

**FEDERAL PROVISIONS
FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS
CONSTRUCTION CONTRACTS**

NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods or services having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of that Federal assistance as a percentage of the total cost of that third party contract. This project is expected to have the following funding, federal 94.3% and local 5.7%.

DISADVANTAGED BUSINESS ENTERPRISES

Policy:

The Arizona Department of Transportation has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Arizona Department of Transportation has received Federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the Arizona Department of Transportation has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Arizona Department of Transportation to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program.

Assurances:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 state deems appropriate.

Definitions:

- (A) **Disadvantaged Business Enterprise (DBE):** a for-profit small business concern which meets both of the following requirements:
- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 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.
- (B) **Socially and Economically Disadvantaged Individuals:** any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (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, Central or South American, or other Spanish or Portuguese cultures or origins, regardless of race;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, 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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, and 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 Small Business Administration (SBA), at such time as the SBA designation becomes effective.
- (C) **Joint Venture:** an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which 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.

Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the Civil Rights Office at the address shown below for assistance in their efforts to use DBEs in the construction program of the Department

Arizona Department of Transportation
Civil Rights Office
1135 N. 22nd Ave, 2nd Floor, Mail Drop 154A
Phoenix, AZ 85009
Phone: 602-712-7791, Fax: 602-712-8429

Applicability:

The provisions are applicable to all bidders including DBE bidders. As a prime contractor, a DBE shall perform a significant portion of the contract work with its own work force in accordance with normal industry practices and Subsection 108.01 -Subletting of Contract of the Standard Specifications.

Certification:

Certification as a DBE or a DBE joint venture shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise" or completion and execution of a "Disadvantaged Business Enterprise Joint Venture Disclosure Affidavit" as appropriate.
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department may require to determine the firm's eligibility to participate in the DBE program.

Applications for certification may be filed with the Department at any time. A DBE must be certified by the Department at least five (5) working days prior to the bid opening for a project to be eligible to participate as a DBE on that project.

Applications for certification are available at the Department's Civil Rights Office, 1135 N. 22nd Avenue, 2nd Floor, Mail Drop 154A, Phoenix, Arizona, 85009, phone: 602-712-7761 or from the internet at www.azdbe.org.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE Firms that are certified by the AZUCP are eligible to be used to meet goals on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at www.azdbe.org. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The contractor bears all risks if it contracts with a firm that does not have a license. If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears responsibility to replace the DBE with another DBE.

The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

General:

Proposals submitted in variance with these provisions will be considered nonresponsive. Noncompliance with these provisions by the contractor will result in remedial action as herein set forth.

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

Each contractor shall establish a program which will ensure nondiscrimination in the award and administration of contracts and subcontracts. Each contractor shall also designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

DBE Participation:

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

A DBE second-tier subcontractor to a non-DBE will not be counted toward meeting the DBE goals.

The contractor shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the contractor cannot meet the goals using DBEs from this geographic area, the contractor, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

Reporting:

The contractor shall submit a report on a monthly basis attached to the monthly Request for Payment indicating the amounts earned by and paid to DBEs on the project (Page DBE-1).

Goals:

The minimum goals for participation by DBEs on this project are as follows:

Percent

The percentage of DBE participation shall be based on the total bid.

Counting DBE Participation Toward Meeting Goals:

General:

Once a firm is determined to be an eligible DBE in accordance with 49 CFR part 26, only the value of the work actually performed by the DBE is counted towards DBE goals. Credit towards the contractor's DBE goal is given only after the DBE has been paid for the work performed.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount quoted by the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be counted toward the DBE goal.

The contractor may not count second-tier subcontracts to DBEs by non-DBE subcontractors toward the goal.

DBE prime contractors must meet the DBE participation goal or demonstrate good faith efforts. This is determined by counting 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. As a prime contractor, a DBE shall perform a significant portion of the contract work

with its own work force in accordance with normal industry practices and in accordance with Subsection 108.01 – Subletting of Contract of the Standard Specifications.

A prime contractor may count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be counted towards a DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime contractor may 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 the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers.

Commercially Useful Function:

A prime contractor can count expenditures to a DBE subcontractor towards DBE goals only if the DBE performs a commercially useful function on a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a 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 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, the Department will 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.

A DBE will not be considered to 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, the Department will examine similar transactions, particularly those in which DBEs do not participate.

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 if 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, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. Decisions on commercially useful function matters are subject to review by FHWA, but are not administratively appealable to U.S. DOT.

Trucking:

The Department will use the following factors in determining whether a DBE trucking company is performing a commercially useful function: 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 on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and 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 DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees results in credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would only 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. With respect to the other trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

Materials and Supplies:

The Department will count expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is counted. A manufacturer is defined as 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.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is counted. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or 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. 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. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, 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. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Department will count the entire amount of the fees or commissions charged by the DBE 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 the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for reasonable hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

Submission with Bids:

All bidders are required to certify in the bid proposal on the "Disadvantaged Business Enterprise Assurances" affidavit (Page DBE-2) either:

- (1) The established goal for DBE participation has been met and arrangements have been made at the time of bid with certified DBEs or
- (2) The bidder has been unable to meet the goal prior to the submission of the bid and has made good faith efforts to do so.

BIDS SUBMITTED WITH AMENDED, INCOMPLETE, UNSIGNED AND/OR NON-NOTARIZED AFFIDAVITS WILL BE CONSIDERED NONRESPONSIVE.

If the bidder indicates that it has met or exceeded the DBE goal, the following documentation shall be submitted no later than 4:00 p.m. on the fifth (5th) working day following the bid opening to both the City of Tempe, Engineering Division, 31 E. 5th Street, Tempe, Arizona, 85281, and the Arizona Department of Transportation, Civil Rights Office, 1135 N. 22nd Avenue, 2nd Floor, Mail Drop 154A, Phoenix, Arizona, 85009:

- (1) DBE Intended Participation Affidavit DBE Summary (Page DBE-3), and
- (2) DBE Intended Participation Affidavit for each DBE (Page DBE-4), and
- (3) Confirmation of Participation by DBE (Page DBE-5).

The affidavit and attachments must be accurate and complete in every detail and must be signed by an officer of the contractor(s).

The DBE Intended Participation affidavit must be submitted listing the DBEs used and the creditable amounts (Page DBE-3).

A separate DBE Intended Participation affidavit (Page DBE-4) must be submitted for each DBE used to meet the goal of the project. The bidder shall indicate each DBE's name, the bid items the DBE will perform, and proposed subcontract amount. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item.

A written confirmation from each DBE used to meet the goal indicating that it is participating in the contract, as provided on the affidavit, must also be submitted at this time (Page DBE-5).

A bidder must determine DBE credit in accordance with the above section, entitled "Counting DBE Participation Toward Meeting Goals." The affidavit will be reviewed by the Civil Rights Office.

ONLY THOSE FIRMS CERTIFIED BY THE AZ UNIFIED CERTIFICATION PROGRAM (AZUCP) AT THE TIME OF THE BID OPENING WILL BE CONSIDERED. It shall be the bidder's responsibility to ascertain the certification status of designated DBEs.

IF THE APPARENT LOW BIDDER FAILS TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED, OR IF THE SUBMITTED INFORMATION REVEALS A FAILURE TO MEET THE REQUIREMENTS OF THE SPECIFICATIONS, THE APPARENT LOW BIDDER SHALL BE INELIGIBLE TO RECEIVE AWARD OF CONTRACT AND THE BID WILL BE REJECTED. THE PROPOSAL GUARANTEE (BID BOND) SHALL BE FORFEITED IF NO SUBMISSION IS MADE OR IF THE STATE TRANSPORTATION BOARD FINDS THE SUBMISSION WAS MADE IN BAD FAITH.

Documented Good Faith Effort:

If the apparent low bidder has stated in its bid proposal that it has been unable to meet the DBE goal, that bidder must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use DBE firms to meet the DBE goal prior to the bid. The bidder may not change its bid to indicate that it will achieve the DBE goal.

Failure to demonstrate good faith efforts to the satisfaction of ADOT will result in the rejection of the bid. The apparent low bidder who fails to meet the DBE goal at the time bids are opened must submit its documentation of good faith effort to the Civil Rights Office. The bidder's documentation must be received by the Department's Civil Rights Office by 4:00 p.m. on the fifth (5th) working day after the bids are opened.

Bidders are encouraged to review Appendix A of 49 CFR part 26.

In order to be awarded a contract on the basis of good faith efforts, a bidder must show that it took all necessary and reasonable steps to achieve the DBE goal 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. The Department will consider the quality, quantity, and intensity of the different kinds of efforts the bidder has made. The efforts employed

by the bidder should be those that one could reasonably expect a bidder to make if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements.

The following is a list of types of efforts a bidder must address when submitting good faith effort documentation:

1. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meeting, advertising, written notices, and other means) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
2. 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 to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. 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.
4. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to the DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available DBE negotiation includes the names, addresses, and telephone numbers of the DBEs that were considered; a description of the information provided from 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 work.

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 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. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.

5. 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 employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.
8. 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 needed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder has made good faith efforts, the Department will take into account the performance of other bidders in meeting the DBE goal.

The bidder will not be considered to have made good faith efforts if the bidder failed to contact the ADOT Civil Rights Office prior to the letting, either in writing, by e-mail, or by telephone, to inform the Civil Rights Office of the firm's difficulty in meeting the DBE goals on a given project and to request assistance. If the bidder contacts the Civil Rights Office by telephone, the contact must be documented in a telephone log indicating the date and time of call, and name of the persons to which he/she spoke. The telephone number for the Civil Rights Office is (602) 712-7761. The following individuals may be contacted: Lisa Wormington (lwormington@azdot.gov), Ralph Gonzales (rgonzales@azdot.gov), and Jamie Graves (jgraves@azdot.gov). The contact must be made in sufficient time to allow the Civil Rights Office to provide assistance.

The ADOT Civil Rights Office will analyze the submittal to determine if in fact good faith efforts have been demonstrated consistent with ADOT procedures and the Federal regulations, 49 CFR 26, Appendix A.

The bidder may, in accordance with the Standard Specifications, appeal to the State Transportation Board. The State Transportation Board awards all contracts and will hear statements from all parties at Board meetings that are open to the public. All testimony involving good faith efforts is either recorded with a tape recorder or by a court reporter. A copy of the transcript will be made available to the bidder.

IF THE APPARENT LOW BIDDER FAILS TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED, OR IF THE SUBMITTED INFORMATION REVEALS A FAILURE TO MEET THE REQUIREMENTS OF THE SPECIFICATIONS, THE APPARENT LOW BIDDER SHALL BE INELIGIBLE TO RECEIVE AWARD OF THE CONTRACT AND THE BID WILL BE REJECTED. THE PROPOSAL GUARANTEE (BID BOND) SHALL BE FORFEITED IF NO SUBMISSION IS MADE OR IF THE STATE TRANSPORTATION BOARD FINDS THE SUBMISSION WAS MADE IN BAD FAITH.

Rejection of Low Bid:

If, for any reason, the bid of the apparent low bidder is rejected, there will be a new apparent low bidder. The Department will notify the new apparent low bidder and this bidder shall submit its subsequent detailed submission as set forth herein, within five working days after notification.

Contract Performance:

Contract items of work, designated by the contractor to be awarded to DBEs, shall be performed by the designated DBE or a Department approved DBE substitute. DBE contract work items shall not be performed by the contractor, or a non-DBE subcontractor, without prior approval by the Department. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

The Department reserves the right to inspect all records of the contractor and all records of the DBEs concerning this contract.

The contractor shall provide to the Engineer, at the pre-construction conference, copies of completed and signed subcontracts, purchase orders, invoices, etc., with the appropriate DBEs.

Use of a DBE named on the DBE Intended Participation Affidavit is a condition of award. Substitution will not be allowed without written evidence from the prime contractor and DBE that the DBE is unable or unwilling to perform. Contractors may not terminate a DBE subcontract for convenience unless the Department has eliminated all of the items of work subcontracted to the DBE.

Non-Performance by DBEs:

In the event a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Engineer and provide all facts surrounding the matter. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract. The contractor shall immediately make reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work to the extent needed to meet the DBE goal. The substitute DBE's name, description of work, and dollar value of work shall be submitted to the Department, and the Department's approval must be obtained prior to the substitute DBE beginning the work.

In the event a prime contractor is unable, after a substantial good faith effort, to obtain another certified DBE, the Department may lower the DBE goal on the project. However, the Department must approve this in writing prior to a non-DBE starting the work which had been subcontracted to the DBE.

Compliance:

The contractor's achievement of the goal is measured by actual payments made to the DBEs. The contractor shall submit at the completion of the project the Certification of Payments to DBE Firms affidavit (Pages DBE-6 and DBE-7) for each DBE firm working on the project. This includes firms that were not used to meet the DBE goal. This affidavit shall be signed by the prime contract and the relevant DBE.

Sanctions:

If the Department determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or to otherwise carry out DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any such other remedy as the Engineer deems appropriate.

If the Engineer determines that such failure is not cause to terminate the contract, an amount equal to the value of the DBE goal that was not obtained will be deducted from the payment due the contractor. However, if the failure is the first by the contractor, and the Engineer determines that the failure was an unintentional error or oversight, the amount to be deducted may be reduced to one-half (1/2) of the value of the unobtained DBE goal. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in ADOT projects.

MENTOR-PROTEGE PROGRAM

The Mentor-Protege program is an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program will permit contractors to provide certain types of assistance to certified Disadvantaged Business Enterprise (DBE) subcontractors on highway construction projects.

The program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations. Abuse of this program may be used as the basis for actions against both categories of firms including suspension or debarment.

It is the policy of ADOT that contractors and certified DBE subcontractors may engage in a Mentor-Protege agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and ADOT in fulfilling requirements of 49 Code of Federal Regulations Part 23.

Definitions:

DBE: The definition, status, and requirements of DBE firms are defined by 49 CFR Part 23. Please also refer to the special provision entitled "Disadvantaged Business Enterprises".

Mentor: A designated contractor who oversees the development of a designated DBE subcontractor by training, counseling, assisting, and sponsoring the DBE firm in an ADOT approved Mentor-Protege Program.

Protégé: An ADOT-certified DBE subcontractor who is guided by a mentor through training and specialized assistance to gain experience, develop expertise in highway construction, and attain general business growth in an approved mentor-protege program.

Mentor-Protege Development Plan: A detailed plan outlining a management agreement between a contractor (who agrees to serve as a mentor) and a DBE subcontractor (who agrees to serve as a protege).

Implementation:

Approval Process:

- (1) When a contractor and DBE agree to engage in a Mentor-Protege Development Plan Agreement, ADOT Affirmative Action Office will be notified by either party for the purpose of (a) reviewing requirements of

STAA, 49 CFR part 23, and Mentor-Protégé program; (b) establishing timeline for processing Agreement; preliminary review of Agreement objective(s) and duration; and (d) reporting requirements. (A copy of the suggested form of agreement is included in these special provisions).

- (2) A completed Mentor-Protégé Development Plan will be submitted to ADOT within 30 days following the initial review. Approval of the Agreement by ADOT will be in two stages:
 - a) General approval of Agreement by ADOT within 15 working days following submission of Agreement.
 - b) Approval of working plan for the designated project where a mentor-protégé development plan will be implemented.
- (3) Duration of a Mentor-Protégé Development Plan may exceed that of a single project, not to exceed three years. Duration of a working plan may exceed that of a single project. However, the continued use of an existing working plan must be approved by the ADOT Affirmative Action Office prior to beginning work on a new project.
- (4) The Mentor-Protégé program is not intended to provide DBE firms with a means to avoid management and operational responsibilities. Mentors cannot be responsible for the management of DBE proteges. Under the program, all administrative functions must be performed by personnel responsible to or employed by protégé. The protégé must retain final decision making responsibilities.
- (5) Mentor and protégé shall agree to an interview by ADOT Affirmative Action Office during the development of the Mentor-Protégé Development Plan.
- (6) Mentor and protégé shall agree to evaluations by ADOT. The frequency and method will depend on the project.

Content of Mentor-Protégé Development Plan:

A mentor-Protégé Development Plan Agreement shall address the following:

- (1) **Areas of Assistance:** Identify the specific areas in which the protégé requires assistance.
- (2) **Schedule of Assistance:** Develop an Action Plan which defines the types and scope of assistance the mentor will provide to meet the protégé's needs.
- (3) **Responsibilities:** Define the responsibilities of the mentor and the protégé in each of the activities.
- (4) **Benchmarks:** Include measurable benchmarks to be reached by the protégé at successive stages of the plan.

- (5) Evaluation: Provide formal evaluations of the protégé's attainment of benchmarks. Evaluations must be made by both the mentor and the protégé and reviewed by ADOT.
- (6) Duration: Specify the maximum timeframe the development plan agreement can remain in effect not to exceed three years.
- (7) Assurances - Provide assurances that all agreements, oral and written, pertaining to the Mentor-Protégé program do not improperly obtain the benefits of the DBE program.
- (8) Key Personnel: Identify mentor's representative(s) responsible for training and/or coordinating the assistance provided to the protégé.
- (9) Fees: Identify any fees paid as a condition of the agreement.
- (10) Copies of agreements - Attach copies of all bonding, security, lease agreements, notes, contracts, etc., made for the duration of the Mentor-Protégé Plan.

Type of Assistance:

The type of assistance provided by contractors may include, but not be limited to:

- (1) Financial:
 - a) Working Capital Secured by Time Demand Notes or Stocks.
Proteges acquiring working capital through the issuance of stocks must maintain no less than 51 percent ownership to maintain DBE certification. Time demand notes may be used to secure working capital. However, any abusive use of recall features will be cause for terminating program.

Where working capital is secured by stocks or demand notes, a third party such as a bank could receive progress payments for work accomplished by the protégé, made out jointly to the agent and the protégé and make payments, on behalf of the protégé, to material suppliers or for Federal and State payroll taxes, etc. In no case can the day-to-day control of the firm be relinquished by the disadvantaged owner as a requirement of the loan.
 - b) Bonding. Mentors may bond the entire job and charge a pro-rata share of the cost to the protégé. Mentors may bond the entire job and carry the protégé by absorbing the cost of the bond. Arrangements of the bonding must be included in the Schedule of Assistance.
- (2) Management Technical Assistance:

- a) Assist in conducting a Protégé Self-Assessment by areas to be strengthened for long-range planning of the protégé firm.
 - b) Assist in developing business plan, loan packaging, and financial counseling.
 - c) Assist the protégé in setting up a cost accounting system and train the protégé's personnel to assume full control.
 - d) Provide training in plan interpretation, estimating, and materials supply function.
 - e) Provide guidance in general project management and related areas to make the protégé aware of techniques to improve productivity and competitiveness and broaden knowledge of industry practices.
- (3) Operation:
- a) Equipment/Facilities Use. Equipment and facilities may be furnished by mentor, provided that separate lease agreements are made and control over the equipment and facilities are under the supervision of protégé.
 - b) Training of managers and specialists of the protégé in state-of-the-art methods in the contracting industry.
 - c) Mentors may provide personnel with specialized expertise for a specific purpose and duration as outlined in the Action Plan. Such personnel must be on the protégé's payroll and under direct supervision of the protégé. Long term, continual, or repetitive use by a protégé of personnel primarily employed by the mentor will be construed as an attempt to artificially inflate DBE participation and may be cause for termination of the mentor-protégé agreement and decertification of the DBE.

General Practice:

- (1) Agreements may not include exclusive arrangements which limit competition.
- (2) DBE firms shall have the latitude to quote bids to other contractors.
- (3) The contractor and the DBE involved in a Mentor Protégé agreement must remain separate and independent business entities.
- (4) Middlemen or passive conduits which serve no commercially useful function, or subcontractors acting essentially as brokers are unacceptable.
- (5) Formal or informal agreements which limit control and management by DBE firms are unacceptable.

- (6) Part ownership in a DBE firm by a non-disadvantaged entity, including a mentor, is permitted by the regulations (49 CFR 23) and may be necessary to ensure adequate capital and technical guidance of the DBE participant. However, any financial investment by the mentor must not create a situation wherein the mentor may assume control over the DBE firm.

Modifications:

Modifications to the Mentor-Protégé Development Plan shall be subject to the approval of ADOT.

Termination:

The Mentor-Protégé Development Plan may be terminated by mutual consent by both parties with notice to ADOT. ADOT may terminate approval of the Plan upon determination that:

- (1) The protégé firm no longer meets the eligibility standards for certification as a DBE.
- (2) Either party has failed or is unable to meet its obligations under the Development Plan.
- (3) The DBE is not progressing or is not likely to progress in accordance with the Development Plan.
- (4) The DBE has reached a satisfactory level of self-sufficiency to compete without special treatment provided in the Development Plan.

In the event a Mentor Protégé Development Plan is terminated, the contractor will remain responsible for the DBE goals established in the project Special Provisions.

ARIZONA DEPARTMENT OF TRANSPORTATION

Mentor-Protégé Development Plan Agreement

PART ONE: General Agreement

This agreement entered into this ____ day of _____, 20____, in the city of _____, Arizona, by and between _____ (hereafter know as Mentor), and (hereafter know as Protégé), in accordance with rules and regulations of the Arizona Department of Transportation (ADOT) Mentor-Protégé program, and in accordance with the requirements for increased Disadvantaged Business Enterprises (DBE) participation in the Surface Transportation Act of 1982 (STAA) and Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

This agreement is intended to cover the general relationship between the parties to insure compliance with STAA, STURAA, and ADOT guidelines, and to implement all provisions set forth in the Mentor-Protégé Development Plan.

PART TWO: Assurances

- 2.1 Both mentor and protégé will remain separate and independent business entities. Protégé shall have the latitude to quote bids to other contractors.
- 2.2 Protégé is an ADOT-certified DBE firm.
- 2.3 The Mentor-Protégé program is not intended to provide DBEs with means to avoid management and operational responsibilities.
- 2.4 All agreements, oral and written, pertaining to this Mentor-Protégé Plan Agreement do not cause the protégé to improperly obtain the benefits of the DBE program.

PART THREE: Content of Plan

Both parties will agree to content of the plan which will include but not be limited to:

- 3.1 Exhibit A: Areas of Assistance--(Areas identified by both parties as the basis for providing assistance by mentor to protégé.)
- 3.2 Exhibit B: Schedule of Assistance--An Action Plan developed by both parties defining the types and scope of assistance; responsibilities of mentor and protégé in each activity; resources to be utilized; and measurable benchmarks to be reached by protégé.
- 3.3 Exhibit C: Key Personnel--A list of mentor and protégé representatives responsible for training and/or coordinating the Plan.
- 3.4 Exhibit D: Lease/Agreement(s)--Full copies of all lease agreements for equipment and facilities; financial agreements; and other agreements between the two parties and/or by third parties.

PART FOUR: Monitoring

- 4.1 Both parties hereby specifically consent to the monitoring of this contract by the appropriate federal and state officials or their agents, and to agree to cooperate with such agencies.
- 4.2 Both mentor and protégé agree to evaluate the progress of the Plan at scheduled intervals with the results reviewed by ADOT.

PART FIVE: Duration

The duration of the Plan will coincide with the length of the project for which the plan was intended. Extended agreement plans shall not exceed a period of three years.

PART SIX: Modifications

None of these agreements may be modified except in writing signed by both parties and approved by ADOT.

PART SEVEN: Termination

The mentor or protégé retains the right to terminate this agreement by showing cause in a written notice to all parties and ADOT. ADOT may terminate the approval of this agreement by showing cause in a written notice to mentor and protégé. In the event of termination of agreement or termination of ADOT approval, the contractor will remain responsible for the DBE goals established in the project Special Provisions.

PART EIGHT: Privacy Act Provision

The information contained herein and on attachments is used for the ADOT Mentor-Protégé Program only, and may not be disclosed without the express permission of all parties involved in this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers on the day and year first above written.

Date

Mentor Firm (Authorized Official Name) Signature

Date

Protégé Firm (Authorized Official Name) Signature

AWARD AND EXECUTION OF CONTRACT

When a contract is funded, either wholly or in part, by federal funds, an award of contract may be made contingent upon the successful bidder obtaining an appropriate license from the State Registrar of Contractors, in accordance with Arizona Revised Statutes 32-1101 through 32-1170.03. The license must be obtained within 60 calendar days following opening of bid proposals. No adjustment in proposed bid prices or damages for delay will be allowed as a result of any delay caused by the lack of an appropriate license.

Failure to acquire the necessary licensing within the specified period of time shall result in either award to the next lowest responsible bidder, or re-advertisement of the contract, as may be in the best interests of the Department.

Licensing information is available from:

Registrar of Contractors
800 W. Washington
6th Floor
Phoenix, AZ 85007
Phone: (602) 542-1502

SCOPE OF WORK

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.

When the Department makes alterations in the details of construction or Specifications, that are limited in scope, to the extent that the cost of the alterations will not exceed \$5,000.00, the Engineer and the contractor may reach agreement upon the scope of work and a lump sum amount to cover the cost of the work to be performed. This agreement shall be reflected in a letter from the Engineer to the contractor, which, when executed by both parties, shall have the same force and effect as a supplemental agreement. Work shall not proceed until both parties have signed the agreement. This work will be paid for as Miscellaneous Work, at the lump sum amount agreed upon, which item will not be a part of the Bidding Schedule, but will be established by the Engineer through the initial letter agreement.

- (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

profits, 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:
 - (a) 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
 - (b) 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.

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 be 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.

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.

PROVIDE ON-THE-JOB TRAINING

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under this project shall be at least **XX** and the required number of training hours is **XXX**; however, the contractor shall make every possible effort to provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any one trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the Highways Division for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the Highways Division and the Federal Highway Administration. The Highways Division and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, Apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Specifically, union apprenticeship programs, Associated Builders and Contractor's apprenticeship program and Associated General Contractor's Arizona Training program may be used. Additionally, in-house training programs are approved on a case-by-case basis. Approval or acceptance of a training program shall be obtained from the Highways Division prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is

permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for off site training indicated above may only be made to the contractor where he contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the off site training period.

No payment will be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. However, when such training opportunities are suspended or interrupted under the contract which the trainee was designated, the contractor may continue training under other ADOT contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts, under this training special provision. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent of the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program will apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor shall provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

The contractor shall submit a weekly training report to the Engineer. The report shall be prepared on forms obtained from the Affirmative Action Office, Room 118, 1739 W. Jackson, Phoenix, Arizona 85007, phone (602) 255-7761.

At the preconstruction conference, the contractor shall submit a schedule which will indicate each trainee's name, social security number, sex, race/ethnicity, the program in which the trainee is enrolled, the approximate number of hours each trainee will be trained in each phase of the work,

the crafts to which the trainees belong and the estimated period of time that they will be employed as trainees. A supplemental schedule shall be submitted to the Engineer when a revision in the original schedule is necessary. At the time each trainee is scheduled to begin work, the contractor shall submit to the Engineer each trainee's name, social security number, sex, and race/ethnicity. The contractor must also submit proof that the trainee is enrolled in an approved training program.

At the conclusion of the project or at the end of each calendar year for multi-year projects, the contractor must submit to the Affirmative Action Office and to the project office, the same information described hereinbefore for each trainee that worked on the project.

Additionally, the contractor must indicate if the trainee graduated from the program, was terminated due to cause, or was transferred to another project to continue his/her training.

If, at the preconstruction conference, the contractor does not provide a schedule containing the specified information, the Engineer will notify the contractor of the infraction. Failure to provide the schedule within 15 calendar days from the date of notification shall be considered as willful non-compliance. The Engineer will cause to be withheld from the contractor's monthly payments additional retainage in the amounts specified below. The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted.

The Engineer will monitor the use of trainees based on the contractor's schedule, supplemental schedules, and weekly training report. If the use of trainees is not in conformance with the schedule or supplemental information, the Engineer will cause to be withheld from the contractor's monthly payments additional retainage in the amounts specified below. Conformance with the schedule will be considered acceptable when the cumulative number of trainee hours earned to date is at least 90 percent of that shown on the schedule, for the work performed to date.

Additional Retainage:

First and second monthly payments following infraction	\$1,000.00 each month
Third monthly payment and thereafter	\$5,000.00 each month

The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted and until conformance with the schedule has been determined.

If, at the completion of the contract, the Department is holding additional retainage in accordance with this specification, the retainage will become the property of the Department, not as penalty but as liquidated damages.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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)(iv) 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 Part 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 classifications and wage rates conformed under paragraph (1)(ii) 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.

(ii)(A) 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:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) 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.

(C) 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) 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.

(iii) 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.

(iv) 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.

(v)(A) The contracting officer shall require that any class of laborers or mechanics 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:

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

(2) The classification is utilized in the area by the construction industry; and

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

(B) 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, 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.

(C) 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 Administrator for determination. The

Administrator, or an authorized representative, will issue a determination with 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) 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.

(2) **Withholding** - The City of Tempe 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Tempe may, after written notice to the Contractor, sponsor, applicant, or owner, 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** - (i) 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Tempe for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime

contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) 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:

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

(2) 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;

(3) 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.

(C) 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 (a)(3)(ii)(B) of this section.

(D) 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.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration 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 Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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.

(ii) Trainees - 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.

(iii) 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.

(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 in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses 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** - (i) 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).

(ii) 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).

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