

## INVITATION FOR BID (IFB) Seven Bends Trails

A Shenandoah Valley Bicycle Coalition (SVBC) project in partnership with Virginia State Parks and the United States Forest Service (USFS) with funding provided by the U.S. Department of Transportation Federal Highway Administration's Recreational Trails program via the Virginia Department of Conservation and Recreation will build new shared-use trail connections between Seven Bends State Park and trails on the Lee Ranger District of the George Washington National Forest.

MANDATORY PRE-BID SITE VISIT: **May 5, 2025**

BID SUBMISSION DUE DATE: **May 13, 2025**

PROJECT COMPLETION DATE: **April 1, 2026**

CONTACT:

Kyle Lawrence Shenandoah Valley Bicycle Coalition  
(571) 277-8121- [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org)



## Updates to Version IFB V5.07b – May 8, 2025

**These updates and answers to questions supersede all prior material in the IFB and shall govern in the event of any conflict.**

- Simplified Map of Worksite: [Cal Topo Map for IFB](#) (matches the printed map in IFB)
  - [Detailed map with additional projects cleared for construction](#)
- Figures that contradicted the written description of the trail specifications have been removed.
- Project completion date has been updated to April 1.
  - Section 7.2: Failure to Meet the Project Deadline: “In the event the Contractor fails to complete the awarded project(s) by the April 1, 2026 deadline, the Contractor will be removed from the job site, and the Client will contract out the remaining project for immediate completion. The Contractor will be responsible for the project's cost and any damages caused by such delay; the Client shall have the right to deduct from and retain completion costs from the Contractor's final payment.”
- Bid Submission date has been updated to end of day on May 13, 2025
- Section 7.2 now also contains “In addition to any actual damages incurred, the Contractor shall be liable for liquidated damages of \$300 per calendar day for each day the work remains incomplete beyond the completion date.”
- Section 1.0 added, “Trails will be shared-use but prioritize foot travel and bike travel, with equestrians prohibited from trails within Seven Bends State Park.”
- Section 6.1 addition, “The project may result in two awards, with an award for Project A (gravel-trail type 1) and potentially a separate award for Project B (Natural surface singletrack trail types 2 and 3).”
- Worksheet B – Rock armor was increased from 500’ to 800’
- Projects are prioritized by letter, and project construction will be determined based on projected costs. Seven Bends State Park contains more shovel-ready projects than the current funding is anticipated to cover:
  - Project A Gravel Trail (Approximately 4000’)
  - Project B: Lupton Trail Construction (Approximately 13,000’)
  - Project C: Hollingsworth Climb (Approximately 2,500’)
  - Project D: Mid-Mountain loop (Approximately 3,000’)

## General Questions:

- **Question:** Would it make sense to add a line item for Ballast stone that way we only bid on the unit price and not assume how much we may or may not need for trail construction type 1?

- **Answer:** The IFB has been updated to specify that the Shenandoah Valley Bicycle Coalition, "The Client," will source the ballast stone required for the project in conjunction with the state park and the contractor's timeline.
- **Question:** We just want to double-check that the appropriate license to be held by the prime contractor is a Virginia Class A Highway/Heavy license?
- **Answer:** Per the Virginia Recreational Trails Program manual: "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."
- **Question:** The Documents state that the trails should be 4' wide in one paragraph and 6' in another. It's our understanding that we are going to be bidding a 4' wide trail with the allowance to make it 6' on our terms as needed for means and methods of construction. OR are there specific sections that are required to be 6' wide?
- **Answer:** Trail width is determined by trail type. Trail types and corresponding widths are as follows:
  - **Trail Type 1 (gravel trail):** 72" width with an exception width of 60" allowed for lengths up to 5'
  - **Trail Type 2 (below the 1500' contour):** 36" – 40" with an exception to 24" allowed for lengths of up to 5'
    - Tread maintains a maximum tread surface variance of up to 3" in height
  - **Trail Type 3: (above the 1500' contour)** 30" – 40" with an average width of at least 36" and an exception for 24" allowed for lengths of up to 5'
    - Tread maintains a maximum tread surface variance of up to 8" in height
- **Question:** Can we estimate the gravel trail's base unit at 6"? That way, we can account for its potential need (which some sections certainly will) instead of guessing and adding margins for it.
- **Answer:** The Shenandoah Valley Bicycle Coalition will procure the gravel needed for the trail. In general, we plan the depth of the base unit to be 3-6" as required for a level and stable surface
- **Question:** Is Trail Type 1 60" or 48"?
- **Answer:** Trail Type 1 width is 72" with an exception width of 60" allowed for lengths up to 5'
- **Question:** Is a Virginia Contractors License required to bid on the project?
- **Answer:** Yes. Per Section 3: Regulations and Standards under Subsection 3.3, Virginia Contractors License of the IFB. "3.3 Virginia Contractors License  
A Virginia Contractors License is required to bid on this project. Contracts will not be awarded to any vendor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under Executive Order 12549, 'Debarment

and Suspension.”

- **Question:** Is 500 feet of Rock armor enough for the trail type 2?
  - **Answer:** Rock armor has been increased to 800', but remember all linear feet numbers in worksheet B are *estimates*. Final quantities may change, but the unit price will be fixed.
  - **Answer:** Trail type 2 is the only type that includes rock armor
- **Question:** Is the change from trail type 2 to trail type 3 staying the same or moving higher? There was some discussion in the field while looking at conditions.
  - **Answer:** Trail type 3 has been moved to the 1,500' contour and above
- **Question:** Is there a certain preference for staying on schedule? Preference for single contract award? How would those be weighted against the lowest bid?
  - **Answer:** There is no schedule preference. Only a penalty for failing to complete the project by April 1, 2026. The contract will be secured by competitive sealed bidding. The contract will be awarded to the lowest responsive and responsible bidder. Federal funding prohibits negotiation with the lowest bidder. If only one bid is received, the project must be re-bid. Two separate awards are possible, one for gravel trail and one for natural surface trails.
- **Question:** Trail Type 1 construction will involve excavation, resulting in sizable spoils. Can these be spread along the corridor or stockpiled?
  - **Answer:** Trail Type 1 spoils can be spread along the corridor where the trail is under the tree canopy. For a portion of the project in the open field and without tree cover (approximately 500'), spoils can be spread so long as they do not dramatically alter the landscape. Spoil can be stockpiled if needed, and the State Park will handle their removal or redistribution. Before stockpiling, the contractor must inform the state park and gain approval for stockpile locations.
- **Question:** Will any structures be constructed to cross drainages?
  - **Answer:** No bridges or other structures will be constructed.

## **Table of Contents**

### **PART A: GENERAL INFORMATION AND BID SUBMISSION PACKAGE**

#### **SECTION 1: PROJECT DESCRIPTION AND SCOPE**

*1.0 General Project Description*

*1.1 Project Scope*

#### **SECTION 2: CONTRACTOR QUALIFICATIONS, REQUIREMENTS AND RESPONSIBILITIES**

*2.1 Expertise*

*2.2 PTBA Membership*

*2.3 Shared Use Experience*

*2.4 Portfolio*

*2.5 Insurance*

*2.6 Workman's compensation*

*2.7 Tools*

*2.8 Mechanized equipment*

*2.9 Backcountry protocol*

*2.10 Meetings and progress reviews*

*2.11 What contractor provides*

*2.12 Timetable*

*2.13 Food and Water*

*2.14 Public safety*

*2.15 Fees for licenses, permits, and insurance*

*2.16 Employee conduct*

*2.17 Superintendence by the Contractor*

*2.18 Compliance with modern practices*

*2.19 Condition of materials and equipment*

*2.20 Trail work specifications*

*2.21 Trail rehabilitation*

*2.22 Indemnity*

#### **SECTION 3: REGULATIONS AND STANDARDS**

*3.1 Federal Highway Administration (FHWA) contract provisions*

*3.2 Jurisdictional regulations*

*3.3 Virginia Contractor License*

*3.4 Davis-Bacon*

*3.5 Applicable laws and courts*

*3.6 Antidiscrimination:*

*3.7 Ethics in public contracting*

*3.8 Executive Order - Buy/Hire American*

#### **SECTION 4: TIMELINE AND SCHEDULE**

*4.1 Mandatory pre-bid meeting & site visit – Seven Bends State Park May 5, 2025*

*4.2 Deadline for requests for clarifications/questions*

*4.3 Responses to requests for clarification distributed*

*4.4 Bid submission deadline*

- 4.5 *Anticipated award announcement*
- 4.6 *Contract and Insurance Certificate*
- 4.7 *Work Complete*

## **SECTION 5: REQUESTS FOR CLARIFICATIONS**

- 5.1 *Requests for Clarification*
- 5.2 *Point of contact*
- 5.3 *Project contact*
- 5.4 *Email communication*

## **SECTION 6: BASIS FOR AWARD AND RIGHT OF REJECTION**

- 6.1 *Basis for award*
- 6.2 *Right of rejection*
- 6.3 *Qualifications and experience*
- 6.4 *Additional information*
- 6.5 *Estimated Quantities*

## **SECTION 7: FINAL INSPECTION AND PAYMENT**

- 7.1 *Final inspection and payment*
- 7.2 *Failure to meet project timeline*

## **SECTION 8: BID SUBMISSION PACKAGE**

## **SECTION 9: BID WORKSHEETS**

- 9.1 *Bid Worksheet A*
- 9.2 *Bid Worksheet B*

## **PART B: PROJECT DETAIL**

## **SECTION 10: FINISHED TRAIL CONSTRUCTION AND MAINTENANCE GUIDELINES**

- 10.1 *Trail Design*
- 10.2 *Corridor clearing*
- 10.3 *Debris*
- 10.4 *Tread*
- 10.5 *Rocks*
- 10.6 *Woody material*
- 10.7 *Backslope*
- 10.8 *Trail, Finished Condition*
- 10.9 *Turns*
- 10.10 *Grade reversals*
- 10.11 *Water diversions*
- 10.12 *Invasive species*
- 10.13 *Mechanized Equipment Best Practices*

## **SECTION 11: UNIT DEFINITIONS AND DETAIL DRAWINGS**

- 11.1 *Trail Construction Type 1 (figures 1- 4)*

- 11.2 *Trail Construction Type 2 (figures 1- 4)*
- 11.3 *Rock Armor (figure 5)*
- 11.4 *Rolling Grade Dip (figure 6)*
- 11.5 *Rock Retaining Wall (figure 7)*
- 11.6 *Rock Armored Ford (figure 8)*
- 11.7 *Switchback (figure 9)*
- 11.8 *Insloped Turn (figure 10)*
- 11.10 *Brushing*
- 11.11 *Trail Closure (figure 11)*
- 11.12 *Modifications*

## **PART C: APPENDIX**

- A.1 *Trail Construction Detailed Figures*
- A.2 *FHWA Form 1273*

## **PART A: GENERAL INFORMATION**

### **SECTION 1: PROJECT DESCRIPTION AND SCOPE**

#### **1.0 General Project Description**

The Shenandoah Valley Bicycle Coalition (SVBC) ("Client") is seeking a contractor ("Contractor") to provide an experienced trail crew to construct new shared-use trails in Seven Bends State Park and on the Lee Ranger District of the George Washington National Forest. This project has multiple potential worksites on Massanutten Mountain. The project area encompasses rugged terrain with steep rocky slopes ranging from 20 to 70 percent and elevation ranging from 690' to 1,801 vertical feet. The project will construct new trails using mechanized equipment. Trails will be shared-use but prioritize foot travel and bike travel, with equestrians prohibited from trails within Seven Bends State Park.

#### **1.1 Project Scope**

The project's scope of work includes the construction of new trails within Seven Bends State Park and on National Forest lands. The Contractor will complete the work outlined in this document by April 1, 2026. Completed work must meet the specifications outlined in Part B - "Project Details" and adhere to the specifications referenced in sections 2 and 10. *This project is funded by a Virginia Department of Conservation and Recreation grant via the Recreational Trails Program of the U.S. Department of Transportation Federal Highway Administration. A cooperative relationship with the United States Forest Service and Virginia State Parks enables this project.*

### **SECTION 2: CONTRACTOR QUALIFICATIONS, REQUIREMENTS AND RESPONSIBILITIES**

#### **2.1 Expertise**

The Contractor shall have sufficient expertise and ability to complete the work in a professional manner. This expertise must be demonstrated by past work identified in a portfolio (see 2.4) and during project discussion during the pre-bid meeting.

#### **2.2 PTBA Membership**

The Contractor should be a current member of the Professional Trail Builders Association (PTBA) (or equivalent) to be eligible for bid consideration. If a bidder is not a PTBA member, they should submit sufficient documentation (i.e., PTBA sponsorship information, other professional organization memberships, referrals, portfolio, etc.) as part of their bid package to be considered.

#### **2.3 Shared Use Experience**

The Contractor shall have demonstrable experience working on sustainable shared use (for foot travel, and mountain bike use/briert) natural surface single-track trails in a backcountry environment.

#### **2.4 Portfolio**

The Contractor shall provide a portfolio detailing work accomplished and references from past comparable or relevant projects. The portfolio should include photographs of past work. Failure



to provide a sufficient portfolio to demonstrate relevant experience may result in rejection of the bid.

## **2.5 Insurance**

The Contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability, and Automobile Liability insurance coverage. The Shenandoah Valley Bicycle Coalition shall be added as an additional insured to the policy by an endorsement when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If work is performed by a sole proprietor, the person does not need Workers' Compensation insurance, as they do not have employees. Employer's Liability is required if an employer has employees who are paid a wage or salary. Employer's Liability is not required for persons in business together, e.g., husband and wife, siblings, or parents and children, as these persons would be considered owners, not employees. If any subcontractors are involved, subcontractors shall also be required to have workers' compensation insurance in accordance with Code of Virginia, § 2.2-4332 and 65.2-800 et seq. Stipulated insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the agency that they possess the appropriate insurance coverage. The agency must verify and document the contractor's insurance coverage and include it in the procurement file. The procuring office may require a certificate of insurance to be furnished prior to the commencement of work and at any time during contract performance.

## **2.6 Workman's compensation**

The Client reserves the right to request proof of compliance with workmen's compensation laws.

## **2.7 Tools**

The Contractor shall perform the required work using small, mechanized equipment that is a maximum of 50" in width. Equipment with adjustable width tracks should be able to reduce track width to less than 50". Permanent modification of the trail outside the scope of work to accommodate equipment access is undesirable and must be approved by the Client in writing.

## **2.8 Mechanized equipment**

All mechanized equipment shall meet USFS specifications, be in good mechanical condition, be free of any fluid leaks, be equipped with spark arrestors if applicable, and have fire extinguishers mounted. All equipment will be clean and debris-free before being introduced to the worksite. Equipment is subject to inspection at the start and during the project. Any equipment that does not meet these criteria shall be removed from the project site at the request of the Client's representative and at no additional cost to the Client. Four-wheeled vehicles identified as part of the contractor's equipment will be permitted on worksites upon **approval** by the State Park and USFS staff and can be used for transportation into and out of project areas. Legally registered motorcycles can be used on the job site and for transport into and out of work sites. Non-registered motorcycles will not be permitted on the job site, nor can they be used for transportation. Unregistered vehicles cannot be driven on State or open Forest Roads. Operation shall be scheduled and conducted to minimize erosion of soils to prevent silting and muddying of streams, rivers, and impoundments (lakes, rivers, reservoirs, etc).

## **2.9 Backcountry protocol**

The Contractor's crew shall be familiar with backcountry operation and safety protocols and be knowledgeable and adept at "leave no trace" practices.

## **2.10 Meetings and progress reviews**

Before beginning any work, a walkthrough of the project with the Client's project manager will be required. The Contractor shall meet with a Client's representative at the beginning of each workweek or as otherwise agreed upon by both parties to review progress and project expectations for the week.

## **2.11 What contractor provides**

The Contractor shall provide the necessary supervision, equipment, and tools to perform specified trail maintenance and trail construction on identified trails and sites, including fuel for any mechanized equipment or tools and all required personal protection and safety equipment.

## **2.12 Timetable**

The Contractor shall provide an approximate timetable and schedule detailing how all project work will be completed. The Contractor will complete all work by **April 1, 2026**. The Client and Contractor will agree on specific construction dates between May 31, 2025, and **April 1, 2026**.

## **2.13 Food and Water**

The Contractor shall be responsible for providing food and water for themselves and staff.

## **2.14 Public Safety**

Worksites must be signed, and the contractor will take care to alert trail users and ensure safe passage through or around active work sites. The Contractor shall ensure that reasonable precautions are taken to protect the public where work is being performed.

## **2.15 Fees for licenses, permits, and insurance**

The Contractor shall bear all costs for required licenses, permits, and insurance. It is not anticipated that additional licenses or permits will be required; however, the contractor will be responsible for licenses or permits that may be needed. Although a Storm Water Pollution Prevention Plan (SWPPP) permit will NOT be required, the contractor is responsible for meeting Forest Service National soil and water BMPs and State BMPs. State Park and Forest Service staff will meet with the contractor before starting work to outline specifics.

## **2.16 Employee conduct**

All of the Contractor's employees shall properly conduct themselves at all times. Intoxication or unsafe behavior by the Contractor's employees while performing duties related to this contract is strictly prohibited. The Contractor will be required to remove from the site any individual whose continued employment is deemed to be contrary to the public interest or inconsistent with the best interests of this trail construction project and will not use such individual to perform services under this contract.

## **2.17 Superintendence by Contractor**

(a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Client, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Client's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques,

sequences and procedures for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents and for all safety and worker health programs and practices. The Contractor shall notify the Client, in writing, of any proposed change in superintendent, including the reason, prior to making such change.

(b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Client or the Client's separate contractors and their subcontractors.

(c) The Client may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Client deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Client shall have no obligation to do so.

(d) The Contractor shall maintain daily work logs to provide documentation as dictated in the [2025 Virginia RTP Grant Manual](#) to include employees on the job site, hours worked, mileage, material list, etc.

### **2.18 Compliance with Modern Practices**

All work shall be performed and completed thoroughly, skillfully, efficiently, and professionally in accordance with best modern practices, regardless of any omissions from the attached specifications and/or drawings.

### **2.19 Condition of materials and equipment**

All materials and equipment shall be new or otherwise in good working order and shall comply with the applicable standard in every case where such a standard has been established for the particular type of material in question.

### **2.20 Trail work specifications**

Trail work specifications can be found in sections 10 and 12. All trail work shall be completed according to the specifications contained in the June 2018 *IMBA Guidelines for a Quality Trail Experience* and the 2007 edition of the *USDA Trail Construction and Maintenance Notebook*. Refer to these publications for details and descriptions of trail maintenance and construction.

### **2.21 Trail rehabilitation**

Trail rehabilitation is not anticipated for this project.

### **2.22 Indemnity**

The Contractor shall indemnify, save, and hold harmless the Client, USFS, FHWA, DCR, as well as their employees and agents, against any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

## **SECTION 3: REGULATIONS AND STANDARDS**

### **3.1 Federal Highway Administration (FHWA) contract provisions**

The work shall comply with all provisions of FHWA Form 1273 (see Section 13), specific to required contract provisions for Federal-Aid construction contracts.

### **3.2 Jurisdictional regulations**

The work shall comply with all laws, ordinances, and regulations of all legally constituted authorities having jurisdiction over any part of this work. These requirements supplement the specifications and shall take precedence in case of conflict.

### **3.3 Virginia Contractors License**

A Virginia Contractors License is **required** to bid on this project. Contracts will not be awarded to any vendor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

### **3.4 Davis-Bacon**

While the Recreational Trails Program is federally funded, the Davis-Bacon Act does not apply to this project because no part of the project occurs within a federal aid road right-of-way.

### **3.5 Applicable laws and courts**

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought to the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues or controversy arising from the contract award or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*.

### **3.6 Anti-discrimination:**

By submitting their bids, bidders certify to the Commonwealth that they shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1 E). During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post notices in conspicuous places available to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.

The Contractor shall include the provisions of item 1 above in every subcontract or purchase order over \$10,000 so that the provisions will be binding upon each subcontractor or vendor. In every contract over \$10,000, 1 and 2 above provisions shall apply.

### **3.7 Ethics in Public Contracting**

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor in connection with their bid, and that they have not conferred on any person having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

### **3.7 Executive Order on Buy American, Hire American, Buy America Act and FHWA 1273**

Acquisition of materials and supplies, as well as staffing, must adhere to the executive order to "Buy and Hire American". Buy American applies to all iron and steel products or materials used in the project.

## **SECTION 4: TIMELINE AND SCHEDULE**

The project schedule is as follows:

May 5, 2025	Mandatory pre-bid meeting/site visit – Seven Bends Park
May 6, 2025	Deadline for requests for clarification/questions
May 8, 2025	Responses to requests for clarification distributed
May 13, 2025	Bid submission deadline
May 15, 2025	Anticipated award announcement
April 1, 2026	Work complete

### **4.1 Mandatory pre-bid meeting and site visit (May 5, 2025)**

Due to the importance of all potential Contractors having a clear understanding of this solicitation's specifications and requirements, a mandatory pre-bid meeting and site visit is scheduled on **May 5, 2025**, on-site, meeting at the [Lupton Entrance to Seven Bends State Park](#) off Lupton Road and accessible from Woodstock, Virginia. Generally, the site visit is rain or shine. In the event that inclement weather impedes the ability to perform a site visit, the pre-bid meeting will be rescheduled for **May 6, 2025**. All bidders shall bring a copy of this solicitation and any subsequent amendments and be prepared to walk the flagged alignments for trails outlined in the project. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Attendance at this meeting is mandatory for the successful bidder and deemed necessary for the Contractor to correctly estimate the difficulty and cost of successfully performing the work. The Client assumes no responsibility for any conclusions or interpretations made by the Contractor based on information made available at the conference. Nor does the Client assume responsibility for any understanding reached or representation made by any of its representatives or agents before the execution of this contract unless that understanding has been expressly stated in this contract. Bidders are cautioned that in no event shall failure to familiarize themselves with the requirements of this solicitation or to resolve ambiguous or inconsistent terms or conditions of this solicitation or proposed contract constitute

grounds for a claim of any kind after contract award. The use of motorized vehicles or off-highway vehicles on trails or roads not open to their use will not be allowed for site evaluation purposes outside of the pre-bid meeting.

Pre-bid meeting and site visit details:

**Date:** May 5, 2025

**Time:** 9:30 a.m.

**Location:** [Lupton Entrance to Seven Bends State Park](#)

**Address:** 38.869165, -78.492495

**Google Maps:** <https://maps.app.goo.gl/GikQSpHpxHLQ5WBh8>

Pre-bid meeting and site details agenda:

**9:30 a.m.** Introduction to grant team, review of grant specifics and bid document

**9:45 a.m.** Begin walking up trail alignment

**2:00 p.m.** Return to the trailhead / debrief

Bidders are encouraged to RSVP for the pre-bid meeting and site visit by May 4 to [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org).

**4.2 Deadline for requests for clarifications or questions on IFB (May 6, 2025)**

All requests for clarification must be submitted in writing to Kyle Lawrence via email at [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org).

**4.3 Responses to requests for clarification distributed (May 8, 2025)**

Response(s) to written requests for clarification will be distributed to recipients of the bid package via email only.

**4.4 Bid submission and Certificate of Insurance deadline (May 13, 2025)**

All bid submissions and Certificate of Insurance are due by 5:00 PM Eastern Standard Time. (See section 6 for bid package details)

**4.5 Anticipated award announcement (May 15, 2025)**

The contract award announcement is anticipated to occur on this date.

**4.6 Contract issued and executed (May 23, 2025)**

The successful bidder will be required to execute a written contract with SVBC within seven (7) days after notice of acceptance of their proposal. In the event the successful bidder fails or refuses to execute a formal contract as required within seven (7) days after notice of acceptance of his bid, the Letter of acceptance of the bidder's proposal may be revoked, and all obligations of the SVBC in connection herewith will be canceled. Immediately after the contract is executed, along with proof of insurance, the Client project manager will meet with the Contractor to confirm the timeline and project details. Work may begin immediately after this meeting. It should be noted, as addressed in Section 7.1, payments on completed work may be delayed due to the reimbursement process and availability of funds.

**4.7 Work Complete (April 1, 2026)**

All work shall be completed and approved by a Client representative before April 1, 2026. See section 7.1 for additional details on failure to meet the project deadline.

## **SECTION 5: REQUEST FOR CLARIFICATIONS**



### **5.1 Requests for Clarification**

All requests for clarification must be submitted via email to the project contact by the deadline listed above. Responses to all questions will be aggregated and then distributed via email to all respondents who requested a copy of the IFB package.

### **5.2 Point of contact**

Bidders SHALL NOT make any contact or communications with any member of the Evaluation Committee, or any other agent, officer, or representative of the Client or associated partners regarding this solicitation.

### **5.3 Project contact**

If you have questions concerning this project, please contact Kyle Lawrence at [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org) or (571) 277-8121. Verbal responses to questions are not binding. The Client will determine and identify specific project managers once the contract is awarded.

### **5.4 Email communication**

Email communication is the primary method of receiving and responding to written requests for clarification. It is solely the bidders' responsibility to ensure that they have received all emails distributed and that any emails they have sent to the project contact have been received.

## **SECTION 6: BASIS FOR AWARD AND RIGHT OF REJECTION**

### **6.1 Basis for award**

The award will be determined by competitive sealed bidding. The contract will be awarded to the lowest responsive and responsible bidder. Federal funding prohibits negotiation with the lowest bidder. If only one bid is received, the project must be re-bid. The project may result in two awards, with an award for Project A (gravel-trail type 1) and potentially a separate award for Project B (Natural surface singletrack trail types 2 and 3).

### **6.2 Right of Rejection**

The Client, Shenandoah Valley Bicycle Coalition, and its partner, the United States Forest Service and Virginia State Parks, reserve the right to waive any informality in any bid, to reject any or all bids in whole or in part, with or without cause, and to accept the proposal that, in their judgment, will be in the best interest of the citizens of Virginia and the United States.

### **6.3 Qualifications and Experience**

Proof of the Contractor's qualifications and experience is required to be eligible for bid consideration.

### **6.4 Additional Information**

The Client reserves the right to request that the bidder supply additional information prior to the award of the contract should such action be deemed in the Client's best interest.

### **6.5 Estimated Quantities**

It shall be understood and agreed that any quantities included by Client in the Project Details and Worksheet B are estimated only and may be increased or decreased in accordance with the actual requirements of the Client and that the Client, in accepting any bid or portion thereof, contracts only and agrees to purchase only the services in such quantities as represent the actual requirements of the Client. The Client reserves the right to change the quantities at its discretion, and it is understood that this will have no effect on the price per unit quoted by the bidder.

## **SECTION 7: FINAL INSPECTION AND PAYMENT**

### **7.1 Final inspection and payment**

Upon the completion of the contract work, a Client's representative shall accompany the Contractor on an inspection of the work. All defects found in the work will be corrected before final payment will be authorized. During the project, the Contractor shall invoice the client

bi-weekly for completed work. The client will complete the final payment upon 100 percent completion and approval of work per sub-project.

Partial funding for this 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.

This is a reimbursement grant-funded project, and only **\$70,000** can be dispersed by SVBC at any given time until the Commonwealth of Virginia reimburses SVBC. Reimbursements can require up to 90 days or more. If the Contractor's invoices exceed \$70,000 at any time, then only this amount will be paid until the Commonwealth of Virginia reimburses SVBC. While all work must be completed by **April 1, 2026**, the Client will schedule the project's specific completion date, in consultation with the Contractor, between **June 1, 2025, and April 1, 2026**. These project completion dates will be memorialized in the Contract described in Section 4.6 of this document. The Client reserves the right to delay the payment of the final 10% of the last invoice for each project in order to complete a final walkthrough and sign off on all requirements for the DCR.

## **7.2 Failure to Meet the Project Deadline**

In the event the Contractor fails to complete the awarded project(s) by the **April 1, 2026** deadline, the Contractor will be removed from the job site, and the Client will contract out the remaining project for immediate completion. The Contractor will be responsible for the project's cost and any damages caused by such delay; the Client shall have the right to deduct from and retain completion costs from the Contractor's final payment.

**In addition to any actual damages incurred, the Contractor shall be liable for liquidated damages of \$300 per calendar day for each day the work remains incomplete beyond the completion date.**

## **SECTION 8: BID SUBMISSION PACKAGE**

Bids and proof of insurance can be submitted via email and must be sent to [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org) by the aforementioned deadline. Bids will be available for public review, and copies may be requested by [Kyle@SVBCoalition.org](mailto:Kyle@SVBCoalition.org) or (571) 277-8121

***The bid package must contain each of the following: incomplete bid packages may not be considered.***

- Completed bid worksheets A and B (Section 9)
- At least two (2) references from previous shared-use trail construction projects
- At least one (1) letter of recommendation from a previous client
- Portfolio containing descriptions and pictures of at least three (3) past projects similar to this project. Project descriptions shall briefly explain the work performed and list the contract amount, client, project location, dates, and duration.



## SECTION 9: BID WORKSHEETS

### 9.1 Seven Bends Trails - WORKSHEET A

Company name \_\_\_\_\_

Contact person \_\_\_\_\_

Contact person's phone number \_\_\_\_\_

Contact person's email \_\_\_\_\_

Company address \_\_\_\_\_ - \_\_\_\_\_

- 
- Has the bidder completed a site inspection of the project detailed in this IFB and has knowledge of all site conditions? \_\_\_\_\_Yes \_\_\_\_\_No
  - Is the bidder a current PTBA Member? \_\_\_\_\_Yes \_\_\_\_\_No
  - If bidder is not a member of the Professional Trailbuilders Association, please provide a separate document that describes why and details equivalent experience and expertise.
  - Does the bidder hold a current VA Contractors License? \_\_\_\_\_Yes \_\_\_\_\_No
  - Is the bidder a Disadvantageous Business Enterprise (DMBE)? \_\_\_\_\_Yes\_\_\_\_\_No  
If yes, provide DMBE #:\_\_\_\_\_
  - Is the bidder experienced in constructing sustainable, shared-use trails (horse/hike/bike)?  
\_\_\_\_\_Yes \_\_\_\_\_No
  - Please list similar past projects:

---

---

---

---

---

- Please provide three (3) references from previous shared-use trail construction projects with contact information (phone numbers and email addresses).

1.

2.

3.

- Please attach one (1) letter of recommendation from a previous client.

- Provide a detailed list of likely project team members, including skill sets and relevant experience.

- Provide a list of the equipment and tools intended to be used in completing the scope of work.

- Provide a recommended schedule/timetable that allows for work completion per the specified schedule.

- Provide a narrative for how you would complete the project.
- Describe the experience for a visitor to the project once your work is completed and they are enjoying the newly constructed trail.
- By signing this, I certify that I am fully aware and have visited each site locations upon which I have bid and have knowledge of their conditions, access restrictions and other constraints. I accept the terms and conditions expressed and contained in the specifications included in and attached to this IFB.

---

*(sign here and date)*

## 9.2 SVBC Seven Bends Trails Project - WORKSHEET B

### Worksheet B Instructions

- Fill in the unit price for all items; failure to provide a unit price may invalidate the bid.
- Quantities for each site are estimated. Final quantities may change, but the unit price will be fixed.

WORKSHEET B: Seven Bends Trails				
Work	Unit Measure	Estimated Quantity	Price	Estimated Cost
(Project A) Trail Construction Type 1	Linear foot	4000		\$
(Project B ) Trail Construction Type 2 Below 1500' contour	Linear foot	13000		\$
(Project B) Trail Construction Type 3 Above 1500' countour	Linear foot	4000		\$
(Project B) Rock Armor (only for Trail type 2)	Linear foot	800		\$
(Project B) Trail Closure	Linear foot	1000		\$
Grand Total:				

## **Part B: PROJECT DETAIL**

**Scope of Work:** The project's scope of work includes the construction of at least two new trails. The first trail is a relatively flat gravel trail at the bottom of the project. The second trail is a newly constructed trail from the Riverbend Rise lower trailhead to the Massanutten Ridge Trail. Trail construction will be split into three types. Type 1 trail construction is for the gravel trail to connect to the existing Gokotta Trail. Trail construction Type 2 is for new trail construction below the 1500' contour, where the terrain is less rocky. Trail type 3 is for new trail construction above the 1500' contour, where the terrain is rockier and sidehills can be steeper. In addition, rock armoring is broken out per linear foot and a short section of trail closure.

Completed work must meet the specifications outlined in Part B - "Project Details" and adhere to the specifications referenced in sections 2 and 10. Refer to Bid Worksheet B for detailed estimates on unit quantities.

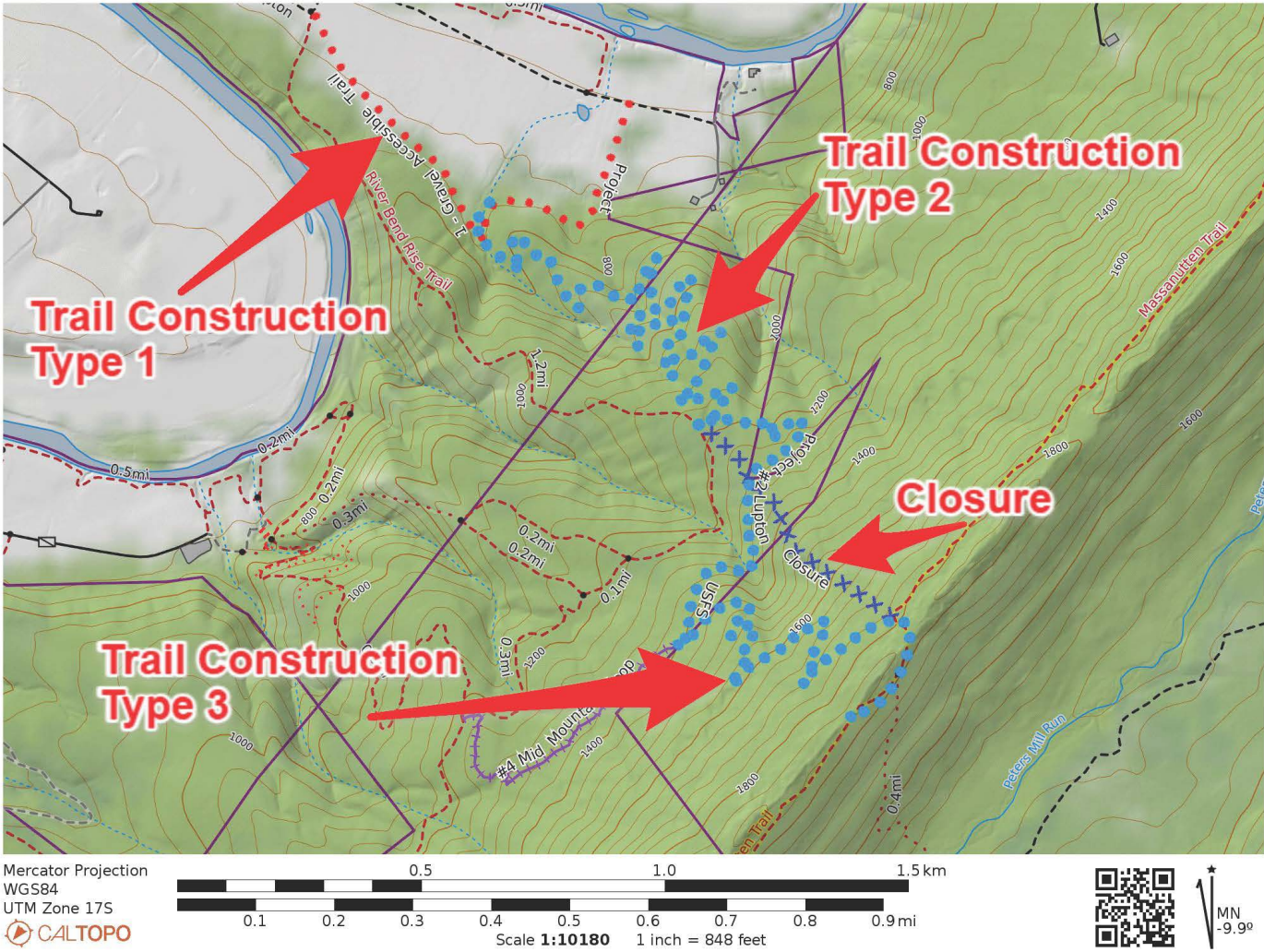
The Client has flagged new trail alignments and provided the GPX tracks. All new trail construction should be consistent and appropriate for shared-use, non-motorized trails. Runners, hikers, and mountain bikers will use these trails.

**Location:** Project locations are based in Seven Bends State Park or the Lee District of the George Washington National Forest and accessed by the Lupton Entrance, accessible via Lupton Road

- [Avenza Map of Seven Bends State Park](#)
- [U.S. Forest Service Visitor Map of Area](#)
- [Cal Topo Map of Work Sites](#)

**PROJECT MAP:**

In addition to the map below, a detailed, interactive project map can be found online at <https://caltopo.com/m/AEQ15>



## **SECTION 10: FINISHED TRAIL CONSTRUCTION AND MAINTENANCE GUIDELINES**

### **10.1 Trail Design**

Design of any tread must be guided by the sustainable trail principles promulgated by accepted resources such as the 2004 edition of the *IMBA Trail Solutions Guide* and the 2007 edition of the *USDA Trail Construction and Maintenance Notebook*.

### **10.2 Corridor clearing**

Corridor clearing shall occur to a minimum width of 6 feet from the trail center unless otherwise specified in the trail type details.

### **10.3 Debris**

Debris shall be treated as follows: Cut and scatter all branches and brush to maximum height of 18 inches; no debris left within 10 feet of trail; butt-ends of any sawed limbs placed facing away from trail.

### **10.4 Tread Reconstruction**

Any tread reconstruction shall be reconstructed at a minimum of a three (3) feet wide full bench whenever possible. If fill is required, it should be supported by a stone retaining wall sufficient to support equestrian use.

### **10.5 Rocks**

Maximum-size rock material to be left in the trail shall not protrude more than three (3) inches from the tread surface. Exceptions may be made in scree fields or where only a portion of the tread is obstructed. All rock embedded in the trail surface should be stable. When used in structures, care will be taken to match rock to the immediate surroundings, grain patterns, lichen growth, etc. Excess tool marks on rocks are not acceptable. Non-native rock may not be imported into a work area without Client's approval.

### **10.6 Woody material**

Woody material such as stumps, logs, and brush shall be removed from the billed sections of trail tread.

### **10.7 Backslope**

Backslope of trail should be graded to 3 to 1 slope or until it matches the existing slope.

### **10.8 Trail, Finished Condition**

Hand finish and grading of trail tread, backslope, downslope spoils, and drainage features shall leave a surface that matches the texture of the surrounding forest floor while enabling water to drain off the trail.

### **10.9 Turns**

All turns should have a minimum radius of eight (8) feet and can be either a traditional rolling crown switchback or, on slopes with a maximum cross grade of 20%, an insloped turn with an entrance and exit rolling grade dip.

### **10.10 Grade reversals**

Any grade reversal must be strongly anchored to discourage short-cutting.

### **10.11 Water diversions**

All tread should be out-sloped five (5) percent whenever possible; when not possible due to purpose-built in sloping, resource concerns, or obstruction; water can be directed down the trail for up to 50 feet before a water diversion location.

### **10.12 Invasive species**

Invasive seed distribution prevention – All hand tools and mechanized equipment should be free of invasive seeds and clean of any dirt and mud when entering a project site. When transporting equipment from a site with invasive species to another site, it should be cleaned.



### 10.13 Mechanized Equipment Best Practices

All track marks will be raked smooth. Machine travel on trails should leave no mark or tracks. Impacted areas will be finished to have a *nature shape* – spoils piles rounded, smoothed, and cleared of significant brush, blade edges blended. When applicable, machinery shall not travel over finished trail construction for removal from the project site. A spill kit will be onsite whenever mechanized equipment is operated. Scarring of trees is to be avoided. Significant and repeated scarring may result in a financial penalty of \$100 per tree over 4" diameter at breast height ("DBH").

## SECTION 11: UNIT DEFINITIONS AND DETAIL DRAWINGS

Appendix A.1 are for illustrative purposes only and do not relieve the Contractor of the need to satisfy written requirements.

### 11.1 Trail Construction Type 1(Appendix Figure 12) Gravel Path

**Trail Type Name:** Aggregate Surface

**Tread Width:** 6'

**Depth of base:** The Shenandoah Valley Bicycle Coalition will procure the gravel needed for the trail. In general, we plan the depth of the base unit to be 3-6" as required for a level and stable surface

**Tread Materials:** Will be provided by the Client

**Sideslope Steepness:** Flat to 25%

**Trail Corridor:** .The trail corridor shall extend horizontally 10' from the center line of the trail to both sides and will be vertically 12' high.

**Intended Experience:** These improved surface experiences will allow for wheeled mobility device use and two-way traffic, at a minimum (6'). The trail will be installed sub-grade to be flush with the adjacent ground and a slight out-slope or crowned in flat terrain. Gentle sinuosity to create a natural shape.

### 11.2 Trail Construction Type 2 (Appendix figures 1 – 4 and 13)

Trail construction is below the 1,500' contour, with less rock (rock armoring unit can apply). Tread maintains a maximum tread surface variance of up to 3" in height due to embedded rocks or roots. Tread width is 36" – 40" with an exception to 24" allowed for lengths of up to 5" with a maximum width of 48". Trail width specification applies to active tread only; backslope is not included. Backslope dimensions are derived from the surrounding area such that they satisfy the earlier stated 3:1 definition. The trail tread shall consist of packed earth or rock. Any stumps should be excavated and removed from the trail tread. The trail corridor shall be cleared of all woody plants smaller than 4" DBH. Any stumps resulting from the clearing should be excavated and removed. Any downslope spoils must be distributed such that no berm is present. Spoils must be stabilized with a covering of forest duff. Excess soil shall not be distributed into drainages or adjacent to streams. Any woody debris not used in trail closure should be removed from sight of the trail or arranged to blend into the landscape. The trail corridor shall extend horizontally 6' from the center line of the trail to both sides and will be vertically 12' high.

### **11.3 Trail Construction Type 3 (Appendix figures 1-4 and 13)**

Trail construction above the 1,500' contour where significant rock can be found (rock armoring unit does not apply). Tread maintains a maximum tread surface variance of up to 10" in height due to embedded rocks or roots. Each linear foot unit shall be 30" – 40" wide with an average width of at least 36" and an exception for 24" allowed for lengths of up to 5'. Trail width specification applies to active tread only; backslope is not included. Backslope dimensions are derived from the surrounding area to satisfy the earlier stated 3:1 definition. The trail tread shall consist of packed earth or rock. Any stumps should be excavated and removed from the trail tread. The trail corridor shall be cleared of all woody plants smaller than 4" DBH. Any stumps resulting from the clearing should be excavated and removed. Any downslope spoils must be distributed such that no berm is present. Spoils must be stabilized with a covering of forest duff. Excess soil shall not be distributed into drainages or adjacent to streams. Any woody debris not used in trail closure should be removed from sight of the trail or arranged to blend into the landscape. The trail corridor shall extend horizontally 6' from the center line of the trail to both sides and will be vertically 12' high.

### **11.4 Rock Armor (Appendix figure 5)**

Armor trail tread surface with stone pitching at least 10" deep. Stones should be stable and aligned perpendicular to the direction of travel. Variance in the surface height of stones can be no more than 1". Each end of a pitched section shall be supported by larger "bookend" stones embedded in the ground. Additional guide stones may be required if the final surface of the trail appears more rugged than the adjacent landscape. Rock armoring will be used for multiple features with varying objectives. It is intended to use rock armoring to armor trail sections to make them stable if they are wet or steep. It can also be applied to outflow armoring, placed rock anchors, or to create rock drainage features. Features created out of single large stones or multiple stones will be priced by linear foot.

### **11.5 Rock Retaining Wall (Appendix figure 7)**

Rock retaining walls should be stable and battered (inclined back into the slope) a minimum of 15% from vertical. All walls should have rubble backing of at least 6" in depth behind the wall to allow for drainage and to prevent damage from frost heaves. The base of the wall should be placed on firm compacted mineral soil or rock outcroppings. Any small stones used to "chink" larger stones in place should be placed in the back of the wall. The top of the wall should not be counted in the width of the trail tread. The top layer of stones should be stable and large enough to avoid being dislodged by shared use traffic. Deadmen (stones that extend from the wall into the slope) should be used to ensure integrity. There should one deadman for every 5 square feet of wall.

### **11.8 Insloped Turn (Appendix figure 10)**

The insloped turn unit includes any walls, armoring, and drainage features associated with the structure. Each insloped turn includes a Grade Reversal or Rolling Grade Dip before and after. The dips for these drainage features should be a minimum of 6' long and can have a cross slope of up to 15%. Uphill dip should be sited to minimize unweighting effects for higher speed users. Turning radius should be consistent and greater than 8'. Cross slope on the trail tread in the turn should be no more than 20%. Turns with a running grade over 20% in the apex should have a rock armored drain 2' wide following the inside the turn.

### **11.10 Trail Closure (Appendix figure 11)**

Compacted tread will be scarified to encourage regrowth of native seed stock. Exposed soils will be covered with local leaf litter. Trail tread will be disguised with woody debris. If trail is incised, check dams will be placed to capture sediment. If trail is actively eroding, grade reversals will be added to stem continued damage. Trail corridor will be erased via the placement of vertical debris. If closure is significant, vertical debris must extend sufficiently from its end points to successfully discourage continued use, a minimum of 50'.

### **11.11 Modifications**

Modifications to the specifications may be allowed, however they must be made by a representative of the Client in writing.

## PART C: APPENDIX

### A.1 Trail Construction and Maintenance Figures

Figure 1: Rolling Contour Trail

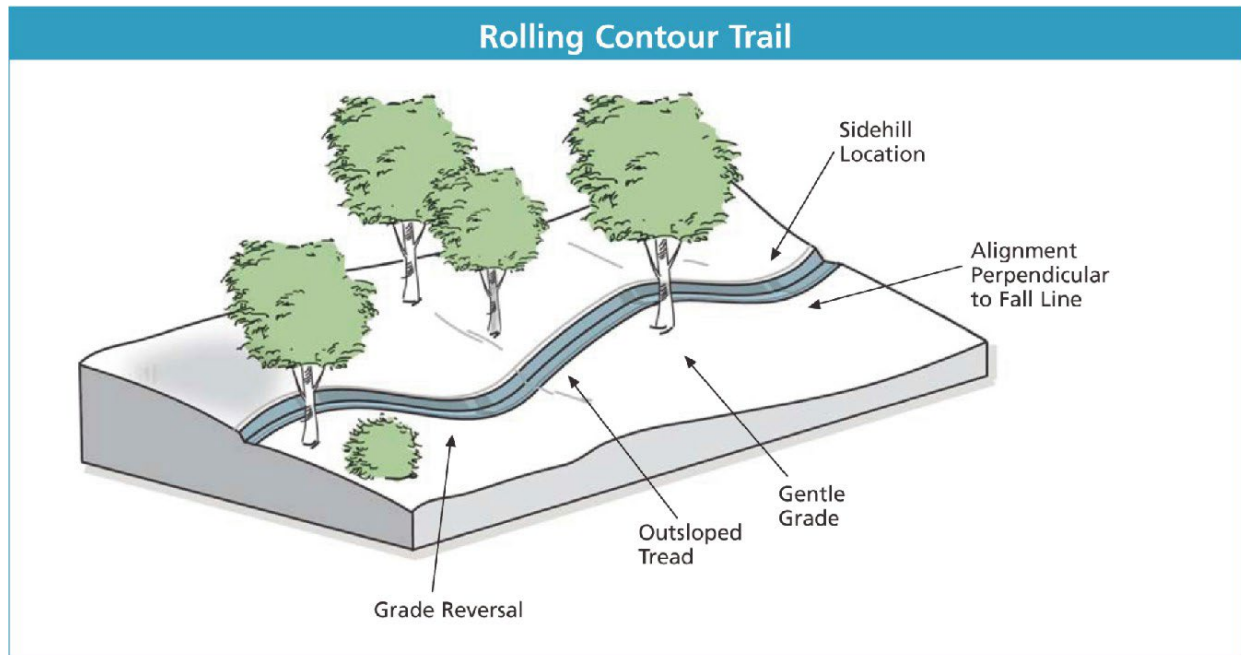


Figure 2: Illustration of The Half Rule

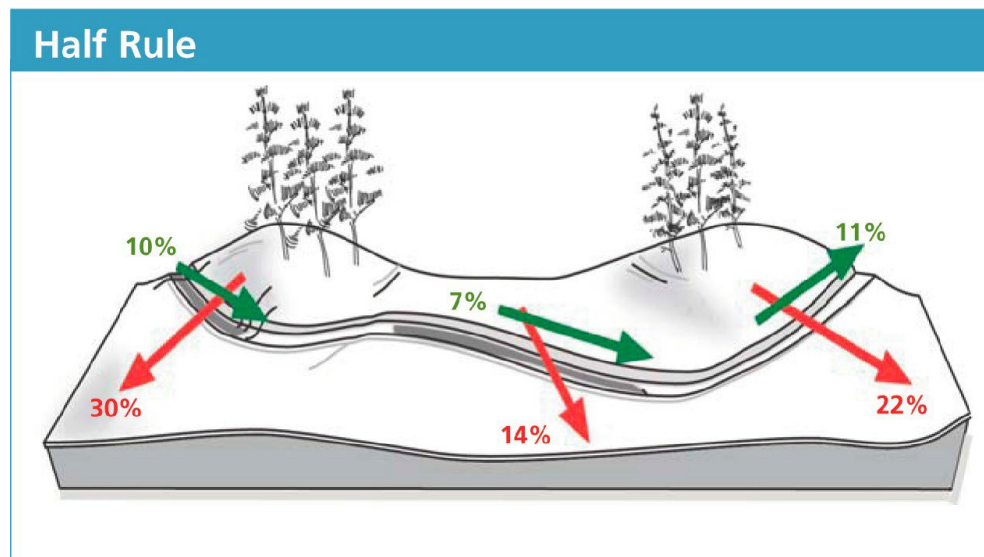


Figure 3: Full Bench Trail

### Full Bench Trail

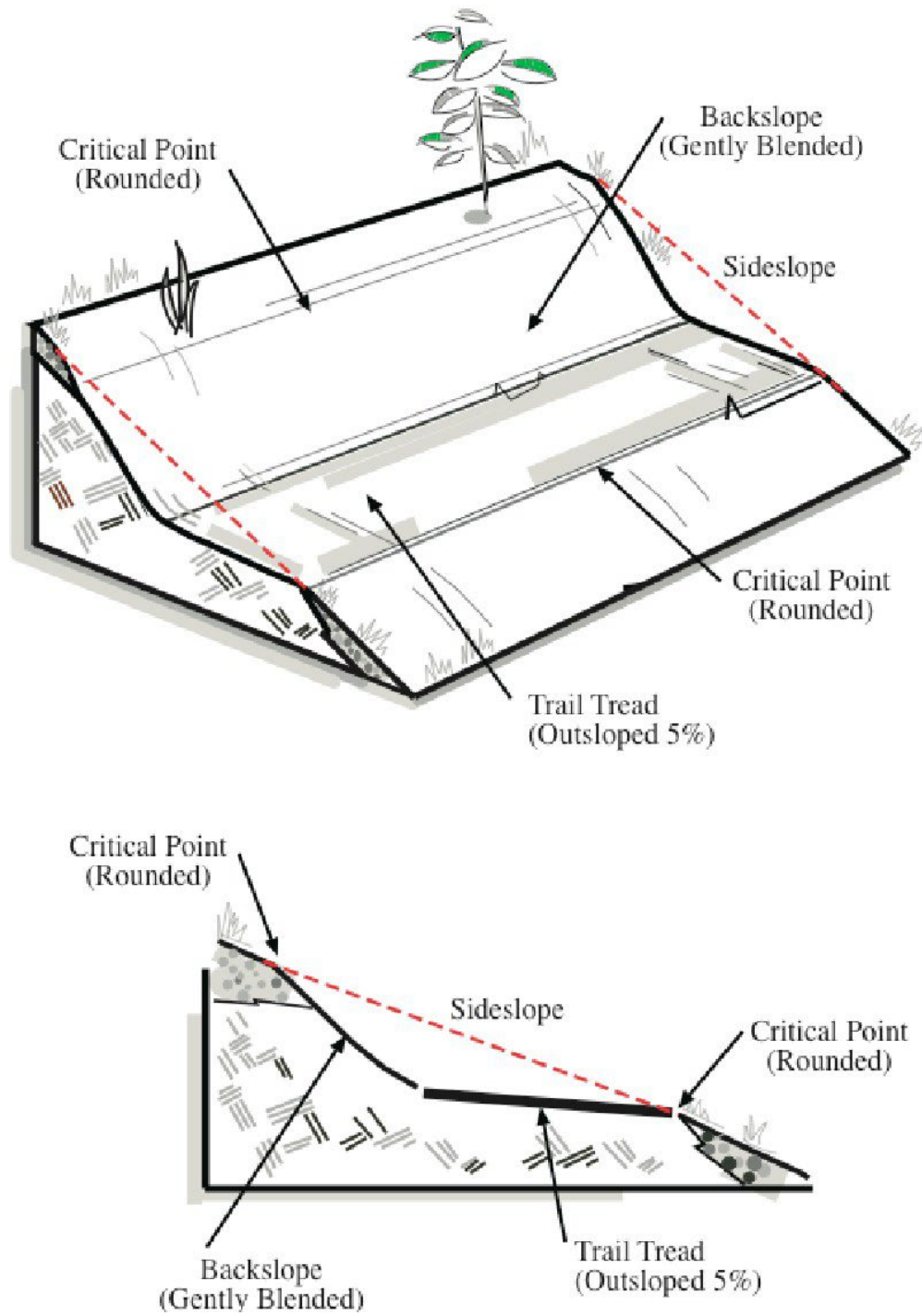


Figure 4: Clearing limits

Figure 5: Stone Pitching

## Stone Pitching

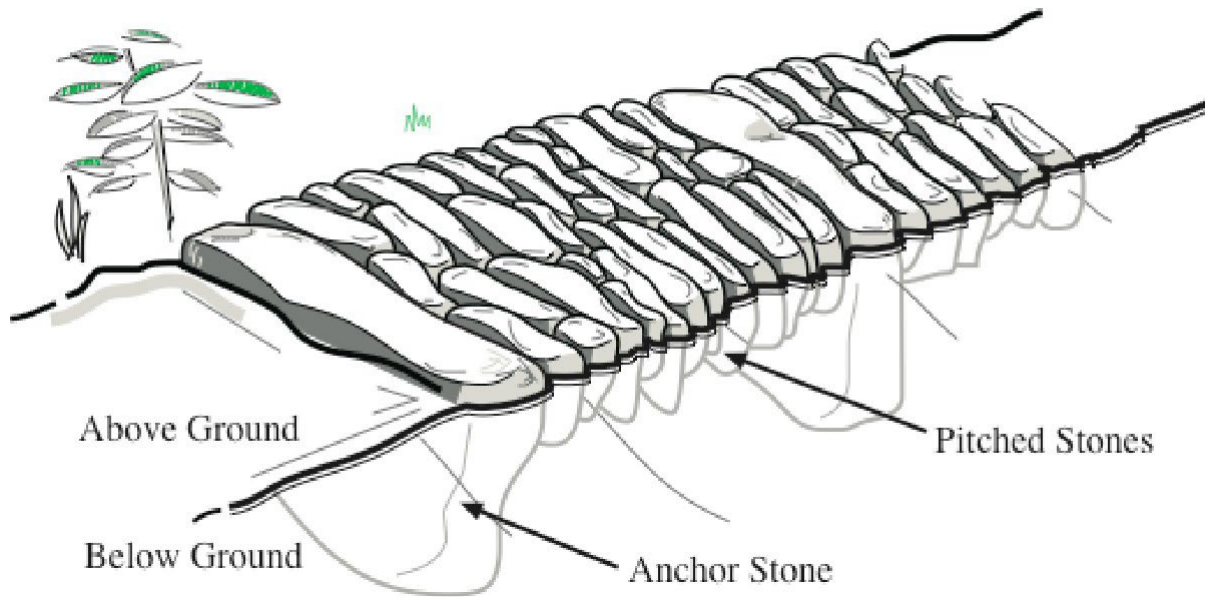
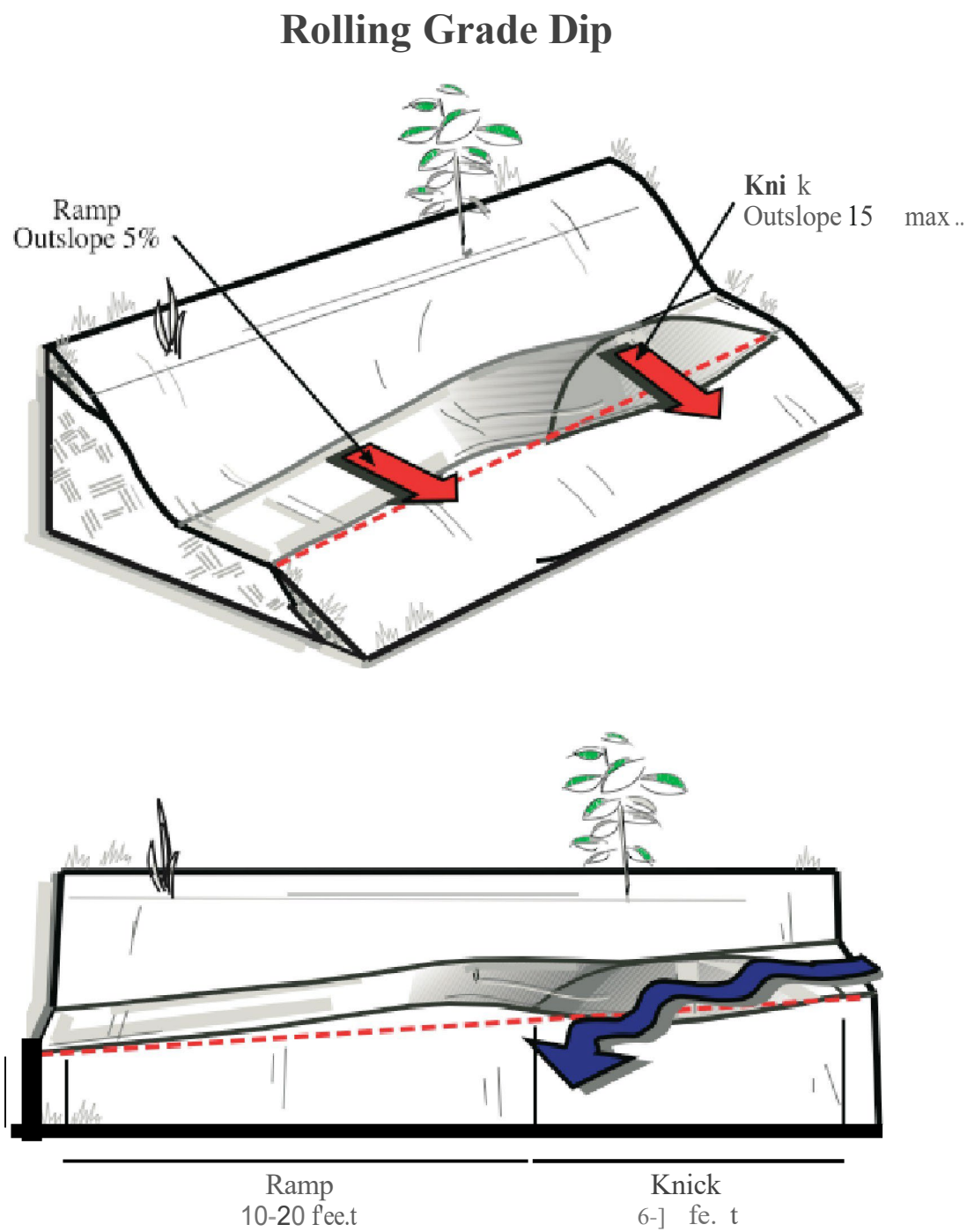


Figure 6: Rolling Grade Dip





## Rock Retaining Wall

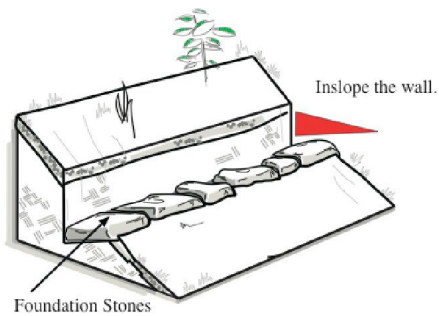
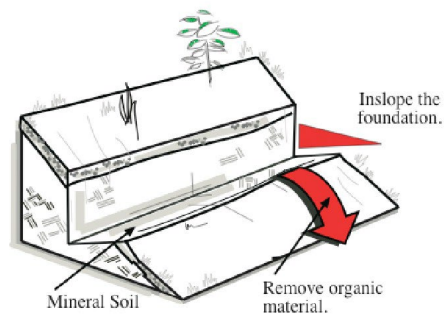


Figure 7: Rock Retaining Wall

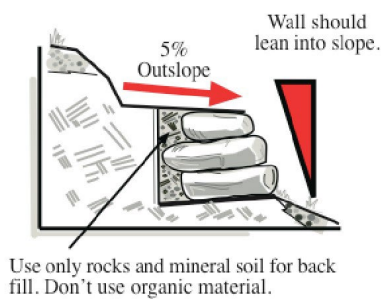
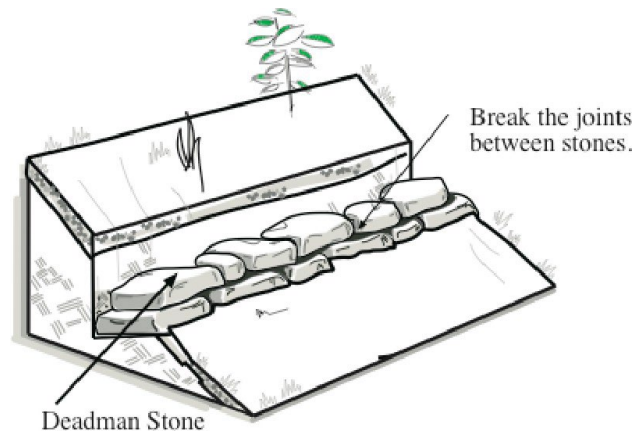
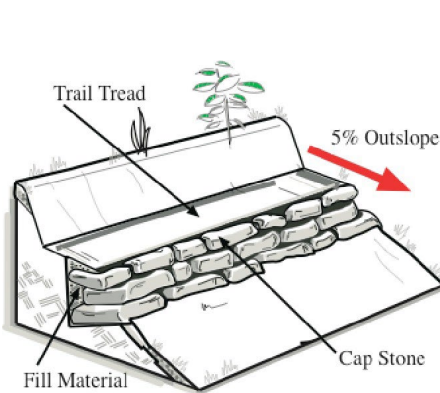
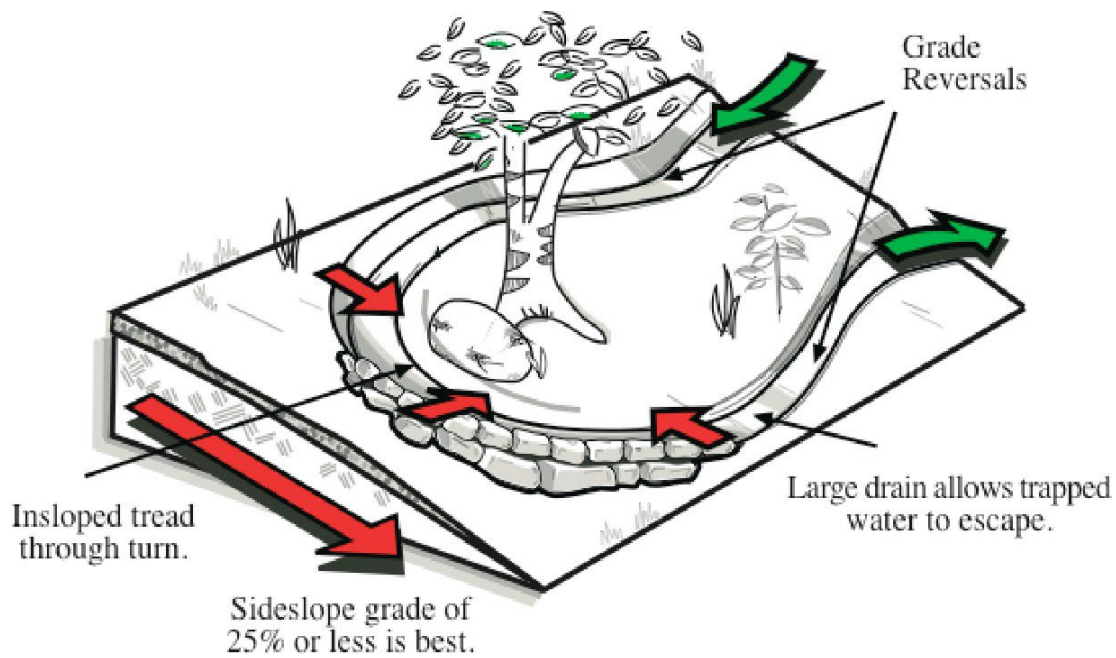


Figure 10: Insloped Turn



## Insloped Turn

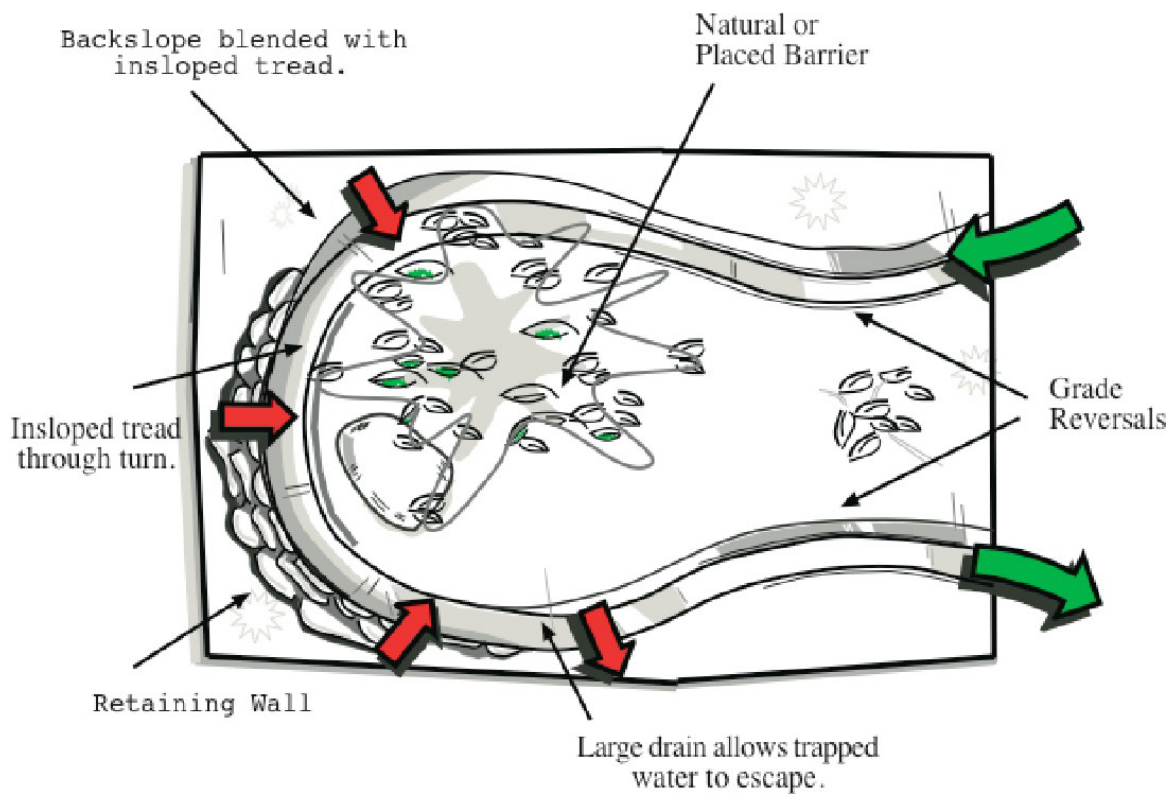


Figure 11: Trail Closure and Reclamation

## Trail Closure and Reclamation

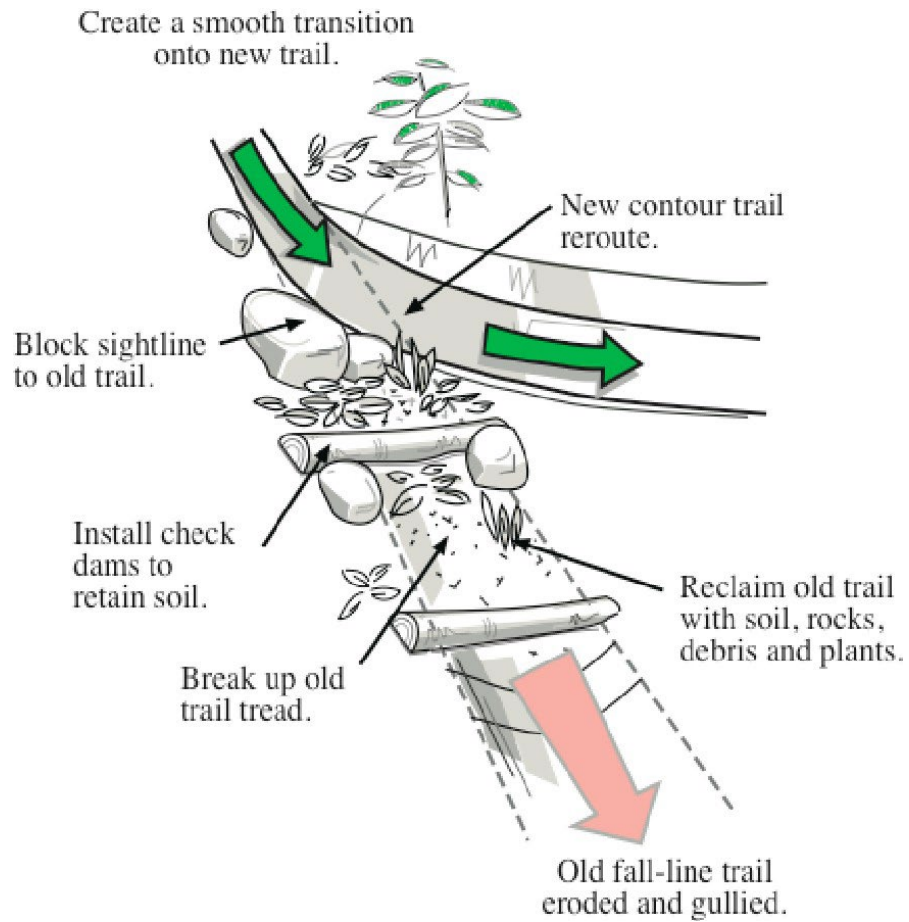


Figure 12: All Weather Trail

Figure 13: Classic Singletrack

## **APPENDIX**

### **A.2 - FHWA CONTRACT PROVISIONS**

#### **13.1 FHWA Form 1273**

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

### 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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

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

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). 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.

(4) 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 will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.*

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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with



the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, 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 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

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

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

**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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* 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.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its repurchase costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

(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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

### **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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

## **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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\*\*\*\*\*

## **3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

\* \* \* \* \*

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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.

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)  
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.