovel, or  
Trenching Machine.....\$ 16.51

GROUP 3

Asphalt Paver, Concrete

Finishing Machine,  
Concrete Paver, Scale,  
Spreader (self-  
propelled), Concrete  
Grinder, Asphalt Milling  
Machine, Boring Machine  
(horizontal).....\$ 17.10

GROUP 4

Bobcat, Central Mining  
Plant, Concrete Pump,  
Concrete Saw, Curb  
Machine (automatic or  
manual), Dozer or Loader  
(stockpile), Drill  
(piling), Mulcher or  
Seeder, Rock Drill (truck  
mounted), Roller  
(asphalt), Roller  
(compaction self-  
propelled), Soil  
Stabilization Machine,  
Tractor (boom and hoist),  
Bituminous Distributor  
Machine, pump, Track  
Drill, Striping Machine....\$ 16.02  
Heavy Duty Mechanic.....\$ 20.88  
Light Duty Mechanic.....\$ 17.04  
Sweeping Machine (Vacuum)  
Operator.....\$ 15.54

GROUP 5

Crane (over 20 Tons).....\$ 19.02

TRUCK DRIVER

2 axles.....\$ 14.17  
3-4 axles.....\$ 14.33  
5 or more axles.....\$ 16.93

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

=====  
  
Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29CFR 5.5 (a) (1) (ii)).  
  
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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an

interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION



STATEOFTENNESSEETENNESSEE DEPARTMENT OF TRANSPORTATION2016 MINIMUM WAGE SCALES FOR STATE FUNDED CONSTRUCTION

January 1, 2016

Tenn. DOL Decision No. T-40189

CLASSIFICATION (ENGLISH)	CLASSIFICATION (SPANISH)	Basic Hourly Rates	Craft No.
Bricklayer	Ladrillero	14.26	01
Carpenter / Leadsperson	Carpintero o Lider	17.52	02
Class "A" Operators	Operador Clase A	19.14	03
Class "B" Operators	Operador Clase B	17.08	04
Class "C" Operators	Operador Clase C	17.75	05
Class "D" Operators	Operador Clase D	16.48	06
Concrete Finisher	Terminador de Cemento	15.55	07
Drill Operator (Caisson)	Operador de Perfordora	25.26	08
Electrician	Electricista	24.08	09
Farm Tractor Operator (Power Broom)	Operador de Tractor de Rancho	13.50	10
Ironworkers (Reinforcing)	Herrero	16.29	11
Ironworkers (Structural)	Herrero de Estructura	16.89	12
Mechanic (Class I) Heavy Duty	Mecanico Clase 1	20.33	13
Mechanic (Class II) Light Duty	Mecanico Clase 2	19.53	14
Painter / Sandblaster	Pintor o Lajador	26.36	15
Powder Person / Blaster	Proveedor de Explosivos	19.77	16
Skilled Laborer	Obrero Diestro	15.27	17
Survey Instrument Operator	Operador de Agrimensor	20.45	18
Sweeping Machine (Vacuum) Operator	Operador de Barredora	15.56	19
Truck Driver (2 axles)	Camionero (2 ejes)	15.36	20
Truck Driver (3/4 axles)	Camionero (3 o 4 ejes)	14.86	21
Truck Driver (5 or more axles)	Camionero (5 o más ejes)	16.27	22
Laborer /Unskilled , Flagger, Traffic Control, Pickup Driver	Obrero no Diestro	13.11	23
Worksite Traffic Coordinator	Coordinar de Trafico en el Lugar de Trabajo	19.05	24
Crane Operator	Operador de la Grúa	20.44	25

**CLASSIFICATION****CRAFT NO.****SKILLED LABORER:****17**

**Air Tool Operator, Asphalt Raker, Chain Saw Operator, Concrete Mixer Operator (less than 1 yard), Concrete Rubber/Edger, Fence Erector, Form Setter (Steel Road), Guardrail Erector, Mechanic's Helper (Tire Changer or Oiler), Mortar Mixer, Nozzelman or Gun Operator (Gunit), \*Pipelayer, Sign Erector**

**CLASS "A" OPERATORS:****03**

**Backhoe/Hydraulic Excavator (3/4 yard and over), Crane (less than 20 tons see Crane Operator below), End Loader (3 yards and over), Motor Patrol (Finish), Pile Driver, Dragline**

**CLASS "B" OPERATORS:****04**

**Backhoe/Hydraulic Excavator (less than 3/4 yard), Bull Dozer or Push Dozer, End Loader (less than 3 yards), Motor Patrol (Rough), Tractor (Crawler/Utility), Scraper, Shovel, Trenching Machine**

**CLASS "C" OPERATORS:****05**

**Asphalt Paver, Concrete Finishing Machine, Concrete Paver, Scale, Spreader (Self-Propelled), Concrete Grinder, Asphalt Milling Machine, Boring Machine Operator (Horizontal)**

**CLASS "D" OPERATORS:****06**

**Bobcat, Central Mixing Plant, Concrete Pump, Concrete Saw, Curb Machine (Automatic or Manual), Dozer or Loader (Stockpile), Drill (Piling), Mulcher or Seeder, Rock Drill (Truck Mounted), Roller (Asphalt), Roller (Compaction Self-Propelled), Soil Stabilization Machine, Tractor (Boom & Hoist), Bituminous Distributor Machine, Pump, Track Drill, Striping Machine Operator, Ditch Paving Machine**

**CRANE OPERATOR:****25**

**Means one who operates boom-type equipment equal to or greater than 20 tons to hoist and move materials, raise and lower heavy weights and perform other related operations; may oil, grease or otherwise service and make necessary adjustments to equipment as needed; and may perform other related duties. (Note: The equipment is used for such work as pouring concrete and setting steel. This work is subject to strict inspection and must conform closely to specifications. The equipment may also be used for other miscellaneous tasks for which crane or stick-type equipment is required which may include hoist operations and pile driving operations.)**

**\*Skilled Laborer - Pipelayer Classification**

**For any work where prevailing wage rates apply which is located five feet or more outside the actual building if building construction is involved:**

**AND**

- (a) which consists of the building, rebuilding, locating, relocating or repairing any street, highway, bridges, water lines, sewer lines, gas lines, force mains or other related utilities

**OR**

- (b) which involves the construction or upgrading of industrial parks or sites and is located outside the five foot limitation.

The classification of pipelayer shall be applicable and the description of work under this classification shall be as follows:

Lays, connects, inspects and tests water lines, force mains, gas lines, sanitary or storm sewers and drains, underground telephone and electric ducts or other utilities manufactured from clay, concrete, steel, plastic, cast iron pipe or other similar materials.

May smooth bottom of trench to proper elevation by scooping with a shovel; receives pipe lowered from top of trench; inserts spigot end of pipe into bell end of last laid pipe; adjusts pipe to line and grades, caulks and seals joint with cement or other sealing compound; may connect threaded or flanged joint pipe; may assemble and place corrugated metal or plastic pipe and performs other related duties.

Additional Information :

Wage Rates : <http://www.tennessee.gov/labor-wfd/prevail.html>

Poster Page : <http://www.state.tn.us/labor-wfd/poster.htm>

**Note:** Adobe Acrobat Reader is required in order to download & print. If you do not have this software a link is provided at the bottom of the Poster Page for a free download.

**Tenn.Dept. of Labor & Workforce Development (Labor Standards Division) : (615) 741-2858.**

**APPRENTICESHIP REGULATIONS:**

Under T.C.A., §12-449, the Prevailing Wage Commission has promulgated Rule 0800-3-2-.04 which provides that: "Apprentices shall mean those persons registered individually under a bona fide apprenticeship program registered with the Bureau of Apprentiship and Training in the United States Department of Labor. The state agency contracting officer shall require the contractor or sub-contractor using the apprentice to submit evidence of his indenture and/or apprenticeship registration when the apprentice's name first appears on a submitting payroll."

**AUTHORITY:** T.C.A., §12-449. Administrative History: Original Rule filed June 4, 1976. Effective: July 14, 1976.

**PROPOSAL**  
**TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION**  
**NASHVILLE, TENNESSEE**

By submitting this Proposal, the undersigned bidder represents that it has carefully examined the site of the work described herein, has become familiar with local conditions and the character and extent of the work; has carefully examined the Plans, the *Standard Specifications for Road and Bridge Construction* (January 1, 2015) adopted by the State of Tennessee, Department of Transportation, with subsequent revisions which are acknowledged to be a part of this Proposal, the Special Provisions, the Proposal Form, the Form of Contract, and the Form of Contract Payment and Performance Bond (or the Form of Contract Performance Irrevocable Letter of Credit, for mowing contracts); and thoroughly understands their stipulations, requirements, and provisions.

The undersigned bidder has determined the quality and quantity of materials required; has investigated the location and determined the sources of supply of the materials required; has investigated labor conditions; and, has arranged for the continuous prosecution of the work herein described.

By submitting this Proposal, the undersigned bidder agrees to provide all necessary equipment, tools, labor, incidentals, and other means of construction, to do all the work, and furnish all the materials of the specified requirements which are necessary to complete the work in accordance with the Plans, and the Specifications, and agrees to accept as payment in full therefor the unit prices for the various items described in the Specifications that are set forth in this Proposal. The bidder understands that the quantities of work specified are approximate only and are subject to increase or decrease and that any such increase or decrease will not affect the unit prices set forth in this Proposal. Compensation for "extra work" which may be required by the Department in connection with the construction and completion of the work but which was not reflected in the Plans and Specifications at the time of bidding, will be made in the following manner: work for which there is a unit price set forth in this Proposal will be compensated at that unit price; work for which there is no unit price set forth in this Proposal will be compensated in accordance with the applicable Standard Specifications.

By submitting this Proposal, the parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

By submitting this Proposal, the undersigned bidder, if awarded the contract, agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

By submitting this Proposal, the undersigned bidder, if awarded the contract, shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax or provide confirmation from the Department of Revenue that the bidder is not required to register for the Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

By submitting this Proposal, the undersigned bidder hereby agrees to be bound by the award of the Contract and, if awarded the Contract on this Proposal, to execute the required Contract and the required Contract Payment and Performance Bond (or Contract Payment and Performance Irrevocable Letter of Credit, for mowing contracts only) within ten days after receipt of notice of the award. The undersigned bidder submits herewith the required Proposal guaranty (or Proposal Irrevocable Letter of Credit, for mowing contracts only) in an amount of not less than five per cent of the total amount of the Proposal offered and agrees and consents that the Proposal guaranty (or Proposal Irrevocable Letter of Credit) shall immediately be at the disposal of the Department, not as a penalty, but as an agreed liquidated damage if the required Contract and Contract Payment and Performance Bond (or Irrevocable Letter of Credit ) are not executed within ten days from receipt of the notice of award.



THIS PROPOSAL SUBMITTED BY:

\_\_\_\_\_  
Bidder (1)

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

Bidder (1) being a \_\_\_\_\_ composed of officers, partners, or owners as follows:  
(Type of business entity)

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

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\_\_\_\_\_  
Bidder (2)\*

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

Bidder (2) being a \_\_\_\_\_ composed of officers, partners, or owners as follows:  
(Type of business entity)

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

**\*NOTE: The signature and information for Bidder (2) is to be provided when there is a joint venture.**

## PROPOSAL CERTIFICATION

The undersigned, being first duly sworn, certifies on behalf of the bidder that it 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 this Proposal or Contract. This is an official document that is required or authorized by law to be made under oath and is presented in an official proceeding. A person who makes a false statement in this certification is subject to the penalties of perjury.

The undersigned further certifies that said bidder is not under the control of any person, firm, partnership, or corporation, which has or exercises any control of any other person, firm, partnership, or corporation, which is submitting a bid on this Contract.

\_\_\_\_\_  
Bidder (1)  
Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title  
\_\_\_\_\_  
Notary Public  
My commission expires\_\_\_\_\_.

(Seal)

-----

\_\_\_\_\_  
Bidder (2)  
Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title  
\_\_\_\_\_  
Notary Public  
My commission expires\_\_\_\_\_.

(Seal)

**\*NOTE: The signature and information for Bidder (2) is to be provided when there is a joint venture.**

**STATE OF TENNESSEE**  
**DEPARTMENT OF TRANSPORTATION**  
**PROPOSAL GUARANTY BOND**  
**CONTRACT NO. \_\_\_\_\_**

Principal: \_\_\_\_\_  
Print Name of Principal

Surety: \_\_\_\_\_  
Print Name of Surety

**KNOW ALL MEN BY THESE PRESENTS**, that we, the Principal and Surety above named, are held and firmly bound unto the Department of Transportation in the full and just sum of five (5) percent of the total amount bid by the Principal for the project stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

**NOW, THEREFORE**, the condition of this obligation is: the Principal shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the Proposal, and if the Department of Transportation shall award a Contract to the Principal, the Principal shall, within ten (10) days after written notice of the award is received by him, fully execute a Contract on the basis of the terms, conditions and unit prices set forth in his Proposal or bid and provide bonds (or Irrevocable Letter of Credit, for mowing contracts) with good and sufficient surety, as required for the faithful performance of the Contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Principal withdraws its bid after bids are opened, or after award of the Contract has been made fails to execute such the Contract and/or such additional documents as may be required and to provide the required bonds (or Irrevocable Letter of Credit, for mowing contracts) within the time period specified above, then the amount of the Proposal Bond shall be immediately paid to the Department of Transportation, not as a penalty, but as agreed upon liquidated damages.

**IN WITNESS WHEREOF**, the Principal has caused these presents to be signed by a duly authorized official and the Surety has caused these presents to be duly signed and sealed by an authorized agent or attorney-in-fact.

_____ Principal (1)	_____ Surety (1)
By: _____	By: _____ General Agent or Attorney-in-Fact
_____ Print Name and Title	_____ Date
_____ Date	(Seal)

-----

_____ Principal (2)	_____ Surety (2)
By: _____	By: _____ General Agent or Attorney-in-Fact
_____ Print Name and Title	_____ Date
_____ Date	(Seal)

**\*NOTE:** The signature and information for Principal(2) and Surety(2) is to be provided when there is a joint venture.

**STATE OF TENNESSEE**  
**DEPARTMENT OF TRANSPORTATION**

**PROPOSAL GUARANTEE**

**CONTRACT NO.** \_\_\_\_\_

Bidder: \_\_\_\_\_  
Print Name of Bidder

**KNOW ALL MEN BY THESE PRESENTS**, that the above-named Bidder has tendered the attached cashier's or certified check in an amount equal to five (5) percent of the total amount it bid for the project stated above, payable to the State of Tennessee, Department of Transportation, to be held pending the fulfillment of the following obligation conditions.

**NOW, THEREFORE**, the condition of this obligation is: the Bidder shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the Proposal, and if the Department of Transportation shall award a Contract to the Bidder, the Bidder shall, within ten (10) days after it receives written notice of the award, fully execute a Contract on the basis of the terms, conditions and unit prices set forth in its Proposal or bid and provide bonds with good and sufficient surety (or Contract Performance Irrevocable Letter of Credit, for mowing contracts), as required for the faithful performance of the Contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Bidder withdraws its bid after bids are opened, or after award of the Contract has been made fails to execute such the Contract and/or such additional documents as may be required and to provide the required bonds (or Irrevocable Letter of Credit) within the time period specified above, then the Department of Transportation shall cash the attached check and retain the funds, not as a penalty, but as agreed upon liquidated damages.

**IN WITNESS WHEREOF**, the Bidder has caused these presents to be signed by a duly authorized official.

\_\_\_\_\_  
Bidder (1)

\_\_\_\_\_  
Bidder (2)\*

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**\*NOTE: The signature and information for Bidder(2) is to be provided when there is a joint venture.**  
(6)

# TENNESSEE DEPARTMENT OF TRANSPORTATION

## CONTRACT NO. \_\_\_\_\_

This agreement is made and executed in three (3) originals, between the State of Tennessee, Department of Transportation, hereinafter referred to as the "Department" and

---

hereinafter referred to as the "Contractor."

### WITNESSETH

The Department did advertise for, receive and accept a bid from the Contractor for work on the above identified contract.

In consideration of the agreements herein contained, to be performed by the parties hereto and of the payments hereafter agreed to be made, it is mutually agreed by both parties that:

1. The contract between the parties consists of the following "Contract Documents" all of which constitute one instrument:
  - (a) the Instructions to Bidders
  - (b) the Proposal
  - (c) all conditions and terms of this Contract form
  - (d) the Contract Payment & Performance Bond (or Irrevocable Letter of Credit, for mowing contracts)
  - (e) the *Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction*, January 1, 2015 Edition (hereinafter referred to as the "2015 Standard Specifications")
  - (f) Supplemental Specifications
  - (g) Revisions and Additions
  - (h) Special Provisions
  - (i) Addenda
  - (j) The Tennessee Department of Transportation Standard Drawings
  - (k) The Contract Plans,
  - (l) The Work Order
  - (m) Construction Changes
  - (n) Supplemental Agreements

All of the provisions contained in the listed Contract Documents are incorporated herein by reference with the same force and effect as though set out in full.

2. The Contract Documents are intended to be complementary and to describe and provide for a complete work. Requirements in one of these are as binding as if occurring in all of them. In case of discrepancy, Supplemental Specifications will govern over the 2015 Standard Specifications; the Contract Plans will govern over both Supplemental and Standard Specifications, and Special Provisions will govern over both Plans and Specifications. In interpreting Plans, calculated dimensions will govern over scaled dimensions. Contract Plans, typical cross sections and approved working drawings will govern over Standard Drawings.

3. The Contractor agrees to furnish all materials, equipment, machinery, tools and labor and to perform the work required to complete the project in a thorough and workmanlike manner, to the satisfaction of the appropriate official of the Department.
4. The Department agrees to pay to the Contractor such unit prices for the work actually done as are set out in the accompanying proposal, in the manner provided for in the 2015 Standard Specifications, Supplemental Specifications and applicable Special Provisions.
5. The Contractor shall, at all times, observe and comply with all applicable federal, state and local laws, ordinances and regulations and shall indemnify and hold harmless the State of Tennessee and all of its officers, agents and servants against any claim of liability or assessment of fines or penalties arising from or based upon the Contractor's and/or its employees' violations of any such law ordinance or regulation. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records and documents of the Contractor insofar as they relate to the work performed or money received under this contract shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives.
6. The Contractor shall be responsible for any and all injury or damage to persons or to property arising from the prosecution of the work and due to any act, omission, neglect or misconduct in its manner or method of prosecuting the work or due to its non-execution of the work or due to defective work or materials. The Contractor shall provide proof of adequate and appropriate general liability insurance providing liability coverage in an amount not less than \$1 million dollars per occurrence and \$300,000 per claimant, naming the State of Tennessee as an additional insured.
7. The Contractor shall indemnify and hold harmless the State, the Department and all of its officers, agents and employees from all suits, actions or claims of any character arising from the Contractor's acts or omissions in the prosecution of the work, use of unacceptable materials in constructing the work, infringement of patent, trade mark or copyright, or claims for Workers' Compensation. If any such suit, action or claim is filed, the Department may retain from the monies due to the Contractor under this Contract a sum deemed sufficient by the Department to protect the Department from loss therefrom. Upon resolution of the suit, action or claim, any remaining retained funds will be released.
8. Upon execution of this Contract, the Contractor shall be prepared to begin the work to be performed under the Contract, but will not proceed until it has received official "Notice to Proceed". This official notice will stipulate the date upon which it is expected that the Contractor will begin his work, and from which date the working days tabulated against its time limit will begin. All other requirements in regard to the beginning of construction set forth in the Proposal and Special Provisions will date from the official notice.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be signed and executed |  
by their respective authorized agents or officials.

\_\_\_\_\_  
Contractor 1

\_\_\_\_\_  
Contractor 2\*

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**STATE OF TENNESSEE**

**DEPARTMENT OF TRANSPORTATION**

This Contract is accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
and is effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Commissioner

Approved:

\_\_\_\_\_  
Department Attorney

**\*NOTE: The signature and information for Contractor 2 is to be provided when there is a joint venture.**



## CONTRACT PAYMENT AND PERFORMANCE BOND

CONTRACT NO. \_\_\_\_\_

Be it known that \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety(ies), all authorized to do business in the State of Tennessee, hereby bind themselves to the State of Tennessee, Department of Transportation, and other potential claimants, for all obligations incurred by the Principal under its contract with the State of Tennessee, Department of Transportation, for the construction of the above identified contract; in the full contract amount of \_\_\_\_\_ (\$\_\_\_\_\_).

The obligations of the Principal and Surety(ies) under these payment and performance bonds shall continue in full force and effect until all materials, equipment and labor have been provided AND all requirements contained in the contract, plans and specifications have been completed in a timely, thorough and workmanlike manner. The parties agree that these bonds are statutory in nature and are governed by the provisions contained in Title 12, chapter 4 and Title 54, chapter 5 of the Tennessee Code Annotated relating to bonds required of contractors and that those provisions constitute a part of this bond.

By this instrument, the Principal and Surety(ies) specifically bind themselves, their heirs, successors, and assigns, *in solido*, under the following bonds:

**Payment Bond.** To the Tennessee Department of Transportation and all "Claimants," as contemplated by T.C.A. Title 54, chapter 5, in the full contract amount of

\_\_\_\_\_, (\$\_\_\_\_\_),  
in order to secure the payment in full of all timely claims under the project.

**Performance Bond.** To the Tennessee Department of Transportation in the full contract amount of \_\_\_\_\_

\_\_\_\_\_, (\$\_\_\_\_\_),  
in order to secure the full and faithful performance and timely completion of the project according to its plans and specifications, inclusive of overpayments to the contractor and liquidated damages as assessed.

Upon receipt of notice that the Principal is in default under the contract, the Surety(ies) shall undertake to complete performance, without regard to cost. If the Surety(ies) fail or refuse to complete performance of the contract, the Department may then proceed with the work in any lawful manner that it may elect until it is finally completed. When the work is thus finally completed, the total cost of the same will be computed. All costs and charges incurred by the Department in completing the Work will be deducted from any monies due or which may become due to the Principal. If the total costs of completion exceeds the sum which would

have been payable under the Contract, then the Principal and the Surety(ies), *in solido*, shall be liable for and shall pay to the Department the amount of such excess.

***In witness whereof we have signed this instrument as dated.***

**Principal/Contractor 1** \_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

**(For Joint Venture)**

**Principal/Contractor 2** \_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

**Surety 1** \_\_\_\_\_

**Surety 2** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

Attorney-in-Fact

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

(Seal)

(Seal)

Subsequent correspondence/communication from TDOT with respect to monthly progress reports and/or the contract bonds should be directed to:

**For Surety 1:**

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Name

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Address

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City

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State/Zip

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Phone Number

---

Fax Number

**For Surety 2:**

---

Name

---

Address

---

City

---

State/Zip

---

Phone Number

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Fax Number