

**WARNING:** ALL INDIVIDUALS INTERESTED IN BIDDING ON THIS PROJECT MUST OBTAIN THE FINAL PLANS AND SPECIFICATIONS FROM THE DEPARTMENT MANAGING THE PROJECT OR AS OTHERWISE STATED IN THE ADVERTISEMENT FOR BIDS FOR THE PROJECT. DO NOT USE THE PLANS AND SPECIFICATIONS POSTED ON THE CLERK OF THE BOARD'S WEBSITE FOR BIDDING ON THIS PROJECT.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #Cranes, Pile Driver and Hoisting Equipment (Operating Engineer, Multi-Shift)**

**DETERMINATION:** SC-23-63-2-2020-2B2

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journey person)	Basic Hourly Rate	Employer Payments					Straight – Time		Overtime Hourly Rate		
		Health and Welfare	Pension (f)	Vacation/ Holiday (a)	Training	Other Payments	Hours (e)	Total Hourly Rate	Daily	Saturday (d)	Sunday/ Holiday
									(c)	1 1/2X	2X
Classification Groups (b)											
Group 1	\$50.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$79.59	\$104.890	\$104.890	\$130.19
Group 2	\$51.38	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.37	\$106.060	\$106.060	\$131.75
Group 3	\$51.67	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.66	\$106.495	\$106.495	\$132.33
Group 4	\$51.81	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.80	\$106.705	\$106.705	\$132.61
Group 5	\$52.03	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.02	\$107.035	\$107.035	\$133.05
Group 6	\$52.14	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.13	\$107.200	\$107.200	\$133.27
Group 7	\$52.26	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.25	\$107.380	\$107.380	\$133.51
Group 8	\$52.43	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.42	\$107.635	\$107.635	\$133.85
Group 9	\$52.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.59	\$107.890	\$107.890	\$134.19
Group 10	\$53.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$82.59	\$109.390	\$109.390	\$136.19
Group 11	\$54.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$83.59	\$110.890	\$110.890	\$138.19
Group 12	\$55.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$84.59	\$112.390	\$112.390	\$140.19
Group 13	\$56.60	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$85.59	\$113.890	\$113.890	\$142.19

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount withheld for supplemental dues.

<sup>b</sup> For classifications within each group, see page 10B.

<sup>c</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>d</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>e</sup> The Third Shift shall work 6.5 hours, exclusive of meal period, for which 8 hours straight-time shall be paid at the non-shift rate, Monday through Friday.

<sup>f</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1  
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # LANDSCAPE OPERATING ENGINEER**

**DETERMINATION:** SC-63-12-33-2020-1

**ISSUE DATE:** February 22, 2020

**EXPIRATION DATE OF DETERMINATION:** October 31, 2020\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

CLASSIFICATION (JOURNEYPEPERSON)	Employer Payments						Straight-Time Total Hourly Hours	Overtime Hourly Rate			
	Basic Hourly Rate	Health and Welfare	Vacation and Pension <sup>d</sup>	Holiday <sup>a</sup>	Training	Other		Daily/ Saturday <sup>b</sup> 1½X	Sunday <sup>c</sup> 2X	Holiday <sup>c</sup> 3X	
<u>Landscape Operating Engineer</u>											
Backhoe Operators											
Forklifts-Tree Planting Equipment (jobsite)											
HDR Welder-Landscape, Irrigation, Operating Engineers' Equipment											
Roller Operators											
Rubber-tired & Track Earthmoving Equipment											
Skiploader Operators											
Trencher-31 horsepower and up	\$40.16	\$11.60	\$11.15	\$3.55	\$1.05	\$0.15	8.0	\$67.66	\$87.74	\$107.82	\$147.98

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<sup>a</sup> Includes an amount per hour worked for supplemental dues.

<sup>b</sup> Rate applies to the first four overtime hours daily and the first twelve hours on Saturday. Thereafter use the Sunday overtime rate.

<sup>c</sup> All work performed on a Dewatering Operation on holidays and all other work on holidays except Labor Day and the 1st Saturday following the 1st Friday in the months of June and December is paid at Sunday rate.

<sup>d</sup> Includes an amount for the Defined Contribution Plan (Annuity).

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

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FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #Tunnel (Operating Engineer)**

**DETERMINATION:** SC-23-63-2-2020-2C

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journey person)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight – Time		Overtime Hourly Rate		
			Pension (d)	Vacation/ Holiday (a)	Training	Other Payments	Hours	Total Hourly Rate	Daily (b)	Saturday (c)	Sunday/ Holiday
									1 1/2X	1 1/2X	2X
Classification Groups											
Group 1	\$50.10	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$79.09	\$104.140	\$104.140	\$129.19
Group 2	\$50.88	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$79.87	\$105.310	\$105.310	\$130.75
Group 3	\$51.17	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.16	\$105.745	\$105.745	\$131.33
Group 4	\$51.31	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.30	\$105.955	\$105.955	\$131.61
Group 5	\$51.53	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.52	\$106.285	\$106.285	\$132.05
Group 6	\$51.64	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.63	\$106.450	\$106.450	\$132.27
Group 7	\$51.76	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.75	\$106.630	\$106.630	\$132.51
Group 8	\$53.11	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$82.10	\$108.655	\$108.655	\$135.21
Group 9	\$52.06	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.05	\$107.080	\$107.080	\$133.11

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount withheld for supplemental dues.

<sup>b</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>c</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>d</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATIONS:**

**GROUP 1**

Heavy Duty Repairman Helper

**GROUP 2**

Skiploader (wheel type up to 3/4 yd. without attachment)

**GROUP 3**

Chainman

Power-Driver Jumbo Form Setter Operator

**GROUP 4**

Dinkey Locomotive or Motorman (up to and including 10 tons)

Rodman

**GROUP 5**

Bit Sharpener

Equipment Greaser (Grease Truck)

Instrumentman

Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms)

Tugger Hoist Operator (1 drum)

Tunnel Locomotive Operator (over 10 and up to and including 30 tons)

Welder-General

**GROUP 6**

Backhoe Operator (up and including 3/4 yd.) Small Ford, Case or similar types

Drill Doctor

Grouting Machine Operator

Heading Shield Operator

Heavy Duty Repairman

Jumbo Pipe Carrier

Loader Operator (Athey, Euclid, Sierra and similar types)

Mucking Machine Operator (1/4 yd rubber tired, rail or track type)

Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type)

Pneumatic Heading Shield (Tunnel)

Pumperete Gun Operator

Tractor Compressor Drill Combination Operator

Tugger Hoist Operator (2 drum)

Tunnel Locomotive Operator (over 30 tons)

**GROUP 7**

Heavy Duty Repairman-Welder Combination

**GROUP 8**

Party Chief

**GROUP 9**

Tunnel Mole Boring Machine Operator

**MISCELLANEOUS PROVISIONS:**

- Operators on hoists with three drums shall receive fifteen cents (15¢) per hour additional pay to the regular rate of pay. The additional pay shall be added to the regular rate and become the base rate for the entire shift.
- All heavy duty repairman and heavy duty combination shall receive one dollar (\$1.00) per hour tool allowance in addition to their regular rate of pay and this shall become their base rate of pay.
- Employees required to suit up and work in a hazardous material environment, shall receive Two Dollars (\$2.00) per hour in addition to their regular rate of pay, and that rate shall become the basic hourly rate of pay.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #Tunnel (Operating Engineer) (Multi-Shift)**

**DETERMINATION:** SC-23-63-2-2020-2C1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journey person)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight – Time		Overtime Hourly Rate		
			Pension (d)	Vacation/ Holiday (a)	Training	Other Payments	Hours	Total Hourly Rate	Daily (b)	Saturday (c)	Sunday/ Holiday
									1 1/2X	1 1/2X	2X
Classification Groups											
Group 1	\$50.10	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$79.09	\$104.140	\$104.140	\$129.19
Group 2	\$50.88	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$79.87	\$105.310	\$105.310	\$130.75
Group 3	\$51.17	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$80.16	\$105.745	\$105.745	\$131.33
Group 4	\$51.31	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$80.30	\$105.955	\$105.955	\$131.61
Group 5	\$51.53	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$80.52	\$106.285	\$106.285	\$132.05
Group 6	\$51.64	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$80.63	\$106.450	\$106.450	\$132.27
Group 7	\$51.76	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$80.75	\$106.630	\$106.630	\$132.51
Group 8	\$53.11	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$82.10	\$108.655	\$108.655	\$135.21
Group 9	\$52.06	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	7.5	\$81.05	\$107.080	\$107.080	\$133.11

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount withheld for supplemental dues.

<sup>b</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>c</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>d</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATIONS:**

**GROUP 1**

Heavy Duty Repairman Helper

**GROUP 2**

Skiploader (wheel type up to 3/4 yd. without attachment)

**GROUP 3**

Chainman  
Power-Driver Jumbo Form Setter Operator

**GROUP 4**

Dinky Locomotive or Motorman (up to and including 10 tons)  
Rodman

**GROUP 5**

Bit Sharpener  
Equipment Greaser (Grease Truck)  
Instrumentman  
Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms)  
Tugger Hoist Operator (1 drum)  
Tunnel Locomotive Operator (over 10 and up to and including 30 tons)  
Welder-General

**GROUP 6**

Backhoe Operator (up and including 3/4 yd.) Small Ford, Case or similar types  
Drill Doctor  
Grouting Machine Operator  
Heading Shield Operator  
Heavy Duty Repairman  
Jumbo Pipe Carrier  
Loader Operator (Athey, Euclid, Sierra and similar types)  
Mucking Machine Operator (1/4 yd rubber tired, rail or track type)  
Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type)  
Pneumatic Heading Shield (Tunnel)  
Pumperete Gun Operator  
Tractor Compressor Drill Combination Operator  
Tugger Hoist Operator (2 drum)  
Tunnel Locomotive Operator (over 30 tons)

**GROUP 7**

Heavy Duty Repairman-Welder Combination

**GROUP 8**

Party Chief

**GROUP 9**

Tunnel Mole Boring Machine Operator

**MISCELLANEOUS PROVISIONS:**

- Operators on hoists with three drums shall receive fifteen cents (15¢) per hour additional pay to the regular rate of pay. The additional pay shall be added to the regular rate and become the base rate for the entire shift.
- All heavy duty repairman and heavy duty combination shall receive one dollar (\$1.00) per hour tool allowance in addition to their regular rate of pay and this shall become their base rate of pay.
- Employees required to suit up and work in a hazardous material environment, shall receive Two Dollars (\$2.00) per hour in addition to their regular rate of pay, and that rate shall become the basic hourly rate of pay.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER**

**DETERMINATION:** SC-23-63-2-2020-2D

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journey person)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight – Time		Overtime Hourly Rate		
			Pension (d)	Vacation/ Holiday (a)	Training	Other Payments	Hours	Total Hourly Rate	Daily (b)	Saturday (c)	Sunday/ Holiday
									1 1/2X	1 1/2X	2X
Classification Groups											
Group 1	\$49.03	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$78.02	\$102.535	\$102.535	\$127.05
Group 2	\$50.81	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$79.80	\$105.205	\$105.205	\$130.61
Group 3	\$52.81	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$81.80	\$108.205	\$108.205	\$134.61

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<sup>b</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>c</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>d</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TTRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATIONS:**

**GROUP I**

Field Soils and Materials Tester  
Field Asphaltic Concrete (Soils and Materials Tester)  
Field Earthwork (Grading Excavation and Filling)  
Roof Inspector  
Water Proofer

**GROUP II**

AWS-CWI Welding Inspector  
Building / Construction Inspector  
Licensed Grading Inspector  
Reinforcing Steel  
Reinforced Concrete  
Pre-Tension Concrete  
Post-Tension Concrete  
Structural Steel and Welding Inspector  
Glue-Lam and truss Joints  
Truss-Type Joint Construction  
Shear Wall and Floor System used as diaphragms  
Concrete batch Plant  
Spray-Applied Fireproofing  
Structural masonry

**Group III**

Nondestructive Testing (NDT)

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FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER (SPECIAL SHIFT)**

**DETERMINATION:** SC-23-63-2-2020-2D1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journey person)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight – Time Hours	Overtime Hourly Rate			
			Pension (d)	Vacation/ Holiday (a)	Training	Other Payments		Total Hourly Rate	Daily (b) 1 1/2X	Saturday (c) 1 1/2X	Sunday/ Holiday 2X
Classification Groups											
Group 1	\$49.53	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$78.52	\$103.285	\$103.285	\$128.05
Group 2	\$51.31	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.30	\$105.955	\$105.955	\$131.61
Group 3	\$53.31	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$82.30	\$108.955	\$108.955	\$135.61

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount withheld for supplemental dues.

<sup>b</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>c</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>d</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATIONS:**

**GROUP I**

Field Soils and Materials Tester  
Field Asphaltic Concrete (Soils and Materials Tester)  
Field Earthwork (Grading Excavation and Filling)  
Roof Inspector  
Water Proofer

**GROUP II**

AWS-CWI Welding Inspector  
Building / Construction Inspector  
Licensed Grading Inspector  
Reinforcing Steel  
Reinforced Concrete  
Pre-Tension Concrete  
Post-Tension Concrete  
Structural Steel and Welding Inspector  
Glue-Lam and truss Joints  
Truss-Type Joint Construction  
Shear Wall and Floor System used as diaphragms  
Concrete batch Plant  
Spray-Applied Fireproofing  
Structural masonry

**Group III**

Nondestructive Testing (NDT)

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #BUILDING/CONSTRUCTION INSPECTOR AND FIELD SOILS AND MATERIAL TESTER (MULTI-SHIFT)**

**DETERMINATION:** SC-23-63-2-2020-2D2

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (Journeyperson)	Basic Hourly Rate	Employer Payments					Straight – Time		Overtime Hourly Rate				
		Health and Welfare	Pension (e)	Vacation/ Holiday (a)	Training	Other Payments	Hours (d)	Total Hourly Rate	Daily (b)	Saturday (c)	Sunday/ Holiday		
											1 1/2X	1 1/2X	2X
Classification Groups													
Group 1	\$50.03	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$79.02	\$104.035	\$104.035	\$129.05		
Group 2	\$51.81	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$80.80	\$106.705	\$106.705	\$132.61		
Group 3	\$53.81	\$11.85	\$12.15	\$3.55	\$1.05	\$0.39	8	\$82.80	\$109.705	\$109.705	\$136.61		

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount withheld for supplemental dues.

<sup>b</sup> Rate applies to the first 4 overtime hours. All other daily overtime is paid at the Sunday rate.

<sup>c</sup> Rate applies to the first 12 hours worked. All other time is paid at the Sunday rate.

<sup>d</sup> The Third Shift shall work 6.5 hours, exclusive of meal period, for which 8 hours straight-time shall be paid at the non-shift rate, Monday through Friday.

<sup>e</sup> Includes an amount for Annuity.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATIONS:**

**GROUP I**

Field Soils and Materials Tester  
Field Asphaltic Concrete (Soils and Materials Tester)  
Field Earthwork (Grading Excavation and Filling)  
Roof Inspector  
Water Proofer

**GROUP II**

AWS-CWI Welding Inspector  
Building / Construction Inspector  
Licensed Grading Inspector  
Reinforcing Steel  
Reinforced Concrete  
Pre-Tension Concrete  
Post-Tension Concrete  
Structural Steel and Welding Inspector  
Glue-Lam and truss Joints  
Truss-Type Joint Construction  
Shear Wall and Floor System used as diaphragms  
Concrete batch Plant  
Spray-Applied Fireproofing  
Structural masonry

**Group III**

Nondestructive Testing (NDT)



GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS  
**CRAFT: LANDFILL WORKER (OPERATING ENGINEER)**

**DETERMINATION:** SC-63-12-41-2020-1

**ISSUE DATE:** February 22, 2020

**EXPIRATION DATE OF DETERMINATION:** March 31, 2020\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties.

CLASSIFICATION (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rate		
	Basic Hourly Rate	Health and Welfare <sup>a</sup>	Pension	Vacation/Holiday	Training	Other Payments <sup>b</sup>	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday <sup>c</sup> 1 1/2X	Sunday/Holiday 2X
Mechanic	\$22.15	\$4.21	\$1.05	\$1.78	\$0.06	\$3.80	8	\$33.05	\$44.125	\$44.125	\$55.20
Lead Equipment Operator	20.15	4.12	.95	1.61	.06	3.44	8	30.33	40.405	40.405	50.48
Lead Truck Driver/ Equipment Operator	19.15	4.07	.90	1.52	.06	3.26	8	28.96	38.535	38.535	48.11
Truck Driver - End Dump/Walking Floor/Low Bed	18.15	4.02	.85	1.44	.06	3.08	8	27.60	36.675	36.675	45.75
Truck Driver - Roll Off/Transfer Station Loader Operator/Maintenance/ Fueler/Mechanic Helper	17.15	3.98	.80	1.35	.06	2.90	8	26.24	34.815	34.815	43.39
Scale House Load Checker/Water Truck Driver/Parts Runner	16.15	3.93	.75	1.27	.06	2.72	8	24.88	32.955	32.955	41.03
Laborer	13.00	3.70	.50	.85	.06	1.81	8	19.92	26.42	26.42	32.92
	13.00	3.61	.40	.68	.06	1.45	8	19.20	25.70	25.70	32.20

<sup>a</sup> Includes an amount for Sick Leave.

<sup>b</sup> Amount for employee stock ownership.

<sup>c</sup> Rate applies to the sixth consecutive day of work.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained from the Office of the Director - Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: LIGHT FIXTURE MAINTENANCE**

**DETERMINATION:** SC-830-61-1-2020-1

**ISSUE DATE:** February 22, 2020

**EXPIRATION DATE OF DETERMINATION:** April 1, 2020\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within **Riverside** county. For other counties please contact the Division of Labor Statistics and Research prior to Bid Advertisement at (415) 703-4774.

CLASSIFICATION	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation and Holiday	Training	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday & Sunday 1 1/2X	Holiday 2X
Lighting Maintenance Service Person	\$13.00	.29	---	.34	---	8	13.63	20.13	20.13	26.63

**DETERMINATION:** SC-830-61-2-2000-1

**ISSUE DATE:** February 22, 2000

**EXPIRATION DATE OF DETERMINATION:** April 1, 2000\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within **San Bernardino** county. For other counties please contact the Division of Labor Statistics and Research prior to Bid Advertisement at (415) 703-4774.

CLASSIFICATION	Basic Hourly Rate	Employer Payments				Straight-Time		Overtime Hourly Rate	
		Health and Welfare	Pension	Vacation and Holiday	Training	Hours	Total Hourly Rate	Daily 1 1/2X	Sunday Holiday 1 1/2X
Lighting Maintenance Service Person	\$13.56	2.43	.39	---	.50	8	16.88	23.66	23.66

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Prevailing Wage Unit at (415) 703- 4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. Travel and/or subsistence requirements for each craft, classification or type of worker may be obtained from the Prevailing Wage Unit at (415) 703-4774.

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: FIRE SAFETY AND MISCELLANEOUS SEALING**

**DETERMINATION:** SC-3-5-4-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** August 31, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (JOURNEYPEPERSON)	Basic Hourly Rate <sup>a</sup>	Employer Payments				Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Other Payment	Hours	Total Hourly Rate	Daily and Saturday 1 1/2X	Sunday and Holiday 2X	3X <sup>e</sup>
<b><u>ASBESTOS WORKER</u></b>										
Fire Safety Technician - Class I <sup>c</sup> (0-2000 hrs)	\$18.49	\$9.66 <sup>b</sup>	-	\$0.90	\$0.05	8	\$29.10	\$38.345 <sup>d</sup>	\$47.59	\$66.08
Fire Safety Technician - Class II <sup>c</sup> (2001-4000 hrs)	\$23.79	\$9.66 <sup>b</sup>	-	\$1.26	\$0.05	8	\$34.76	\$46.655 <sup>d</sup>	\$58.55	\$82.34
Fire Safety Technician - Class III <sup>c</sup> (4001-6000 hrs)	\$25.83	\$9.66 <sup>b</sup>	\$8.12	\$1.33	\$0.05	8	\$44.99	\$57.905 <sup>d</sup>	\$70.82	\$96.65
Fire Safety Technician - Class IV <sup>c</sup> (6001 or more hrs)	\$29.97	\$9.66 <sup>b</sup>	\$8.12	\$1.53	\$0.05	8	\$49.33	\$64.315 <sup>d</sup>	\$79.30	\$109.27

**DETERMINATION:** SC-204-X-18-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** August 31, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (JOURNEYPEPERSON)	Basic Hourly Rate <sup>a</sup>	Employer Payments					Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday <sup>g</sup>	Training	Other Payment	Hours	Total Hourly Rate	Daily and Saturday 1 1/2X	Sunday and Holiday 2X	3X
<b><u>PLUMBER</u></b>											
Fire Safety Technician - Class I <sup>c</sup> (0 -2000 hrs)	\$19.67	\$8.10	-	-	\$0.10	\$1.25	8	\$29.12	\$38.955 <sup>f</sup>	\$48.790	\$68.460
Fire Safety Technician - Class II <sup>c</sup> (2001-4000 hrs)	\$25.32	\$8.10	-	-	\$0.10	\$1.25	8	\$34.77	\$47.430 <sup>f</sup>	\$59.480	\$83.580
Fire Safety Technician - Class III <sup>c</sup> (4001-6000 hrs)	\$28.26	\$8.10	\$6.77	-	\$0.10	\$1.25	8	\$44.48	\$58.610 <sup>f</sup>	\$71.880	\$98.420
Fire Safety Technician - Class IV <sup>c</sup> (6001 or more hrs)	\$32.59	\$8.10	\$6.77	-	\$0.10	\$1.25	8	\$48.81	\$65.105 <sup>f</sup>	\$80.040	\$109.910

<sup>a</sup> Includes an amount per hour worked for Administrative Dues.

<sup>b</sup> Includes an amount for Occupational Health and Research.

<sup>c</sup> The 1st man on a job site shall be a Class IV Fire Safety Technician. A Class IV must be on a job site at all times.

<sup>d</sup> Rate applies to the first 2 daily overtime hours and the first 8 hours worked on Saturday. All other overtime is at the Sunday & Holiday rate.

<sup>e</sup> No work shall be performed on Labor Day, except in special cases of extreme emergency and then only when triple (3) times is paid.

<sup>f</sup> Rate applies to the first 2 daily overtime hours and the first 10 hours worked on Saturday. All other overtime is at the Sunday & Holiday rate.

<sup>g</sup> Vacation/Holiday shall be paid at time and one half for all overtime hours and is included in the Basic Hourly Rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: FIRE SAFETY AND MISCELLANEOUS SEALING (SHIFT)**

**DETERMINATION:** SC-3-5-4-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** August 31, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate <sup>a</sup>	Employer Payments				Other Payment	Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday			Hours	Total Hourly Rate	Daily and Saturday 1 1/2X	Sunday and Holiday 2X	3X <sup>g</sup>
<b>ASBESTOS WORKER</b>											
Fire Safety Technician - Class I <sup>c</sup> (0-2000 hrs)	\$18.49	\$9.66 <sup>b</sup>	-	\$0.90	\$0.05	d	\$29.10	\$38.345 <sup>e</sup>	\$47.59	\$66.08	
Fire Safety Technician - Class II <sup>c</sup> (2001-4000 hrs)	\$23.79	\$9.66 <sup>b</sup>	-	\$1.26	\$0.05	d	\$34.76	\$46.655 <sup>e</sup>	\$58.55	\$82.34	
Fire Safety Technician - Class III <sup>c</sup> (4001-6000 hrs)	\$25.83	\$9.66 <sup>b</sup>	\$8.12	\$1.33	\$0.05	d	\$44.99	\$57.905 <sup>e</sup>	\$70.82	\$96.65	
Fire Safety Technician - Class IV <sup>c</sup> (6001 or more hrs)	\$29.97	\$9.66 <sup>b</sup>	\$8.12	\$1.53	\$0.05	d	\$49.33	\$64.315 <sup>e</sup>	\$79.30	\$109.27	

**DETERMINATION:** SC-204-X-18-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** August 31, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties.

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate <sup>a</sup>	Employer Payments					Other Payment	Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday <sup>h</sup>	Training			Hours	Total Hourly Rate	Daily/ Saturday 1 1/2X	Sunday/ Holiday 2X	3X
<b>PLUMBER</b>												
Fire Safety Technician - Class I <sup>c</sup> (0 -2000 hrs)	\$20.65	\$8.10	-	-	\$0.10	\$1.25	8	\$30.10	\$40.425 <sup>f</sup>	\$50.750	\$71.400	
Fire Safety Technician - Class II <sup>c</sup> (2001-4000 hrs)	\$26.53	\$8.10	-	-	\$0.10	\$1.25	8	\$35.98	\$49.245 <sup>f</sup>	\$61.900	\$87.210	
Fire Safety Technician - Class III <sup>c</sup> (4001-6000 hrs)	\$29.59	\$8.10	\$6.77	-	\$0.10	\$1.25	8	\$45.81	\$60.605 <sup>f</sup>	\$74.540	\$102.410	
Fire Safety Technician - Class IV <sup>c</sup> (6001 or more hrs)	\$34.08	\$8.10	\$6.77	-	\$0.10	\$1.25	8	\$50.30	\$67.340 <sup>f</sup>	\$83.020	\$114.380	

<sup>a</sup> Includes an amount per hour worked for Administrative Dues.

<sup>b</sup> Includes an amount for Occupational Health and Research.

<sup>c</sup> The 1st man on a job site shall be a Class IV Fire Safety Technician. A Class IV must be on a job site at all times.

<sup>d</sup> When 2 or 3 shifts are employed, the 2<sup>nd</sup> shift shall work 7.5 hours for 8 hours pay; the 3<sup>rd</sup> shift shall work 7 hours for 8 hours pay.

<sup>e</sup> Rate applies to the first 2.5 daily overtime hours on the 2<sup>nd</sup> shift; first 3 daily overtime hours on the 3<sup>rd</sup> shift; and the first 7.5 hours (2<sup>nd</sup> shift) and first 7 hours (3<sup>rd</sup> shift) worked on Saturday. All other overtime is at the Sunday & Holiday rate.

<sup>f</sup> Rate applies to the first 2 daily overtime hours and the first 10 hours worked on Saturday. All other overtime is at the Sunday & Holiday rate.

<sup>g</sup> No work shall be performed on Labor Day, except in special cases of extreme emergency and then only when triple (3) times is paid.

<sup>h</sup> Vacation/Holiday shall be paid at time and one half for all overtime hours and is included in the Basic Hourly Rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #LABORER AND RELATED CLASSIFICATIONS**

**DETERMINATION:** SC-23-102-2-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

Classification <sup>a</sup> (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rates		
	Basic Hourly Rate	Health and Welfare	Pension	Vacation/ and Holiday <sup>d</sup>	Training	Other Payment	Hours	Total Hourly Rate	Daily <sup>b</sup> 1 1/2X	Saturday <sup>bc</sup> 1 1/2X	Sunday and Holiday
<b>CLASSIFICATION GROUPS</b>											
Group 1	\$36.39	8.00	9.31	4.87	0.70	0.61	8	59.88	78.075	78.075	96.27
Group 2	36.94	8.00	9.31	4.87	0.70	0.61	8	60.43	78.900	78.900	97.37
Group 3	37.49	8.00	9.31	4.87	0.70	0.61	8	60.98	79.725	79.725	98.47
Group 4	39.04	8.00	9.31	4.87	0.70	0.61	8	62.53	82.050	82.050	101.57
Group 5	39.39	8.00	9.31	4.87	0.70	0.61	8	62.88	82.575	82.575	102.27

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> For classification within each group, see page 14.

<sup>b</sup> Any hours worked over 12 hours in a single workday are double (2) time.

<sup>c</sup> Saturdays in the same work week may be worked at straight-time if job is shut down during work week due to inclement weather or similar Act of God, or a situation beyond the employers control.

<sup>d</sup> Includes an amount per hour worked for supplemental dues

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATION GROUPS**

**GROUP 1**

Boring Machine Helper (Outside)  
Certified Confined Space Laborer  
Cleaning and Handling of Panel Forms  
Concrete Screeding for Rough Strike-Off  
Concrete, Water Curing  
Demolition Laborer, the cleaning of brick if performed by an employee performing any other phase of demolition work, and the cleaning of lumber  
Fiberoptic Installation, Blowing, Splicing, and Testing Technician on public right-of-way only  
Fire Watcher, Limbers, Brush Loaders, Pilers and Debris Handlers  
Flagman  
Gas, Oil and/or Water Pipeline Laborer  
Laborer, Asphalt-Rubber Material Loader  
Laborer, General or Construction  
Laborer, General Cleanup  
Laborer, Jetting  
Laborer, Temporary Water and Air Lines  
Plugging, Filling of Shee-Bolt Holes; Dry Packing of Concrete and Patching  
Post Hole Digger (Manual)  
Railroad Maintenance, Repair Trackman and Road Beds; Streetcar and Railroad Construction Track Laborers  
Rigging and Signaling  
Scaler  
Slip Form Raisers  
Tarman and Mortar Man  
Tool Crib or Tool House Laborer  
Traffic Control by any method  
Water Well Driller Helper  
Window Cleaner  
Wire Mesh Pulling - All Concrete Pouring Operations

**GROUP 2**

Asphalt Shoveler  
Cement Dumper (on 1 yard or larger mixer and handling bulk cement)  
Cesspool Digger and Installer  
Chucktender  
Chute Man, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks  
Concrete Curer-Impervious Membrane and Form Oiler  
Cutting Torch Operator (Demolition)  
Fine Grader, Highways and Street Paving, Airport, Runways, and similar type heavy construction  
Gas, Oil and/or Water Pipeline Wrapper-Pot Tender and Form Man  
Guinea Chaser  
Headerboard Man-Asphalt  
Installation of all Asphalt Overlay Fabric and Materials used for Reinforcing Asphalt  
Laborer, Packing Rod Steel and Pans  
Membrane Vapor Barrier Installer  
Power Broom Sweepers (small)  
Riprap, Stonepaver, placing stone or wet sacked concrete  
Roto Scraper and Tiller  
Sandblaster (Pot Tender)  
Septic Tank Digger and Installer (leadman)

**GROUP 2 (continued)**

Tank Scaler and Cleaner  
Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders  
Underground Laborer, including Caisson Bellow

**GROUP 3**

Asphalt Installation of all fabrics  
Buggymobile Man  
Compactor (all types including Tampers, Barko, Wacker)  
Concrete Cutting Torch  
Concrete Pile Cutter  
Driller, Jackhammer, 2 1/2 ft. drill steel or longer  
Dri Pak-it Machine  
Gas, Oil and/or Water Pipeline Wrapper - 6-inch pipe and over by any method, inside and out  
Impact Wrench, Multi-Plate  
Kettlemen, Potmen and Men applying asphalt, lay-kold, creosote, lime caustic and similar type materials  
Laborer, Fence Erector  
Material Hoseman (Walls, Slabs, Floors and Decks)  
Operators of Pneumatic, Gas, Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs, and similar mechanical tools not separately classified herein; operation of remote controlled robotic tools in connection with Laborers work  
Pipelayer's backup man, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services  
Power Post Hole Digger  
Rock Slinger  
Rotary Scarifier or Multiple Head Concrete Chipping Scarifier  
Steel Headerboard Man and Guideline Setter  
Trenching Machine, Hand Propelled

**GROUP 4**

Any Worker Exposed to Raw Sewage  
Asphalt Raker, Luteman, Ironer, Asphalt Dumpman, and Asphalt Spreader Boxes (all types)  
Concrete Core Cutter (walls, floors or ceilings), Grinder or Sander  
Concrete Saw Man, Cutting Walls or Flat Work, Scoring old or new concrete  
Cribber, Shorer, Laggging, Sheeting and Trench Bracing, Hand-Guided Laggging Hammer  
Head Rock Slinger  
High Scaler (including drilling of same)  
Laborer, Asphalt-Rubber Distributor Bootman  
Laser Beam in connection with Laborer's work  
Oversize Concrete Vibrator Operator, 70 pounds and over  
Pipelayer  
Prefabricated Manhole Installer  
Sandblaster (Nozzleman), Water Blasting, Porta Shot-Blast  
Subsurface Imaging Laborer  
Traffic Lane Closure, certified

**GROUP 5**

Blasters Powderman  
Driller  
Toxic Waste Removal  
Welding, certified or otherwise in connection with Laborers' work

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: TUNNEL WORKER (LABORER)**

**DETERMINATION:** SC-23-102-12-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director - Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties.

Classification (Journey person)	Basic Hourly Rate	Employer Payments					Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Other Payments	Hours	Total Hourly Rate	Daily 1 1/2X <sup>c</sup>	Saturday 1 1/2X <sup>c</sup>	Sunday and Holiday
Group I	\$42.54	\$8.00	\$9.31	<sup>a</sup> \$4.87	\$0.70	\$0.61	8	\$66.03	\$87.30	\$87.30	\$108.57
Group II	\$42.86	\$8.00	\$9.31	<sup>a</sup> \$4.87	\$0.70	\$0.61	8	\$66.35	\$87.78	\$87.78	\$109.21
Group III	\$43.32	\$8.00	\$9.31	<sup>a</sup> \$4.87	\$0.70	\$0.61	8	\$66.81	\$88.47	\$88.47	\$110.13
Group IV <sup>b</sup>	\$44.01	\$8.00	\$9.31	<sup>a</sup> \$4.87	\$0.70	\$0.61	8	\$67.50	\$89.505	\$89.505	\$111.51

<sup>a</sup> Includes an amount per hour worked for supplemental dues.

<sup>b</sup> The classification "Shaft and Raise Work" shall be applicable to all work from the entrance to the shaft or raise and including surge chambers. This classification shall apply to all work involving surge chambers up to ground level.

<sup>c</sup> All work performed over 12 hours in a single work day shall be paid for at double time (2x).

**CLASSIFICATIONS**

**Group I**

Batch Plant Laborer  
Bottom Lander  
Changehouseman  
Dumpman  
Outside Dumpman  
Loading and Unloading Agitator Cars  
Nipper  
Pot Tender using mastic or other materials  
Rollover Dumpman  
Shotcrete Man (helper)  
Subsurface Laborer (non-miner)  
Swamper/Brakemen (Brakeman and Switchman on tunnel work)  
Tool Man  
Top Lander  
Tunnel Materials Handling Man

**Group II**

Bull Gang Mucker  
Trackman  
Chemical Grout Jetman  
Chucktender  
Cabletender  
Concrete crew-include Rodders and Spreaders  
Grout Mixerman  
Grout Pumpman  
Operating of Troweling and/or Grouting Machines  
Vibratorman  
Jack Hammer Pneumatic Tools (except driller)

**Group III**

Blaster  
Driller  
Powderman  
Cherry Pickerman  
Grout Gunman  
Jackleg Miner  
Jumbo Man  
Kemper and other Pneumatic Concrete Placer Operator  
Miner - Tunnel (hand or machine)  
Micro-Tunneling, Micro-Tunneling Systems  
Nozzleman  
Powderman-Primer House  
Primer Man  
Sandblaster  
Segment Erector  
Steel Form Raiser and Setter  
Timberman, Retimberman, wood or steel  
Tunnel Concrete Finisher

**Group IV**

Shaft and Raise Work<sup>b</sup>  
Diamond Driller

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1  
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: GUNITE WORKER (LABORER)**

**DETERMINATION:** SC-102-345-1-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties.

Classification (Journeyman)	Employer Payments					Straight-Time		Overtime Hourly Rate				
	Basic Hourly Rate	Health and Welfare	Pension	Vacation and Holiday	Other Payments	Hours	Total Hourly Rate	1 1/2X <sup>b</sup>	2X	1 1/2X <sup>c</sup>	2X	Saturday <sup>f</sup> and Sunday Holiday
Ground Wire Man, Nozzleman, Rodman	\$45.05 <sup>d</sup>	8.00	7.60	<sup>a</sup> 6.00	0.09	8	66.74	89.265	111.79	89.265	111.79	111.79
Gunman	44.10 <sup>d</sup>	8.00	7.60	<sup>a</sup> 6.00	0.09	8	65.79	87.84	109.89	87.84	109.89	109.89
Reboundman	40.56 <sup>d</sup>	8.00	7.60	<sup>a</sup> 6.00	0.09	8	62.25	82.53	102.81	82.53	102.81	102.81
Entry-Level Gunite Worker Step 1 <sup>e</sup> (0-1000 hours)	28.30 <sup>d</sup>	4.93	6.71	<sup>a</sup> 6.00	0.06	8	46.00	60.15	74.30	60.15	74.30	74.30
Entry-Level Gunite Worker Step 2 <sup>e</sup> (1001- 2000 hours)	30.30 <sup>d</sup>	4.93	6.71	<sup>a</sup> 6.00	0.06	8	48.00	63.15	78.30	63.15	78.30	78.30

<sup>a</sup> Includes an amount per hour worked for Supplemental Dues.

<sup>b</sup> Rate applies to the first 3 overtime hours.

<sup>c</sup> Rate applies to the first 11 overtime hours.

<sup>d</sup> Employees working from a Bos'n's Chair or suspended from a rope or cable shall receive \$0.40/hour above this rate.

<sup>e</sup> Ratio is one Entry-Level Gunite Worker for the 1<sup>st</sup> 4 Journeymen on the job (although the Entry-Level Gunite Worker may be the 2<sup>nd</sup> worker on the job) and 1 Entry-Level Gunite Worker for every 4 Journeymen thereafter (the Entry-Level Gunite Worker may not be on the job until after all 4 Journeymen are on the job).

<sup>f</sup> In the event it is not reasonably possible to complete forty (40) hours of work on an eight (8) hour day shift, Monday through Friday, then the balance of the forty (40) hours may be worked on Saturday at the straight time rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.



GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: HOUSEMOVER (LABORER)**

**DETERMINATION:** SC-102-507-1-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties.

CLASSIFICATION (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rate		
	Basic Hourly Rate	Health and Welfare	Pension	Vacation/ Holiday <sup>a</sup>	Training	Other Payments <sup>b</sup>	Hours	Total Hourly Rate	Daily <sup>c</sup> 1 1/2X	Saturday <sup>c,d</sup> 1 1/2X	Sunday/ Holiday 2X
Housemover	\$36.44	8.00	9.31	4.87	0.70	0.51	8.0	59.83	78.05	78.05	96.27

<sup>a</sup> Includes Supplemental Dues contribution.

<sup>b</sup> Include an amount for Contract Administration Fund (\$0.07), Contract Compliance Trust Fund (\$0.30), Industry Fund (\$0.08), and Laborers Trusts' Administrative Trust Fund (\$0.06).

<sup>c</sup> Any hours over 12 hours in a single workday are double time.

<sup>d</sup> If the employee is unable to complete the forty (40) hours during the normal workweek, Monday through Friday, due to inclement weather or a situation beyond the employers control, then the balance of the forty (40) hours may be worked on Saturday at the straight-time rate in the same workweek.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1  
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #LANDSCAPE/IRRIGATION LABORER/TENDER**

**DETERMINATION:** SC-102-X-14-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** July 31, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

CLASSIFICATION (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rate		
	Basic Hourly Rate	Health and Welfare	Pension	Vacation and Holiday	Training	Other	Hours	Total Hourly Rate	Daily <sup>b</sup> 1 1/2X	Saturday <sup>b</sup> 1 1/2X	Sunday/ Holiday 2X
Landscape/Irrigation Laborer	\$34.58	\$8.00	\$9.31	\$4.87 <sup>a</sup>	\$0.70	\$0.48	8	\$57.94	\$75.23	\$75.23	\$92.52
Landscape Hydro Seeder	\$35.68	\$8.00	\$9.31	\$4.87 <sup>a</sup>	\$0.70	\$0.48	8	\$59.04	\$76.88	\$76.88	\$94.72

**DETERMINATION:** SC-102-X-14-2020-1A

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** July 31, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for new rates after 10 days from the expiration date, if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

Landscape/Irrigation Tender <sup>c</sup>	\$15.53	\$2.65	\$1.35	\$1.03 <sup>a</sup>	--	--	8	\$20.56	\$28.325	\$28.325	\$36.09
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#Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet at <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount per hour worked for Supplemental Dues.

<sup>b</sup> Rate applies to first 4 daily overtime hours and the first 12 hours on Saturday. All other time is paid at the Sunday and Holiday double-time rate.

<sup>c</sup> The first employee on the jobsite shall be a Landscape/Irrigation Laborer; the second employee on the jobsite must be an Apprentice or a Landscape/Irrigation Laborer; and the third and fourth employees may be Tenders. The fifth employee on the jobsite shall be a Landscape/Irrigation Laborer; the sixth employee must be an Apprentice or a Landscape/Irrigation Laborer; and the seventh and eighth employees may be Tenders. Thereafter, Tenders may be employed with Landscape/Irrigation Laborers in a 50/50 ratio on each jobsite. However, plant establishment may be performed exclusively by Landscape/Irrigation Tenders without the supervision of a Journeyman.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the Travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or Subsistence provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: TREE MAINTENANCE<sup>1</sup> (LABORER)**

**(APPLIES ONLY TO ROUTINE TREE MAINTENANCE WORK, NOT CONSTRUCTION AND/OR LANDSCAPE CONSTRUCTION<sup>2</sup>)**

**DETERMINATION:** SC-102-X-20-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties.

CLASSIFICATION <sup>a</sup> (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rate	
	Basic Hourly Rate	Health and Welfare	Pension	Vacation and Holiday	Training	Other	Hours	Total Hourly Rate	Daily 1 1/2X <sup>b</sup>	Sunday/ Holiday 2X
Senior Tree Trimmer	\$22.10	\$2.55	\$2.00	\$2.47	-	\$0.30	8	\$29.42	\$40.47	\$51.52
Tree Trimmer	\$20.10	\$2.55	\$2.00	\$2.27	-	\$0.30	8	\$27.22	\$37.27	\$47.32
Groundsperson	\$17.35	\$2.55	\$2.00	\$2.12	-	\$0.30	8	\$24.32	\$32.995	\$41.67

<sup>a</sup> There shall be at least one Senior Tree Trimmer on crews of three or more.

<sup>b</sup> Monday thru Saturday shall constitute a workweek. Rate applies to first 4 overtime hours Monday thru Saturday, and all time worked in excess of forty (40) hours per workweek. All other time is paid at the Sunday and Holiday double-time rate.

<sup>1</sup> This determination does not apply to the work of a landscape laborer employed on landscape construction (work incidental to construction or post-construction maintenance during the plant installation and establishment period) or to tree trimming work involving line clearance.

<sup>2</sup> This determination does not apply to tree trimming, removal, or planting work performed on construction or landscape construction contracts.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or Subsistence provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

**CRAFT: LANDSCAPE MAINTENANCE LABORER**

(APPLIES ONLY TO ROUTINE LANDSCAPE MAINTENANCE WORK NOT NEW LANDSCAPE CONSTRUCTION)<sup>1</sup>

**DETERMINATION:** SC-LML-2020-1

**ISSUE DATE:** February 22, 2020

**EXPIRATION DATE OF DETERMINATION:** March 31, 2020\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY:	Employer Payments						Straight-Time	Overtime	
	Basic Hourly Rate	Health and Welfare	Pension	Vacation	Holiday	Training	Hours Total Hourly Rate	1 1/2X	
Imperial	\$13.00	-	-	<sup>a</sup> 0.115	0.17	-	8	<sup>b</sup> 13.285	<sup>b</sup> 19.785
Inyo, Mono and San Bernardino	13.00	-	-	0.30	0.17	-	8	13.47	19.97
Kern	13.00	-	-	<sup>c</sup> 0.16	0.17	-	8	<sup>b</sup> 13.33	<sup>b</sup> 19.83
	13.00	-	-	<sup>d</sup> 0.27	0.46	-	8	<sup>b</sup> 13.73	<sup>b</sup> 20.23
Los Angeles	13.00	0.89	-	<sup>e</sup> 0.115	0.14	-	8	<sup>b</sup> 14.145	<sup>b</sup> 20.645
Orange	13.00	-	-	<sup>f</sup> 0.11	0.11	-	8	<sup>b</sup> 13.22	<sup>b</sup> 19.72
Riverside	13.00	-	-	<sup>g</sup> 0.20	0.16	-	8	<sup>b</sup> 13.36	<sup>b</sup> 19.86
San Diego	13.00	-	-	0.22	0.115	-	8	13.335	19.835
	13.00	-	-	0.24	0.12	-	8	13.36	19.86
San Luis Obispo	13.00	-	-	<sup>k</sup> 0.15	0.15	-	8	13.30	19.80
	13.00	-	-	<sup>l</sup> 0.16	0.16	-	8	13.32	19.82
Santa Barbara	13.00	-	-	<sup>h</sup> 0.12	0.12	-	8	<sup>b</sup> 13.24	<sup>b</sup> 19.74
	13.00	-	-	<sup>i</sup> 0.13	0.13	-	8	<sup>b</sup> 13.26	<sup>b</sup> 19.76
Ventura	13.00	-	-	0.115	0.16	-	8	13.275	19.775
	13.00	2.97	-	<sup>j</sup> 0.19	0.26	-	8	<sup>b</sup> 16.42	<sup>b</sup> 22.92

**NOTE:** If there are two rates, the first rate is for routine work, the second rate is for complex work.

<sup>a</sup> \$0.22 after 3 years of service.

<sup>f</sup> \$0.22 after 4 years of service.

<sup>b</sup> Computation is based on the first years of employment. This rate should be increased by any applicable vacation increase as stated in other footnotes.

<sup>g</sup> \$0.40 after 3 years of service.

<sup>h</sup> \$0.23 after 2 years of service.

<sup>i</sup> \$0.27 after 2 years of service.

<sup>c</sup> \$0.31 after 2 years of service.

<sup>j</sup> \$0.38 after 3 years of service.

<sup>d</sup> \$0.54 after 2 years of service; \$0.81 after 3 years of service.

<sup>k</sup> \$0.29 after 2 years of service.

<sup>e</sup> \$0.24 after 3 years of service; \$0.37 after 7 years of service.

<sup>l</sup> \$0.31 after 2 years of service.

<sup>1</sup> This determination does not apply to work of a landscape laborer employed on landscape construction (work incidental to construction or post-construction maintenance during the plant installation and establishment period). The following is a description of the landscape work cover under this determination:

*ROUTINE* – mowing, watering, pruning, trimming, weeding, spraying, occasional planting and replacement of plants and janitorial work incidental to such landscape maintenance.

*COMPLEX* – servicing of irrigation and sprinkler systems, repairing of equipment use in such landscape maintenance.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: ASBESTOS AND LEAD ABATEMENT (LABORER)**

**DETERMINATION:** SC-102-882-1-2020-1

**ISSUE DATE:** February 22, 2020

**EXPIRATION DATE OF DETERMINATION:** February 28, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties

Classification (Journey person)	Employer Payments						Straight-Time		Overtime Hourly Rate		
	Basic Hourly Rate	Health and Welfare	Pension	Vacation/ Holiday <sup>a</sup>	Training	Other <sup>b</sup>	Hours	Total Hourly Rate	Daily 1 1/2X	Saturday <sup>c</sup> 1 1/2X	Sunday/ Holiday 2X
Asbestos and Lead Abatement Worker	\$36.13	7.47	9.15	4.97	0.75	0.51	8	\$58.98	\$77.045	\$77.045	\$95.11

<sup>a</sup> Includes an amount for supplemental dues.

<sup>b</sup> Includes amounts for Center for Contract Compliance, Contract Administration Fund, Industry Fund, and Laborers' Trust Administrative Trust Fund.

<sup>c</sup> Saturdays in the same work week may be worked at straight-time if the job is shut down during the normal work week due to inclement weather, or reasons beyond the control of the employer.

**NOTE:** Asbestos Abatement must be trained and the work conducted according to the Code of Federal Regulations 29 CFR 1926.58, the California Labor Code 6501.5 and the California Code of Regulations Title 8, Section 5208. Contractors must be certified by the Contractors' State License Board and registered with the Division of Occupational Safety and Health (DOSH). For further information, contact the Asbestos Contractors Abatement Registration Unit, DOSH at (916) 574-2993.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the Travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or Subsistence provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # PARKING AND HIGHWAY IMPROVEMENT  
(STRIPING, SLURRY AND SEAL COAT OPERATIONS-LABORER)**

**DETERMINATION:** SC-23-102-6-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura counties.

Classification (Journey person)	Basic Hourly Rate	Employer Payments					Straight-Time		Overtime Hourly Rates		
		Health and Welfare	Pension	Vacation/ Holiday	Training	Other	Hours <sup>b</sup>	Total Hourly Rate	Daily 1 1/2X	6th & 7th Day <sup>c</sup> 1 1/2X	Holiday 2X
<b>CLASSIFICATION GROUPS</b>											
Group 1	\$39.06	\$8.00	\$6.26	\$5.11 <sup>a</sup>	\$1.32	\$0.50	8	\$60.25	\$79.78	\$79.78	\$99.31
Group 2	40.36	8.00	6.26	5.11 <sup>a</sup>	1.32	0.50	8	61.55	81.73	81.73	101.91
Group 3	42.37	8.00	6.26	5.11 <sup>a</sup>	1.32	0.50	8	63.56	84.745	84.745	105.93
Group 4	44.11	8.00	6.26	5.11 <sup>a</sup>	1.32	0.50	8	65.30	87.355	87.355	109.41

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @

<http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at <http://www.dir.ca.gov/das/das.html>.

<sup>a</sup> Includes an amount per hour worked for Supplemental Dues.

<sup>b</sup> Straight-time hours: 8 consecutive hours per day. 40 hours over 5 consecutive days, Monday through Sunday shall constitute a week's work at straight time.

<sup>c</sup> The sixth consecutive day in the same work week may be worked at straight-time if job is shut down during work week due to inclement weather.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**CLASSIFICATION GROUPS:**

**Group 1**

Protective coating, Pavement sealing (repairs and filling of cracks by any method to parking lots, game courts and playgrounds, and tracks, whether indoor or outdoor)  
Truck Mounted Attenuator  
Automatous Truck Mounted Attenuator  
Installation of carstops  
Traffic Control Person & Serviceman; including work of installing and protecting utility covers, traffic delineating devices, posting of no parking and notifications for public convenience  
Asphalt Repair  
Equipment Repair Technician  
Truncated Dome Assitant  
Decorative Asphalt Surfacing Applicator Assistant

**Group 2**

Traffic Surface Abrasive Blaster  
Pot Tender  
Traffic Control Person/Certified Traffic Control Person  
Repairing and filling of cracks and surface cleaning on streets, highways, and airports by any means, and other work not directly connected with the application of slurry seal  
Slurry Seal Squeegeeman (finisher)  
Bob Cat/Skid Steer  
Seal Roller  
Forklift

**Group 3**

Traffic Delineating Device Applicator  
Traffic Protective System Installer  
Pavement Marking Applicator

Slurry Seal Applicator Operator (Line Driver-including self-contained distribution units, aggregate spreader truck)  
Shuttleman (loader/slurry machine operations) operation of all related machinery and equipment; handling of related materials  
Truncated Dome Technician  
Decorative Asphalt Surfacing Applicator

**Group 4**

Traffic Striping Applicator  
Slurry Seal Mixer Operator  
Power Broom Sweeper (operation of all related trucks, machinery and equipment; Handling of related materials)

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # CEMENT MASON**

**DETERMINATION:** SC-23-203-2-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties.

CLASSIFICATION (JOURNEYPERSON)	Basic Hourly Rate	Employer Payments					Straight-Time Total Hourly Rate	Overtime Hourly Rate			
		Health and Welfare	Pension	Vacation/ Holiday	Training	Other Payments		Hours	Daily 1 1/2X	Saturday <sup>a</sup> 1 1/2X	Sunday/ Holiday 2X
Cement Mason, Curb and Gutter Machine Operator; Clary and Similar Type of Screed Operator (Cement only); Grinding Machine Operator (all types); Jackson Vibratory, Texas Screed and Similar Type Screed Operator; Scoring Machine Operator	\$38.50	8.27	9.86	7.14 <sup>b</sup>	0.64	0.24	8	64.65	83.90 <sup>c</sup>	83.90 <sup>c</sup>	103.15
Magnesite, magnesite-terrazzo and mastic composition, Epoxy, Urethanes and exotic coatings, Dex-O-Tex	\$38.62	8.27	9.86	7.14 <sup>b</sup>	0.64	0.24	8	64.77	84.08 <sup>c</sup>	84.08 <sup>c</sup>	103.39
Floating and Troweling Machine Operator	\$38.75	8.27	9.86	7.14 <sup>b</sup>	0.64	0.24	8	64.90	84.275 <sup>c</sup>	84.275 <sup>c</sup>	103.65

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Saturday in the same work week may be worked at straight-time rate, up to 8 hours on Saturday or when the employee has worked a total of 40 hours in the work week, if it is not reasonably possible for any individual employee on a particular job site to complete 40 hours of work on a 8 hour day, Monday through Friday, due to inclement weather or similar act of God or a situation beyond the control of the contractor.

<sup>b</sup> Includes an amount for supplemental dues.

<sup>c</sup> Rate applies to the first 4 daily overtime hours and the first 12 hours worked on Saturday. All other time is paid at the double time (2X) rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # HORIZONTAL DIRECTIONAL DRILLING (LABORER)**

**DETERMINATION:** SC-102-1184-1-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties.

Classification (Journey person)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight-Time		Overtime Hourly Rate		
			Pension	Vacation/ Holiday <sup>a</sup>	Training	Other Payments	Hours	Total Hourly Rate	Daily 1 1/2x	Saturday <sup>b</sup> 1 1/2x	Sunday/ Holiday 2x
GROUP I (Drilling Crew Laborer)	\$37.85	\$8.00	\$5.66	\$3.40	\$0.40	\$0.99	8	\$56.30	75.225	75.225	\$94.15
GROUP II (Vehicle Operator/Hauler)	\$38.02	\$8.00	\$5.66	\$3.40	\$0.40	\$0.99	8	\$56.47	75.480	75.480	\$94.49
GROUP III (Horizontal Directional Drill Operator)	\$39.87	\$8.00	\$5.66	\$3.40	\$0.40	\$0.99	8	\$58.32	78.255	78.255	\$98.19
GROUP IV (Electronic Tracking Locator, Subsurface Imaging Laborer)	\$41.87	\$8.00	\$5.66	\$3.40	\$0.40	\$0.99	8	\$60.32	81.255	81.255	\$102.19

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>.

<sup>a</sup> Includes an amount for Supplemental Dues.

<sup>b</sup> In the event, due to inclement weather, major equipment breakdown, or similar Act of God, it is not reasonably possible to complete forty (40) hours of work Monday through Friday, then the balance of the forty (40) hours may be worked on Saturday at the straight-time rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.



**Group I**

Warehouseman and Teamster

**Group II**

Driver of Vehicle or Combination of Vehicles - 2 axles  
Traffic Control Pilot Car, excluding moving heavy equipment permit load  
Truck Mounted Power Broom

**Group III**

Driver of Vehicle or Combination of Vehicles - 3 axles  
Bootman  
Cement Mason Distribution Truck  
Fuel Truck Driver  
Water Truck - 2 axles  
Dump Truck of less than 16 yards water level  
Erosion Control Driver

**Group IV**

Driver of Transit Mix Truck-Under 3 yds  
Dumcrete Truck Less than 6 1/2 yards water level  
Truck Repairman Helper

**Group V**

Water Truck 3 or more axles  
Warehouseman Clerk  
Slurry Truck Driver

**Group VI**

Driver of Transit Mix Truck - 3 yds or more  
Dumcrete Truck 6 1/2 yds water level and over  
Driver of Vehicle or Combination of Vehicles - 4 or more axles  
Driver of Oil Spreader Truck  
Dump Truck 16 yds to 25 yds water level  
Side Dump Trucks  
Flow Boy Dump Trucks

**Group VII**

A Frame, Swedish Crane or Similar  
Forklift Driver  
Ross Carrier Driver

**Group VIII**

Dump Truck of 25 yds to 49 yards water level  
Truck Repairman  
Water Pull Single Engine  
Welder

**Group IX**

Truck Repairman Welder  
Low Bed Driver, 9 axles or over

**Group X**

Working Truck Driver  
Truck Greaser and Tireman - \$0.50 additional for Tireman  
Pipeline and Utility Working Truck Driver, including Winch Truck and Plastic Fusion, limited to Pipeline and Utility Work  
Dump Truck and Articulating - 50 yards or more water level  
Water Pull Single Engine with attachment

**Group XI**

Water Pull Twin Engine  
Water Pull Twin Engine with attachments  
Winch Truck Driver - \$0.25 additional when operating a Winch or similar special attachments

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #TEAMSTER (SPECIAL SHIFT)**  
**(APPLIES ONLY TO WORK ON THE CONSTRUCTION SITE)**

**DETERMINATION:** SC-23-261-2-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties

Classification <sup>c</sup> (Journeyman)	Basic Hourly Rate	Health and Welfare	Employer Payments				Straight-Time		Overtime Hourly Rates		
			Pension	Vacation/ Holiday	Training <sup>e</sup>	Other Payments <sup>f</sup>	Hours	Total Hourly Rate	Daily <sup>d</sup> 1 1/2X	Saturday <sup>d</sup> 1 1/2X	Sunday/ Holiday 2X
Group I	33.09	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.13	80.68	80.68	97.22
Group II	33.24	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.28	80.90	80.90	97.52
Group III	33.37	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.41	81.10	81.10	97.78
Group IV	33.56	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.60	81.38	81.38	98.16
Group V	33.59	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.63	81.43	81.43	98.22
Group VI	33.62	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.66	81.47	81.47	98.28
Group VII	33.87	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.91	81.85	81.85	98.78
Group VIII	34.12	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.16	82.22	82.22	99.28
Group IX	34.32	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.36	82.52	82.52	99.68
Group X	34.62	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.66	82.97	82.97	100.28
Group XI	35.12	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	66.16	83.72	83.72	101.28
Subjourneyman <sup>b</sup>											
0-2000 hours	18.80	19.62	6.00	2.00 <sup>a</sup>	1.22	1.05	8	48.69	55.59	55.59	67.49
2001-4000 hours	20.80	19.62	6.00	2.25 <sup>a</sup>	1.22	1.05	8	50.94	58.84	58.84	71.74
4001-6000 hours	22.80	19.62	6.00	2.50 <sup>a</sup>	1.22	1.05	8	53.19	62.09	62.09	75.99
Over 6000 hours and thereafter at journeyman rates											

#Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @

<http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at

<http://www.dir.ca.gov/das/das.html>.

<sup>a</sup> Includes an amount for Supplemental Dues.

<sup>b</sup> Subjourneyman may be employed at a ratio of one subjourneyman for every five journeymen.

<sup>c</sup> For classifications within each group, see page 21A.

<sup>d</sup> Rate applies to the first 4 daily overtime hours and the first 12 hours on Saturday. All other overtime is paid at the Sunday/Holiday double-time rate.

<sup>e</sup> Includes \$1.22 for Teamster Training and Upgrading Trust.

<sup>f</sup> Includes \$0.60 for Apprentice Program Fund.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: #TEAMSTER (SECOND SHIFT)**  
**(APPLIES ONLY TO WORK ON THE CONSTRUCTION SITE)**

**DETERMINATION:** SC-23-261-2-2020-1

**ISSUE DATE:** August 22, 2020

**EXPIRATION DATE OF DETERMINATION:** June 30, 2021\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties

Classification <sup>c</sup> (Journeyman)	Basic Hourly Rate	Employer Payments					Straight-Time		Overtime Hourly Rates		
		Health and Welfare	Pension	Vacation/ Holiday	Training <sup>f</sup>	Other Payments <sup>g</sup>	Hours <sup>d</sup>	Total	Daily <sup>e</sup>	Saturday <sup>e</sup>	Sunday/ Holiday
							8	Hourly Rate	1 1/2X	1 1/2X	2X
Group I	33.59	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.63	81.43	81.43	98.22
Group II	33.74	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.78	81.65	81.65	98.52
Group III	33.87	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	64.91	81.85	81.85	98.78
Group IV	34.06	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.10	82.13	82.13	99.16
Group V	34.09	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.13	82.18	82.18	99.22
Group VI	34.12	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.16	82.22	82.22	99.28
Group VII	34.37	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.41	82.60	82.60	99.78
Group VIII	34.62	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.66	82.97	82.97	100.28
Group IX	34.82	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	65.86	83.27	83.27	100.68
Group X	35.12	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	66.16	83.72	83.72	101.28
Group XI	35.62	19.62	6.00	3.15 <sup>a</sup>	1.22	1.05	8	66.66	84.47	84.47	102.28
Subjourneyman <sup>b</sup>											
0-2000 hours	18.80	19.62	6.00	2.00 <sup>a</sup>	1.22	1.05	8	48.69	58.09	58.09	67.49
2001-4000 hours	20.80	19.62	6.00	2.25 <sup>a</sup>	1.22	1.05	8	50.94	61.34	61.34	71.74
4001-6000 hours	22.80	19.62	6.00	2.50 <sup>a</sup>	1.22	1.05	8	53.19	64.59	64.59	75.99
Over 6000 hours and thereafter at journeyman rates											

#Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @

<http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at <http://www.dir.ca.gov/das/das.html>.

<sup>a</sup> Includes an amount for Supplemental Dues.

<sup>b</sup> Subjourneyman may be employed at a ratio of one subjourneyman for every five journeymen.

<sup>c</sup> For classifications within each group, see page 21A.

<sup>d</sup> The third shift shall work 6.5 hours, exclusive of meal period, for which 8 hours straight-time shall be paid at the non-shift rate, Monday through Friday.

<sup>e</sup> Rate applies to the first 4 daily overtime hours and the first 12 hours on Saturday. All other overtime is paid at the Sunday/Holiday double-time rate.

<sup>f</sup> Includes \$1.22 for Teamster Training and Upgrading Trust.

<sup>g</sup> Includes \$0.60 for Apprentice Program Fund.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS  
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

**CRAFT: # HORIZONTAL DIRECTIONAL DRILLING (LABORER)**

**DETERMINATION:** SC-102-1184-1-2019-1

**ISSUE DATE:** August 22, 2019

**EXPIRATION DATE OF DETERMINATION:** June 30, 2020\*\* The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Office of the Director – Research Unit for specific rates at (415) 703-4774.

**LOCALITY:** All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura Counties.

Classification (Journeyperson)	Basic Hourly Rate	Employer Payments					Other Payments	Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension Rate	Vacation/ Holiday <sup>a</sup>	Training	Hours		Total Hourly Rate	Daily 1 1/2x	Saturday <sup>b</sup> 1 1/2x	Sunday/ Holiday 2x	
GROUP I (Drilling Crew Laborer)	\$36.70	\$7.47	\$5.25	\$3.40	\$0.40	\$0.98	8	\$54.20	72.550	72.550	\$90.90	
GROUP II (Vehicle Operator/Hauler)	\$36.87	\$7.47	\$5.25	\$3.40	\$0.40	\$0.98	8	\$54.37	72.805	72.805	\$91.24	
GROUP III (Horizontal Directional Drill Operator)	\$38.72	\$7.47	\$5.25	\$3.40	\$0.40	\$0.98	8	\$56.22	75.580	75.580	\$94.94	
GROUP IV (Electronic Tracking Locator, Subsurface Imaging Laborer)	\$40.72	\$7.47	\$5.25	\$3.40	\$0.40	\$0.98	8	\$58.22	78.580	78.580	\$98.94	

# Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at <http://www.dir.ca.gov/das/das.html>.

<sup>a</sup> Includes an amount for Supplemental Dues.

<sup>b</sup> In the event, due to inclement weather, major equipment breakdown, or similar Act of God, it is not reasonably possible to complete forty (40) hours of work Monday through Friday, then the balance of the forty (40) hours may be worked on Saturday at the straight-time rate.

**RECOGNIZED HOLIDAYS:** Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

**TRAVEL AND/OR SUBSISTENCE PAYMENT:** In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director - Research Unit at (415) 703-4774.

***Section 101  
Federal Minimum Wages  
(Pink Pages)***

***inserted here***

NOT FOR BIDD

"General Decision Number: CA20220026 04/29/2022

Superseded General Decision Number: CA20210026

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: San Bernardino County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	01/14/2022
2	01/21/2022
3	02/18/2022
4	02/25/2022
5	04/01/2022
6	04/29/2022

ASBE0005-002 09/01/2021

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	\$ 47.25	24.45
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	\$ 32.09	19.66

ASBE0005-004 07/05/2021

	Rates	Fringes
Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....	\$ 22.40	13.07

BOIL0092-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 46.03	38.81

\* BRCA0004-011 05/01/2020

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	\$ 41.48	18.63

\*The wage scale for prevailing wage projects performed in Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine Palms, Needles and 1-15 corridor (Barstow to the Nevada State Line) will be Three Dollars (\$3.00) above the standard San Bernardino/Riverside County hourly wage rate

BRCA0018-004 06/01/2021

	Rates	Fringes
MARBLE FINISHER.....	\$ 35.90	14.11
TILE FINISHER.....	\$ 30.47	12.52
TILE LAYER.....	\$ 43.09	18.31

\* BRCA0018-010 09/01/2021

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 35.43	14.10
TERRAZZO WORKER/SETTER.....	\$ 43.61	14.63

CARP0213-001 07/01/2021

	Rates	Fringes
CARPENTER		

(1) Carpenter, Cabinet Installer, Insulation Installer, Hardwood Floor Worker and acoustical installer.....	\$ 51.60	16.28
(2) Millwright.....	\$ 52.10	16.48
(3) Piledrivermen/Derrick Bargeman, Bridge or Dock Carpenter, Heavy Frammer, Rock Bargeman or Scowman, Rockslinger, Shingler (Commercial).....	\$ 51.73	16.28
(4) Pneumatic Nailer, Power Stapler.....	\$ 51.85	16.28
(5) Sawfiler.....	\$ 51.69	16.28
(6) Scaffold Builder.....	\$ 42.80	16.28
(7) Table Power Saw Operator.....	\$ 51.70	16.28

FOOTNOTE: Work of forming in the construction of open cut sewers or storm drains, on operations in which horizontal lagging is used in conjunction with steel H-Beams driven or placed in pre- drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): \$0.13 per hour additional.

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 CARP0213-002 07/01/2021

	Rates	Fringes
Diver		
(1) Wet.....	\$ 834.40	16.28
(2) Standby.....	\$ 445.84	16.28
(3) Tender.....	\$ 437.84	16.28
(4) Assistant Tender.....	\$ 413.84	16.28

Amounts in "'Rates' column are per day

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 CARP0213-004 07/01/2021

	Rates	Fringes
Drywall		
DRYWALL INSTALLER/LATHER....	\$ 51.60	16.28
STOCKER/SCRAPPER.....	\$ 22.16	8.62

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 CARP0721-001 07/01/2021

	Rates	Fringes
Modular Furniture Installer.....	\$ 21.85	7.15

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 ELEC0440-004 12/27/2021

COMMUNICATIONS AND SYSTEMS WORK

	Rates	Fringes
Communications System		
Installer.....	\$ 39.60	3%+16.89
Technician.....	\$ 33.09	15.89

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex,



nurse call systems, radio page, school intercom and sound, burglar alarms, fire alarms, and low voltage master clock systems in commercial buildings. Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems. Does not cover work performed at China Lake Naval Ordnance Test Station.

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 ELEC0477-002 06/01/2021

	Rates	Fringes
Electricians:.....	\$ 45.75	3%+25.33

CABLE SPLICER: \$1.50 per hour above Electrician rate.  
 TUNNEL WORK: 10% above Electrician rate.

ZONE PAY:  
 Zone A - 80 road miles from Post Office, 455 Orange Show Lane, San Bernardino, will be a free zone for all contractors  
 Zone B - Any work performed outside Zone A's 80 road miles, shall add \$12.00 per hour to the current wage scale.

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 ELEC1245-001 01/01/2022

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 60.19	22.07
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 48.08	20.86
(3) Groundman.....	\$ 36.76	20.46
(4) Powderman.....	\$ 51.87	18.79

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

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 ELEV0018-001 01/01/2022

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 61.34	36.885+a+b

FOOTNOTE:  
 a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.  
 b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

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 ENGI0012-003 07/01/2020

	Rates	Fringes
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OPERATOR: Power Equipment  
(All Other Work)

GROUP 1.....	\$ 48.25	27.20
GROUP 2.....	\$ 49.03	27.20
GROUP 3.....	\$ 49.32	27.20
GROUP 4.....	\$ 50.81	27.20
GROUP 5.....	\$ 48.96	25.25
GROUP 6.....	\$ 51.03	27.20
GROUP 8.....	\$ 51.14	27.20
GROUP 9.....	\$ 49.29	25.25
GROUP 10.....	\$ 51.26	27.20
GROUP 11.....	\$ 49.41	25.25
GROUP 12.....	\$ 51.43	27.20
GROUP 13.....	\$ 51.53	27.20
GROUP 14.....	\$ 51.56	27.20
GROUP 15.....	\$ 51.64	27.20
GROUP 16.....	\$ 51.76	27.20
GROUP 17.....	\$ 51.93	27.20
GROUP 18.....	\$ 52.03	27.20
GROUP 19.....	\$ 52.14	27.20
GROUP 20.....	\$ 52.26	27.20
GROUP 21.....	\$ 52.43	27.20
GROUP 22.....	\$ 52.53	27.20
GROUP 23.....	\$ 52.64	27.20
GROUP 24.....	\$ 52.76	27.20
GROUP 25.....	\$ 52.93	27.20

OPERATOR: Power Equipment  
(Cranes, Piledriving &  
Hoisting)

GROUP 1.....	\$ 49.60	27.20
GROUP 2.....	\$ 50.38	27.20
GROUP 3.....	\$ 50.67	27.20
GROUP 4.....	\$ 50.81	27.20
GROUP 5.....	\$ 51.03	27.20
GROUP 6.....	\$ 51.14	27.20
GROUP 7.....	\$ 51.26	27.20
GROUP 8.....	\$ 51.43	27.20
GROUP 9.....	\$ 51.60	27.20
GROUP 10.....	\$ 52.60	27.20
GROUP 11.....	\$ 53.60	27.20
GROUP 12.....	\$ 54.60	27.20
GROUP 13.....	\$ 55.60	27.20

OPERATOR: Power Equipment  
(Tunnel Work)

GROUP 1.....	\$ 50.10	27.20
GROUP 2.....	\$ 50.88	27.20
GROUP 3.....	\$ 51.17	27.20
GROUP 4.....	\$ 51.31	27.20
GROUP 5.....	\$ 51.53	27.20
GROUP 6.....	\$ 51.64	27.20
GROUP 7.....	\$ 51.76	27.20

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator

(includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine

operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving

equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator,

operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

#### CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes load, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

#### TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

#### ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County

boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1S, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is



the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

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 ENGI0012-004 08/01/2020

	Rates	Fringes
OPERATOR: Power Equipment (DREDGING)		
(1) Leverman.....	\$ 56.40	30.00
(2) Dredge dozer.....	\$ 50.43	30.00
(3) Deckmate.....	\$ 50.32	30.00
(4) Winch operator (stern winch on dredge).....	\$ 49.77	30.00
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 49.23	30.00
(6) Barge Mate.....	\$ 49.84	30.00

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 IRON0433-006 07/01/2020

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 34.58	24.81
Ornamental, Reinforcing and Structural.....	\$ 41.00	33.45

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

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 LAB00300-005 03/01/2021

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 37.49	21.88

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LAB00345-001 07/01/2021

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 46.50	20.42
GROUP 2.....	\$ 45.55	20.42
GROUP 3.....	\$ 42.01	20.42

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0"" above base level and which work must be performed in whole or in part more than 75'-0"" above base level, that work performed above the 75'-0"" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

- GROUP 1: Rodmen, Nozzlemen
- GROUP 2: Gunmen
- GROUP 3: Reboundmen

LAB00783-002 07/01/2020

	Rates	Fringes
LABORER (TUNNEL)		
GROUP 1.....	\$ 42.54	21.04
GROUP 2.....	\$ 42.86	21.04
GROUP 3.....	\$ 43.32	21.04
GROUP 4.....	\$ 44.01	21.04
LABORER		
GROUP 1.....	\$ 36.39	21.04
GROUP 2.....	\$ 36.94	21.04
GROUP 3.....	\$ 37.49	21.04
GROUP 4.....	\$ 39.04	21.04
GROUP 5.....	\$ 39.39	21.04

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance,

repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all

other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Changehouse person; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.)

GROUP 2: Chucktender, cabledtender; Loading and unloading agitator cars; Vibrator person, jack hammer, pneumatic tools (except driller); Bull gang mucker, track person; Concrete crew, including rodder and spreader

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

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LAB00783-005 07/01/2021

	Rates	Fringes
Brick Tender.....	\$ 35.82	20.45

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LAB01184-001 07/01/2021

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	\$ 38.89	17.10
(2) Vehicle Operator/Hauler.	\$ 39.06	17.10
(3) Horizontal Directional Drill Operator.....	\$ 40.91	17.10
(4) Electronic Tracking Locator.....	\$ 42.91	17.10
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 40.10	20.12
GROUP 2.....	\$ 41.40	20.12
GROUP 3.....	\$ 43.41	20.12
GROUP 4.....	\$ 45.15	20.12

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble

and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

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LAB01414-003 08/05/2020

	Rates	Fringes
LABORER		
PLASTER CLEAN-UP LABORER....	\$ 36.03	21.01
PLASTER TENDER.....	\$ 38.58	21.01

Work on a swing stage scaffold: \$1.00 per hour additional.

Work at Military Bases - \$3.00 additional per hour:  
 Coronado Naval Amphibious Base, Fort Irwin, Marine Corps Air Station-29 Palms, Imperial Beach Naval Air Station, Marine Corps Logistics Supply Base, Marine Corps Pickle Meadows, Mountain Warfare Training Center, Naval Air Facility-Seeley, North Island Naval Air Station, Vandenberg AFB.

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PAIN0036-001 07/01/2020

	Rates	Fringes
Painters: (Including Lead Abatement)		
(1) Repaint (excludes San Diego County).....	\$ 29.59	17.12
(2) All Other Work.....	\$ 33.12	17.24

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

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PAIN0036-008 10/01/2021

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 43.63	22.92

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PAIN0036-015 01/01/2020

	Rates	Fringes
GLAZIER.....	\$ 43.45	23.39

FOOTNOTE: Additional \$1.25 per hour for work in a condor, from the third (3rd) floor and up Additional \$1.25 per hour for work on the outside of the building from a swing stage or any suspended contrivance, from the ground up

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PAIN1247-002 01/01/2021

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 38.75	14.03

-----  
 PLAS0200-008 08/04/2021

	Rates	Fringes
PLASTERER.....	\$ 45.77	18.39

FORT IRWIN; MARINE CORPS AIR STATION 29 PALMS, AND MARINE  
 CORPS LOGISTICS SUPPLY BASE: \$3.00 additional per hour.

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 PLAS0500-002 07/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 38.50	25.91

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 PLUM0016-002 09/01/2021

	Rates	Fringes
PLUMBER, PIPEFITTER, STEAMFITTER		
Work at Edwards AFB.....	\$ 60.83	25.36
Work at Fort Irwin Army Base.....	\$ 64.33	25.36
Work at Marine Corps Logistic Base at Nebo, Marine Corps Logistic Base at Yermo and Twenty-Nine Palms Marine Base.....	\$ 60.83	25.36
Work ONLY on new additions and remodeling of bars, restaurants, stores and commercial buildings, not to exceed 5,000 sq. ft. of floor space.....	\$ 52.20	24.38
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....	\$ 39.91	22.71
All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....	\$ 53.83	25.36

-----  
 PLUM0345-001 09/01/2021

	Rates	Fringes
PLUMBER		
Landscape/Irrigation Fitter.	\$ 36.85	24.75
Sewer & Storm Drain Work....	\$ 40.94	22.13

-----  
 ROOF0036-002 08/01/2021

	Rates	Fringes
ROOFER.....	\$ 42.07	18.92

FOOTNOTE: Pitch premium: Work on which employees are exposed

to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive \$1.75 per hour ""pitch premium"" pay.

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 SFCA0669-009 04/01/2022

Does not include the northern part of the City of Chino, or the Cities of Montclair and Ontario

	Rates	Fringes
SPRINKLER FITTER.....	\$ 43.25	26.77

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 SFCA0709-004 01/01/2021

THE NORTHERN PART OF THE CITY OF CHINO, AND THE CITIES OF MONTCLAIR AND ONTARIO:

	Rates	Fringes
SPRINKLER FITTER (Fire).....	\$ 48.71	29.15

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 SHEE0105-003 01/01/2022

LOS ANGELES (South of a straight line drawn between Gorman and Big Pines)and Catalina Island, INYO, KERN (Northeast part, East of Hwy 395), MONO ORANGE, RIVERSIDE, AND SAN BERNARDINO COUNTIES

	Rates	Fringes
SHEET METAL WORKER (1) Commercial - New Construction and Remodel work.....	\$ 50.23	29.60
(2) Industrial work including air pollution control systems, noise abatement, hand rails, guard rails, excluding aritechtrual sheet metal work, excluding A-C, heating, ventilating systems for human comfort....	\$ 48.28	29.46

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 TEAM0011-002 07/01/2020

	Rates	Fringes
TRUCK DRIVER		
GROUP 1.....	\$ 32.59	30.59
GROUP 2.....	\$ 32.74	30.59
GROUP 3.....	\$ 32.87	30.59
GROUP 4.....	\$ 33.06	30.59
GROUP 5.....	\$ 33.09	30.59
GROUP 6.....	\$ 33.12	30.59
GROUP 7.....	\$ 33.37	30.59
GROUP 8.....	\$ 33.62	30.59
GROUP 9.....	\$ 33.82	30.59
GROUP 10.....	\$ 34.12	30.59
GROUP 11.....	\$ 34.62	30.59
GROUP 12.....	\$ 35.05	30.59

WORK ON ALL MILITARY BASES:  
 PREMIUM PAY: \$3.00 per hour additional.  
 [29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB, El Centro Naval Facility, Fort Irwin, Marine Corps Logistics Base at Nebo & Yermo, Mountain Warfare Training

Center, Bridgeport, Point Arguello, Point Conception,  
Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2  
axles; Traffic control pilot car excluding moving heavy  
equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3  
axles; Boot person; Cement mason distribution truck; Fuel  
truck driver; Water truck - 2 axle; Dump truck, less than  
16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete  
truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire  
person (\$0.50 additional for tire person); Pipeline and  
utility working truck driver, including winch truck and  
plastic fusion, limited to pipeline and utility work;  
Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck,  
6-1/2 yds. water level and over; Vehicle or combination of  
vehicles - 4 or more axles; Oil spreader truck; Dump truck,  
16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver;  
Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck  
repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles  
or over

GROUP 10: Dump truck - 50 yds. or more water level; Water  
pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine  
with attachments; Winch truck driver - \$1.25 additional  
when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
for Federal Contractors applies to all contracts subject to the  
Davis-Bacon Act for which the contract is awarded (and any  
solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide  
employees with 1 hour of paid sick leave for every 30 hours  
they work, up to 56 hours of paid sick leave each year.  
Employees must be permitted to use paid sick leave for their  
own illness, injury or other health-related needs, including  
preventive care; to assist a family member (or person who is  
like family to the employee) who is ill, injured, or has other  
health-related needs, including preventive care; or for reasons  
resulting from, or to assist a family member (or person who is  
like family to the employee) who is a victim of, domestic  
violence, sexual assault, or stalking. Additional information



on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

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

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

#### Survey Rate Identifiers

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

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

#### Union Average Rate Identifiers

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

for the classifications and rates under that identifier.

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

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

=====  
END OF GENERAL DECISIO"

***Section 102  
Required Contract  
Provisions for Federal-Aid  
Construction Contracts  
Attachment D  
(Yellow Pages)***

***inserted here***

**EXHIBIT 12-G REQUIRED FEDERAL-AID CONTRACT LANGUAGE**  
(For Local Assistance Construction Projects)

The following language must be incorporated into all Local Assistance Federal-aid construction contracts.  
The following language, with minor edits, was taken from the Code of Federal Regulations.

**MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION**

<b>1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)</b> .....	<b>2</b>
<b>A. NONDISCRIMINATION STATEMENT</b> .....	<b>2</b>
<b>B. CONTRACT ASSURANCE</b> .....	<b>3</b>
<b>C. PROMPT PROGRESS PAYMENT</b> .....	<b>3</b>
<b>D. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS</b> .....	<b>3</b>
<b>E. TERMINATION AND SUBSTITUTION OF DBE SUBCONTRACTORS</b> .....	<b>4</b>
<b>F. COMMITMENT AND UTILIZATION</b> .....	<b>5</b>
<b>G. DBE RUNNING TALLY OF ATTAINMENTS</b> .....	<b>6</b>
<b>2. BID OPENING</b> .....	<b>6</b>
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<b>4. CONTRACT AWARD</b> .....	<b>6</b>
<b>5. CONTRACTOR LICENSE</b> .....	<b>6</b>
<b>6. CHANGED CONDITIONS</b> .....	<b>6</b>
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<b>B. SUSPENSIONS OF WORK ORDERED BY THE ENGINEER</b> .....	<b>6</b>
<b>C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK</b> .....	<b>7</b>
<b>7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES</b> .....	<b>7</b>
<b>8. BUY AMERICA</b> .....	<b>7</b>
<b>9. QUALITY ASSURANCE</b> .....	<b>8</b>
<b>10. PROMPT PAYMENT FROM THE AGENCY TO THE CONTRACTORS</b> .....	<b>8</b>
<b>11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS</b> .....	<b>8</b>
<b>12. FEMALE AND MINORITY GOALS</b> .....	<b>21</b>
<b>13. TITLE VI ASSURANCES</b> .....	<b>22</b>
<b>14. USE OF UNITED STATES-FLAG VESSELS (CARGO PREFERENCE ACT)</b> .....	<b>23</b>
<b>15. FEDERAL TRAINEE PROGRAM</b> .....	<b>23</b>

## 1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The contractor, subrecipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a contract goal for DBEs. The prime contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal.

It is the prime contractor's responsibility to verify that the DBE firm is certified as DBE at date of bid opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies the prime contractor purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

The prime contractor receives credit towards the goal if they employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) as follows:

- 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.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- 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.
- 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 another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. 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.

### a. Nondiscrimination Statement

The contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, the contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

**b. Contract Assurance**

Under 49 CFR 26.13(b):

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

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

**c. Prompt Progress Payment**

The prime contractor or subcontractor shall pay to any subcontractor, not later than **seven days** after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

**d. Prompt Payment of Withheld Funds to Subcontractors**

The Agency may hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The Agency shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. The Agency shall include either Method 1, Method 2, or Method 3 below and delete the other two.

**Method 1:** No retainage will be held by the Agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 2:** No retainage will be held by the Agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 3:** The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Agency. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **e. Termination and Substitution of DBE Subcontractors**

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's written consent. The prime contractor shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency. Unless the Agency's prior written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G Construction Contract DBE Commitment form, included in the Bid.

The Agency authorizes a request to use other forces or sources of materials if the bidder shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The Local Agency stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the Local Agency's bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The Agency determines other documented good cause.

The prime contractor shall notify the original DBE of the intent to use other forces or material sources and provide the reasons, allowing the DBE 5 days to respond to the notice and advise the prime contractor and the Agency of the reasons why the use of other forces or sources of materials should not occur.

The prime contractor's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from the prime contractor to the DBE regarding the request.
3. Notices from the DBEs to the prime contractor regarding the request.

If a listed DBE is terminated or substituted, the prime contractor must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

#### **f. Commitment and Utilization**

Note: In the Agency's reports of DBE participation to Caltrans, the Agency must display both commitments and attainments.

The Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The bidder shall submit the Exhibit 15-G Construction Contract DBE Commitment, included in the Bid book. This exhibit is the bidder's DBE commitment form. If the form is not submitted with the bid, the bidder must remove the form from the Bid book before submitting their bid.

The bidder shall complete and sign Exhibit 15-G Construction Contract DBE Commitment included in the contract documents regardless of whether DBE participation is reported. The bidder shall provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the bidder shall submit a copy of the joint venture agreement.

If the DBE Commitment form, Exhibit 15-G, is not submitted with the bid, it must be completed and submitted by all bidders to the Agency within five (5) days of bid opening. If the bidder does not submit the DBE Commitment form within the specified time, the Agency will find the bidder's bid nonresponsive.

The prime contractor shall use each DBE subcontractor as listed on Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE), and Exhibit 15-G Construction Contract DBE Commitment form unless they receive authorization for a substitution.

The Agency shall request the prime contractor to:

1. Notify the Resident Engineer or Inspector of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subcontractor
  - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment)

If the prime contractor is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work.

Before the 15th of each month, the prime contractor shall submit a Monthly DBE Trucking Verification (LAPM Exhibit 16-Z1) form.

If a DBE is decertified before completing its work, the DBE must notify the prime contractor in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify the prime contractor in writing of the certification date. The prime contractor shall submit the notifications. Upon work completion, the prime contractor shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form within 30 days of contract acceptance.



Upon work completion, the prime contractor shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

#### **g. DBE RUNNING TALLY OF ATTAINMENTS**

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.

- 2. BID OPENING** The Agency publicly opens and reads bids at the time and place shown on the Notice to Contractors.
- 3. BID RIGGING** The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.
- 4. CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.

#### **5. CONTRACTOR LICENSE**

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).

#### **6. CHANGED CONDITIONS**

##### **a. Differing Site Conditions**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

##### **b. Suspensions of Work Ordered by the Engineer**

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in

writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

**c. Significant Changes in the Character of Work**

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Contractor shall begin work within 15 calendar days after the issuance of the Notice to Proceed.

This work shall be diligently prosecuted to completion before the expiration of 120 WORKING DAYS beginning on the fifteenth calendar day after the date shown on the Notice to Proceed.

The Contractor shall pay to the City/County of San Bernardino the sum of \$ 3,000 per day, for each and every calendar days' delay in finishing the work in excess of the number of working days prescribed above.

**8. BUY AMERICA**

**Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. Steel and iron materials must be produced in the U.S. except:**

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

## 9. QUALITY ASSURANCE

The Local Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. The Local Agency may examine the records and reports of tests the prime contractor performs if they are available at the job site. Schedule work to allow time for QAP.

## 10. PROMPT PAYMENT FROM THE AGENCY TO THE CONTRACTORS

The Agency shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency fails to pay promptly, the Agency shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the Agency shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the Agency as soon as practicable after receipt for the purpose of determining that it is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

## 11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

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

[The following 12 pages must be physically inserted into the contract without modification.]

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

NOT FOR BID

- I. General
- II. Nondiscrimination
- III. No segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide 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."

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**2. EEO Officer:** The contractor will designate and make known to the contracting officers and EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting and 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.

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**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.

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**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.



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**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.

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**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.

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**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 or 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 contractor). "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.

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**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 to 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 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.

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**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.

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**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 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 information of participant is not required to exceed that which is \$100,000 and that all such recipients shall certify and disclose accordingly.

NOT FOR BID

**12. FEMALE AND MINORITY GOALS**

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

**MINORITY UTILIZATION GOALS**

	Economic Area	Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey	28.9
	7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	25.6
	7400 San Jose, CA	19.6
	CA Santa Clara, CA 7485 Santa Cruz, CA	14.9
	CA Santa Cruz 7500 Santa Rosa	9.1
	CA Sonoma 8720 Vallejo-Fairfield-Napa, CA	17.1
	CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties	16.1
	CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	14.3
	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus	12.3
178	8120 Stockton, CA CA San Joaquin	24.3
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern	19.1
	2840 Fresno, CA	26.1



	CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA	11.9
	CA Orange	28.3
	4480 Los Angeles-Long Beach, CA	
	CA Los Angeles	21.5
	6000 Oxnard-Simi Valley-Ventura, CA	
	CA Ventura	19.0
	6780 Riverside-San Bernardino-Ontario, CA	
181	CA Riverside; CA San Bernardino	19.7
	7480 Santa Barbara-Santa Maria-Lompoc, CA	
	CA Santa Barbara	24.6
	Non-SMSA Counties	
	CA Inyo; CA Mono; CA San Luis Obispo	
	San Diego, CA: SMSA Counties	16.9
181	7320 San Diego, CA	
	CA San Diego	18.2
	Non-SMSA Counties	
	CA Imperial	

For the last full week of July during which work is performed under the contract, the prime contractor and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

**13. TITLE VI ASSURANCES**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- a. Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such

Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

#### 14. USE OF UNITED STATES-FLAG VESSELS (CARGO PREFERENCE ACT)

The CONTRACTOR agrees-

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Federal Trainee Program Special Provisions  
(to be used when applicable)

#### 15. FEDERAL TRAINEE PROGRAM

For the Federal training program, the number of trainees or apprentices is 1.

This section applies if a number of trainees or apprentices is specified in the special provisions.

As part of the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the City/County of San Bernardino :

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

The prime contractor shall obtain the City/County of San Bernardino approval for this submitted information before the prime contractor starts work. The City/County of San Bernardino credits the prime contractor for each apprentice or trainee the prime contractor employs on the job who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeyman status. The prime contractor shall make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area and show that they have made the efforts. In making these efforts, the prime contractor shall not discriminate against any applicant for training.

The prime contractor shall not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

The prime contractor shall ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. The prime contractor's records must show the employee's answers to the questions.

In the training program, the prime contractor shall establish the minimum length and training type for each classification. The City/County of San Bernardino and FHWA approves a program if one of the following is met:

1. It is calculated to:
  - Meet the your equal employment opportunity responsibilities
  - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

The prime contractor shall obtain the State's approval for their training program before they start work involving the classification covered by the program.

The prime contractor shall provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of San Bernardino reimburses the prime contractor 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and prime contractor does at least one of the following:
  - a. Contribute to the cost of the training
  - b. Provide the instruction to the apprentice or trainee
  - c. Pay the apprentice's or trainee's wages during the off-site training period
3. If the prime contractor complies with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

The prime contractor shall furnish the apprentice or trainee with a copy of the program that the prime contractor will comply with in providing the training

**EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_  
 3. Project Description: \_\_\_\_\_  
 4. Project Location: \_\_\_\_\_  
 5. Bidder's Name: \_\_\_\_\_ 6. Prime Certified DBE:  7. Bid Amount: \_\_\_\_\_  
 8. Total Dollar Amount for **ALL** Subcontractors: \_\_\_\_\_ 9. Total Number of **ALL** Subcontractors: \_\_\_\_\_

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount

<b>Local Agency to Complete this Section upon Execution of Award</b>		<b>15. TOTAL CLAIMED DBE PARTICIPATION</b>	%
21. Local Agency Contract Number: _____			
22. Federal-Aid Project Number: _____		<p><b>IMPORTANT:</b> Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.</p>	
23. Bid Opening Date: _____			
24. Contract Award Date: _____			
25. Award Amount: _____			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		16. Preparer's Signature _____	17. Date _____
26. Local Agency Representative's Signature _____	27. Date _____	18. Preparer's Name _____	19. Phone _____
28. Local Agency Representative's Name _____	29. Phone _____	20. Preparer's Title _____	
30. Local Agency Representative's Title _____			

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.  
 3. Include additional copy with award package.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT

### CONTRACTOR SECTION

- 1. Local Agency** - Enter the name of the local agency that is administering the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location(s) as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 5. Bidder's Name** - Enter the contractor's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
- 8. Total Dollar Amount for ALL Subcontractors** – Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 9. Total number of ALL subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 10. Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
- 11. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 12. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 13. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
- 14. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 15. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 16. Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
- 17. Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
- 18. Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
- 19. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
- 20. Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

### LOCAL AGENCY SECTION

- 21. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 22. Federal-Aid Project Number** - Enter the Federal-Aid Project Number(s).
- 23. Bid Opening Date** - Enter the date contract bids were opened.
- 24. Contract Award Date** - Enter the date the contract was executed.
- 25. Award Amount** – Enter the contract award amount as stated in the executed contract.
- 26. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
- 27. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 28. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
- 29. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.

**30. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.

NOT FOR BID

**EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS**

Cost Proposal Due Date \_\_\_\_\_ PE/CE

Federal-aid Project No(s). \_\_\_\_\_ Bid Opening Date \_\_\_\_\_ CON

The \_\_\_\_\_ established a Disadvantaged Business Enterprise (DBE) goal of \_\_\_\_\_ for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates



- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:

This content is from the eCFR and is authoritative but unofficial.

## Title 49 - Transportation

### Subtitle A - Office of the Secretary of Transportation

#### Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

##### Subpart A General

- § 26.1 What are the objectives of this part?
- § 26.3 To whom does this part apply?
- § 26.5 What do the terms used in this part mean?
- § 26.7 What discriminatory actions are forbidden?
- § 26.9 How does the Department issue guidance and interpretations under this part?
- § 26.11 What records do recipients keep and report?
- § 26.13 What assurances must recipients and contractors make?
- § 26.15 How can recipients apply for exemptions or waivers?

##### Subpart B Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- § 26.21 Who must have a DBE program?
- § 26.23 What is the requirement for a policy statement?
- § 26.25 What is the requirement for a liaison officer?
- § 26.27 What efforts must recipients make concerning DBE financial institutions?
- § 26.29 What prompt payment mechanisms must recipients have?
- § 26.31 What information must you include in your DBE directory?
- § 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- § 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- § 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- § 26.39 Fostering small business participation.

##### Subpart C Goals, Good Faith Efforts, and Counting

- § 26.41 What is the role of the statutory 10 percent goal in this program?
- § 26.43 Can recipients use set-asides or quotas as part of this program?
- § 26.45 How do recipients set overall goals?
- § 26.47 Can recipients be penalized for failing to meet overall goals?
- § 26.49 How are overall goals established for transit vehicle manufacturers?
- § 26.51 What means do recipients use to meet overall goals?

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

§ 26.55 How is DBE participation counted toward goals?

**Subpart D** Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

§ 26.63 What rules govern group membership determinations?

§ 26.65 What rules govern business size determinations?

§ 26.67 What rules determine social and economic disadvantage?

§ 26.69 What rules govern determinations of ownership?

§ 26.71 What rules govern determinations concerning control?

§ 26.73 What are other rules affecting certification?

**Subpart E** Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

§ 26.83 What procedures do recipients follow in making certification decisions?

§ 26.85 Interstate certification.

§ 26.86 What rules govern recipients' denials of initial requests for certification?

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

§ 26.88 Summary suspension of certification.

§ 26.89 What is the process for certification appeals to the Department of Transportation?

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

**Subpart F** Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

§ 26.105 What enforcement actions apply in FAA programs?

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

**Appendix A to Part 26**

Guidance Concerning Good Faith Efforts

**Appendix B to Part 26**

Uniform Report of DBE Awards or Commitments and Payments  
Form

**Appendix C to Part 26**

DBE Business Development Program Guidelines

**Appendix D to Part 26**

Mentor-Protégé Program Guidelines

**Appendix E to Part 26**

Individual Determinations of Social and Economic Disadvantage

## Appendix F to Part 26

Uniform Certification Application Form

## Appendix G to Part 26

Personal Net Worth Statement

# PART 26 - PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d, et seq.; Sec. 1101(b), Pub. L. 114-94, 129 Stat. 1312, 1324; 49 U.S.C. 47113, 47123; Sec. 150, Pub. L. 115-254, 132 Stat. 3215.

**Source:** 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

## Subpart A - General

### § 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

*[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]*

### § 26.3 To whom does this part apply?

- (a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
  - (2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
  - (3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*
- (b) [Reserved]
- (c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.
- (d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

## § 26.5 What do the terms used in this part mean?

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (i) One concern controls or has the power to control the other; or
  - (ii) A third party or parties controls or has the power to control both; or
  - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation** (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

**Assets** mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

**Business, business concern or business enterprise** means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

**Compliance** means that a recipient has correctly implemented the requirements of this part.

**Contingent Liability** means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

**Days** mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

**Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged business enterprise or DBE** means a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Home state** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Liabilities** mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

**Primary recipient** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.



*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

**Spouse** means a married person, including a person in a domestic partnership or a civil union recognized under State law.

**Transit vehicle manufacturer** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

**Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

**You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

## § 26.7 What discriminatory actions are forbidden?

- (a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.
- (b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

## § 26.9 How does the Department issue guidance and interpretations under this part?

- (a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.
- (b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

## § 26.11 What records do recipients keep and report?

- (a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.
- (b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.
- (c) You must create and maintain a bidders list.
  - (1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.
  - (2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:
    - (i) Firm name;
    - (ii) Firm address;
    - (iii) Firm's status as a DBE or non-DBE;
    - (iv) Age of the firm; and
    - (v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.
  - (3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).
- (d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.
- (e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:
  - (1) Women;
  - (2) Socially and economically disadvantaged individuals (other than women); and
  - (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

## § 26.13 What assurances must recipients and contractors make?

- (a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- (b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;
  - (2) Assessing sanctions;
  - (3) Liquidated damages; and/or
  - (4) Disqualifying the contractor from future bidding as non-responsible.

[79 FR 59593, Oct. 2, 2014]

## § 26.15 How can recipients apply for exemptions or waivers?

- (a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.
- (b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

- (1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.
- (2) Your application must show that -
  - (i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;
  - (ii) Conditions in your jurisdiction are appropriate for implementing the proposal;
  - (iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and
  - (iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.
- (3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:
  - (i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;
  - (ii) Your level of DBE participation continues to be consistent with the objectives of this part;
  - (iii) There is a reasonable limitation on the duration of your modified program; and
  - (iv) Any other conditions the Secretary makes on the grant of the waiver.
- (4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

## **Subpart B - Administrative Requirements for DBE Programs for Federally-Assisted Contracting**

### **§ 26.21 Who must have a DBE program?**

- (a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:
  - (1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;
  - (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;
  - (3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.
- (b)

- (1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).
- (2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.
- (c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 79 FR 59593, Oct. 2, 2014]

### **§ 26.23 What is the requirement for a policy statement?**

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

### **§ 26.25 What is the requirement for a liaison officer?**

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

### **§ 26.27 What efforts must recipients make concerning DBE financial institutions?**

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

### **§ 26.29 What prompt payment mechanisms must recipients have?**

- (a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
  - (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
  - (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

- (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
- (c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- (d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.
- (e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
  - (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
  - (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
  - (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

### **§ 26.31 What information must you include in your DBE directory?**

- (a) In the directory required under § 26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.
- (b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

### **§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?**

- (a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

- (b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- (c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

### **§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?**

- (a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.
- (b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.
  - (1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
  - (2) During the course of the mentor-protégé relationship, you must:
    - (i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and
    - (ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.
  - (3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.
- (c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

### **§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?**

- (a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.
- (b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).



- (c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

### § 26.39 Fostering small business participation.

- (a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:
  - (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
  - (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
  - (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
  - (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
  - (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- (c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

### Subpart C - Goals, Good Faith Efforts, and Counting

#### § 26.41 What is the role of the statutory 10 percent goal in this program?

- (a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

- (c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

### § 26.43 Can recipients use set-asides or quotas as part of this program?

- (a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.
- (b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

### § 26.45 How do recipients set overall goals?

- (a)
  - (1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.
  - (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.
- (b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.
- (c) **Step 1.** You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.
  - (1) **Use DBE Directories and Census Bureau Data.** Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.
  - (2) **Use a bidders list.** Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.

- (3) **Use data from a disparity study.** Use a percentage figure derived from data in a valid, applicable disparity study.
  - (4) **Use the goal of another DOT recipient.** If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
  - (5) **Alternative methods.** Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.
- (d) **Step 2.** Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.
- (1) There are many types of evidence that must be considered when adjusting the base figure. These include:
    - (i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
    - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
    - (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.
  - (2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
    - (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;
    - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.
  - (3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- (e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:
- (1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

- (2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.
- (3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.
  - (i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.
  - (ii) A project goal covers the entire length of the project to which it applies.
  - (iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.
  - (iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)

- (1)
  - (i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.
  - (ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.
  - (iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.
  - (iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.
  - (v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.
- (2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.
- (3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and,

where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

- (4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.
- (5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:
  - (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
  - (ii) Avoid imposing undue burdens on non-DBEs.
- (6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.
- (7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)

- (1) In establishing an overall goal, you must provide for consultation and publication. This includes:
  - (i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.
  - (ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

- (2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.
- (h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

### § 26.47 Can recipients be penalized for failing to meet overall goals?

- (a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.
- (b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.
- (c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:
  - (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
  - (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;
  - (3)
    - (i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.
    - (ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.
  - (4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
  - (5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

- (i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;
  - (ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or
  - (iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.
- (d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

### § 26.49 How are overall goals established for transit vehicle manufacturers?

- (a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.
- (1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
  - (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
  - (3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
  - (4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.
- (b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.
- (1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.
    - (i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and
    - (ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

- (iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).
- (2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.
- (c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.
- (d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.
- (e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.
- (f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

### § 26.51 What means do recipients use to meet overall goals?

- (a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.
- (b) Race-neutral means include, but are not limited to, the following:
  - (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.
  - (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
  - (3) Providing technical assistance and other services;
  - (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
  - (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;



- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
  - (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
  - (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
  - (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.
- (d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.
- (e) The following provisions apply to the use of contract goals:
- (1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
  - (2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.
  - (3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.
  - (4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.
- (f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:
- (1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not

at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

- (2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

- (3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

- (4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

- (g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

### § 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

- (a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:
  - (1) Documents that it has obtained enough DBE participation to meet the goal; or
  - (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.
- (b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:
  - (1) Award of the contract will be conditioned on meeting the requirements of this section;
  - (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
    - (i) The names and addresses of DBE firms that will participate in the contract;
    - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
    - (iii) The dollar amount of the participation of each DBE firm participating;
    - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3)
- (i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section -
    - (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
    - (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.
  - (ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.
- (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
- (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
- (1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
  - (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
  - (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
  - (4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
  - (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- (e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)

(1)

(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes 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 to 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vii) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels 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.

- (4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.
- (g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall 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 you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.
- (h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.
- (i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.
- (j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

### § 26.55 How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
  - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for 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, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
  - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
  - (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) 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.

- (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) 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.
- (4) 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 another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

- (6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

- (7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. 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.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1)



- (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
- (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)

- (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  - (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  - (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- (4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 79 FR 59595, Oct. 2, 2014]

## Subpart D - Certification Standards

### § 26.61 How are burdens of proof allocated in the certification process?

- (a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.
- (b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.
- (c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).
- (d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)
- (e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

### § 26.63 What rules govern group membership determinations?

- (a)
  - (1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.
  - (2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.
  - (3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

- (b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.
  - (1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
  - (2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

### § 26.65 What rules govern business size determinations?

- (a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.104), over the firm's previous three fiscal years, in excess of \$26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.
- (c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009, as amended at 79 FR 59596, Oct. 2, 2014; 85 FR 80647, Dec. 14, 2020]

### § 26.67 What rules determine social and economic disadvantage?

- (a) **Presumption of disadvantage.**
  - (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
    - (2)
      - (i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.
      - (ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G

to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

- (iii) In determining an individual's net worth, you must observe the following requirements:
  - (A) Exclude an individual's ownership interest in the applicant firm;
  - (B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
  - (C) Do not use a contingent liability to reduce an individual's net worth.
  - (D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
- (iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other State to which the individual's firm has applied for certification under § 26.85 of this part.

(b) ***Rebuttal of presumption of disadvantage.***

- (1) An individual's presumption of economic disadvantage may be rebutted in two ways.
  - (i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

**Example to paragraph (b)(1)(i):** An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)

- (A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:
- (1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
  - (2) Whether the income was unusual and not likely to occur in the future;
  - (3) Whether the earnings were offset by losses;
  - (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
  - (5) Other evidence that income is not indicative of lack of economic disadvantage; and
  - (6) Whether the total fair market value of the owner's assets exceed \$6 million.
- (B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

- (2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.
- (3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.
- (4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) **Transfers within two years.**

- (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

- (2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.
- (d) **Individual determinations of social and economic disadvantage.** Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

[79 FR 59596, Oct. 2, 2014]

### § 26.69 What rules govern determinations of ownership?

- (a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
  - (1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
  - (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
  - (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- (c)
  - (1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.
  - (2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

- (3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.
- (4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c):

- (i) An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.
- (ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

- (iii) The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

- (d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if -

- (1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
- (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

- (1) The owner's expertise must be -
  - (i) In a specialized field;
  - (ii) Of outstanding quality;

- (iii) In areas critical to the firm's operations;
- (iv) Indispensable to the firm's potential success;
- (v) Specific to the type of work the firm performs; and
- (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual -

- (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- (2) Through inheritance, or otherwise because of the death of the former owner.

(h)

(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is -

- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- (ii) Involved in the same or a similar line of business; or
- (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that -

- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.



- (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- (j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because -
  - (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;
  - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
  - (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59597, Oct. 2, 2014]

### § 26.71 What rules govern determinations concerning control?

- (a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.
- (b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
  - (1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
  - (3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
  - (4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- (c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory

agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

- (d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
  - (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  - (2) In a corporation, disadvantaged owners must control the board of directors.
  - (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- (e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
- (g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)

- (1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.
  - (2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
- (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (k)
- (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.
  - (2) If you cannot determine that the socially and economically disadvantaged owners - as distinct from the family as a whole - control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:
- (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.
- (m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely

because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

- (n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.
- (1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.
- (2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.
- (3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.
- (4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.
- (o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

- (q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011; 79 FR 59597, Oct. 2, 2014]

## § 26.73 What are other rules affecting certification?

(a)

- (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
- (2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)

- (1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.
- (2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm - even a DBE firm - cannot be an eligible DBE.

- (1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

- (2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

**Example 1:** Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

**Example 2:** Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

**Example 3:** Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

**Example 4:** Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

**Example 5:** Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

**Example 6:** The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) You must not require a DBE firm to be prequalified as a condition for certification.

- (h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.
- (i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).
  - (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
    - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
    - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
    - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
  - (2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).
  - (3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

## Subpart E - Certification Procedures

### § 26.81 What are the requirements for Unified Certification Programs?

- (a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).
  - (1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.
  - (2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement

shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

- (3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
  - (4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.
  - (5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.
- (b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.
    - (1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.
    - (2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
    - (3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
  - (c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
  - (d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
  - (e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
  - (f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.
  - (g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.



- (h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

### § 26.83 What procedures do recipients follow in making certification decisions?

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c)
  - (1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
    - (i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
    - (ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing
    - (iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
    - (iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;
    - (v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
    - (vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
    - (vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
    - (viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this part.

- (2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.
  - (3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
  - (4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.
- (e) [Reserved]
- (f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- (h)
- (1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.
  - (2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.
- (i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
- (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
  - (2) You must attach supporting documentation describing in detail the nature of such changes.

- (3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).
- (j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).
- (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.
- (l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- (m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

## § 26.85 Interstate certification.

- (a) This section applies with respect to any firm that is currently certified in its home state.
- (b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

- (1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.
  - (2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.
- (c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.
- (1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see § 26.83(j)) and any notices of changes (see § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.
  - (2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.
  - (3) If you have filed a certification appeal with DOT (see § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.
  - (4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
    - (i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.
    - (ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.
- (d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:
- (1) Within seven days contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.
  - (2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:
    - (i) Evidence that State A's certification was obtained by fraud;
    - (ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

- (iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
  - (iv) The State law of State B requires a result different from that of the State law of State A.
  - (v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
- (3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.
- (4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.
- (i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
  - (ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.
  - (iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.
  - (iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
  - (v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
  - (vi) The firm's application for certification is stayed pending the outcome of this process.
  - (vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§ 26.89 of this part.
- (e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- (f)

- (1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:
    - (i) The name of the firm;
    - (ii) The name(s) of the firm's owner(s);
    - (iii) The type and date of the action;
    - (iv) The reason for the action.
  - (2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.
  - (3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.
- (g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

### § 26.86 What rules govern recipients' denials of initial requests for certification?

- (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.
- (b) [Reserved]
- (c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to § 26.89 does not extend this period.
- (d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003; 79 FR 59598, Oct. 2, 2014]

### § 26.87 What procedures does a recipient use to remove a DBE's eligibility?

- (a) *Ineligibility complaints.*

- (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).
  - (2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
  - (3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- (b) **Recipient-initiated proceedings.** If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- (c) **DOT directive to initiate proceeding.**
- (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
  - (2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
  - (3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.
- (d) **Hearing.** When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
- (1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
  - (2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

- (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
- (e) **Separation of functions.** You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
  - (1) Your method of implementing this requirement must be made part of your DBE program.
  - (2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
  - (3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.
- (f) **Grounds for decision.** You may base a decision to remove a firm's eligibility only on one or more of the following grounds:
  - (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
  - (2) Information or evidence not available to you at the time the firm was certified;
  - (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
  - (4) A change in the certification standards or requirements of the Department since you certified the firm;
  - (5) Your decision to certify the firm was clearly erroneous;
  - (6) The firm has failed to cooperate with you (see § 26.109(c));
  - (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or
  - (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.
- (g) **Notice of decision.** Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.
- (h) [Reserved]
- (i) **Status of firm during proceeding.**



- (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.
  - (2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.
- (j) **Effects of removal of eligibility.** When you remove a firm's eligibility, you must take the following action:
- (1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.
  - (2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.
  - (3) **Exception:** If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.
- (k) **Availability of appeal.** When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011; 79 FR 59599, Oct. 2, 2014]

### § 26.88 Summary suspension of certification.

- (a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- (b)
  - (1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).
  - (2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
- (c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

- (d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- (e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
- (f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- (g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.
- (h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under § 26.89 of this part, as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

### § 26.89 What is the process for certification appeals to the Department of Transportation?

- (a)
  - (1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.
  - (2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
  - (3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- (b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.
- (c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of

this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

- (d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- (e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
- (f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
  - (1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
  - (2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.
  - (3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
  - (4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
  - (5) The Department does not uphold your decision based on grounds not specified in your decision.
  - (6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

- (7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
- (8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- (g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008; 79 FR 59599, Oct. 2, 2014]

### **§ 26.91 What actions do recipients take following DOT certification appeal decisions?**

- (a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.
- (b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:
  - (1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.
  - (2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.
  - (3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.
  - (4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.
  - (5) If the Department affirms your determination, no further action is necessary.
- (c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

## Subpart F - Compliance and Enforcement

### § 26.101 What compliance procedures apply to recipients?

- (a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.
- (b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

### § 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

- (a) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (b) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (c) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.
- (d) **Conciliation.**
  - (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
  - (2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

- (3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.
- (4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.
- (e) **Enforcement actions.**
  - (1) Enforcement actions are taken as provided in this subpart.
  - (2) Applicable findings in enforcement proceedings are binding on all DOT offices.

### § 26.105 What enforcement actions apply in FAA programs?

- (a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.
- (b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.
- (c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

### § 26.107 What enforcement actions apply to firms participating in the DBE program?

- (a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
- (b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- (d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.
- (e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

## § 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

### (a) *Availability of records.*

- (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
- (2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

### (b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

### (c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

### (d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

## Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps

to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

- (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

- (2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D.



- (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
- (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E.

- (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
- (2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds

the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in § 26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

## Appendix B to Part 26 - Uniform Report of DBE Awards or Commitments and Payments Form

### INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/ COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.
3. Specify the Federal fiscal year (*i.e.*, October 1-September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire year.
6. Provide the name and address of the recipient.
7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

## Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or

committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

## Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11 - 17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The "Non-Minority" category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either "women" OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

### Section C: Payments on Ongoing Contracts

Line 18(A-E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

### Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)-20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)-21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

\*\*Submit your completed report to your Regional or Division Office.

**UNITED STATES DEPARTMENT OF COMMERCE**  
**UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS**  
Please refer to the instructions about the instructions on filing and this form.

1. FIRM NAME: [REDACTED] 2. FIRM TYPE: [REDACTED] 3. FIRM ADDRESS: [REDACTED] 4. REPORT PERIOD: [REDACTED] 5. REPORT DATE: [REDACTED]

**Awards/Commitments This Reporting Period**

A	B	C	D	E	F	G	H	I	J	K	L
Awards/Commitments Made During This Reporting Period	Total Dollars	Total Number	Total to DBEs (Number)	Total to DBEs (Amount)	Total to DBEs (Percentage)	Total to DBEs (Number)	Total to DBEs (Amount)	Total to DBEs (Percentage)	Total to DBEs (Number)	Total to DBEs (Amount)	Total to DBEs (Percentage)
1. DBE Firms	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. Non-DBE Firms	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Payments Made This Period**

M	N	O	P	Q	R
Total Dollars Paid	Total Number of Contracts with DBEs	Total Dollars Paid to DBEs	Total Number of DBE Firms Paid	Total Dollars Paid to DBEs (Percentage)	Total Number of DBE Firms Paid (Percentage)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[79 FR 59601, Oct. 2, 2014]

**Appendix C to Part 26 - DBE Business Development Program Guidelines**

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

- (A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.
- (B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

- (C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.
- (D) The business plan should contain at least the following:
  - (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
  - (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
  - (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
  - (4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
  - (5) Such other information as the recipient may require.
- (E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.
- (F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:
  - (1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
  - (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
  - (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
  - (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.
- (G) Program participation is divided into two stages;
  - (1) a developmental stage and
  - (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial



skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

- (H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.
- (I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.
- (J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.
- (K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:
  - (1) Profitability;
  - (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
  - (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
  - (4) Ability to obtain bonding;
  - (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
  - (6) Good management capacity and capability.
- (L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.
- (M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

## Appendix D to Part 26 - Mentor-Protégé Program Guidelines

- (A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.
- (B)
- (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.
- (2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.
- (C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

## Appendix E to Part 26 - Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see [13 CFR 124.103\(c\)](#) and [124.104](#)).

### Social Disadvantage

- I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:
- (A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- (B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

- (C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
- (1) **Education.** Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.
  - (2) **Employment.** Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.
  - (3) **Business history.** The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.
- II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities - especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) - may be socially and economically disadvantaged.
- III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

## Economic Disadvantage

- (A) **General.** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- (B) **Submission of narrative and financial information.**
- (1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) **Factors to be considered.** In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) **Transfers within two years.**

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.


(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

### Appendix F to Part 26 - Uniform Certification Application Form

Appendix F



**UNIFORM CERTIFICATION APPLICATION**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) /**  
**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**  
**49 C.F.R. Parts 23 and 26**

**Roadmap for Applicants**

**1. Should I apply?**  
 You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a associated activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) (who also controls it).
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.5M in gross annual receipts for DBE (\$52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, air rental companies, pay telephone firms, and automobile dealers.)

**2. How do I apply?**  
 First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

**3. Where can I send my application?** INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION

**4. Who will contact me about my application and what are the eligibility standards?**  
 The DBE and ACDBE Programs require that all U.S. Departments of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop verification program that eliminates the need for your firm to obtain certification from multiple verifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT purposes, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

**5. Where can I find more information?**  
 U.S. DOT—<http://www.dot.gov> (This site provides useful links to the rules and regulations governing the DBE/ACDBE programs, questions and answers, and other pertinent information).  
 SBA—Small Business Size standards matched to the North American Industry Classification System (NAICS): <http://www.sba.gov/sbs/size-standards> and <http://sbs.sba.gov/content/tables/small-business-size-standards>.

By collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a). The Privacy Act provides confidentiality protections for your personal information. This includes how information is collected, used, disclosed, stored, and destroyed. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR 23.2 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR 26.5. You may review DOT's complete Privacy Act Statement to the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. 26.107 dated February 7, 2009 and January 26, 2011, if at any time the Department or a recipient has reason to believe that any person or firm has violated and knowingly provided incorrect information or made false statements, the Department may initiate enforcement proceedings against the person or firm under 49 C.F.R. Parts 103 and 120. Such enforcement proceedings and enforcement, like subsequent action under 49 C.F.R. Part 11, Program Fraud and Civil Remedies, include referral the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1003, which prohibits false statements in Federal programs.



**INSTRUCTIONS FOR COMPLETING THE  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)  
UNIFORM CERTIFICATION APPLICATION**

**NOTE:** All participating firms must be for-profit enterprises. If your firm is not for-profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, tabling care to indicate on each attached sheet regarding the section and number of this application to which it refers.

**Section 1: CERTIFICATION INFORMATION**

**A. Basic Contact Information**

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website address, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

**B. Prior Other Certifications and Applications**

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE program, and provide the name of the certifying agency that certified your firm. Use the dates of any site visits conducted by your home team and any extensions or UCP members. Also provide the names of state UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was delisted, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency or Federal entity. If your account is suspended, identify the name of the agency and explain fully the nature of the action in the space provided. Indicate if you have ever appealed the decision to the Department and if so, attach a copy of USDOOT's final agency decision(s).

**Section 2: GENERAL INFORMATION**

**A. Business profile**

- (1) Give a concise description of the firm's primary activities, the products or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be found in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the firm(s) of work you identified in your business profile, state the code in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the ownership of your firm, and check other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for-profit." If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for-profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide those firms' gross receipts and submit complete copies of those firms' Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 49 C.F.R. Part 121.

**B. Relationships and Dealings with Other Businesses**

- (10) Check the appropriate box that indicates whether your firm is affiliated in any of its business activities or whether your firm shares a telephone number(s), a post office box, any office space, a truck, warehouse, office facilities, any equipment, financing, or any other staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with those other business(es) by identifying the business or person with whom you have any financial, informal, verbal, or



and agreement. Provide an explanation of any issue shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked "Yes," please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
  - (a) ever existed under different ownership, a different type of ownership, or a different name;
  - (b) existed as a subsidiary of any other firm;
  - (c) acted as a partner in which one or more of the partners are/were other firms;
  - (d) owned any percentage of any other firm and had any subsidiaries of its own;
  - (e) served as a subcontractor with another firm constituting more than 25% of your firm's revenue.

If you answered "Yes" to any of the questions in (2)-(5), you may be asked to explain the arrangement(s) in detail.

**Section 3: MAJORITY OWNER INFORMATION**

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below. (If your firm has more than one owner, provide completed copies of this section for each owner.)

**A. Identify the majority owner of the firm holding 51% or more ownership interest.**

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Indicate the owner's ethnic group membership. If you checked "Other," specify that owner's ethnic group/identity not otherwise listed.

- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.

- (8) Enter the number of years during which this owner has been an owner of your firm.

- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate) the class of stock owned.

- (10) Indicate the dollar value of this owner's latest investment to acquire an ownership interest in your firm broken down by stock and other investment, equipment and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

**B. Additional Owner Information**

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," only the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
- (b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
- (b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.

- (5) Check the appropriate box indicating whether any of your immediate family members, managers, or employees own, manage, or are associated with another company. Immediate family member is defined in 49 CFR §26.5.

- (6) If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.


**Section 4: CONTROL**

**A. Identify the firm's Officers and Board of Directors**

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

- (3) Check the appropriate box to indicate whether any of your firm's officers, under directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.

- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own, or work for any other firm(s) that has a relationship with your firm (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



**B. Duties of Owners, Officers, Directors, Managers and Key Personnel**

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who started the functions listed for the business. Submit resumes for each owner and non-owner identified below. Note the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, loans, personnel sharing, etc.) If you answered "Yes," describe the nature of the business relationship with that other firm.

**C. Inventory** Indicate firm inventory in those categories:

(A) **Equipment and Vehicle:**  
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where the firm is stored.

(B) **Office Space:**  
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(C) **Storage Space:**  
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

**D. Does your firm rely on any other firm for management functions or employee payroll?**

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance, and the extent to which the other firm carries out such functions.

**F. Financial - Banking Information**

Banking Information: State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and agreement numbers.

Heading Information: State your firm's banking firm in dollars, specifying both the aggregate and project loans.

**F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.**

Note the name and address of each source, the name of person receiving the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements.

**G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:**

Indicate in the space provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

**H. Current licenses/permits held by any owner or employee of your firm.**

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing state of the license or permit. Attach copies of licenses, license renewal forms, permits, and bond indemnity forms.

**I. Largest contracts completed by your firm in the past three years, if any:**

List the name of each owner or contractor for each contract, the name and location of the project under each contract, the type of work performed on each contract, and the dollar value of each contract.

**J. Largest active jobs on which your firm is currently working:**

For each active job listed, state the name of the prime contractor and the project location, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

**AIRPORT CONCESSION (ACDBE) APPLICANTS**  
Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns, and its operations, including name, location, type of concession, and start date of the concession enterprise.

**AFFIDAVIT & SIGNATURE**  
The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then return the form.



**Section 1: CERTIFICATION INFORMATION**

**A. Basic Contact Information**

(1) Contact person and Title: \_\_\_\_\_ (2) Legal name of firm: \_\_\_\_\_

(3) Phone #: ( ) \_\_\_\_\_ (4) Other Phone #: ( ) \_\_\_\_\_ (5) Fax #: ( ) \_\_\_\_\_

(6) E-mail: \_\_\_\_\_ (7) Firm Websites: \_\_\_\_\_

(8) Street address of firm (No P.O. Box): City: \_\_\_\_\_ County/Parish: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(9) Mailing address of firm (if different): City: \_\_\_\_\_ County/Parish: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**B. Prior Other Certifications and Applications**

(10) Is your firm currently certified for any of the following U.S. DOT programs?  
 DBE  ACDBE Names of certifying agencies: \_\_\_\_\_

If firm not certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:  
Date \_\_\_/\_\_\_/\_\_\_ State UCP Member: \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_ State UCP Member: \_\_\_\_\_

(11) Indicate whether the firm or any persons listed in this application have ever been:  
(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm?  Yes  No  
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?  Yes  No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision.)  
\_\_\_\_\_  
\_\_\_\_\_

**Section 2: GENERAL INFORMATION**

**A. Business Profile:** (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Applicable NAICS Codes for this line of work include: \_\_\_\_\_

(3) This firm was established on \_\_\_\_\_ (4) I/We have owned this firm since: \_\_\_\_\_

(5) Method of acquisition (Check all that apply):  
 Started new business  Bought existing business  Inherited business  Secured concession  
 Merger or consolidation  Other (specify) \_\_\_\_\_

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(6) Is your firm "for profit"?  Yes  No -- **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application. Federal Tax ID# \_\_\_\_\_

(7) Type of Legal Business Structure: *check all that apply.*  
 Sole Proprietorship  Limited Liability Partnership  
 Partnership  Corporation  
 Limited Liability Company  Joint Venture (Identify all JV partners: \_\_\_\_\_)  
 Applying as an ACDBE  Other. Describe \_\_\_\_\_

(8) Number of employees: Full-time \_\_\_\_\_ Part-time \_\_\_\_\_ Seasonal \_\_\_\_\_ Total \_\_\_\_\_  
*(Provide a list of employees, their job titles, and dates of employment, in your application.)*

(9) Specify the firm's gross receipts for the last 3 years. *(Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owner, you must submit complete copies of those firms' Federal tax returns.)*

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

**B. Relationships and Dealings with Other Businesses**

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity?  Yes  No  
*If Yes, explain the nature of your relationship with those other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.*


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?  Yes  No. If Yes, explain \_\_\_\_\_

(3) At present, or at any time in the past, has your firm:  
(a) Ever existed under different ownership, a different type of ownership, or a different name?  Yes  No  
(b) Existed as a subsidiary of any other firm?  Yes  No  
(c) Existed as a partnership in which one or more of the partners are/were other firms?  Yes  No  
(d) Owned any percentage of any other firm?  Yes  No  
(e) Had any subsidiaries?  Yes  No  
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts?  Yes  No  
*If you answered "Yes" in any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement constitutes \_\_\_\_\_*

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**Section 3: MAJORITY OWNER INFORMATION**



**A. Identify the majority owner of the firm holding 51% or more ownership interest.**

(1) Full Name: \_\_\_\_\_ (2) Title: \_\_\_\_\_ (3) Home Phone #: \_\_\_\_\_

(4) Home Address (Street and Number): \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(5) Gender:  Male  Female

(6) Ethnic group membership (Check all that apply)

Black  Hispanic  
 Asian Pacific  Native American  
 Subcontinent Asian  
 Other (specify) \_\_\_\_\_

(7) U.S. Citizenship:

U.S. Citizen  
 Lawfully Admitted Permanent Resident

(8) Number of years as owner: \_\_\_\_\_

(9) Percentage owned: \_\_\_\_\_ %  
Class of stock owned: \_\_\_\_\_  
Date acquired: \_\_\_\_\_

(10) Initial investment to acquire ownership interest in firm

Type	Dollar Value
Cash	\$ _____
Real Estate	\$ _____
Equipment	\$ _____
Other	\$ _____

Describe how you acquired your business:

Started business myself  
 It was a gift from: \_\_\_\_\_  
 I bought it from: \_\_\_\_\_  
 I inherited it from: \_\_\_\_\_  
 Other: \_\_\_\_\_

*(Attach documentation substantiating your investment!)*

**B. Additional Owner Information**

(1) Describe familial relationship to other owners and employees:  
\_\_\_\_\_  
\_\_\_\_\_

(2) Does this owner perform a management or supervisory function for any other business?  Yes  No  
If Yes, identify: Name of Business: \_\_\_\_\_ Function: Title: \_\_\_\_\_

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g. owning interest, shared office space, financial investment, equipment, loans, personal services, etc.)  Yes  No  
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:  
\_\_\_\_\_  
\_\_\_\_\_

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: \_\_\_\_\_

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ \_\_\_\_\_

(b) Has any trust been created for the benefit of this disadvantaged owner(s)?  Yes  No  
*(If Yes, you may be asked to provide a copy of the trust instrument)*

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company?  Yes  No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company. (Please attach entry above, if needed): \_\_\_\_\_

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**Section 3: OWNER INFORMATION, Cont'd.**

**A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm.** *(Attach separate sheets for each additional owner.)*

(1) Full Name: \_\_\_\_\_ (2) Title: \_\_\_\_\_ (3) Home Phone #: \_\_\_\_\_  
(4) Home Address (Street and Number): \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(5) Gender:  Male  Female

(6) Ethnic group membership *(Check all that apply)*  
 Black  Hispanic  
 Asian Pacific  Native American  
 Subcontinent Asian  
 Other (specify): \_\_\_\_\_

(7) U.S. Citizenship:  
 U.S. Citizen  
 Lawfully Admitted Permanent Resident

(8) Number of years as owner: \_\_\_\_\_

(9) Percentage owned: \_\_\_\_\_ %  
Class of stock owned: \_\_\_\_\_  
Date acquired: \_\_\_\_\_

(10) Initial investment to acquire ownership interest in firm

Type	Dollar Value
Cash	\$ _____
Real Estate	\$ _____
Equipment	\$ _____
Other	\$ _____

Describe how you acquired your business:  
 Started business myself  
 It was a gift from: \_\_\_\_\_  
 I bought it from: \_\_\_\_\_  
 I inherited it from: \_\_\_\_\_  
 Other: \_\_\_\_\_  
*(Attach documentation substantiating your investment.)*

**B. Additional Owner Information**

(1) Describe familial relationship to other owners and employees: \_\_\_\_\_

(2) Does this owner perform a management or supervisory function for any other business?  Yes  No  
If Yes, identify: Name of business: \_\_\_\_\_ Position Title: \_\_\_\_\_

(3)(a) Does this owner own or work for any other firms that has a relationship with this firm? *(e.g., ownership interest, shared office space, financial transactions, equipment, loans, personal sharing, etc.)*  Yes  No  
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm: \_\_\_\_\_

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: \_\_\_\_\_

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ \_\_\_\_\_

(b) Has any trust been created for the benefit of this disadvantaged owner(s)?  Yes  No  
*(If Yes, you may be asked to provide a copy of the trust instrument.)*

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company?  Yes  No. If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage. *(Please attach extra sheets, if needed):* \_\_\_\_\_

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**Section 4: CONTROL**

**A. Identify your firm's Officers and Board of Directors** (If additional space is required, attach a separate sheet)

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company:	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors:	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?  
 Yes  No. If Yes, identify for each:

Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investment, equipment lease, personnel sharing, etc.)  
 Yes  No. If Yes, identify for each:

Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Duties of Owners, Officers, Directors, Managers, and Key Personnel**

(1) Identify your firm's management personnel who control your firm in the following areas. (Attach separate sheet as needed)

	Majority Owner (51% or more)				Minority Owner (49% or less)			
	A	F	S	N	A	F	S	N
Set policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hires and fires field staff or crew	A	F	S	N	A	F	S	N
Designates profit spending or investments	A	F	S	N	A	F	S	N
Obtains business by contract/bid	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Sign business checks	A	F	S	N	A	F	S	N

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**2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).**

A = Always F = Frequently	S = Seldom N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/Key Personnel			
		Name:	Title:	Race and Gender:	Percent Owned:	Name:	Title:	Race and Gender:	Percent Owned:
		A	F	S	N	A	F	S	N
Sets policy for company directors/scope of operations		A	F	S	N	A	F	S	N
Bidding and estimating		A	F	S	N	A	F	S	N
Major purchasing decisions		A	F	S	N	A	F	S	N
Marketing and sales		A	F	S	N	A	F	S	N
Supervises field operations		A	F	S	N	A	F	S	N
Attend bid opening and lettings		A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable payable, etc.)		A	F	S	N	A	F	S	N
Hires and fires management staff		A	F	S	N	A	F	S	N
Hires and fires field staff or crew		A	F	S	N	A	F	S	N
Designates profits, spending or investment		A	F	S	N	A	F	S	N
Obligates business by contract credit		A	F	S	N	A	F	S	N
Purchase equipment		A	F	S	N	A	F	S	N
Signs business checks		A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: \_\_\_\_\_

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investment, equipment lease, personnel sharing, etc.) If Yes, describe the nature of the business relationship: \_\_\_\_\_

**C. Inventory:** Indicate your firm's inventory in the following categories (Please attach additional sheets if needed):

**1. Equipment and Vehicles**

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

**2. Office Space**

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease
_____		
_____		

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**3. Storage Space** *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

**D. Does your firm rely on any other firm for management functions or employee payroll?**  Yes  No

**E. Financial/Banking Information** *(Provide bank authorization and signature cards)*

Name of bank: \_\_\_\_\_ City and State: \_\_\_\_\_  
The following individuals are able to sign checks on this account: \_\_\_\_\_

Name of bank: \_\_\_\_\_ City and State: \_\_\_\_\_  
The following individuals are able to sign checks on this account: \_\_\_\_\_

**Bonding Information** - If you have bonding capacity, identify the firm's bonding aggregate and project limits.  
Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

**F. Identify all sources, amounts, and purposes of moneys loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACD/BE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner.** *(Provide copies of signed loan agreements and security agreements)*

Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1. _____					
2. _____					
3. _____					

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years.** *(Attach additional sheets if needed)*

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1. _____					
2. _____					
3. _____					

**H. List current licenses/permits held by any owner and/or employee of your firm** *(e.g. contractor, engineer, architect, etc. Attach additional sheets if needed)*

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1. _____			
2. _____			
3. _____			

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I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

**AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION**

Identify the following information concerning the ACDBE applicant firm:


Concession Space	Address / Location at Airport	Value of Property or Lease	Fees/Lease Payments Paid to the Airport
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

Name of Concession	Location	Type of Concession	Start Date of Concession
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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**AFFIDAVIT OF CERTIFICATION**  
*This form must be signed and notarized for each award upon which disadvantaged status is claimed.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed)  
owner or officer under penalty of law that I am \_\_\_\_\_  
(title) of the applicant firm \_\_\_\_\_ and that I  
have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge and that all responses to the questions are full and complete, meeting no essential information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and personnel history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approved by a government agency. I understand that a government agency may, by reason it deems appropriate, determine the accuracy and truth of the statements in this application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to governmental audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or otherwise, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, in the foregoing arrangements.

I agree to provide notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 90 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding \$1.57 million, etc.)

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded, denial or revocation of certification, suspension and debarment, and for initiating actions under federal and/or state law concerning false statements, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise. In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (Check all that apply):

Female     Black American     Hispanic American  
 Native American     Asian-Pacific American  
 Subcontinent Asian American     Other (specify) \_\_\_\_\_

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or unfair bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.


I further certify that my personal net worth does not exceed \$1.57 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I do have under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature \_\_\_\_\_ (DBE/AC/DBE Applicant)    Date \_\_\_\_\_

**NOTARY CERTIFICATE**

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### UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

**Required Documents for All Applicants**

- Resumes (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Signed loan and security agreements, and bonding forms
- List of equipment and/or vehicles owned and leased including VIN numbers, copy of title, proof of ownership, insurance cards for each vehicle
- Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- Licenses, license renewal forms, permits, and land authority forms
- Descriptions of all real estate (including office storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable, and any U.S. DOT appeal decisions on these actions.
- Bank statements and signature cards
- Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- List of all employees, job titles, and dates of employment
- Proof of warehouse/storage facility ownership or lease arrangements

**Partnership or Joint Venture**

- Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement(s)
- Minutes of all stockholders' and board of directors meetings

**Optional Documents to be Provided on Request**

The UCP to which you are applying may request the submission of the following documents. If requested to provide these documents, you must supply them with your application or at the on-site visit.

- Proof of citizenship
- Insurance agreements for each truck owned or operated by your firm
- Audited financial statements (if available)
- Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm
- Trust agreements held by any owner claiming disadvantaged status
- Year-end balance sheets and income statements for the past 3 years (or life of firm, if less than three years)


**Signatory**

- List of product lines carried and list of distribution equipment owned and/or leased

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[79 FR 59603, Oct. 2, 2014]

Appendix G to Part 26 - Personal Net Worth Statement



**Personal Net Worth Statement  
 For DBE/ACDBE Program Eligibility**

U.S. Department of Transportation  
 As of \_\_\_\_\_

DATE APPROVAL (if)  
 EXPIRATION DATE

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the United Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 28. Return form to appropriate UCP certifying member, not U.S. DOT.

Name		Business Phone	
Residence Address: (As reported to the IRS) City, State and Zip Code		Residence Phone	
Business Name of Applicant Firm			
Spouse's Full Name (Married Status, Single, Married, Divorced, Union)			

ASSETS		LIABILITIES	
(One Column)		(Two Columns)	
Cash and Cash Equivalents	\$	Loans on Life Insurance (Complete Section 5)	\$
Retirement Accounts: (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate (Excluding Primary Residence Debt) (Complete Section 4)	\$
Stocks, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)	\$
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	\$
Loans to Shareholders & Other Receivables (Complete Section 8)	\$	Other Liabilities (Complete Section 6)	\$
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 6)	\$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$		
Other Personal Property and Assets (Complete Section 6)	\$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$		
<b>Total Assets</b>	<b>\$</b>	<b>Total Liabilities</b>	<b>\$</b>
		<b>NET WORTH</b>	

**Section 2. Notes Payable to Banks and Others**

Name of Noteholders	Original Interest	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Enclosed Type of Collateral

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 2 of 5



Section 6. Other Personal Property and Assets (List descriptions as necessary)				
Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lease or Note amount and Terms of Payment
Automobiles and Vehicles (including motorized vehicles, motorcycles, boats, etc.) (Include personally owned vehicles that are leased or rented to businesses or other individuals)				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivable				

**Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)**  
Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely Held and Publicly Traded Corporations

**Section 8. Other Liabilities and Unpaid Taxes (Describe)**

**Section 9. Transfer of Assets:** Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes  No  If yes, describe

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of seeking certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the naming, banking institutions, credit agencies, contractors, clients, and other entities, for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentation in the application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded, denial or revocation of certification, suspension and debarment, and for initiating action under Federal and/or state law concerning false statement, fraud or other applicable offenses.

**NOTARY CERTIFICATE**  
(Insert applicable state acknowledgment, affidavit, or oath)

Signature (DRB/ACDBE Owner) \_\_\_\_\_ Date \_\_\_\_\_

In verifying the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act of (U.S.C. 552 and 552a) and state provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and processed. Your privacy rights will be distributed to the public without your consent. The information obtained will be used solely to determine your firm's eligibility for participation in the Disadvantaged Business Enterprise (DBE) Program of Agency Construction DBE Programs as defined in 49 C.F.R. Parts 23 and 25. You may obtain a copy of the Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477).

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 3 of 5



**General Instructions for Completing the  
Personal Net Worth Statement  
for DBE/ACDBE Program Eligibility**

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your firm, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 501(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.02 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.02 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any question about completing this form, please contact one of the UCP certifying agencies.

**Assets**

All items must be reported at their current fair market value as of the date of your statement. Investor's asserted value for real estate, for example, is not acceptable. Assets held in a trust should be included.

**Cash and Cash Equivalents:** On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

**Retirement Accounts, IRA, 401(k), 403(b), Pensions:** On page 1, enter the full value (even tax and interest penalties that would apply if taxes) were distributed as of the date of the firm. Describe the number of shares, name of investment, cost market value, date of quotation, and total value in section 3 on page 2.

**Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts:** Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc., the cost, market value of the asset, the date of quotation, and total value as of the date of the PNW statement.

**Assets Held in Trust:** Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 2.

**Loans to Shareholders and Other Receivables not listed:** Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 2.

**Real Estate:** The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence as follows: including the address, method of acquisition, date of acquisition, amount of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payments. List this information for all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

**Life Insurance:** On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

**Other Personal Property and Assets:** Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furs, etc., household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 1, list these assets and enter the present value, the balance of any loans, whether the asset is insured, and list or note references and terms of payments. For accounts and assets receivable, enter the total value of all monies owed to you, personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any bills or notes on the property.

**Other Business Interests Other than Applicant Firm:** On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 1, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, cooperatives, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

**Liabilities**

**Mortgages on Real Estate:** Enter the total balance on all mortgages payable on real estate on page 1.

**Loans on Life Insurance:** Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

**Notes & Accounts Payable to Bank and Others:** On page 1, section 2, enter details concerning any liability, including name of creditor, original and current balances, payment terms, and security/collateral information. The entries should include receivables/inventory accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

**Other Liabilities:** On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 3, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

**Unpaid Taxes:** Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Current tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amount.

**Transfers of Assets:**

**Transfers of Assets:** If you checked the box indicating you on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

**Attests:**

I, the undersigned, certify that the information provided on this Personal Net Worth Statement is true and correct.

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 5 of 5

[79 FR 59617, Oct. 2, 2014]

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This content is from the eCFR and is authoritative but unofficial.

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## Title 49 - Transportation

### Subtitle A - Office of the Secretary of Transportation

#### Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation

##### Financial Assistance Programs

**Authority:** 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

**Source:** 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

#### Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

(1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs



listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

- (2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D.

- (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

- (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E.

- (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

- (2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in § 26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

*Permits and Agreements  
(Brown Pages)*

*inserted here*

NOT FOR BID

## ***LIST OF PERMITS AND AGREEMENTS (BROWN PAGES)***

### **ENVIRONMENTAL DOCUMENTS**

- California Department of Fish & Wildlife
- 401 Certification
- 404 Nationwide Permit
- 408 USACE Permit
- Least Bell's Vireo Survey Record
- Habitat Restoration Plan (Including Figure No. 3a, 3b, 3c)
- Environmental Mitigation Matrix
- Southwest Resource Management Association Agreement

### **GEOTECHNICAL REPORT**

- "Geotechnical Engineering Study, for the Phase III of Santa Ana River Trail Development," prepared by Allwest Geoscience Inc., dated January 24, 2003

### **SOUTHERN CALIFORNIA EDISON (SCE) – CONSENT AGREEMENT**

### **SAN BERNARDINO COUNTY FLOOD CONTROL PERMIT**

### **CITY OF SAN BERNARDINO PERMIT AND GRANT OF EASEMENT**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
INLAND DESERTS REGION  
3602 INLAND EMPIRE BLVD., SUITE C-220  
ONTARIO, CALIFORNIA, 91764



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2017-0073-R6 (Revision 3)

San Bernardino County Department of Public Works  
SART Phase III Trail Project

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and San Bernardino County Department of Public Works (Permittee), or as represented by Mr. Darren Meeka.

### **RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on April 14, 2017 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

### **PROJECT LOCATION**

The project is located in the Santa Ana River, beginning at Waterman Avenue, in the City of San Bernardino and continues easterly to California Street in the City of Redlands, San Bernardino County, State of California. The furthest westernmost extent is located at Latitude: 34.070023° and Longitude: -117.278758° and the furthest easternmost extent of the project is located at Latitude: 34.090225° and Longitude: -117.226201°. The project location can also be found on the U.S. Geological Survey (USGS) – San Bernardino South and Redlands quadrangles, 7.5 Minute Series topographic within un-sectioned portions of Township 1 South and Ranges 4 and 3 West (APNs: 014143119, 014141203, 016739109, 028102117, 028103140, 028103152, 028102126, 028102134, 028102135, 028102136, 028024104, 028025123, 028134110, 029249105, 028101134, 028102116, 028030222, 029201143, 028022213, 016739108, 028025153, 028104167, 028134108, 028024109, 028102130, 014141248, 028134107, 016772103, 028102121, 028104166, 028025161, 016739111, 028104123, 029201142, 028024105, 028103138, 016772102 and 028134104).

## PROJECT DESCRIPTION

The project includes the construction of an approximately 3.8-mile-long pedestrian recreational trail along the southern boundary of the Santa Ana River. Most of the alignment will occur on top of an existing levee maintenance road. Between Waterman Avenue and Orange Show Road, where no levee currently exists, the trail will be constructed on the unimproved riverbank within the San Bernardino County Flood Control District right-of-way. Overall, the project will consist of the construction of:

- A 10-footwide asphalt and concrete surface with two-foot-wide unpaved shoulders on each side;
- Protective side screens/railings where the trail crosses roads;
- Five trail access ramps from surface streets located on the east side of Waterman Avenue, and the east and west sides of Orange Show Road and Tippecanoe Avenue;
- Four highway undercrossing improvements at Waterman Avenue, Orange Show Road, Tippecanoe and Mountain View Avenue;
- Rock slope protection and concrete slope paving; and

Additionally, at the Mission Zanja and Santa Ana River confluence, a "keystone" concrete erosion-control retaining wall, approximately 20 feet in height and 295-feet in length, will be constructed. An approximately 100x14-foot prefabricated, clear span steel bridge will be built over the Mission Zanja Creek, while a railroad undercrossing with a protective overhead screen will occur beneath the Burlington Northern Santa Fe Railroad within the Santa Ana River. Finally, a 4x6-foot concrete box culvert will replace an existing storm drainpipe approximately 1,000 feet east of Tippecanoe Avenue.

Associated construction activities will include ground preparation (i.e. grading and filling) for the trail, bridge, and any necessary associated embankment/retaining walls; fencing and railing, trail delineators, and pavement striping/markings; and access gates with signage. Excavation will generally be limited to 2-4 feet along the trail alignment, 9-11 feet for the replacement culvert, up to 25 feet for the undercrossings and retaining walls, and drilling up to 50 feet to install bridge supports for the pedestrian bridge.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include:

**BIRDS** - Allen's hummingbird (*Selasphorus sasin*), American crow (*Corvus brachyrhynchos*), American goldfinch (*Spinus tristis*), Anna's hummingbird (*Calypte anna*), Bewick's wren (*Thryomanes bewickii*), black phoebe (*Sayornis nigricans*), black headed grosbeak (*Pheucticus melanocephalus*), blue grosbeak (*Guiraca caerulea*), bushtit (*Psaltriparus minimus*), California towhee (*Melospiza crissalis*), California quail (*Callipepla californica*), Cassin's kingbird (*Tyrannus vociferans*), cliff swallow (*Petrochelidon pyrrhonota*), Cooper's hawk (*Accipiter cooperii*), common yellowthroat (*Geothlypis trichas*), great egret (*Ardea alba*), house finch (*Carpodacus mexicanus*), house wren (*Troglodytes aedon*), killdeer (*Charadrius vociferus*), least Bell's vireo (*Vireo bellii pusillus*), lesser goldfinch (*Spinus psaltria*), mourning dove (*Zenaidura macroura*)

*macroura*), northern mockingbird (*Mimus polyglottos*), red-tailed hawk (*Buteo jamaicensis*), Say's phoebe (*Sayornis saya*), song sparrow (*Melospiza melodia*), spotted towhee (*Pipilo maculatus*), western kingbird (*Tyrannus verticalis*), white-throated swift (*Aeronautes saxatalis*); **MAMMALS** - black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Spermophilus beecheyi*), coyote (*Canis latrans*), and desert cottontail (*Sylvilagus audubonii*); **REPTILES** - side-bloched lizard (*Uta sp.* ), and western fence lizard (*Sceloporus occidentalis*); **PLANTS** - arroyo willow (*Salix lasiolepis*), black willow (*Salix gooddingii*), California buckwheat (*Eriogonum fasciculatum*), California Cholla (*Cylindropuntia californica*), coastal sagebrush (*Artemisia californica*), common cryptantha (*Cryptantha intermedia*), common eucrypta (*Eucrypta chrysanthemifolia*), common sunflower (*Helianthus annuus*), deerweed (*Acmispon glaber var. glaber*), Fremont cottonwood (*Populus fremontii*), horseweed (*Erigeron canadensis*), mule fat (*Baccharis salicifolia*), narrow-leaved willow (*Salix exigua*), prickly pear (*Opuntia littoralis*), red willow (*Salix laevigata*), scale broom (*Lepidospartum squamatum*), telegraphweed (*Heterotheca grandiflora*), valley popcornflower (*Plagiobothrys canescens*), white sage (*Salvia apiana*), wishbone bush (*Mirabilis laevis*), and willow dock (*Rumex salicifolius*).

The adverse effects the project could have on the fish or wildlife resources identified above include the disturbance to, alteration of, and/or loss of breeding, foraging, and refugia habitat. The construction of the project will permanently impact 1.57 acre of streambed, including 0.98 acre of riparian and stream-associated habitat and 0.59 acre of slopes, and temporarily impact 1.36 acre of streambed, of which 1.05 acre is riparian and stream-associated habitat and 0.31 acre is slopes. If additional impacts to riparian habitat and/or streambed are anticipated that are not described in this Agreement, Permittee shall consult with CDFW prior to initiating those additional impacts, to determine whether a new notification or an amendment to this Agreement will be required.

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that

event, CDFW shall contact Permittee to resolve any conflict.

- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Take of Listed Species. The issuance of this Agreement does not authorize the take of any state- or federally-listed threatened, endangered, or fully protected species. Take of any California Endangered Species Act (CESA)-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, the Department recommends that the project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).
- 1.6 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code Section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act 1918, as amended (16 U.S.C. § 703 *et seq.*). The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

## 2. **Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Designated Biologists. Permittee shall submit to CDFW for review and approval, the name, contact information, and qualifications of each biologist, botanist, or other specialist (Designated Biologist(s)) proposed to perform survey and/or conduct monitoring activities for the project. Permittee shall specify within these submittals which activities each Designated Biologist is being considered for and the specific qualifications and experience they possess to support the assignment. CDFW's written approval of the Designated Biologists must be received prior to the commencement of project activities, including construction and/or site preparation.
- 2.2 Authority of Designated Biologists. To ensure compliance with the measures of this Agreement, the Designated Biologists shall have the authority to immediately halt any activity that does not comply with this Agreement, order any reasonable measure to avoid the violation of any measure of this Agreement, and directly



contact CDFW for any reason. If the Designated Biologist(s) determines that the project may have an adverse effect on any special-status species (threatened, endangered, candidate, species of special concern, etc.), they must halt construction and notify the appropriate agencies immediately. Unless authorized by CDFW, the Designated Biologists shall not have the authority to handle any special-status species.

- 2.3 Lighting Impacts. No lighting shall be allowed to impact jurisdictional areas, and the lighting and fencing for infrastructure adjacent to jurisdictional areas shall be designed or reviewed by a qualified biologist to allow wildlife to move within the open space and conserved areas without hindrance.
- 2.4 Worker Environmental Awareness Program. Prior to implementing any construction activities on the project site, the Permittee shall implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the project. The program will be administered to all on-site personnel, including the Permittee's personnel, contractors, and all subcontractors, prior to the employee's commencing work on the site. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Site. The WEAP will include but not be limited to protected species that have potential to occur within the Project site, including nesting birds, plants, and other wildlife species.
- 2.5 Delineate Work Area Boundary. In consultation with the Designated Biologist, Permittee shall clearly delineate the outer perimeter of the work areas and access routes with appropriate fencing, signage, and/or flagging to prevent damage to adjacent habitats. The delineation materials shall be in place during all periods of operation and all persons employed or otherwise working on the project site shall be instructed about the restrictions. Permittee shall ensure the delineation materials are monitored daily, and maintained, repaired, or replaced immediately if the materials are damaged, lost, stolen, or become ineffective in any way. The Designated Biologist(s) shall ensure the delineation materials do not create a barrier to wildlife movement and will not pose a risk to wildlife safety.
- 2.6 Nesting Bird Plan. **No less than 30 days prior to initiating Project activities, including site preparation and staging**, Permittee shall submit to CDFW for review a Nesting Bird Plan (NBP) that includes project specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur and that the project complies with all applicable laws related to nesting birds and birds of prey. The NBP shall include, at a minimum: monitoring protocols; survey timing and duration; and project-specific avoidance and minimization measures including, but not limited to: project phasing and timing, monitoring of project-related noise, sound walls, and buffers.

- 2.7 Work Period and Time Limits – Bird Surveys. Migratory non-game native bird species are protected (Refer to Measure 1.6). The Designated Biologist(s) shall survey the entirety of the project site, and within a recommended 500-foot buffer surrounding the project site for both diurnal and nocturnal nesting birds, prior to commencing project activities (including construction and/or site preparation). Surveys shall be conducted by the Designated Biologist(s) at the appropriate time(s) of day, no more than three days prior to commencement of project activities. **Documentation of surveys and findings shall be submitted to CDFW for review prior to conducting project activities.** If no nesting activities were observed, project activities may begin. If an active bird nest is located, the Designated Biologist(s) shall implement and monitor specific avoidance and minimization measures as specified in the CDFW-approved NBP (refer to Measure 2.6).
- 2.8 Biological Monitoring. The Designated Biologist(s) shall be responsible for monitoring all project activity that have the potential to impact Fish and Game Code section 1602 resources, including streams, associated vegetation/habitat, and wildlife. The Designated Biologist(s) shall ensure that all avoidance and minimization measures are implemented and maintained, including, but not limited to: determining and delineating appropriate avoidance and buffer areas, maintaining delineated access routes and work areas, monitoring for the presence of, and potential impacts to, special-status species, and maintaining/repairing/replacing any exclusionary fencing and trench/excavation covers.
- 2.9 Best Management Practices. Permittee shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants during project activities. BMPs shall be monitored and repaired if necessary to ensure maximum erosion, sediment, and pollution control. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread. Permittee shall ensure BMPs do not pose a barrier to wildlife movement and shall be installed to allow for the safe passage of wildlife movement, particularly of less vagile species (such as small mammals and reptiles), out of the project area. Long, continuous lengths of silt-fencing or other BMP materials installed without gaps can create a barrier to wildlife movement, trapping wildlife within the project area. Areas of safe passage can be easily accommodated by leaving small gaps between parallel and overlapping lengths of BMPs.

- 2.10 Trash Abatement and Refuse Removal. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at the end of each workday to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Upon completion of project activities within each project location, Permittee shall remove and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 2.11 Pollution and Litter. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.11.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.11.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.11.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. These materials, placed within or where they may enter a lake, streambed, or flowing stream by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.
- 2.11.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any lake, streambed, or flowing stream.
- 2.11.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.12 Disposal of Vegetation. Following any vegetation clearing/removal activities, Permittee shall immediately chip woody debris to pieces 1 - inch in diameter or less and dispose of the materials using one of the following methods: a) solarize with

clear tarp, b) compost at a commercial facility, c) burn at a biogeneration facility, or d) send to a landfill (can be utilized as Alternative Daily Coverage). Handling procedures for plant material infested with polyphagous shot hole borer can be found at <http://eskalenlab.ucr.edu/handouts/decisionmaking.pdf>.

- 2.13 Excavated Areas. At the end of each workday, Permittee shall, with the oversight of the Designated Biologist, secure any open trench or excavated area such that animals are unable to enter and become entrapped. The excavated areas must be secured using appropriate site- and species-specific methods, such as, placing plywood or other barrier materials over the excavated area, placing an escape ramp of suitable material and at an angle no greater than 30 degree at each end of the open trench/excavated area, or installing temporary fencing around the perimeter of trenches or holes.
- 2.14 Nonnative plant species. Permittee shall utilize local, native plants to the greatest extent feasible in the landscaped areas adjacent to and/or near open space and mitigation areas. Permittee shall not plant, seed, or otherwise introduce invasive plant species to the landscaped areas. Invasive nonnative plant species not to be used include those species listed on the "California Invasive Plant Inventory, February 2006" and the "February 2007 Inventory Update", (which are updates to Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999"). This list includes: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, bush lupine, sweet alyssum, English ivy, French broom, Scotch broom, Spanish broom, and pepperweed. A copy of the complete list can be obtained by contacting the California Invasive Plant Council by phone at (510) 843-3902, at their website at [www.cal-ipc.org](http://www.cal-ipc.org), or by email at [info@cal-ipc.org](mailto:info@cal-ipc.org).

### 3. Compensatory Measures

Permittee shall compensate for adverse effects to fish and wildlife resources identified above that cannot be avoided or minimized as follows:

- 3.1 Habitat Rehabilitation – Offsite. Permittee shall mitigate project impacts within the Santa Ana River watershed through the contribution of sufficient funds to a CDFW-approved mitigation bank, in-lieu fee program, or other entity, for the rehabilitation of 2.94 acres of riparian habitat. **Permittee shall obtain CDFW approval, in writing, regarding the choice of the mitigation prior to contribution of funds.** Habitat "rehabilitation" activities shall include: erosion control and minor grading where appropriate; removal of nonnative plant species, trash, and debris; installation of temporary irrigation; and the installation of riparian and riparian-upland transitional plant species where appropriate. **Proof of purchase shall be provided to CDFW prior to commencement of any project activities, or as extended by CDFW.**

- 3.2 Habitat Rehabilitation – Onsite. Permittee shall restore all temporary impact areas, consisting of 1.05 acres of riparian habitat and coastal sage scrub and 0.31 acre of streambed/slope within the project (herein termed Onsite Mitigation Area). Restoration activities shall include recontouring the stream bank and adjacent areas to natural grade; redistributing previously stockpiled native topsoil, and removing all nonnative plant species, trash, and debris. Prior to start of construction, or as extended by CDFW, Permittee shall develop and submit to CDFW an onsite Habitat Restoration Plan (HRP). At a minimum, the HRP shall include the following information: (a) a description of the existing physical conditions of the restoration site, including water resources and habitat types, and a map that identifies the location of the site; (b) a plan for the preparation of the restoration site, post-project construction, including the removal of nonnative plant species, redistribution of previously stockpiled native topsoil, and grading; (c) a local California native plant palette, for seeding/planting; (d) a planting plan, including monitoring and maintenance measures and a timeline; (e) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the restoration site and a nonnative plant removal plan; and (f) success standards with contingency measures. Monitoring and maintenance of the restoration site shall be conducted annually for a minimum of five years, or until CDFW determines the mitigation site is successful. If the survival and cover requirements have not been met as established in the approved HRP, the Permittee shall follow contingency measures, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or offsite, payment of in-lieu fees, or purchase of additional mitigation credits from a mitigation bank. Any contingency actions will be determined in coordination with all regulatory agencies.

All onsite restoration activities described above shall be completed no later than 12 months following Project completion.

#### 4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 As-Built Report. Permittee shall submit a brief as-built report to CDFW following the completion of the restoration activities and subsequent 120-day establishment period for the Onsite Mitigation Area. The reports shall describe the preparation, installation methods, and activities conducted within the 120-day establishment period. The report shall document implementation of the HMMP and baseline site conditions. The report shall include an as-built graphic on an aerial photo base and on-ground photos from designated photo stations. The As-Built report shall serve as the beginning of the 5-year maintenance and monitoring period. **Please reference SAA # 1600-2017-0073-R6**
- 4.3 Annual Reporting. Annual reports shall be submitted to CDFW each year for a minimum of five years following plant installation or until CDFW deems the Onsite Mitigation Area successful. At a minimum, this reports shall include the following

information: (1) a description of the restoration activities conducted during the previous year, including: (a) the number by species of plants replaced or naturally recruited, (b) when the activities were conducted, and (c) any adaptive management measures implemented; (2) current site conditions, including: (a) the percent survival and percent cover of habitat; (b) the methods used to assess these parameters; and (3) information regarding nonnative plant removal, including: (a) the methods used for removal, (b) the amount removed and/or treated, (c) the frequency and timing of removal and treatment, (d) disposal specifics, and (e) a summary of the general successes and failures of the nonnative removal plan. The reports shall also include wildlife species observed during monitoring surveys including sensitive species and/or listed species. Photos from designated photo stations shall be included. The first annual report is due to CDFW no later than thirteen (13) months following submission of the As-Built Report.

- 4.4 Notification to CNDDDB. If any sensitive species are observed on or in proximity to the project site, or during project surveys, Permittee shall submit the occurrence information to California Natural Diversity Data Base (CNDDDB) within five working days of the sightings, and provide the regional CDFW office with copies of the CNDDDB forms and survey maps. Submissions can be made to CNDDDB online at: [http://www.dfg.ca.gov/biogeodata/cnddb/submitting\\_data\\_to\\_cnddb.asp](http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp). A copy of this information shall also be mailed within five days to CDFW Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA, 91764, **Attn: Claire Ingel**. **Please reference SAA # 1600-2017-0073-R6.**
- 4.5 Notification of Start of Construction. The Permittee shall notify CDFW, in writing, at least five (5) days prior to the initiation of project activities in jurisdictional areas. Notification shall be mailed to CDFW Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA, 91764, **Attn: Claire Ingel**. **Please reference SAA # 1600-2017-0073-R6.**

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

### To Permittee:

Darren Meeka  
825 East 3<sup>rd</sup> Street, Room 123  
San Bernardino, CA 92415  
(909) 387-8109 (Phone)  
[darren.meeka@dpw.sbcounty.gov](mailto:darren.meeka@dpw.sbcounty.gov)

### To CDFW:

Department of Fish and Wildlife  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Attn: Lake and Streambed Alteration Program – Claire Ingel  
Notification #1600-2017-0073-R6  
(909) 484-3979 (Phone)  
(909) 481-2945 (Fax)  
[claire.ingel@wildlife.ca.gov](mailto:claire.ingel@wildlife.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and

subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

#### **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

#### **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).



## EXTENSIONS

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the

extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

## EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## TERM

This Agreement shall expire on **October 17, 2023**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

## AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

**CONCURRENCE**


The undersigned accepts and agrees to comply with all provisions contained herein.

**FOR SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC WORKS**

  
\_\_\_\_\_  
Darren Meeka  
Division Chief, Environmental Management  
Division

12/17/18  
\_\_\_\_\_  
Date

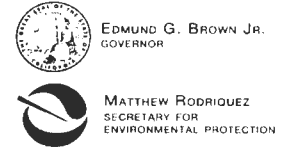
**FOR DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_  
Scott Wilson  
Environmental Program Manager  
Inland Deserts Region

1/7/2019  
\_\_\_\_\_  
Date

Prepared by: Claire Ingel  
Senior Environmental Scientist, Specialist

NOT FOR BID



**Santa Ana Regional Water Quality Control Board**

March 19, 2018

Mr. Harold Zamora, P.E  
County of San Bernardino  
Department of Public Works, Environmental Management Division  
825 East Third Street  
San Bernardino, California 92315

[hzamora@dpw.sbcounty.gov](mailto:hzamora@dpw.sbcounty.gov)

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR SANTA ANA RIVER TRAIL PHASE III PROJECT, CITIES OF  
REDLANDS AND SAN BERNARDINO, SAN BERNARDINO COUNTY (USACE FILE  
NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 362017-22)**

Dear Mr. Zamora:

On April 14, 2017, Regional Water Quality Control Board (Regional Water Board) staff received from the San Bernardino County Department of Public Works (Applicant) an application for Clean Water Act section 401 Water Quality Standards Certification (Certification) for a project to construct Phase III of the Santa Ana River Trail (SART) along the south bank of the Santa Ana River (SAR) in the Cities of San Bernardino and Redlands (Project). The Applicant submitted a filing fee of \$3,062.00 with the Certification application materials, satisfying the Project fee requirement for consideration of a Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (State Water Board) web site, which is based on the iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) that was in place when the Certification Application was determined to be complete.

This letter responds to your request for Certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments.

Project Description:

The proposed project is the installation of a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the city of San Bernardino and California Avenue in the City of Redlands. This project is Phase III of the SART that will

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

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extend a regional pedestrian and bicycle trail that is proposed to extend from the Pacific Ocean to the San Bernardino Mountains.

The SART Phase III Project consists of construction of this portion of the regional trail which will include the trail, bridges, culverts, and access ramps. The construction activities include fill and embankment construction; relocating and/or adjusting surface features to grade; subsurface preparation for paving the trail with concrete, asphalt concrete, Portland cement concrete, and decomposed granite pavement; erosion control measure best management practices (BMPs); reinforced concrete retaining walls; fencing and railing; access gates; protective screens under railroads; construction of storm drain facilities; signage, and pavement striping and markings.

The SART is designed as a 10-foot wide asphalt trail wide and adjacent 4-foot wide unpadded shoulder to accommodate non-motorized transportation modes. The majority of SART Phase III will be constructed along an existing County of San Bernardino Flood Control levee adjacent to the River corridor. In one area of the alignment (approximately 2,500 linear feet), easterly of Waterman Avenue, from the confluence of Mission Zanja Creek east to Orange Show Road, no levee currently exists and, therefore, in this area the trail will be developed on the unimproved southern bank of the riverbed within the County Flood Control right-of-way.

Trail crossings under Waterman Avenue, Orange Show Road, and Tippecanoe Avenue; and the San Bernardino Association of Governments and Metrolink rail line will require impacts to Waters of the United States (WOTUS). At each of crossing, SART will be routed under the roads or railroad. SART in these locations would consist of a ramp leading from the levee, along the bank of the Santa Ana River, and under the road or railroad. On the other side of the road or railroad bridge, another ramp will be constructed from the river bank to the top of the levee. The bikeway underpass is constructed by either creating a roadbed of compacted fill material under the roadway or railroad bridge; or by cutting into the existing rock rip-rap protected river bank wall or a retaining wall. The river bank wall is then finished with grouted rip-rap and concrete.

The construction will take place along the south bank of the Santa Ana River between Waterman Avenue and California Street in the Cities of San Bernardino and Redlands, in the un-sectioned San Bernardino Land Grant area. The Project is located on of the U.S. Geological Survey *San Bernardino South* and *Redlands* 7.5 minute topographic quadrangle maps (34° 4' 12.04" N/-117° 16' 42.84" W).

Receiving waters:

Santa Ana River Reach 5, Mission Zanja (tributary to Santa Ana River Reach 5) and unnamed tributaries to Santa Ana River Reach 5. Santa Ana River Reach 5 has the following designated beneficial uses (existing or potential): Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Groundwater Recharge (GWR), Contact Water Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened or Endangered Species (RARE).

Fill area:

Permanent Impact to WOTUS	0.071 acre	325 linear feet
Temporary Impact to WOTUS	0.168 acre	383 linear feet

Federal permit:

U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 14 – Linear Transportation Projects

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below.

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related Best Management Practices (BMPs) will be employed during construction activities.
- WOTUS temporarily disturbed by project activities will be restored as guided by a Regional Water Board-approved Habitat Mitigation and Monitoring Plan (HMMP).

Offsite Water Quality Standards Mitigation Proposed:

- The Project Applicant will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit in at a Regional Water Board approved mitigation bank or in-lieu fee program.

Should the proposed Project have the potential to impact State- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW) will ensure those impacts are mitigated to an acceptable level.

Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of Regional Water Board Order No. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0036 requires the Applicant substantially comply with the requirements of State Water Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

Pursuant to California Code of Regulations, Title 14, Chapter 3, section 15096, as a Responsible Agency, the Regional Water Board is required to consider an Environmental Impact Report or Mitigated Negative Declaration (MND) prepared by the lead agency to determine whether to approve an application submitted for a project should receive Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by section 15091 and, if necessary, section 15093 for each and every significant impact of the project.

As required by section 15096, in approving this Certification, the Regional Water Board has considered the MND prepared by the City of San Bernardino and filed with the Clerk of the Board of Supervisors of San Bernardino County on December 16, 2014, and subsequent information provided by the Applicant. More specifically, the Regional Water Board considered those sections of the MND pertaining to impacts to water quality standards. Based on the mitigation proposed in the MND and the Conditions set forth in this Certification, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed. Thus, the Regional Water Board independently finds that to avoid or mitigate impacts to water quality to a less than significant level, changes or alterations have been required in the Project.

**This Certification is contingent upon the execution of the following conditions:**

- 1) This Order for Certification will remain valid until the USACE 2017 Nationwide permits expire on March 18, 2022, or through an extended period beyond the expiration date that is authorized in writing by the USACE.
- 2) The Applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 3) The Applicant must ensure that all fees associated with this Project are paid to each respective agency prior to conducting any construction activities at the Project site.

- 4) The proposed mitigation must be implemented in a timely manner. A copy of the receipt from the transfer of funds to the Regional Water Board approved mitigation bank or in-lieu fee program must be provided to the Regional Water Board prior to the discharge of fill to or the dredging or excavation of material from waters of the State of California.
- 5) A copy of this Certification and any subsequent amendments must be maintained onsite for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP).
- 6) Prior to construction activities, the Applicant must delineate the work area with brightly colored fencing or other methods to ensure temporary impacts to WOTUS and waters of the State of California do not exceed the limits authorized in this Certification.
- 7) Prior to the initiation of Project activities, the Applicant must submit to the Regional Water Board for approval the HMMP prepared for the temporarily disturbed areas. The HMMP must include the following information:
  - a) a description of the existing physical and biological conditions of the WOTUS within the temporarily disturbed areas, including an evaluation of present and potential beneficial uses;
  - b) a plan of management actions to occur in the mitigation areas, including but not limited to, the removal of nonnative plant species;
  - c) a restoration schedule, including monitoring and maintenance measures;
  - d) the establishment of fixed photographic monitoring locations; and
  - e) mitigation success standards and contingency measures.
- 8) Monitoring and maintenance of the temporarily disturbed areas must be conducted for a minimum of five years, or until the Regional Water Board determines the areas have met the performance criteria of successful restoration as set forth in the Regional Water Board-approved HMMP. After the completion of construction activities, the Applicant must submit an annual monitoring report to the Regional Water Board each year, for a minimum of five years. The first report summarizing annual maintenance activities is due to the Regional Water Board no later than April 1 of the year following the beginning of Project activities. The report must include:
  - a) a summary of the annual restoration activities conducted;
  - b) an analysis of the changes to the vegetative community (including species present, percent cover, and stem density of riparian trees and shrubs); and
  - c) photographs taken at the fixed monitoring locations detailed in the HMMP.

- 9) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times, unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their transport in storm water or directly into the channels, and may not be located in any WOTUS. Discharges of wastewater from the site are prohibited.
- 10) The Project proponent must utilize BMPs during Project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of WOTUS.
- 11) Substances resulting from Project-related activities that could be harmful to aquatic life, including but not limited to petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, Portland cement concrete or asphalt concrete, and washings and cuttings thereof, must not be discharged to soils or waters of the State. All waste concrete must be removed from the Project site.
- 12) Motorized equipment must not be maintained or parked within or near any stream crossing, channel, or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow condition. Vehicles must not be driven or equipment operated onsite in waters of the State, except as necessary to complete the proposed Project. Equipment must not be operated in areas of flowing water.
- 13) Construction dewatering discharges, including temporary stream diversions necessary to carry out the Project, are subject to regulation by Regional Water Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at [https://www.waterboards.ca.gov/santaana/board\\_decisions/adopted\\_orders/orders/2015\\_orders.html](https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015_orders.html)
- 14) This Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including revocation of this Certification and imposition of administrative civil or criminal liability.



- 15) The Applicant must ensure written notification to this agency be made prior to conducting any onsite construction activities. Such notifications must be made to Jason Bill at [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov) or other Regional Water Board Certification staff.
- 16) The Applicant must submit an Annual Project Status Report each year by January 1. Annual reporting must continue until a Notice of Project Complete Letter is issued to the Applicant. The status report must be sent to Jason Bill at [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov) or other Regional Water Board Certification staff.
- 17) When work conducted in accordance with this Certification has been completed, the Applicant must notify Regional Water Board staff, Jason Bill at [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov) or other Regional Water Board Certification staff within ten working days. Please cite SARWQCB Project No. 362017-22 as the Project identifier.

Under California Water Code, section 1058, and pursuant to California Code of Regulations, Title 23, Chapter 28, section 3860, the following must be included as Conditions of all Certification actions:

- (a) Every Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and Article 6 (commencing with section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the Applicant.

If the above-stated Conditions are changed, any of the criteria or Conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Water Board may require that the Applicant submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the Conditions of this Certification, the holder of any permit or license subject to this Certification will be subject to any remedies, penalties, process, or sanctions as provided under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation

constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the Conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code section 13350 and/or section 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act section 401. I hereby certify that any discharge from the referenced Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification," which requires compliance with all Conditions of this Certification. Order No. 2003-0017-DWQ is available at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf).

Should there be any questions, please contact Jason Bill at (951) 782-3295 or [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov), or David Woelfel at (951) 782-7960 or [David.Woelfel@waterboards.ca.gov](mailto:David.Woelfel@waterboards.ca.gov).

Sincerely,



Hope A. Smythe  
Executive Officer  
Santa Ana Regional Water Quality Control Board

cc:

USACE, Los Angeles Office – Aaron Allen  
USACE, Los Angeles Office – Shannon Pankratz  
U.S. Environmental Protection Agency, Region 9 - Wetlands Section – Sam Ziegler  
CDFW – Jeff Brandt  
State Water Board, Office of Chief Counsel – Teresita.Sablan  
State Water Board, Division of Water Quality – Water Quality Certification Unit  
County of San Bernardino – Michael Perry – [Michael.Perry@dpw.sbcounty.gov](mailto:Michael.Perry@dpw.sbcounty.gov)  
County of San Bernardino – Lorraine Bueno – [Lorraine.Bueno@dpw.sbcounty.gov](mailto:Lorraine.Bueno@dpw.sbcounty.gov)



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
915 WILSHIRE BOULEVARD, SUITE 930  
LOS ANGELES, CALIFORNIA 90017

May 1, 2018

SUBJECT: Nationwide Permit (NWP) Verification

Darren Meeka  
San Bernardino County Department of Public Works  
Environmental Management Division  
825 East Third Street  
San Bernardino, California 92415

Dear Mr. Meeka:

I am responding to your request (Corps File No. SPL-2017-00262-SLP) for a Department of the Army permit for the proposed Santa Ana Trail Phase III Project. The proposed project is located in the city of San Bernardino, San Bernardino County, California (map enclosed).

Because this project would result in a discharge of fill material into waters of the U.S., a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330).

I have determined construction of your proposed project, if constructed as described in your application, would comply with NWP No. 14: *Linear Transportation Projects*. Specifically, and as shown in the enclosed Figures 1-4 and Table 1, you are authorized to conduct the following regulated activities:

1. Permanently impact up to 0.0706 acre of non-wetland waters of the U.S. for construction of Phase III of the Santa Ana River Trail (10-foot width with 4-foot wide shoulder), including associated: grading, bank stabilization and protection, maintenance access ramps, storm drain construction and modifications, and box culvert crossings with riprap splash pads;
2. Temporarily impact up to 0.1676 acre of non-wetland waters of the U.S. for construction access, work areas, and grading associated with the Santa Ana Trail Phase III Project.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Conditions listed below:

1. This Corps permit does not authorize you to take any threatened or endangered species, in particular the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and the least Bell's vireo (*Vireo bellii pusillus*) or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA)

(e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). Pursuant to the USFWS correspondence dated April 6, 2018, including the required avoidance and minimization measures, the Corps Regulatory Division has determined and the USFWS has concurred that your activity is not likely to adversely affect the above species. Your authorization under this Corps permit is conditional upon your compliance with all of the required avoidance and minimization measures, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

2. No later than one month following completion of authorized work in waters of the U.S., the permittee shall ensure all sites within waters of the U.S. subject to authorized, temporary impacts are restored to pre-project alignments, elevation contours, and conditions to the maximum extent practicable to ensure expeditious resumption of aquatic resource functions. No later than 45 calendar days following completion of authorized work in waters of the U.S., the permittee shall submit a memorandum documenting compliance with this special condition.

3. Within 45 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memorandum including the following information:

- A) Date(s) work within waters of the U.S. was initiated and completed;
- B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
- C) Color photographs (including map of photopoints) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized fills can be verified;
- D) One copy of "as built" drawings for the entire project. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
- E) Signed Certification of Compliance (attached as part of this permit package).

This verification is valid through March 18, 2022. If, on March 18, 2022, you have commenced or are under contract to commence the permitted activity, you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity, I may request the use of discretionary authority in accordance with procedures in 33 CFR part 330.4(e) and 33 CFR part 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level, the Chief of Engineers, any time prior to March 18, 2022, may choose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR part 330.5. It is incumbent upon you to

comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

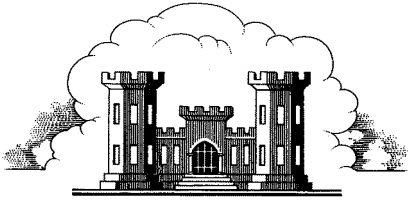
A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in the Regulatory Program. If you have any questions, please contact Shannon Pankratz at (213) 452-3412 or via e-mail at [Shannon.L.Pankratz@usace.army.mil](mailto:Shannon.L.Pankratz@usace.army.mil). Please help me to evaluate and improve the regulatory experience for others by completing the [customer survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey) form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey).

Sincerely,

Stephen M. Estes  
Chief, L.A. & San Bernardino Counties Section  
North Coast Branch  
Regulatory Division

Enclosures



**LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH  
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

**Permit Number:** *SPL-2017-00262-SLP*

**Name of Permittee:** *Darren Meeka, San Bernardino County Department of Public Works*

**Date of Issuance:** *May 1, 2018*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

1) Email a digital scan of the signed certificate to [Shannon.L.Pankratz@usace.army.mil](mailto:Shannon.L.Pankratz@usace.army.mil)  
**OR**

2) Mail the signed certificate to  
U.S. Army Corps of Engineers  
ATTN: Regulatory Division, SPL-2017-00262-SLP  
915 Wilshire Boulevard, Suite 930  
Los Angeles, California 90017

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(l)(3) to confirm that the appropriate number and resource type of credits have been secured.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

## Enclosure 1: NATIONWIDE PERMIT NUMBER NWP 14 Linear Transportation Projects.

### 1. Nationwide Permit NWP 14: *Linear Transportation Projects* Terms:

14. **Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404) Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

**2. General Conditions:** The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of

waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.



13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate

documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-

Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal

adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWP.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

---

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not



provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be

provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must

include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP's and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP's, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

### **3. Regional Conditions for the Los Angeles District:**

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, including designated critical habitat for such species, the permittee shall design all new or substantially reconstructed

linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts) to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-54 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
3. When a pre-construction notification (PCN) is required, the Los Angeles District shall be notified in accordance with General Condition 32 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/Missions/Regulatory/PermitProcess.aspx>. In addition, unless specifically waived by the Los Angeles District, the PCN shall include:
  - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
  - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings shall follow the Updated Map and Drawing Standards for the South Pacific Division Regulatory Program (Feb 2016), or most recent update (available at the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>);
  - c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
  - d. Delineation of aquatic resources in accordance with the current Los Angeles District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at: <http://www.spl.usace.army.mil/Missions/Regulatory/Jurisdictional-Determination/>).

4. Submission of a PCN pursuant to General Condition 32 and Regional Condition 3 shall be required for specific regulated activities in the following locations:
  - a. All perennial waterbodies and special aquatic sites throughout the Los Angeles District as well as intermittent waters within the State of Arizona for any regulated activity that would result in a loss of waters of the United States. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
  - b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council, and that would result in an adverse effect to EFH, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. EFH Assessment Guidance and other supporting information can be found at:  
[http://www.westcoast.fisheries.noaa.gov/habitat/fish\\_habitat/efh\\_consultations\\_go.html](http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_go.html).
  - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
  - d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.
  - e. The Murrieta and Temecula Creek watersheds in Riverside County, California for any regulated activity that would result in a loss of waters of the U.S. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
  - f. All waterbodies designated by the Arizona Department of Environmental Quality as Outstanding Arizona Waters (OAWs), within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW, and on tributaries to OAWs within 1600 meters of the OAW (see <http://www.azdeq.gov/index.html>).
  - g. All waterbodies designated by the Arizona Department of Environmental Quality as 303(d)-impaired surface waters, within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated impaired surface water, and on tributaries to impaired waters within 1600 meters of the impaired water (see <http://www.azdeq.gov/index.html>).
5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWP 5, 6, and 27 with the submission of a PCN in accordance with General Condition 32 and Regional Condition 3.

6. Within the Murrieta Creek and Temecula Creek watersheds in Riverside County the use of NWP 29, 39, 42 and 43, and NWP 14 combined with any of those NWPs shall be restricted. The loss of waters of the U.S. cannot exceed 0.25 acre. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
  7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
  8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.
  9. Any requests to waive the applicable linear foot limitations for NWPs 13, 21, 29, 39, 40 and 42, 43, 44, 51, 52, and 54, must include the following:
    - a. A narrative description of the affected aquatic resource. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks) or Mean High Water Line; a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
    - b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 32 and Regional Condition 3;
    - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
    - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
  10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.
- 4. Further information:**
1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- (b) This permit does not grant any property rights or exclusive privileges.
- (c) This permit does not authorize any injury to the property or rights of others.
- (d) This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- (d) Design or construction deficiencies associated with the permitted work.
- (e) Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- (a) You fail to comply with the terms and conditions of this permit.
- (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.

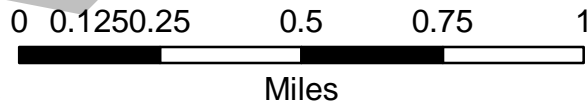
7. You must maintain the activity authorized by this permit in good condition and in conformance with the

terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

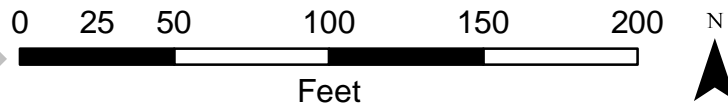
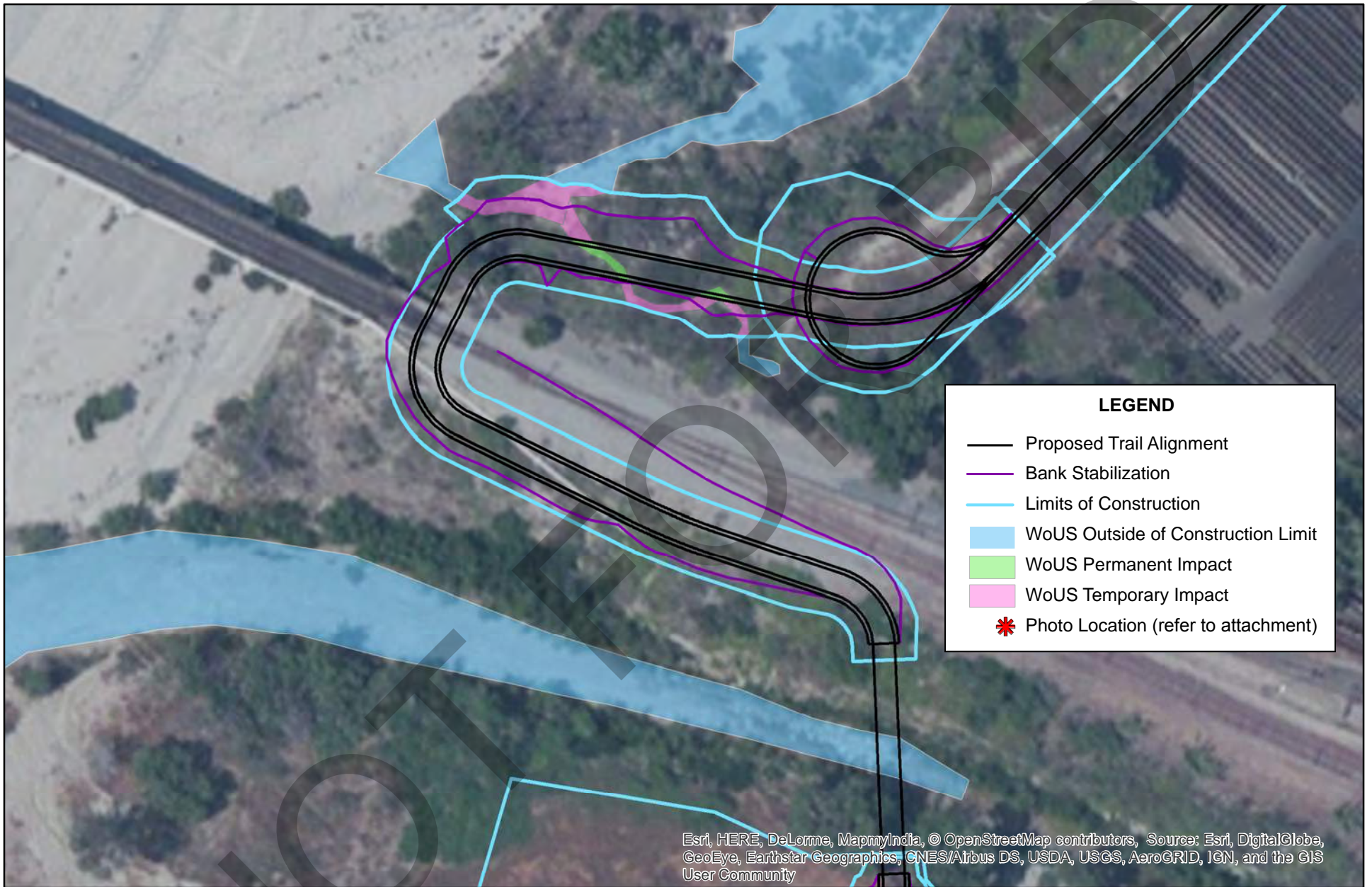
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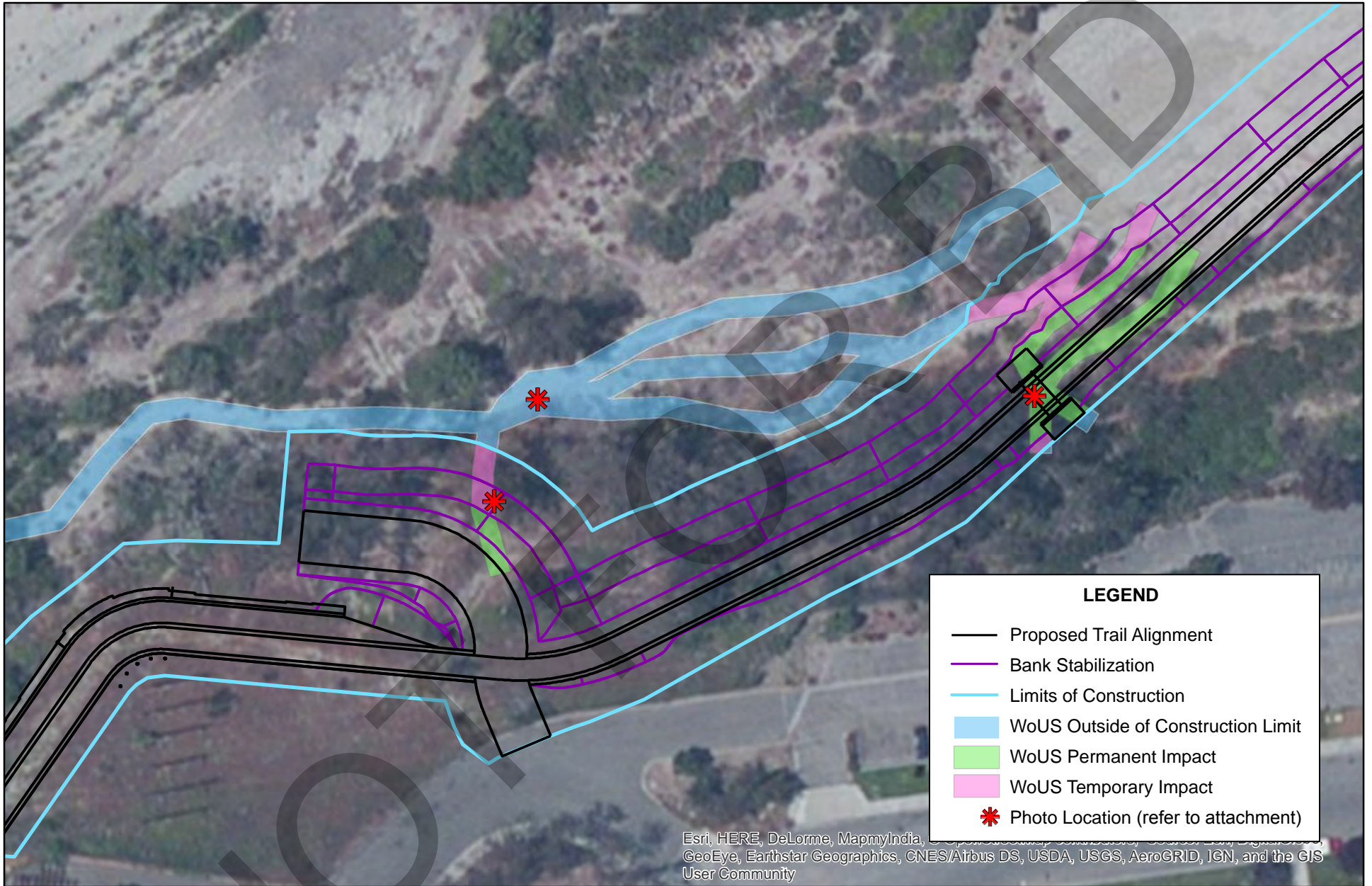


# SART PHASE III PROJECT FOOTPRINT OVERVIEW

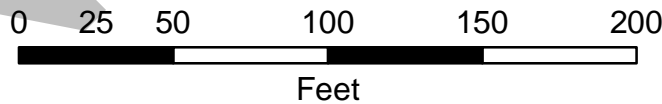
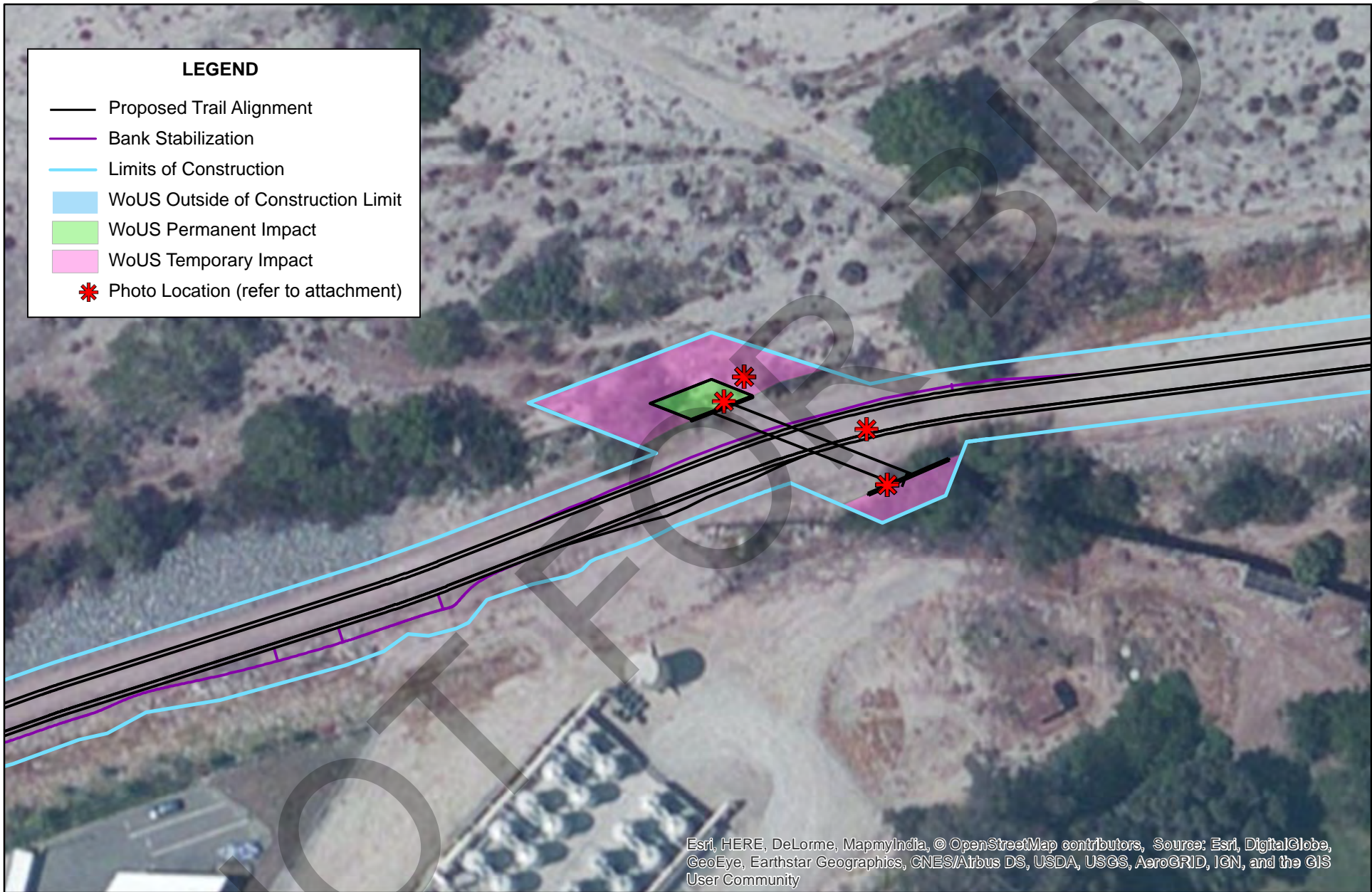
SART III USACE Impact Maps  
San Bernardino, California



**MISSION ZANJA**  
 SART III USACE Impact Maps  
 San Bernardino, California  
 Figure 1



**MAINTENANCE RAMP**  
 SART III USACE Impact Maps  
 San Bernardino, California  
 Figure 2

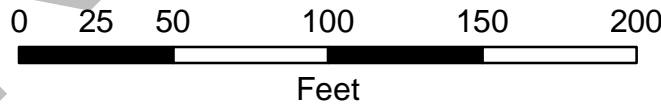
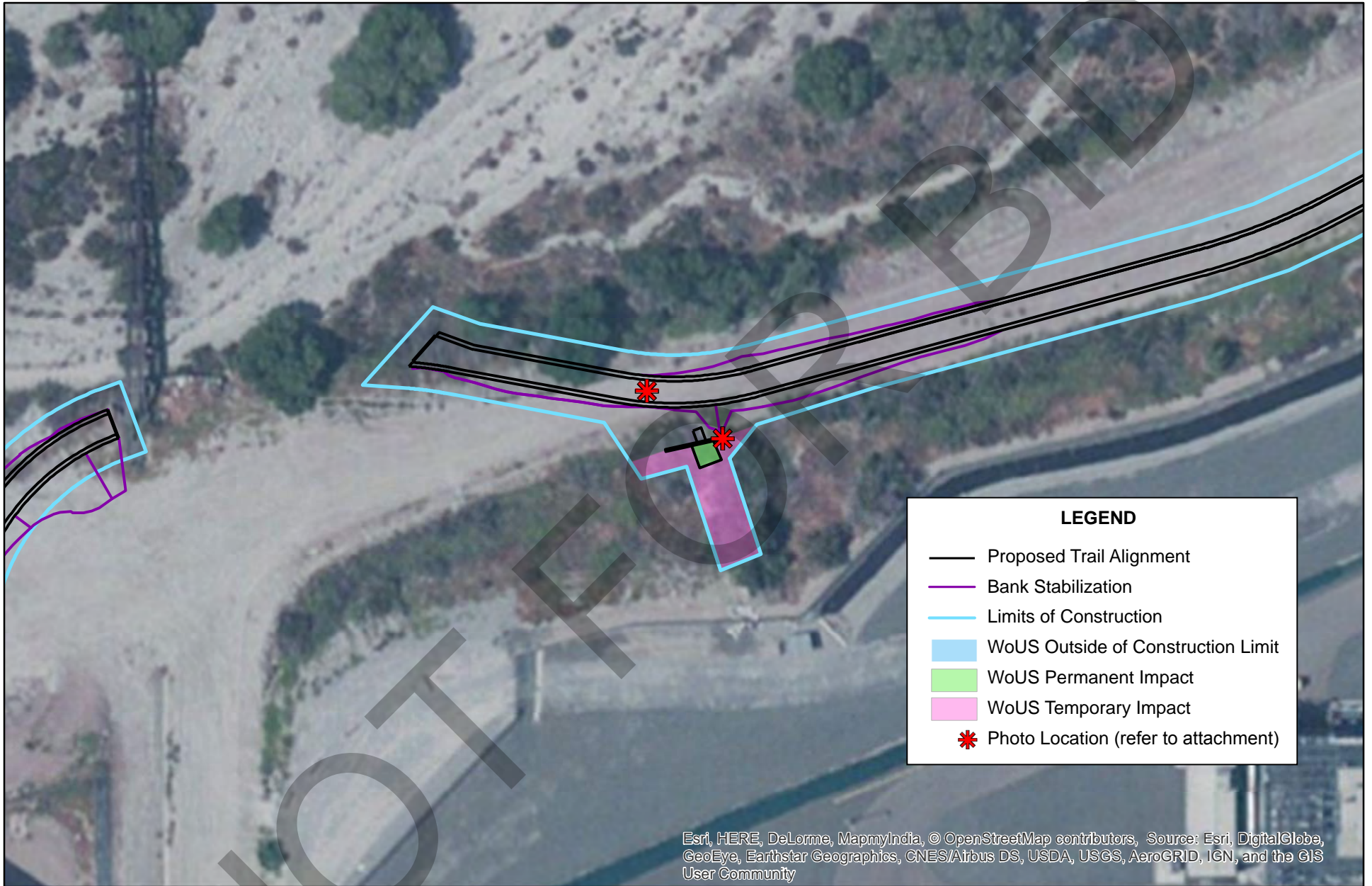


# STORM DRAIN EAST OF TIPPECANOE

SART III USACE Impact Maps

San Bernardino, California

Figure 3



# STORM DRAIN EAST MOUNTAIN VIEW

SART III USACE Impact Maps

San Bernardino, California

Figure 4

Table 1. SART III - Project Impacts to WoUS

LOCATION	PERMANENT IMPACT (acres)	TEMPORARY IMPACT (acres)	COMBINED PERMANENT AND TEMPORARY IMPACT
1. Mission Zanja	0.0042	0.0244	0.0286
2. Maintenance Ramp	0.0528	0.0360	0.0888
3. Storm Drain East of Tippecanoe	0.0106	0.0766	0.0872
4. Storm Drain East of Mountain View	0.0030	0.0306	0.0336
<b>TOTAL IMPACTS</b>	<b>0.0706</b>	<b>0.1676</b>	<b>0.2382</b>

NOT FOR BLD