

# Virginia Recreational Trails Program 2018



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## **Virginia Recreational Trails Program**

The Recreational Trails Program (RTP) is an 80-20, matching reimbursement program established for the purposes of providing and maintaining recreational trails. It is funded through the Federal Highway Administration (FHWA), which establishes a program for allocating funds to the States for recreational trails. The agency responsible for administering the program in Virginia is the Department of Conservation and Recreation (DCR).

Funding may be provided to city governments, county governments or other government entities but must consider guidance from the Virginia Recreational Trails Program Advisory Committee. Non-profits when partnered with a governmental body are also eligible to compete for funding.

Program requirements mandate that 30% of the trail program funds be used for motorized recreational trail uses, 30% for non-motorized recreational trails and 40% for trails with the greatest number of compatible recreational purposes and/or those that provide for innovative recreational trail corridor sharing (multiple-use trails).

The RTP is a reimbursement program, meaning that the applicant should be capable of financing the project while requesting periodic reimbursements. All project applications must have a 20% (minimum) applicant match in total cost.

Planning proposals, gap analysis, and feasibility studies are not eligible for funding through this program.

RTP funding is for projects that are primarily recreational in nature rather than serving a more utilitarian transportation function. For the purposes of this program sidewalks and publicly maintained roads are not considered trails.

Projects are selected and recommended for funding through a competitive call for proposals. Projects recommended for funding must complete an environmental analysis in accordance with the National Environmental Policy Act and at a minimum compliance with the Endangered Species Act, Historic Preservation Act, Executive Orders 11988 and 11990: Floodplain Management and Wetlands Protection. A Federal Consistency Determination in accordance with the Coastal Zone Management Act may also be required. Projects must be undertaken in accordance with the 18 April 2017 Presidential Executive Order on Buy American and Hire American.

**The RTP Application deadline for the 2018 RTP grant cycle is 19 July 2018.** RTP applications must be received at **DCR no later than 4:00PM** on, Thursday, 19 July 2018. Applicants are responsible for effecting delivery by the deadline; late submissions will be rejected without consideration.

## How to Compete for RTP Funding Assistance

1. Read this RTP Application Manual in its entirety. It reflects the most recent guidance on the Recreational Trails Program and supersedes previous guidance materials distributed by DCR.
2. Review the RTP application and scoring criteria before beginning to complete the application (See Appendix F).
3. Access the RTP Application via the Department of Conservation & Recreation website at [http://www.dcr.virginia.gov/recreational\\_planning/trailfnd.shtml](http://www.dcr.virginia.gov/recreational_planning/trailfnd.shtml).

The application is a fillable form. Questions are answered by checking the appropriate box or in narrative form. All questions should be answered in the space available. Space is limited. Be clear and be concise. Do not attach additional pages to answer questions. Failure to follow these instructions may disqualify the application.

4. **Seven complete copies of the application plus one complete copy on a USB flash drive should be submitted to DCR no later than 4:00 pm on Thursday, 19 July 2018.** Applications should be sent to

Virginia Recreational Trails Program  
Department of Conservation and Recreation  
600 East Main Street, 24<sup>th</sup> Floor  
Richmond, Virginia 23219.

Emailed applications will be rejected and not be considered for funding.

5. **Applications selected for funding will be issued a preliminary engineering (PE) agreement which must be completed within 18 months of authorization. The PE agreement will be followed by a construction agreement which must be completed within 18 months. The PE agreement will assist with the costs associated with the completion of the required environmental assessments in accordance with the National Environmental Policy Act, required studies, design plans and specifications and permitting. This two-step funding obligation process is a new requirement for the Recreational Trails Program.**

## Important Points

- This is a reimbursement program; therefore, 100% of the cost of any eligible item must be incurred and paid by the federal aid recipient before submitting a request for reimbursement to DCR.
- Projects funded with RTP are to be consistent with needs established by *2013 Virginia Outdoors Plan* [www.dcr.virginia.gov/recreational\\_planning/vop.shtml](http://www.dcr.virginia.gov/recreational_planning/vop.shtml).
- RTP may reimburse up to 80% of a project's total eligible costs.
- The program requires a 20% match. The value of donated labor, materials, supplies and services **cannot** serve as a total match for a trail proposal.
- **RTP Recipients unable to advance to construction within 2 years of completion of the Preliminary Engineering grant agreement are required to return any RTP reimbursements received to DCR for return to the FHWA.**
- Applicants submitting proposals for trails crossing lands owned by another entity must provide evidence of their legal right to the property and authorization to undertake the proposal being described.
- The matching share can include federal funds other than RTP funding. However, the project must adhere to the 95% rule which states that the federal funding cannot exceed 95% of the total project costs. This means a minimum of 5% of the project costs must come from non-federal sources. Each reimbursement must adhere to this rule.
- Each trail facility receiving federal aid will have a life expectancy associated with it. The preference for federal-aid investments is that the public interest in and access to the trail should be in perpetuity. However, the protection of the public interest in the expenditure of RTP funds is somewhat dependent on the nature and magnitude of the expenditure. Therefore, the greater the amount of federal funding involved will require a longer facility life.
- Be sure to see minimum and maximum funding request amounts as identified by category on page 11.

### **Prioritization order for RTP funding assistance \***

1. Projects facilitating the access and use of trails by persons with disabilities.
2. Projects completing critical gaps in existing trail systems.
3. Projects for new trail or access construction especially in underserved outdoor recreation areas in support of Governor Northam's land conservation strategy, rehabilitation of existing trails and/or projects involving both new construction and rehabilitation,
4. Projects for trailhead development or trailhead rehabilitation

\*Funding preference will be given to projects which have initiated environmental regulatory requirements and can move quickly to construction.

## Recreational Trails Program Review and Selection Process

1. Applications will be reviewed for consistency with the current Statewide Comprehensive Outdoor Recreation Plan which in Virginia is the *Virginia Outdoors Plan*.
2. Applications deemed ineligible, incomplete or do not follow application instructions will be eliminated from consideration for funding. Applicants whose applications are deemed ineligible will be notified.
3. Applications will be distributed to the Virginia Recreational Trails Program Advisory Committee for review, scoring, comment and recommendation for funding.
4. Site inspections of the highest ranking projects will be made to ascertain field conditions and suitability for recommendation to the FHWA. Site inspections are not a guarantee of recommendation for funding to the FHWA.
5. Applications selected for funding will be issued a preliminary engineering agreement (PE) which must be completed within 18 months of authorization followed by a construction agreement which must be completed within 18 months of authorization. The PE agreement will assist with the costs associated with the completion of the required environmental assessments in accordance with the National Environmental Policy Act (NEPA), required studies, final design plans and specifications and permitting. Applications selected for funding which have already satisfactorily completed NEPA and other regulatory requirements and can move immediately construction will be issued a construction agreement. Construction agreements are expected to be completed within 18 months of authorization..
6. At the discretion of the Recreational Trails Advisory Committee, applications submitted during the 2018 RTP cycle may be chosen to be waitlisted and funded when additional RTP funding becomes available. These waitlisted projects will be selected based on the project ranking and previously identified prioritization order.

## Recreational Trails Program Review and Selection Timeline

19 July 2018	<p>RTP Application <b>due no later than 4:00 pm.</b></p> <p>Seven complete copies and one complete copy on USB flash drive must be received by DCR no later the 4:00 pm at <b>600 East Main Street, 24<sup>th</sup> Floor, Richmond, Virginia 23219.</b></p> <p>Faxed and/or emailed applications will <b>not</b> be accepted.</p> <p><b>Applicants are responsible for effecting delivery by the deadline. Late submissions will be rejected without consideration.</b></p>
July- September 2018	<p>RTP applications screened for eligibility and forwarded to the Virginia Recreational Trails Program Advisory Committee for review, comment, scoring and recommendation for funding.</p>
September 2018	<p>All applicants notified of status.</p>
October 2018-December 2018	<p>Preliminary Engineering agreement or Construction agreement issued depending upon state of project readiness.</p>
January 2020	<p>Next Recreational Trails Program Grant Cycle Announced.</p>

## **Eligibility**

### ***Eligible Entities:***

RTP funding may be awarded to any of the following:

- Municipalities (cities, towns, counties, etc.)
- State agencies (Forestry, Game & Inland Fisheries, etc.)
- Federal government agencies  
(Federal sponsors need to be aware that the combined total of RTP funds and matching funds cannot exceed 95% federal funds on any given project.)
- Other government entities (regional park authorities, etc.)
- Non-profit organizations when partnered with a governmental body.

### ***Eligible Projects:***

RTP funding may be used for:

- Provision of features that facilitate the access and use of trails by persons with disabilities
- Trail rehabilitation
- Trail construction
- Development of motorized trails except as noted under “uses not permitted”.

### ***Uses not permitted:***

RTP funding may not be used for:

- Condemnation of any kind of interest in property.
- Upgrading, expanding, or otherwise facilitating motorized use or access to trails that prior to May 1, 1991, were predominantly used by non-motorized trail users, and on which motorized use was either prohibited or had not occurred.
- Planning proposals, gap analysis, and feasibility studies.
- RTP funds will not be used to provide sidewalks along or adjacent to public roads or streets. The Virginia Department of Transportation may have funding available to assist with these types of facilities.
- Advertising or promotional expenditures.
- Food and/or lodging for volunteers or others working on a project. Indirect costs and/or administrative costs

## Right of Way

Applicants should have the right of way secured (deed, easement, license agreement, etc.) or commitments (purchase agreement, option, letter from owner indicating willingness to sell to applicant, etc.) for the right of way in place *prior to* applying for RTP funding. Evidence to support this is required to be included in the RTP application.

Work on Public Lands-Applicants submitting proposals for work on lands owned by another public entity are required to enter into a separate legal agreement with that public entity to undertake the work described in the RTP application. **A copy of this agreement must be included with the RTP application. If the agreement is pending, then the draft agreement must be included with the RTP grant application**

Work on Private Lands- Public access to private lands must be secured. Applicants submitting proposals for work on privately owned land must **submit a copy of the recorded deed, easement, license or agreement with the RTP application. If applicant does not already have right of way secured, timeline for securing the right of way must be described in the RTP application. A copy of the draft agreement must be included with the RTP application.**

Uniform Relocation and Real Property Acquisition Policies act of 1970-All RTP projects must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Relocation Act), as amended. **The acquisition of property itself does not need to be federally funded for the rules to apply.** When federal funds are used in any phase of a project, the rules of the Uniform Relocation Act apply.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended is available online at <https://www.gpo.gov/fdsys/granule/USCODE-2010-title42/USCODE-2010-title42-chap61>

Condemnation- **RTP funding will not be used to acquire interest of any kind in properties being condemned. The use of RTP funding on previously condemned property will be situation specific and dependent upon the purpose, time and circumstances of the condemnation.**

Facility Life- Each trail facility receiving federal aid will have a life expectancy associated with it. The preference for federal-aid investments is that the public interest in and access to the trail should be in perpetuity. However, the protection of the public interest in the expenditure of RTP funds is somewhat dependent on the nature and magnitude of the expenditure. Therefore, the greater the amount of federal funding involved will require a longer facility life.

Acquisition- RTP funding may be used for acquisition; however, due to the limited funding available, the 2018 RTP competitive cycle will only consider fee simple or easement acquisition of tracts of land suitable for motorized trail system development or fee simple or easement acquisition of land for completing critical gaps between existing trail segments. The value of property to be acquired must be established by an appraisal performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) which is commonly referred to as the “yellow

book” standards. That appraisal must be reviewed and certified by an independent appraisal reviewer. In addition to the appraisal, an ASTM Phase I Environmental Site Assessment, title insurance and ten-year history of conveyance will be required. **Applications for acquisition only that do not result in trail development within 18 months of acquisition will be required to return RTP funding to DCR for return to the FHWA.**

## **Project Classification and Categories**

### ***Classification:***

RTP applications will be classified as rehabilitation/maintenance, new, or a combination of these two classes or acquisition:

Rehabilitation Projects-Projects that significantly contribute to the renovation and improvement of existing trail corridors and/or trailheads, especially those where intensive use has caused resource deterioration or where storm damage has occurred.

New Construction Projects-Proposals that involve construction of new trails and/or trailside and trailhead facilities.

Combination Projects-Proposals involving both rehabilitation/maintenance elements with new construction and may involve acquisition.

### ***Categories:***

RTP Legislation (23 U.S.C. 206) dictates categorical requirements for the use of a RTP apportionment. It requires that 40 percent of funds apportioned be used for diverse recreational trail use, 30 percent for motorized recreation, and 30 percent for non-motorized recreation.

To provide flexibility in RTP project selection, the following categories are recognized for meeting the 40-30-30 requirements:

- Non-motorized project for a single use: A project primarily intended to benefit only one mode of non-motorized recreational trail use, such as pedestrian only, or equestrian only or mountain biking only. RTP projects serving various pedestrian uses (such as walking, hiking, wheelchair use, running, bird-watching, nature interpretation, backpacking, etc.) constitute a single use for the purposes of this category.
- Diverse use project: A project primarily intended to benefit more than one mode of recreational use such as: walking, bicycling, and skating; or both pedestrian and equestrian use; or pedestrian and mountain biking. A Diverse use project may also include both motorized and non-motorized uses where motorized use is not the predominant use or when the motorized and non-motorized uses are separated by season, such as equestrian use in summer and snowmobile use in winter.

- Motorized use project: A project primarily intended to benefit motorized use. A project may be classified in this category if the project serves only one mode of motorized recreational use or more than one mode of motorized recreational use. A project may be classified in this category if the project also benefits some non-motorized uses (it is not necessary to exclude non-motorized uses), but the primary intent must be for the benefit of motorized use.

## **Funding Request Amount Ranges**

### Minimum funding request amount for **all three categories**:

\$100,000 (\$125,000 minimum total project cost)

### Maximum funding request amount for the **non-motorized category**:

\$300,000 (\$375,000 minimum total project cost)

### Maximum funding request amount for the **diversified category**:

\$400,000 (\$500,000 minimum total project cost)

### Maximum funding request amount for the **motorized category**:

\$300,000 (\$375,000 minimum total project cost)

Approximately \$1 million is available to fund projects. It is anticipated that 1-3 grants may be awarded in the motorized and non-motorized category and 1-4 grants in the diversified category. The actual number of grants awarded and dollar value of the award is contingent upon the amount of RTP funding available to Virginia at the time of grant award selections.

## **Matching Funds Requirement**

RTP funds cannot exceed 80% of total project cost. The remaining 20% must come from the applicant. This 20% contribution from the applicant is also called the match.

Allowable matches can include donation of private funds, materials, equipment and services at fair market value, and charges incurred by government entities. Other allowable matching costs are in-kind materials, equipment, services and force account labor.

The value of donated, volunteer or in-kind contributions **cannot serve as a total match** for a trail proposal, but can be a portion of the total project cost.

The matching share can include federal funds other than RTP funds. The other federal funds may be credited as the non-federal share if expended on an eligible project in accordance with the requirements of that particular funding program. In cases where federal funds are pledged as the RTP project match, the combined total of RTP grant funds requested and other federal funds may not exceed 95% of total project costs. A minimum of 5% of the project cost must come from non-federal sources.

For example, a total project cost of \$100,000 requires that the sponsor provide at least \$20,000 in match (the RTP amount in this example is \$80,000). To keep with the 95% federal

source rule, the project sponsor may use \$15,000 of eligible federal sources as a match (other than RTP funds) and must provide \$5,000 of non-federal funds.

If a grant is being used as a source of match for the RTP application, the RTP applicant must include a copy of the authorized grant agreement and contact information for the awarding agency. **Pending grant awards are not eligible as a match. Applications submitted without evidence of an eligible match will be rejected.**

The maximum funding request amount must not exceed 80% of total cost including donated value of materials and labor.

**The actual amount RTP will reimburse varies based on the amount of actual dollar spent and compliance with RTP program requirements.**

Examples:

<b># 1</b>	<b><u>Total Project Cost</u></b>	<b><u>\$40,000</u></b>
	Breakdown:	
	Cost of materials	20,000
	Cost of county work forces (Force Account)	12,000
	Value of private volunteer labor	8,000
	Combined cost of trail project	\$40,000

Maximum RTP reimbursement on the above project is \$32,000

The maximum approved RTP funding on this project is \$32,000. The sponsor actually spent \$32,000 on materials, services and work forces, and then added the volunteer labor to the local match to receive the full grant reimbursement of \$32,000.

<b># 2</b>	<b><u>Total Project Cost</u></b>	<b><u>\$40,000</u></b>
	Breakdown:	
	Cost of materials	8,000
	Cost of city/county work forces (Force Account)	8,000
	Value of donated materials	12,000
	Value of private volunteer labor	12,000

Maximum RTP reimbursement on the above project is \$16,000. The maximum RTP funding amount approved for this project is \$32,000. The total paid expenditures on the project equal \$16,000. The total value of donated materials and labor is \$24,000. Therefore, the maximum allowable reimbursement amount is \$16,000 or the cost of materials and work forces.

## Reimbursement Program

This is a reimbursement program; therefore, the RTP recipient must pay 100% of the cost of any item before submitting a request for reimbursement for eligible costs.

Reimbursements will be made only for those items that were approved in the project agreement and cost estimate. RTP requires verification and justification of all expenditures including proof of payment, labor, materials, supplies and services. All reimbursement requests will require documentation to support expenditures incurred and paid and a signed certification by the recipient. The certification is to ensure that the expenditures submitted to DCR for reimbursement are in compliance with the Recreational Trails Program and applicable regulations under 2, 23 and 49 CFR, the approved scope of work, cost estimate and RTP project agreement. **All requests for reimbursement are required to submit documentation suitable for audit.**

The final 20% of the approved maximum grant amount will be withheld until the project is completed as determined by DCR and site inspected.

**RTP recipients unable to go to construction within 2 years of completion of their Preliminary Engineering grant must return all RTP funding received to DCR for return to the FHWA.**

## **Administering a Recreational Trails Program Project**

### ***Reporting Requirements***

Recipients of RTP funding must submit quarterly reports providing the status of the trail project. Reports are due 15 April, 15 July, 15 October and 15 January. It is the responsibility of the recipient to submit the status reports to DCR. **Failure to submit reports may result in rescission of funding.** The report may be emailed to [Synthia.Waymack@dcr.virginia.gov](mailto:Synthia.Waymack@dcr.virginia.gov). Be sure to reference the grant number and name in the subject line of the email.

The report should address the following topics

1. A narrative describing the status of the work required under the scope of the project agreement, including the percent of work completed and percentage of work billed.
2. An explanation of any delays, cost overruns, or other similar problems encountered and their expected impact on the project, etc.
3. A completed SF425 should accompany each report. This form is available on the grants.gov website under “Forms, Post Award Reporting”  
<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1>
4. A description of any permits, studies or permissions issued for the project and copies of these for the project file. A description of the procurement process for materials, labor and supplies including the good faith effort exerted to include DBEs in the project. Copies of invitation for bid documents and contracts, etc. should be included.
5. A statement as to whether the project is on schedule, ahead of schedule or behind schedule and why.
6. If no activity has occurred within the quarter, an explanation as to why no work has been conducted must be given in detail.

### ***Project Management***

One person should be assigned as the project coordinator. This person will then have the overall responsibility for all aspects of the project for construction, accounting, and for submitting reimbursement requests to DCR.

***The recipient must absorb administrative and indirect costs.***

Funding for the Recreational Trails Program is made possible through Fixing America’s Surface Transportation Act (FAST). FAST, like previous transportation bills places significant emphasis on increasing opportunities for Disadvantaged Business Enterprises (DBE) as outlined in 49 CFR Part 26, as amended. Since the Recreational Trail Program (RTP) is included in FAST, the DBE requirement applies to the program.

DCR requires that all RTP recipients take appropriate and reasonable steps to make a good faith effort to provide DBEs with the maximum opportunity to compete for and perform contracts for trail projects receiving aid through the program. RTP recipients shall not discriminate on the basis of race, color, sex or national origin, in the awarding of RTP funded projects.

In accordance with RTP guidance and 2 CFR 200.317, RTP projects are expected to adhere to the Commonwealth of Virginia's construction procurement requirements, the 2018 Presidential Executive Order on Buy American and Hire American and the federal requirements outlined in form FHWA 1273. The Buy America Act, DBE Requirements and form FHWA 1273 are incorporated into each RTP project agreement issued. The Buy America Act, DBE Policy and form FHWA 1273 are provided in Appendix B. **When Federal, State and Local laws and regulations conflict, DCR must be contacted for consultation with the FHWA.**

Preliminary Engineering (PE) grants assist with the cost associated with performing the studies and analysis needed to address the requirements of the National Environmental Policy Act and other environmental laws. PE grants also assist with the completion of design plans and specifications, and obtaining required permits. A completed environmental assessment and supporting documents must be submitted to DCR for a NEPA pathway recommendation to FHWA. Directions and coordination instructions for completing the NEPA analysis and environmental assessment will be provided when the PE grant is issued. **PE grants must be completed within 18 months of authorization and are required to show financial activity at least once per active year of the grant. PE grants that are unable to move to the construction phase within 2 years after completion must return RTP funding to DCR for return to the FHWA.**

**Construction grants assists with the cost of construction and may assist with obtaining permits if the permits were not included in the PE grant. Construction grants are expected to be completed within 18 months of authorization and show financial activity at least once per active year of the grant.**

**Plans and bid documentation must be administratively reviewed by DCR prior to the start of construction on the project.** Administrative review is defined as a review of bidding documents, construction plans, specifications and/or contractual documents to determine consistency with the approved Recreational Trail Program scope of work. DCR's administrative review of these items and permission to proceed shall not be considered a professional architectural, engineering or legal review, or an endorsement of design practices and standards.

Plans which include the design of structural components, such as trail bridges, tunnels, or scenic overlooks, must be stamped, signed and dated by a Licensed Professional Engineer. RTP recipients are required to state and defend the design standards they will use.

Bid documentation must contain notice that partial funding for the project is being provided by the Recreational Trails Program of the Federal Highway Administration administered in Virginia by DCR and must be undertaken in accordance with the Recreational Trails Program guidance of the FHWA and the with 2, 23 and 49 CFR.

Contracts must be awarded to the lowest responsive and responsible bidder. **Federal funding prohibits negotiation with the lowest bidder. If only one bid is received, then the project must be re-bid.**

Contracts must be awarded to entities licensed to work in Virginia. Contracts must not be awarded to any vendor which is debarred or suspended or is otherwise excluded for or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

Cost plus agreements are not allowed and will not be considered eligible for reimbursement.

Recipients must submit a final copy of the advertisement for bid, a bid spreadsheet showing the lowest, responsive and responsible bidder, a description and documentation of the good faith effort exerted by the RTP recipient to include DBEs in the bidding process and a copy of the executed contract to DCR for the project file.

Recipients are responsible for ensuring that all contracts are in compliance with federal and state laws concerning the solicitation of supplies, equipment and services. When conflicts exist DCR must be contacted for consultation with the FHWA.

### **Reimbursement Program**

This is a reimbursement program; therefore, the grant recipient must pay 100% of the cost of any item before submitting a request for reimbursement for eligible costs. Only expenses incurred during the project agreement period are eligible for funding.

Requests for reimbursement must be submitted at least once per active year of the RTP project regardless of phase (PE or construction). Failure to adhere to this can result in termination of the project.

Reimbursements will be made only for those items that were approved in the RTP project agreement and approved cost estimate. Reimbursement requests will require signed certification by the project manager. The certification is to ensure that the expenditures submitted to DCR are in compliance with the Recreational Trails Program guidance of the FHWA and all rules and applicable regulations under 2, 23 and 49 CFR. RTP Recipients seeking reimbursement are required to submit documentation suitable for audit to verify expenditures and proof of payment.

Projects utilizing other federal funds in addition to the Recreational Trails Program funding must demonstrate adherence to the 95% rule. The 95% rule states that the total federal dollars on a project cannot exceed 95%. Each reimbursement request must adhere to this rule.

The final 20% of the total grant amount may be withheld until the project is completed as determined by DCR.

### **Reimbursement Documentation**

1. Itemized summary of documentation being submitted for invoices, labor, materials, supplies, etc.
2. RTP Certification Form (See Appendix A).

3. Documentation to support and justify all expenditures being used to request reimbursement from the RTP (See Appendix B).

Appendix A has a copy of the RTP Certification Form and sample itemization forms.

Appendix B has a listing of information typically needing to be submitted to obtain RTP reimbursement.

**Failure to supply documentation justifying each request for reimbursement may result in the inability to receive reimbursement.**

### Project Close Out

Prior to receiving the final reimbursement on a PE project, DCR must be provided with all of the deliverables associated with the PE grant. For construction grants a site inspection of the completed work is required. Final reimbursement requests must be accompanied by a final performance describing the actual work accomplished, how it differed, if at all, from the original scope of work, the percentage and dollar value of volunteer, in-kind, donated, and cash contributions. It should also include a reporting on the total DBE and SWaM involvement in the project. The final performance report should be accompanied by a Final SF425 form <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1>.

**PE grants that are unable to go to construction within 2 years of final reimbursement are required to return RTP funding to DCR for return to the FHWA.**

### **Project Period**

The project period will be included in the grant agreement. PE grants are to be completed within 18 months of authorization. Construction grants are to be completed within 18 months of authorization.

### **Project Extensions**

See the Recreational Trails Program Extension Policy included in Appendix C.

**Appendix A**  
**RTP Certification Form**  
**and**  
**RTP Sample Itemization Forms**









# DAILY EQUIPMENT RECORD

Date Used:

Description

Model #:

Type:

Time

From:

To:

RTP Project Number:

RTP Project Name:

Description of Work Performed and associated RTB Budget Item

Driver's Signature

Supervisor's Signature

Date

**Data Sheet Summarizing In Kind Equipment Records**

Supporting documentation must accompany this data sheet.

Be sure to include a print out of the FEMA Schedule of Equipment Rates in use during the period covered. The rates are available at FEMA.gov

Project Name: \_\_\_\_\_

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

Reimbursement No. \_\_\_\_\_

Reimbursement Period: \_\_\_\_\_

Period Covered	Equipment Used	Description of Work, RTP Budget Item	Equipment Rate	Number of Hours	Value of Contribution
<b>TOTAL</b>					

CERTIFICATION: I certify that, to the best of my knowledge and belief, the billed costs of reimbursement on the attached documents are in accordance with the terms of the RTP project agreement and that the reimbursement represents the reimbursement share due, which has not been previously requested, and that an inspection has been performed and all work is in accordance with the terms of the grant. In addition, I certify compliance with applicable federal and state regulations including, but not limited to, 2, 23 and 49 CFR, Federal, State and Local Laws and Regulations, the RTP DBE policy, Virginia Swam requirements, the construction provisions for federal-aid projects as outlined in FHWA1273 and the FAST Act.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix B  
Sample Listing of  
Reimbursement Documentation

## **Recreational Trails Program Reimbursement Documentation Guidance**

- Final copy of the Invitation for Bid (IFB), Bid Spreadsheet, executed contract with the lowest responsive and responsible bidder, summary of procurement on the project and the RTP recipient's efforts to comply with the RTP DBE Policy.
- A transmittal letter/performance report describing the work completed, challenges, amount of DBE participation in the project (if any), a breakdown by percentage of the total cash, donation, volunteer or in-kind work involved. The transmittal should include the reimbursement amount being requested.
- Receipts, delivery tickets and packing slips for materials and supplies purchased. This is required for all projects including contractor performed work.
- Invoices/Schedule of Values (SOV) itemizing charges. All invoices/SOV should reference the RTP project. Invoices/Schedule of Values must be detailed. Invoices/Schedule of Values with expenses for materials and supplies without corresponding delivery tickets, packing slips, etc. will not be honored and will be ineligible for reimbursement. When invoices contain other purchases not related to the RTP project, the purchases applying to the RTP project must be clearly identified.
- All invoice/SOV expenditures must have an explanation for how the material, supply or service relates to the RTP authorized work.
- Time cards signed by both the employee and supervisor are required. Time cards are needed for contract labor performed work, force account performed work and volunteer performed work. A description indicating how the work performed by the employee ties to the RTP authorized work is needed. "Trail work" is not acceptable. Unsigned timecards by either the employee or supervisor are ineligible for seeking reimbursement. Incomplete timecards are ineligible for seeking reimbursement. Unsigned and/or incomplete volunteer time cards and/or logs are ineligible for seeking reimbursement. Timecards/volunteer logs for multiple individuals that appear to be in the same handwriting will be deemed ineligible.
- All expenditures must have an accompanying proof of payment in the form of image of cleared check (front and back of check), credit card receipt, payroll ledger or pay stub copies, etc. **Internal source documents are not sufficient to prove an outlay of funds.**
- Holiday, Annual, Sick leave and Overtime may not be charged to the RTP project.
- Work logs indicating daily tasks completed for the RTP project. Daily work logs are needed for force account, volunteer and contract built projects.
- Materials notebook. The materials used on any project must be documented as approved materials meeting specifications and documented as to the quantities used. The materials notebook must contain the total quantities of materials incorporated into the project including a description of the material, the material supplier and manufacturer. Supporting documentation such as delivery tickets, test reports and certifications demonstrating conformance to specifications is required to demonstrate

compliance with the 18 April 2017 Presidential Order to Buy American as well as the Buy America Act regarding iron and steel. The Contractor's quality control manager and the local project manager must sign the materials notebook. Self-built projects require material books and should be signed by the project manager.

- Equipment records must clearly identify machinery, date, time, name of operator, rate of the equipment and description how the equipment was used in accordance with the authorized RTP scope of work. If discrepancies exist between the hours on the operator's time sheets and the equipment records explanations are required to determine eligibility for reimbursement purposes.
- Documentation describing providing a summary of the procurement on the RTP project including the Recipient's effort to including DBEs in the project. This documentation includes but is not limited to the final Invitation For Bid, Project Manual, bid spread sheet showing lowest, responsive and responsible bidder and executed contract.

**Notes:**

The RTP program requires documentation to justify all expenditures associated with the project before reimbursement can be authorized. **Each RTP project is situation specific and additional information to what is listed above may be requested to receive reimbursement. The failure to provide suitable documentation for authorization from the FHWA for payment can result in the inability to be reimbursed for work performed, either in whole or in part.**

**In situations where ambiguity exists in determining how an expense relates to the authorized RTP scope of work no reimbursement will be possible.**

**In situations where ambiguity exists regarding the eligibility of an expense no reimbursement will be allowed.**

Projects involving other federal funding must adhere to the 95% rule which states the total federally funding on any given project cannot exceed 95%. **Each reimbursement request must adhere to this rule in order for a reimbursement to be authorized. Failure to comply with the 95% rule will result in no reimbursement being made on the project.**

**PE grants unable to go to construction within 2 years of final reimbursement are required to return RTP funding to DCR for return to the FHWA.**

**Each reimbursement request must be accompanied by a signed RTP Certification Form (See Appendix A).**

The certification should be signed by the project manager or other employee who had responsibility for overseeing the project in accordance with the Recreational Trails Program. The certification is a component of the RTP reimbursement Log.

## Appendix C

Presidential Executive Order on Buy American and Hire  
American,  
Buy America Act, and  
FHWA 1273

# Presidential Executive Order on Buy American and Hire American

## ECONOMY & JOBS

Issued on: April 18, 2017

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<https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>

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By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the faithful execution of the laws, it is hereby ordered as follows:

Section 1. Definitions. As used in this order:

- (a) “Buy American Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal grants including those that refer to “Buy America” or “Buy American” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods.
- (b) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (c) “Petition beneficiaries” means aliens petitioned for by employers to become nonimmigrant visa holders with temporary work authorization under the H-1B visa program.
- (d) “Waivers” means exemptions from or waivers of Buy American Laws, or the procedures and conditions used by an executive department or agency (agency) in granting exemptions from or waivers of Buy American Laws.
- (e) “Workers in the United States” and “United States workers” shall both be defined as provided at section 212(n)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(4)(E)).

Sec. 2. Policy. It shall be the policy of the executive branch to buy American and hire American.

- (a) Buy American Laws. In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States.
- (b) Hire American. In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

Sec. 3. Immediate Enforcement and Assessment of Domestic Preferences According to Buy American Laws.

- (a) Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law.
- (b) Within 150 days of the date of this order, the heads of all agencies shall:

- (i) assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws within their agencies;
  - (ii) assess the use of waivers within their agencies by type and impact on domestic jobs and manufacturing; and
  - (iii) develop and propose policies for their agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement.
- (c) Within 60 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to agencies about how to make the assessments and to develop the policies required by subsection (b) of this section.
- (d) Within 150 days of the date of this order, the heads of all agencies shall submit findings made pursuant to the assessments required by subsection (b) of this section to the Secretary of Commerce and the Director of the Office of Management and Budget.
- (e) Within 150 days of the date of this order, the Secretary of Commerce and the United States Trade Representative shall assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences.
- (f) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the Office of Management and Budget, and the United States Trade Representative, shall submit to the President a report on Buy American that includes findings from subsections (b), (d), and (e) of this section. This report shall be submitted within 220 days of the date of this order and shall include specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs. Subsequent reports on implementation of Buy American Laws shall be submitted by each agency head annually to the Secretary of Commerce and the Director of the Office of Management and Budget, on November 15, 2018, 2019, and 2020, and in subsequent years as directed by the Secretary of Commerce and the Director of the Office of Management and Budget. The Secretary of Commerce shall submit to the President an annual report based on these submissions beginning January 15, 2019.

Sec. 4. Judicious Use of Waivers. (a) To the extent permitted by law, public interest waivers from Buy American Laws should be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

(b) To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration.

(c) To the extent permitted by law, before granting a public interest waiver, the relevant agency shall take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and it shall integrate any findings into its waiver determination as appropriate.

Sec. 5. Ensuring the Integrity of the Immigration System in Order to “Hire American.”

(a) In order to advance the policy outlined in section 2(b) of this order, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse.

(b) In order to promote the proper functioning of the H-1B visa program, the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security shall, as soon as practicable, suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof;

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or

(iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,  
April 18, 2017.

VIRGINIA DEPARTMENT OF  
TRANSPORTATION SPECIAL PROVISION FOR  
**USE OF DOMESTIC MATERIAL**

July 26, 2013

**SECTION 102.05 PREPARATION OF BID** of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as "Buy America", except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material) such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as "foreign" material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with "Buy America" requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the contract amount or \$2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site

and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

**Waivers:**

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated: 1) that the use of domestic steel or iron materials would be inconsistent with the public interest; or 2) materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and
  
2. Analysis of redesign of the project using alternative or approved equal domestic products

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website <http://www.fl1wa.dot.gov/construction/contracts/waivers.cfm>. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

**Alternative Bidding Procedures:**

An alternative bidding procedure may be employed to justify the use of foreign iron and/or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and/or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and/or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and/or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and/or steel materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign iron and/or steel items will be permanently

installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total "Foreign" bid.

In the event the contract is awarded to the bidder furnishing foreign iron and/or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment for Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the contract is awarded to a bidder furnishing foreign iron and/or steel items and during the life of that contract the Contractor discovers he cannot furnish foreign iron and/or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and/or steel materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign" including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The "Foreign" bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor's "Domestic" bid. The Contractor shall write the word "Foreign" by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate "Foreign" paper bid.

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given therefor shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

**Certification of Compliance:**

Where domestic material is supplied, prior to incorporation into the Work, the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and/or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.

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

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

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.

**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.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed

and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to

the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

## **10. Assurance Required by 49 CFR 26.13(b):**

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

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related

matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S.

Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

## 2. Withholding

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

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics

working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

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

#### 4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of

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

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

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

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

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

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he

or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

#### **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an

employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) The prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) The prime contractor remains responsible for the quality of the work of the leased employees;
- (3) The prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) The prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

## **VII. SAFETY: ACCIDENT PREVENTION**

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety,

health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be

performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

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

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

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consulting contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

\* \* \* \* \*

## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

### 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a

participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

\* \* \* \* \*

#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

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

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL

wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Appendix D  
Disadvantaged Business Enterprise Program

**Department of Conservation & Recreation**  
**DBE Plan for Virginia Recreational Trail Program**  
**March 2018**

**Policy**

The Moving Ahead For Progress in the 21<sup>st</sup> Century Act enacted in 2012, included provisions designed to foster and support the use of Disadvantaged Business Enterprises. Section 1101 (b) of Fixing America's Surface Transportation Act" or the "FAST-ACT," (P.L. 114-94) describes Congress's findings regarding the continued need for the DBE program due to the discrimination and related barriers that pose significant obstacles for minority and women-owned businesses seeking federally-assisted surface transportation work.

In order to show compliance with FAST-ACT DBE expectations, DCR requires that Virginia Recreational Trail Program recipients, heretofore called the "The Recipient" shall take all appropriate and reasonable steps to make a good faith effort in achieving compliance with the provisions of 49 CFR Part 26 to ensure that DBEs are given the maximum opportunity to compete for and perform contracts for RTP projects. The Recipient shall not discriminate on the basis of race, color, sex or national origin, in the award of RTP funded projects.

DCR will review factors to determine the race- and gender- neutral and/or race- and gender conscious DBE goal as outlined in 49 CFR 26.51. If the RTP DBE participation goal is obtained or exceeded by race-neutral means alone for two consecutive years, DCR as the administering RTP agency will not be required to make a projection of the amount of the DBE goal the RTP can meet using such means in the next year. As such, DCR will not be required to set contract goals on any grant award contracts in the next year. DCR will continue using only race-neutral means to meet the RTP overall goals unless and until the overall goal for a year is not met (26.51 (f) (3)).

**Definitions**

Definitions as given in 49 CFR Part 26 and 23 will be used to define for RTP grant recipients the following terms:

- Disadvantaged Business Enterprise (DBE)
- Small Business Concern
- Socially and Economically Disadvantaged Individuals
- Owned and Controlled
- Manufacturer
- Regular Dealer
- Other Socially and Economically Disadvantaged Individuals

These definitions are as follows:

Disadvantaged Business Enterprise (DBE) means a for-profit small business concern that is (1) 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.

Small Business Concern means a small business as defined by section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121). With respect to firms seeking to participate as DBEs in RTP projects, a firm will not be eligible as a DBE if in any Federal Fiscal year over firm's previous three fiscal years, the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402) in excess of \$23.98 million

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 member 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.

(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, Kiribati, 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.

Owned and Controlled means a business: (a) which is at least 51 percent owned by one or more Socially and Economically Disadvantaged Individuals (see above) or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

Manufacturer means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

Regular Dealer means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such

bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

Other Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Department to meet the social and economic disadvantage criteria described below.

#### *Social Disadvantage*

1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
2. The individual must demonstrate that he/she has personally suffered social disadvantage.
3. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

#### *Economic Disadvantage*

1. The individual's 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 line of business and competitive market area that are not socially disadvantaged.
2. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets

- personal and business net worth
- personal and business income and profits

## **Compliance & Procedure**

The majority of RTP projects within Virginia are DCR sub-grants to localities and private non-profit organizations as approved by the FHWA.

Federal guidelines require that work performed and materials purchased be done so on a competitive basis and that awards go to the lowest, responsive and responsible bidder. Some RTP projects are constructed with in-kind and/or volunteer labor. Regardless of whether a project comes to fruition through the use of contract labor or in-kind and/or volunteer labor, RTP projects must demonstrate a “Good Faith Effort” for including DBE’s within the project.

So that a “Good Faith effort” is made on behalf of the DBE Goal and requirement as outlined in 49 CFR Part 26 and 23 as amended, The Recipient is required to:

1. Sign Project Agreement that shows
  - (a) the Recipient, its agents, employee, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR, Part 26 and Part 23, as amended, and
  - (b) that the Recipient shall take appropriate and reasonable steps in accordance with 49 CFR, Part 26, and Part 23 as amended, to ensure that DBE’s have an opportunity to compete for and perform on contracts and subcontracts and to provide materials and supplies. The Recipient is directed to the listing of certified DBE firms online at <https://www.sbsd.virginia.gov/directory/> or to contact the Virginia Department of Small Business and Supplier Diversity (101 N. 14th Street, 11th Floor Richmond, VA 23219 or 804.786.6585) for assistance in identifying vendors.
2. The Recipient is encouraged to arrange solicitations, presentation of bids, quantities, specifications and delivery of schedules in ways that facilitate DBE and other small business participation.
3. The Recipient is instructed to advertise bids in at least one newspaper of general circulation, at least one trade association publication and at least two minority-focused media if available within the bid area.
4. The Recipient will identify as part of their required competitive bid documentation all of the DBEs, if any, who participated in the bid process. In addition, the Recipient will be required to identify the primary location of each DBE contractor identified on their list, the mailing address and the type of work performed by each.
5. The Recipient will indicate the DBE participation in the total project expressed as a dollar value.

# **Appendix E**

## **RTP Extension Policy**

## **Virginia Recreational Trails Program Policy for Considering Requests for Extension of RTP Project Agreements (01/2018)**

### **Overview**

RTP project agreement extensions result in an increased financial tracking, reporting and project management workload. Therefore, extensions will only be considered when there are circumstances beyond the control of the RTP Recipient and if appropriate justification is provided. Extensions may also be denied on the constraints of the RTP program guidelines or the federal funding source.

### **Policy**

RTP project agreement extensions may be considered, on a case by case basis based on the following conditions:

1. Unforeseeable *severe* weather conditions prevented project implementation as scheduled;
2. Unexpected staff turnover during the project period and after beginning construction, which required that new personnel be hired or trained in order to meet project deliverables;
3. Delays due to unexpected environmental concerns.

Conditions that do not warrant an extension include but are not limited to:

1. Project delays resulting from lack of attention;
2. Extension request on projects where program reporting requirements have not been met;
3. Failure to complete project deliverables in accordance with the project schedule established in grant application and project agreement scope of work.
4. History of inability to meet deadlines on previous DCR grants (LWCF, RTP, etc.).

### **Administrative Procedure for Extensions**

**At least 90 days prior to the agreement expiration date, the RTP Recipient provides a written request to the DCR that specifies the reason for the project extension and the necessary time period needed to complete the project.** Extensions are made in one year increments. Only one extension request per project agreement will be considered. The RTP Administrator will forward the request to the Division of Planning & Recreation Resources Director with a recommendation to support or not-support the extension. If an extension is approved, then DCR will request an extension for the project from the FHWA.

**Appendix F**  
**Conservation Visions Recreation Model(s)**

## The Virginia Conservation Vision Recreation Model

The Virginia Conservation Vision Recreation Model quantifies access to outdoor public recreation sites in the state of Virginia, based on the number and size of recreational opportunities within a 30-minute drive.

There are two components to the recreation model: terrestrial and aquatic. Scoring for both components is measured on a scale from 0 to 100, and represents the relative abundance of access points to recreational sites within a 30-minute drive (not including traffic delays). Both number and size (e.g., area of a park or public lake) of recreational sites are incorporated into the scoring. Recreational sites are given a score of 101 in the model, and are marked as 'Public Recreation Lands' (terrestrial component) and 'Aquatic Areas' (aquatic component) in map products.

Recreational sites included in the terrestrial component of the model include trailheads, birding and wildlife trail sites, and all public-access lands.

Recreational sites included in the aquatic component of the model includes public boating/water access sites, birding and wildlife trail sites on public waters, public lakes and canoe-only public lands, public beach access, and publicly accessible Scenic Rivers or stocked trout streams.

The purpose of the model is to quantify opportunities for outdoor recreation in Virginia. The map helps to identify areas where recreational opportunities are abundant, as well as areas where access to public recreation opportunities are limited.

The model is one of several in a suite of conservation planning and prioritization models developed by the Virginia Natural Heritage Program and partners, known collectively as Virginia Conservation Vision. The Recreation Model can be used in conjunction with other data to help prioritize conservation, restoration, and management efforts.

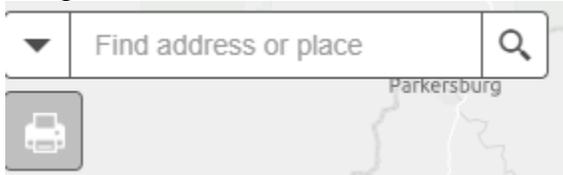
To view the model in an ArcGIS Online map viewer, please go to <http://www.dcr.virginia.gov/natural-heritage/vaconvisrec>

Both Terrestrial and Aquatic components are included in the ArcGIS Online map. Use the "Layer List" on the side panel to turn on/off component layers.

Question 6 of the Recreational Trails Program Application asks applicants to indicate how the trail proposal addresses needs in the Conservation Vision Recreation Model. Please use the online tool and print maps as the supporting documents for statements made when answering the question. It is recommended that two maps be used. One showing the Aquatic Areas and the other the Terrestrial Areas. Please note the online tool will allow users to upload shape files using the icon



The print button is located beneath the find an address or place bar.



**Appendix G**  
**2013 Virginia Outdoors Plan**

## 2013 Virginia Outdoors Plan

The *2013 Virginia Outdoors Plan* (VOP) is the state's official conservation, outdoor recreation and open-space plan. The plan is developed to meet the requirements of the Land and Water Conservation Fund (54 U.S.C. 2003305 et seq.) and the Virginia Land Conservation Foundation (Title 10.1, Chapter 10.2 of the Code of Virginia). For the Recreational Trails Program (23 U.S.C. 206), the plan serves as a guidance for project selections.

Question 6 of the Recreational Trails Program Application asks applicants to indicate how the trail proposal addresses needs in the *2013 Virginia Outdoors Plan*. The VOP is posted on the Virginia Department of Conservation and Recreation website at <http://www.dcr.virginia.gov/recreational-planning/document/vopall.pdf>. To support the statements made within the application, applicants should cite the page number, print the page(s), highlight relevant content and attach to the application.

**Appendix H**  
**2018 Scoring Criteria**

## 2018 Recreational Trails Program Scoring Criteria

### Project Name:

#### 1. Purpose and Need (score 0-15 points)

The project creates a significant and/or unique recreational trail experience, or is located in a None or Limited or Somewhat Limited Access for Aquatic or Terrestrial Recreation Opportunity area in the DCR Conservation Vision models, or rehabilitates a significant and/or unique recreational trail, or is being designed to 100% ADA standards specifically for use by impaired users. The application contains information that shows the recreational need and demand for the proposal is documented and supported by statistical data. The ability to make the trail 100% ADA is supported by documentation. The anticipated usage projections are supported by statistical data and appear realistic for the trail facility being planned and its location.

(Score: 10-15 points)

The project creates and/or rehabilitates a moderate recreational trail contribution or is located in a Moderately Abundant Access for Aquatic or Terrestrial Recreation Opportunity area in the DCR Conservation Vision models. The purpose or need statement is clear but application lacks supporting documentation and statistical data to support statements being made. How ADA is being addressed for the project is absent or unclear. (Score: 1-9 points)

Project creates and /or rehabilitates a trail which has an unclear recreational purpose and need statement, unclear usage expectation and does not address questions about ADA. (Score: 0 points)

#### 2. Close to Home Trail Project (score 0-15 points)

Application includes mapping, census data, GIS applications, etc. to demonstrate the proposed project is a close to home trail project. Close to home is defined as a trail within a 15 minute walk or bike ride or a 30 minute car ride. (Score 10-15 points)

Application indicates the trail is close to home but documentation to support this is either lacking, unclear or fails to adequately support claims. (Score 1-9 points)

#### 3. Trail Connectivity (score 0-10 points)

The proposed project will connect existing trails systems to help form trail networks. To receive points, the connection must be to an existing, separate and distinct trail already in use by the public. A trail extension is not considered a connection unless it connects to a separate and distinct trail or is completing a critical gap in an existing trail. (Score 0-10 points)

#### 4. Project Design, Means, Methods and Timeline (score 0-10 points)

Project schedule is clear, well planned and logical. Applicant has clearly indicated the approach to the project will be in a timely, efficient and effective manner. The proposal includes actions that should allow the PE grant phase to be completed within 18 months. The project includes plans to create or enhance ADA accessibility. Long term operation and maintenance plans indicate that Facility Life Requirements can be easily met. (Score: 6-10 points)

Project schedule is clear but appears unrealistic. ADA accessibility is not planned or what is planned does not appear meaningful. Long term operation and maintenance is unclear or inadequate for meeting Facility Life Requirements. (Score: 2-5 points)

Project schedule is unrealistic, either overly ambitious or under achieving. The application does not address ADA accessibility. There is little evidence the long term operation and maintenance has been considered. (Score: 0-1 points)

#### **5. Project Readiness (score 0 - 10 points)**

Applicant does not have legal control/access to the property for project. (Score 0 points-do not award other points from this section).

Application is for the fee simple or easement acquisition to close a critical gap within an existing trail system or for construction of motorized trails. The application does NOT contain a letter from the current property owner indicating a willingness to give/sell the easement or fee simple rights to the applicant for use in the trail project.(Score 0 points-do not award other points from this section).

Application provides information demonstrating control of the right-of-way, final design plans are complete, the public has been involved in the development of the proposal, permits have been issued environmental regulatory requirements have been completed and the project is ready to be bid for construction (Score 7-10 points).

Application provides information demonstrating the project is beyond the concept and feasibility stages, the applicant has control of the right-of-way, the general public has been involved in the development of the proposal, sufficient environmental analysis of the site has been conducted to show the property is suitable for the proposed trail uses and that the PE grant phase can be completed within 18 months. (score: 2-6 points)

Application provides information that indicates the project is still within the concept or feasibility stages, information within application makes it difficult to determine if the public, other than specific user groups, have been actively engaged in the development of the proposal. Application content makes it difficult to determine if the PE grant phase can be completed within 18 months. (Score: 0-1 points)

#### **6. Planning Process, Virginia Outdoors Plan and Local and Regional Plans (score 0-10 points)**

##### **New Construction**

Project is an identified need in an approved local plan, regional plan, identified as a need through user/citizen surveys, or is located in a None or Limited or Somewhat Limited Access for Aquatic or Terrestrial Recreation Opportunity area in the DCR ConservationVision models. Development of the proposal included public participation opportunities (design charrettes, public hearings, public meetings, legal notices requesting comments, etc.) specifically for the RTP proposal's scope of work. (Score 8-10 points)

Project is an identified need in an approved local plan, regional plan or was identified as a need through user/citizen surveys, or is located in a Moderately Abundant Access for Aquatic or Terrestrial Recreation Opportunity area in the DCR ConservationVision models. Application content indicates the proposal was on the agenda of routine council or governing body meeting but there is no information indicating the specific project proposal was provided to the public for review and citizen input. (Score: 6-7 points)

The specific project **is not** an identified need in a local plan but is an identified need in the *Virginia Outdoors Plan*. Planning of the project does not appear to have involved any public participation or public review and comment opportunities. (Score: 1-5 points).

Planning Process and/or decision making process is unclear or inadequate or took place more than 3 years ago. (Score: 0 points)

### **Rehabilitation**

For proposals involving rehabilitation and relocation of existing trail corridors and amenities, Is the rehabilitation part of a resource management plan for the facility or system? Is the rehabilitation needed due to high volume use? Is the rehabilitation needed due to natural occurrences? Is the rehabilitation needed to improve safety? Was the decision making process that led to the submission of the application clear and logical? Has the applicant explained a decision making process that should have involved the public but did not? (Score 0-10 points)

### **Acquisition**

Due to limited funding and categorical requirements of the RTP, RTP funding will only be used for acquisition if the acquisition is to close a gap in an existing trail system or for the creation of motorized trail systems. If the proposal meets this criteria, then consider the how well the applicant has engaged the public in the decision making process for the proposal and score. (Score 1-10 points)

## **7. Budget/Cost Estimate (score 0-10 points)**

Application includes detailed, itemized cost estimate and budget narrative where all costs are eligible for reimbursement, the costs appear accurate and the applicant has certified and identified the financial resources are committed for financing the project over the life of the grant. (Score: 7-10 points)

Application includes detailed cost estimate where certain costs are not eligible for reimbursement, some costs do not appear accurate or cost effective the budget narrative raises questions or appears incomplete, financial resources have not been certified but information within application demonstrates the applicant's capability to fund the project over the life of the grant. (Score: 2-6 points)

Application includes cost estimate that is not complete and/or or uses lump sum for every item, the estimate includes ineligible items or appears unrealistic: either over or under budgeted, the budget narrative is unclear or raises questions. (Score: 0-1 points).

Application does not include a detailed, itemized, cost estimate or budget narrative or what is included raises numerous questions about the ability of the applicant to complete the project while seeking periodic reimbursement. (Score: 0 points)

## **8. Match Composition (score 0-10 points)**

Match is unclear or not available, match is 100% soft match and/or application lacks documentation showing match is secure raising questions about the ability of the project to move forward. Match involves pending grants from other programs and is therefore ineligible. (Score: 0 Points)

Match is 100% cash. Application includes documentation supporting the commitment of funds and the applicant is providing more than a 20% match, (Score 5-10 points-consider how much over the required 20% match the applicant is providing.)

Match is 100% cash but there is no overmatch. (Score: 6-9 Points)

Match is combination of cash, forced account, volunteer labor and donations of materials, services and goods, and/or other federal funding sources. (Score: 3 points)

#### **9. Application Preparation (score 0-5 points)**

Application answers all questions in a clear and concise manner, all required attachments are included, graphics are clear depicting logical termini of the RTP project and how the public will access the facility. Linkages to other existing facilities are clearly shown.(Score: 5 points)

Application answers all questions but raises some questions and some of the required documentation is missing, graphics are unclear or raises questions, any connections and linkages described in application are not noted or poorly depicted. (Score 2-4 Points)

Applications is missing required documentation, answers to questions are unclear, rambling, confusing, contradictory or not relevant. (Score: 0- 1 Point)

#### **10. Previous RTP performance (Score 0 to 5 points)**

Applicant has completed previous recreational grants within the original timeframe or extensions, and without reductions in the scope of work. Financial and status reports were consistently submitted on time. (Score: 5 points)

Applicant has completed previous recreational grants. Applicant needed numerous extensions not due to acts of nature and/or was inconsistent with financial and status reports. (Score: 1 – 2 points)

Applicant has completed previous recreational grants but failed to follow grant requirements, was inconsistent with financial status reporting , repeatedly asked for exemptions of requirements, were temporarily suspended, needed multiple time extensions or reductions in scope of work, etc. (Score 0 points)

#### **11. Recreational Trails Advisory Committee Bonus Points (Score 0-15)**

The Recreational Trails Advisory Committee may choose to add up to 15 discretionary points for projects that are felt to be especially well thought out, innovative and unique or will contribute significantly to needed trail opportunities in Virginia or represent new opportunities in underserved outdoor recreation areas, or aid in geographic distribution of funds.

**Maximum total points possible for items 1-10 = 100 points**

**Maximum total RTP Advisory Committee points = 15 points.**