

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

1. General

- A. The location, scope of work, cost and working days are estimates. Emergency work is subject to highly changeable field conditions. Actual cost, schedule and type of work may vary.
- B. Contractor Requirements are incorporated by reference into the Agreement. In the event that there is a conflict or inconsistency between the Agreement terms and Contractor Requirements, the terms and conditions of this Agreement shall control.

2. Contract Provisions

- A. All work shall be done in accordance with the provisions of the 2023 Standard Specifications, and the amendments, and **[if plans are available to be furnished]** as shown on plans to be furnished by the Engineer. In the event of conflict between the 2023 Standard Specifications and the special provisions in this Agreement, the special provisions in this Agreement shall control.
- B. All references to Director in the 2023 Standard Specifications shall be construed to mean Department District Director.
- C. All references to Engineer or Resident Engineer shall be construed to mean Caltrans Contract Manager.

3. Start of Job Site Activities and Time

Section 8-1.04B, of the 2023 Standard Specifications is amended to read: “Begin work as soon as possible when directed to do so by the Caltrans Contract Manager and diligently prosecute the work to completion without causing delay. The estimated number of working days needed to complete the work indicated is an estimate and does not constitute an expressed or implied promise of the actual contract duration. If conditions at the site make it feasible to finish ahead of schedule, endeavor to do so.”

4. Budget Contingency Clause

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to Caltrans by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if Congress or State Legislature does not appropriate sufficient funds for the program, either the scope of work or the maximum amount of this Agreement, or both, may be reduced or altered. The State also has the option of terminating the Agreement. Termination will be in accordance with Section 8-1.14, “Contract Termination,” of the 2023 Standard Specifications.
- D. Pursuant to Government Code Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally-mandated program or that is directly dependent upon the receipt of federal funds by a State agency.
- E. Caltrans has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

5. Cost Limitation

The total amount of this Agreement shall not exceed the original amount unless a Change Order is received and processed in accordance with Section 4-1.05, “Changes and Extra Work,” of the 2023 Standard Specifications.

6. Prompt Payment Clause

- A. Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927 and all agreements must comply with Public Contract Code Sections 10262 and 10262.5.
- B. Pursuant to Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by Caltrans.
- C. Failure of Contractor adhering to Public Contract Code Section 10262 may result in termination of this Agreement per Public Contract Code Section 10253 and disciplinary action by the Contractors State License Board may be implemented
- D. Pursuant to 49 Code of Federal Regulations, Part 26.29(b), Caltrans will not withhold payment from Contractor, and Contractor, and any of its subcontractors, shall not withhold payment from any subcontractor when the Agreement is Federally funded.
- E. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

7. Payment

- A. Work performed under this contract will be paid for on a force account basis in accordance with the provisions of Section 9-1.04, “Force Account”, of the 2023 Standard Specifications and terms of this Agreement.
- B. The markup rates in Section 9-1.04, “Force Account”, of the 2023 Standard Specifications that are added to the direct costs of labor, materials, and equipment rental are amended to 21 percent (21%).
- C. Paragraph three (3) of Section 9-1.04A, “Force Account—General” of the 2023 Standard Specifications is amended to read: “If a Subcontractor performs work at force account, accept an additional 10 percent (10%) markup to the total cost of that work paid at force account, including the markup specified in **paragraph 7B** of this section, as reimbursement for additional administrative costs.”
- D. The following is added to Section 9-1.04D(1), “(Equipment Rental) General” of the 2023 Standard Specifications as the fourth (4th) paragraph, “Overtime and Multiple shift differentials shown in the publication, ‘Labor Surcharge And Equipment Rental Rates,’ shall not apply. All equipment will be paid at the straight time rate in the publication, ‘Labor Surcharge And Equipment Rental.

Rates, for all hours worked. If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged by the rental agency will be paid to the Contractor.”

- E. All equipment operated for this Agreement and compensated by force account, except equipment covered by **paragraphs 7F and 7G** of this Agreement, is considered equipment not on the job site and required for original-contract work. The following is added to Section 9-1.04D(4), “Equipment Not on the Job Site and Required for Original-Contract Work” of the 2023 Standard Specifications as the 2nd paragraph, “Overtime and Multiple shift differentials shown in the publication, ‘Labor Surcharge and Equipment Rental Rates,’ shall not apply. All equipment will be paid for at the straight time rate for all hours worked. If a minimum equipment rental amount is

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

required by the local equipment rental agency, the actual amount charged by the rental agency will be paid to Contractor.”

- F. The sixth (6th) paragraph of Section 9-1.04A, “(Force Account) General”, of the 2023 Standard Specifications is amended to read: “Payment for owner-operated labor and equipment is made at the current market-priced invoice submitted.”
- G. Section 9-1.05, “Extra Work Performed by Specialists”, of the 2023 Standard Specifications is amended to read: “The Contractor, and all Subcontractors obtained before or after contract execution, must itemize all labor, material, and equipment rental costs, and shall not be deemed Specialists unless the selected Contractor or available Subcontractors on site are not capable of performing the specialty work and it is not the special service industry’s established practice to provide cost itemization. In addition, Engineer may approve for non-itemized Specialist billing work required to be performed at an off-site manufacturing plant or machine shop. To obtain approval as a Specialist, Contractor shall submit on behalf of the Subcontractor a request to Engineer prior to the start of the proposed Specialist work. If approval is granted, Engineer will accept the non-itemized invoices for Specialist work performed, provided the invoices are at current market rates. If approval is not granted prior to the start of the proposed Specialist work, Contractor or Subcontractor shall itemize labor, material, and equipment rental costs as required by the 2023 Standard Specifications.” Engineer determines the cost based on the Specialist invoice price minus any available or offered discounts plus a 10 percent (10%) additional administrative cost markup.
- H. Upon completion of all the work and acceptance of the Agreement, Contractor will be paid only fees directly charged by surety for the bond premium. No other fees or costs will be reimbursed.
- I. Section 12-1.04, “Payment,” of the 2023 Standard Specifications does not apply. Payment for flagging will be made under Section 9-1.04, “Force Account,” of the 2023 Standard Specifications.

8. State General Prevailing Wage Rates

- A. Both Federal and State prevailing wage requirements apply to this contract. The Contractor shall ascertain which prevailing wage determination applies for each type of work performed. Where there is a conflict in State and Federal prevailing wage rates for the same work, pay the higher of the two rates.
- B. Contractor shall comply with the applicable provisions of the Labor Code, including those provisions requiring the payment of not less than the general prevailing wage rates. Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.
- C. Pursuant to Labor Code Section 1771.5, not less than the general prevailing wage rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work for work of a similar character in the county in which the work is to be performed shall be paid to all workers employed on this Agreement, if this Agreement is for:
 - 1) More than \$25,000 for public works construction, or
 - 2) More than \$15,000 for the alteration, demolition, installation, repair, or maintenance of public works.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 8**.

9. State Prevailing Wage Rate Determinations

- A. The General Prevailing Wage Rate Determinations applicable to the project are available and on file with the Caltrans Regional/District Labor Compliance Office. These wage rate determinations

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

are made a specific part of this contract by reference pursuant to Labor Code Section 1773.2. Any special wage rate determinations applicable to this project are attached.

- B. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at:
<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Federal prevailing wage requirements and wage determinations will be attached to this Agreement at time of execution.
- C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations are to be obtained by Contractor from Caltrans' District/Regional Labor Compliance Officer. These wage rate determinations are to be posted by Contractor at the job site in accordance with Labor Code Section 1773.2.
- D. After the award, questions pertaining to predetermined wage rates should be directed to Caltrans Labor Compliance Office:

Caltrans Headquarters Labor Compliance Office
1120 N Street, MS-44
Sacramento, CA 95814
Email: labor.compliance@dot.ca.gov

10. Hours of Labor

- A. Eight (8) hours labor constitutes a legal day's work. Contractor shall forfeit, as a penalty to the State of California, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by Contractor or any Subcontractor under Contractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and 40 hours in any week, at not less than one and one-half times the basic rate of pay, as provided in Section 1815.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

11. Contractor Registration Program

No Contractor or Subcontractor may be awarded a public works contract or engage in the performance of any contract for public works, unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

12. Prohibition of Delinquent Taxpayers

Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the California Department of Tax and Fee Administration or the Franchise Tax Board pursuant to Revenue and Taxation Code Sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

13. Employment of Apprentices

- A. Where either this Agreement or a subcontract exceeds \$30,000, the Contractor and any Subcontractors of any tier shall comply with all applicable requirements of Labor Code Sections 1777.5, 1777.6, and 1777.7 in the employment of apprentices.
- B. Contractor and its Subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and Subcontractors are

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

advised to contact the State Division of Apprenticeship Standards, PO Box 420603, San Francisco, California 94142-0603, or one of its branch offices, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The Contractor is responsible for all Subcontractors' compliance with these requirements. Penalties for failure to comply with apprenticeship requirements are specified in Labor Code Section 1777.7.

- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this **Section 13**.

14. Payroll Records

- A. Contractor and its Subcontractors shall comply with the following provisions. Contractor shall be responsible for compliance by its Subcontractors.
- 1) Each Contractor and its Subcontractors shall keep accurate payroll records and supporting documents as mandated by California Labor Code Section 1776 and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a) The information contained in the payroll record is true and correct.
 - b) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by all employees on the public works project.
 - 2) The payroll records described in **paragraph (1) above**, shall be certified. The certified payrolls and records related to employee wages, fringe benefits, payroll tax and deductions shall be made available for inspection and copying by Caltrans' representatives at all reasonable hours at the principal office of Contractor. Contractor shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to employee or employee's authorized representative upon request.
 - b) A certified copy of all payroll records described in **paragraph (1) above**, shall be made available for inspection or furnished upon request to a representative of Caltrans, the Department of Industrial Relations Division of Labor Standards Enforcement and the Division of Apprenticeship Standards. Certified payrolls submitted to Caltrans and, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Contractor.
 - c) The public shall not be given access to certified payroll records by Contractor. Contractor is required to forward any requests for certified payrolls to Caltrans Contract Manager by both email and a hard copy sent by regular mail on the business day following receipt of the request.
 - 3) Each Contractor shall submit a certified copy of the records described in **paragraph 1, above**, to the entity that requested the records within 10 days after receipt of a written request.
 - 4) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Caltrans shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Contractor awarded the Agreement or performing the Agreement shall not be marked or obliterated.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- 5) Contractor shall inform Caltrans of the location of the records described in **paragraph 1, above**, including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - 6) Contractor and any Subcontractor shall have 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in **paragraph 1, above**. In the event Contractor or a Subcontractor fails to comply within the 10-day period, they shall, as a penalty to Caltrans forfeit one hundred dollars (\$100) for each calendar day, or for any portion of a calendar day, for each worker, until strict compliance is achieved. Such penalties shall be withheld by Caltrans from payments when due. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
- B. The penalties specified in **paragraph 6**, above, for noncompliance with the provisions of said Section 1776 will be deducted from any monies due or which may become due to Contractor. Penalties assessed for failure to submit certified payrolls are forfeitures and not withholdings that will be returned to Contractor.
 - C. Payrolls shall contain the full name, address, and social security number of each employee, the correct work classification (including apprentices, if applicable), rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Agreement. The "Statement of Compliance" shall be on forms furnished by Caltrans or on any form with identical wording. Any payroll that does not include the required "Statement of Compliance" will be deemed inadequate and unacceptable. Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors.
 - D. Contractor and each Subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.
 - E. Contractor shall submit a certified copy of all payroll records for verification by Caltrans Contract Manager and/or designee with each invoice. When progress payments are called for, Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by Contractor.
 - F. Contractor shall pay any employee actually engaged in the moving and handling of goods being relocated under this Agreement no less than the prevailing wage rate.
 - G. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this **Section 14**.

15. Penalty

- A. Contractor and any Subcontractor shall comply with Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit, as a penalty to Caltrans, not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any public work done under the Agreement by them, or by any Subcontractor under them, in violation of the provisions of the Labor Code and, in particular, Labor Code Sections 1775 to 1780, inclusively.
- B. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of Contractor or any Subcontractor in

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

failing to pay the correct rate of prevailing wages, or the previous record of Contractor or Subcontractor in meeting their prevailing wage obligations, or Contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or Subcontractor had knowledge of the obligations under the Labor Code. Contractor by executing and receiving a copy of this Agreement is deemed to have knowledge of their obligations regarding the Labor Code's prevailing wage requirements. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or any Subcontractor.

- C. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by Subcontractor, Prime Contractor of the project is not liable for any penalties described above unless Prime Contractor had knowledge of that failure of Subcontractor to pay the specified prevailing rate of wages to those workers or unless Prime Contractor fails to comply with all the following requirements:
 - 1) The Agreement executed between Contractor and Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - 2) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by a Subcontractor to employees by periodic review of the certified payroll records of a Subcontractor.
 - 3) Upon becoming aware of the failure of a Subcontractor to pay their workers the specific prevailing rate of wage, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, withholding sufficient funds due Subcontractor for work performed on the public works project.
 - 4) Prior to making final payment to a Subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury for Subcontractor that Subcontractor has paid the specified general prevailing rate of per diem wages to their employees on the public works project and any amounts due pursuant to Section 1813.
- D. Pursuant to Labor Code Section 1775, Caltrans shall notify Contractor on a public works project within 15 days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.
- E. If Caltrans determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if Caltrans did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of moneys due Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by Caltrans.
- F. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this **Section 15**.

16. Subcontracting

- A. The second (2nd) and fifth (5th) paragraphs of Section 5-1.13A, "(Subcontracting) General" of the 2023 Standard Specifications shall not be applicable to this project.
- B. Contractor shall perform not less than 50 percent (50%) of the total cost of all work performed under this Agreement with its own organization.

17. Bonds

Section 3-1.05, "Contract Bonds", of the 2023 Standard Specifications is amended to read

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

“Furnish a payment bond which shall secure the payment of the claims of laborers, mechanics or materialmen employed on the work. The payment bond shall be in a sum equal to this Agreement.” No performance bond is required.

“All alterations, extensions of time, extra and additional work, and other changes authorized by these specifications or any part of the contract may be made without securing the consent of the surety or sureties on the contract bonds.”

18. Reporting Disabled Veteran Business Enterprise (DVBE) Utilization (For State-Funded Contracts Only)

If this Agreement requires DVBE participation, it is the responsibility of Contractor to track DVBE participation requirement progress and Contractor must report the actual amount paid to certified Subcontractors. Contractors must comply with Government Code Section 14841 and Military and Veterans Code Sections 999.5(d) and 999.7 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059)

(<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM3059>) to Caltrans Contract Manager with each invoice.

If Contractor fails to submit the ADM-3059 with the final invoice, Caltrans Contract Manager shall withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on the Agreement until Caltrans Contract Manager receives a complete and satisfactory ADM-3059. Caltrans Contract Manager shall notify Contractor by email that Contractor must submit a complete and satisfactory ADM-3059 within 30 days from the date of the notice. If Contractor fails to fully complete and submit the ADM-3059 within this 30-day period, Caltrans shall permanently withhold payment of the final invoice.

Upon Caltrans Contract Manager’s request, Contractor shall provide proof of payment for the work performed by the DVBE subcontractor(s).

19. Reporting Small Business/Micro Business (SB/MB) Utilization (For State-Funded Contracts Only)

If SB/MB Subcontractor participation is a requirement of this Agreement, Contractor must report the actual amount paid to certified Subcontractors. Contractor must comply with Government Code Section 14841 by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. Contractor shall prepare and submit the Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only (ADM-3059) (<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=ADM3059>) to Caltrans Contract Manager with each invoice.

20. DVBE Participation Requirements (For State-Funded Contracts)

Contractor has the responsibility to attempt to attain the five percent (5%) DVBE utilization participation rate. Caltrans recognizes that during emergency situations, the work and timeframes may not lend themselves to always meeting this participation requirement. Any utilization rate up to five percent (5%) will be accepted.

21. Disadvantaged Business Enterprise (DBE) Program Participation Without Goals (For Federal-Funded Contracts Only)

A. This Agreement is subject to Title 49, Code of Federal Regulations (CFR), Part 26 (49 CFR) 26), entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by this reference and made part of this Agreement as if attached hereto.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- B. There is no specific contract goal for DBE participation in this Agreement.
- C. It is the policy of Caltrans that DBEs, as defined in 49 CFR 26, shall be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds to assist the State in meeting its federally mandated overall annual DBE goal. Contractor shall ensure that DBEs have an opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth 49 CFR 26, for this assurance. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of Agreement and may result in termination of this Agreement or other remedies Caltrans may deem appropriate.
- D. In order to ascertain whether or not the overall annual DBE goals achieved, Caltrans tracks DBE participation on all Federal-aid contracts. The Disadvantaged Business Enterprise (DBE) Information (ADM-0227F) is incorporated as part of this Agreement.
- E. Contractor shall notify Caltrans Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.
- F. If subcontracting is allowed in this solicitation, any subcontract entered into between Contractor and Subcontractor(s) as a result of this Agreement shall contain all of the provisions of this **Section 20**.

22. Subcontractors

- A. Perform the work contemplated with resources available within your own organization and no portion of the work shall be subcontracted without written authorization by Caltrans Contract Manager.
- B. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to Subcontractors.
- C. Any substitution of Subcontractor(s) must be approved in writing by Caltrans Contract Manager in advance of assigning work to a substitute Subcontractor(s).
- D. A substitute DBE must possess the work category code(s) applicable to the type of work performed.
- E. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any Subcontractor(s), and no subcontract shall relieve you of your responsibilities and obligations. Be fully responsible to the State for the acts and omissions of its Subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its Subcontractor(s) is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any Subcontractor.

23. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

- A. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a CUF.
- D. DBE Subcontractors shall perform the work and supply the materials which they have listed in their response to the Agreement award requirements specified in the ADM-0227F, unless Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in **Section 26, DBE Substitutions**.
- E. You are not entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Contractor) pursuant to prior written authorization of Caltrans Contract Manager.

24. Exclusion of Retention

- A. In conformance with 49 CFR 26.29(b)(1), the retention of proceeds required by Public Contract Code Section 10261 shall not apply.
- B. In conformance with Public Contract Code Section 7200(b), in subcontracts between Contractor and a Subcontractor and in subcontracts between a Subcontractor and any Subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in Public Contract Code Section 7200(c), shall not apply. At the option of Contractor, Subcontractor(s) may be required to furnish payment and performance bonds issued by an admitted surety insurer.
- C. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

25. Payment to Subcontractor(s)

- A. Pay your DBE Subcontractor(s) and non-DBE Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by the State.
- B. Prior to the 15th of each month, submit documentation to Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in Contractor's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies, which is claimed toward DBE participation. Contractor shall also obtain and submit documentation to the Caltrans Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a non-DBE truck leasing company must use its own employees as drivers in order to be eligible to receive credit for the total value of the hauling services. The records must confirm that amount of credit claimed toward DBE participation conforms to the requirements of **Section 26 below** entitled, "DBE Substitutions."
- C. Submit to Caltrans Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and, if applicable, the DBE certification number of the truck owner for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on the Monthly DBE Trucking Verification form provided to Contractor by Caltrans Contract Manager.
- D. Return all moneys withheld from a Subcontractor within 30 days after receiving payment for work satisfactorily completed, even if other Agreement work is not completed and has not been accepted in conformance with the terms of the Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

available to Contractor or a Subcontractor in the event of a dispute involving late payment or non-payment to Contractor or deficient performance or noncompliance by a Subcontractor.

26. DBE Records

- A. Maintain records of all subcontracts entered into with certified DBE Subcontractor(s) and records of materials purchased from certified DBE supplier(s). The records shall show the name and business address of each DBE Subcontractor or vendor and the total dollar amount actually paid each DBE Subcontractor or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Prime Contractor is required to submit a Monthly Disadvantaged Business Enterprises (DBE) Payment (CEM-2406) on the 15th of the following month for ongoing projects beginning October 1, 2014. Failure to submit the form will result in withholds.
- C. Upon completion of work in this Agreement, a summary of these records shall be prepared and submitted on the form entitled, Final Report—Utilization of Disadvantaged Business Enterprises First-Tier Subcontractors (CEM-2402F), and certified correct by Contractor or Contractor's authorized representative and shall be furnished to the Caltrans Contractor Manager. The form shall be furnished to Caltrans Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25 percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Contractor when a satisfactory CEM-2402F, is submitted to the Caltrans Contract Manager.

27. DBE Substitutions

- A. Do not substitute a listed DBE Subcontractor, supplier or, if applicable, a trucking company, without the prior written approval of Caltrans Contract Manager. Failure to obtain approval of substitute Subcontractors before work is performed, supplies are delivered, or services are rendered may result in payment being denied by Caltrans.
- B. Submit requests for substitution to Caltrans Contract Manager. Authorization to use other Subcontractors or suppliers may be requested for the following reasons:
 - 1) Listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written Agreement, when such written Agreement, based upon the terms and conditions for this Agreement or on the terms of such Subcontractor's or supplier's written bid, is presented by Contractor.
 - 2) Listed DBE becomes bankrupt or insolvent.
 - 3) Listed DBE fails or refuses to perform subcontract or furnish listed materials.
 - 4) Contractor stipulated that a bond was a condition of executing subcontract and listed DBE Subcontractor failed or refuses to meet the bond requirements of Contractor.
 - 5) Work performed by listed Subcontractor is substantially unsatisfactory and is not in substantial conformance with scope of work to be performed, or Subcontractor is substantially delaying or disrupting the progress of work.
 - 6) When it would be in the best interest of the State.
- C. At a minimum, Contractor's substitution request to Caltrans Contract Manager must include a:
 - 1) Written explanation of the substitution reason; and if applicable, include the reason a non-DBE Subcontractor is proposed for use.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- 2) Written description of the substitute business enterprise, include its business status, DBE certification number, and status as a sole proprietorship, partnership, corporation, or other entity.
 - 3) Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.
- D. Prior to the approval of Contractor's substitution request, Caltrans Contract Manager must give written notice to the Subcontractor being substituted by Contractor. A copy of the notice sent by the Caltrans Contract Manager must be sent to the Division of Procurement and Contracts (DPAC). The notice must do all of the following:
- 1) Give the reason Contractor is requesting substitution of the listed Subcontractor;
 - 2) Give the listed Subcontractor five (5) working days to submit written objections to DPAC and copies to Caltrans Contract Manager;
 - 3) Notify Subcontractor that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution; and
 - 4) Be served by certified or registered mail to the last known address of the listed Subcontractor.
- The listed Subcontractor, who has been so notified, shall have five (5) working days within which to submit written objections to the substitution to Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subcontractor's consent to the substitution.
- E. If written objections are filed by the listed Subcontractor, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed Subcontractor of a hearing by Caltrans on Contractor's request for substitution.

28. DBE Certification and De-certification Status

- A. If a DBE Subcontractor is decertified during the life of the Agreement, the decertified Subcontractor shall notify Contractor in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the Agreement, the Subcontractor shall notify Contractor in writing with the date of certification.
- B. Report any changes to Caltrans Contract Manager within 30 days.

29. Termination of DBE

- A. In conformance with 49 CFR 26.53 (f) (1) and 26.53 (f) (2), do not:
 - 1) Terminate for convenience the subcontract of a listed DBE Subcontractor and then perform that work with its own forces (personnel), or those of an affiliate, unless Contractor has received prior written authorization from the Caltrans Contract Manager to perform the work with other forces (other than Contractor's own personnel) or to obtain materials from other sources;
 - 2) If a DBE Subcontractor is terminated or fails to complete its work for any reason, Contractor will be required to replace that original DBE Subcontractor with another DBE Subcontractor; and
 - 3) If a DBE Subcontractor is terminated or fails to complete its work for any reason, Contractor will be required to make Good Faith Effort to replace the original DBE Subcontractor with another DBE Subcontractor to the extent needed to meet the Agreement goal.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- B. Noncompliance with the requirements of this section is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as Caltrans deems appropriate.

30. Surface Mining and Reclamation Act (SMARA)

All imported mineral aggregate materials from surface mines or commercial sources shall be from material sites listed as SMARA-approved by the California Department of Conservation. The Engineer may accept non-SMARA mineral aggregate material if the Governor suspends SMARA in either a disaster proclamation or Executive Order and the mineral aggregate material is used for the sole purpose of reconstructing roadways damaged by the disaster.

31. Public Safety

- A. The first sentence of the ninth (9th) paragraph of Section 7-1.04, "Public Safety", of the 2023 Standard Specifications is amended to read:

“Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the California Manual of Uniform Traffic Control Devices (MUTCD).”

- B. Any work performed on or near a roadway must be in accordance with safety standards set forth in Sections 7-1.03, "Public Convenience," and 7-1.04, "Public Safety," of the 2023 Standard Specifications.

32. Removal of Asbestos and Hazardous Substances

- A. When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and Contractor encounters materials which Contractor reasonably believes to be asbestos or a hazardous substance as defined in Health and Safety Code Section 25914.1, and the asbestos or hazardous substance has not been rendered harmless, Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.
- B. In accordance with Health and Safety Code Section 25914.1, all such removal of asbestos or hazardous substances including any exploratory work to identify and determine the extent of such asbestos or hazardous substance will be performed by separate contract.
- C. If an excusable delay of work in the area delays the current controlling activity, Contractor will be compensated for such delay as provided in Section 8-1.07, "Delays", of the 2023 Standard Specifications.

33. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

34. Nondiscrimination Clause (2 CCR 11105 Clause b)

- A. During the performance of this Agreement, Contractor, and its Subcontractors, shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.
- C. Contractor shall permit access by representatives of Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.
- D. Contractor and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

35. Insurance—General Provisions

- A. Nothing in this Agreement is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.
- B. Contractor shall procure and maintain casualty insurance on all of its operations with companies acceptable to the State as follows:
 - 1) Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
 - 2) All insurance shall be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
 - 3) Contractor shall maintain completed operations coverage with a carrier acceptable to State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

36. Insurance—Workers' Compensation

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- A. In accordance with Labor Code Section 1860, Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
- B. In accordance with Labor Code Section 1861, Contractor shall submit to Caltrans the following certification as soon as possible after contract award:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

- C. Contractor shall provide Employer's Liability Insurance in amounts not less than the amounts set forth below:
 - 1) \$1,000,000 for each accident for bodily injury by accident
 - 2) \$1,000,000 policy limit for bodily injury by disease
 - 3) \$1,000,000 for each employee for bodily injury by disease
- D. If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

37. Insurance—General Liability

- A. Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:
 - 1) Premises, operations, and mobile equipment
 - 2) Products and completed operations
 - 3) Broad form property damage (including completed operations)
 - 4) Explosion, collapse, and underground hazards
 - 5) Personal injury
 - 6) Contractual liability
- B. The limits of liability shall be at least the amounts shown in the following table:

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

Total Contract Amount	For Each Occurrence	Aggregate for Products/Completed Operation	General Aggregate	Umbrella or Excess Liability
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$10,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$10,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000
1. Combined single limit for bodily injury and property damage. 2. This limit shall apply separately to Contractor's work under this Agreement. 3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.				

- C. Contractor shall not require certified Small Business Subcontractors to carry Liability Insurance that exceeds the limits in the table above. Notwithstanding the limits specified herein, at the option of Contractor, the liability insurance limits for certified Small Business Subcontractors of any tier may be less than those limits specified in the table. For Small Business subcontracts, "Total Contract Amount" shall be interpreted as the amount of subcontracted work to a certified Small Business.
- D. The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of Contractor under this contract. Coverage for such additional insureds does not extend to liability:
 - 1) Arising from any defective or substandard condition of the roadway which existed at or before the time Contractor started work, unless such condition has been changed by the work or the scope of the work requires Contractor to maintain existing roadway facilities and the claim arises from Contractor's failure to maintain;
 - 2) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor that occurred during the course of the work; or
 - 3) To the extent prohibited by Insurance Code Section 11580.04.
- E. Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by Insurance Services Office, Inc. of New Jersey, <https://www.verisk.com/insurance/brands/iso/>, or other form designated by Caltrans.
- F. The policy shall stipulate that the insurance afforded the additional insured applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and shall not be called upon to contribute with this insurance.

38. Insurance—Automobile

Contractor shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The primary limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required in Section 34 under Paragraph B also applies to automobile liability insurance.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

39. Insurance—Forms and Enforcement

- A. Contractor shall provide its General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.
- B. The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, Contractor is responsible for any deductible amount and shall warrant that the coverage provided to the State is in accordance with **Sections 34-36**, "Insurance", of this Agreement.
- C. Caltrans may verify Contractor's compliance with its insurance obligations. Ten (10) days before an insurance policy lapses or is canceled during the contract period, the Contractor shall submit to Caltrans evidence of renewal or replacement of the policy.
- D. If Contractor fails to maintain any required insurance coverage, Caltrans may maintain this coverage and withhold or charge the expense to Contractor or terminate Contractor's control of the work in accordance with Section 8-1.13, "Contractor's Control Termination," of the 2023 Standard Specifications.
- E. Contractor is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, directors and employees by Caltrans' acceptance of insurance policies and certificates.
- F. Minimum insurance coverage amounts do not relieve Contractor for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this contract.

40. Self-Insurance

- A. Self-insurance programs and self-insured withholding in insurance policies are subject to separate annual review and approval by the State.
- B. If Contractor uses a self-insurance program or self-insured withholding, Contractor shall provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is Contractor's acknowledgement that Contractor will be bound by all laws as if the Contractor were an insurer as defined under the California Insurance Code and that the self-insurance program or self-insured retention shall operate as insurance as defined under the California Insurance Code.

41. Satisfying a Self-Insured Retention (SIR)

All insurance required by this Agreement must allow, but not require, the State to pay any SIR and/or act as Contractor's agent in satisfying any SIR. The choice to pay any SIR and/or act as Contractor's agent in satisfying any SIR is at the State's discretion. If the State chooses to pay any SIR and/or act as Contractor's agent in satisfying any SIR, Contractor shall reimburse the State for the same.

42. Available Coverages/Limits

In the event the insurance coverages obtained by Contractor is broader in scope than, and/or the limits are higher than, those required under the contract, all such broader coverage and/or higher limits available to Contractor shall also be available and applicable to the State.

43. Indemnification

- A. Contractor agrees to defend, indemnify, and save harmless the State, including its officers, directors, employees, and agents (excluding agents who are design professionals) from any

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity (Section 7-1.05 Claims) arising out of or in connection with Contractor's performance of this contract for:

- 1) Bodily injury, including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of Contractor, the State, or any other contractor; and
 - 2) Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.
- B. Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. Contractor is not obligated to indemnify the State for claims arising from conduct delineated in Civil Code Section 2782 and to claims arising from any defective or substandard condition of the highway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires Contractor to maintain existing highway facilities and the claim arises from Contractor's failure to maintain. Contractor's defense and indemnity obligation shall extend to claims arising after the work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during the course of the work. State inspection is not a waiver of full compliance with these requirements.
- C. Contractor's obligation to defend and indemnify shall not be excused because of Contractor's inability to evaluate liability or because Contractor evaluates liability and determine that Contractor is not liable. Contractor shall respond within 30 days to the tender of any claim for defense and indemnity by the State, unless this time has been extended by the State. If Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, Caltrans may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the claim or until Contractor accepts or rejects the tender of defense, whichever occurs first.
- D. With respect to third party claims against Contractor, Contractor waives all rights of any type to express or implied indemnity against the State, its officers, directors, employees, or agents (excluding agents who are design professionals).
- E. Nothing in the Agreement is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.
- F. Contractor is responsible for any liability imposed by law and for injuries to or death of any person, including workers and the public, or damage to property. Indemnify and save harmless any county, city, or district and its officers and employees connected with the work, within the limits of which county, city, or district the work is being performed, all in the same manner and to the same extent specified for the protection of the State.

44. Disadvantaged Business Enterprise (DBE) Assurances

- A. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT) assisted contract or in the administration of its DBE Program or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement.

Upon notification by the applicable USDOT agency to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR, Part 26. They may also, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

- B. Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR, Part 26, in the award and administration of USDOT Federally-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the 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
- 4) Disqualifying Contractor from future bidding as non-responsible

Each subcontract signed by the bidder must include this assurance.

- C. Contractor must make available to Caltrans Contract Manager a copy of all DBE subcontracts upon request.
- D. Contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Contractor obtains authorization from Caltrans. Unless Caltrans provides prior authorization approving a request for termination or substitution of a listed DBE, Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.

45. Title VI Assurances

A. Appendix A

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

- 1. Compliance with Regulations:** Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the US Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- 2. Nondiscrimination:** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, age, sex, or disability in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Acts and the

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

Regulations relative to Non-discrimination on the grounds of race, color, national origin, age, sex, or disability.

4. **Information and Reports:** Contractor will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Caltrans or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to Caltrans or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the non-discrimination provisions of this Agreement, Caltrans will impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to Contractor under the Agreement until Contractor complies, and/or
 - b) Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. **Incorporation of Provisions:** Contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as Caltrans or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request Caltrans to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Appendix E (Pertinent Non-Discrimination Authorities)

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC Sections 2000d et seq., 78 Stat. 252) prohibits discrimination on the basis of race, color, national origin) and 49 CFR Part 21
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC Section 4601) prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects;
3. Federal-Aid Highway Act of 1973 (23 USC Section 324 et seq.) prohibits discrimination on the basis of sex;
4. Section 504 of the Rehabilitation Act of 1973 (29 USC Section 794 et seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27;
5. The Age Discrimination Act of 1975 (42 USC Section 6101 et seq.), as amended, prohibits discrimination on the basis of age;
6. Airport and Airway Improvement Act of 1982 (49 USC Sections 471 and 47123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex;
7. The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage, and applicability of Title VI of the Civil Right Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

"programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients, and Contractors, whether such programs or activities are Federally funded or not;

8. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC Section 12131-12189) as implemented by Department of Transportation regulations 49 CFR Parts 37 and 38;
9. The Federal Aviation Administration's Non-discrimination statute (49 USC Section 47123) prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, which requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin, and requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits you from discriminating because of sex in education programs or activities.

45. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week the contractor shall arrange for organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling. Contractor shall provide proof of compliance, i.e. organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from the Caltrans Contract Manager.

46. Solid Waste Disposal and Recycling Report

Submit a final Solid Waste Disposal and Recycling Report (CEM-4401) within five (5) business days after Contract acceptance. Show the types and amounts of project-generated solid waste taken to or diverted from landfills or reused on the project from start of work to Contract acceptance. This form is available for download from the internet at <https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=CEM4401>.

47. Recycled Materials: Certification Requirement

- A. Pursuant to State law (Pub. Cont. Code Section 12205), certify the percentage of postconsumer recycled materials contained in certain materials Contractor incorporates into the work under this contract. Contractor shall submit the report, "Postconsumer Recycled Materials Content Certification," to the Engineer upon contract completion.

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

- B. For the purposes of the report, postconsumer recycled materials consist of finished materials which would normally be disposed of as solid waste.

(See **Attachment 1, Interim Form CEM-4402, Postconsumer Recycled Materials Content Certification.**)

48. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by Caltrans must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

49. Electronic Signatures

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for this Agreement. Documents that are referenced by this Agreement may still require manual signatures.

50. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law unless the contract has been Federalized (i.e. there is federal participation in any phase). The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

51. BUY AMERICA

- A. Buy America requirements do not apply to the following:
 - 1) Tools and construction equipment used in performing the work
 - 2) Temporary work that is not incorporated into the finished project.
- B. Crumb Rubber (Pub Res Code § 42703(d))
 - (a) Furnish crumb rubber with a certificate of compliance. Crumb rubber must be:
 - 1) Produced in the United States
 - 2) Derived from waste tires taken from vehicles owned and operated in the United States
- C. Steel and Iron Materials
 - Steel and iron materials must be melted and manufactured in the United States except:
 - 1) Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials
 - 2) If the total combined cost of the materials produced outside the United States does not exceed the greater of 0.1 percent of the total bid or \$2,500, the material may be used if authorized.

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

and iron were melted and manufactured.

All melting and manufacturing processes for these materials, including an application of a coating, must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied.

D. Manufactured Products

Iron and steel used in precast concrete manufactured products must meet the requirements of section C regardless of the amount used.

Iron and steel used in other manufactured products must meet the requirements of section C if the weight of steel and iron components constitute 90 percent or more of the total weight of the manufactured product.

E. Construction Materials

The following construction materials must be produced in the United States under standards in 2 CFR 184.6:

- 1) Non-ferrous metals
- 2) Plastic and polymer-based products such as:
 - 2.1. Polyvinylchloride
 - 2.2. Composite building materials
- 3) Glass
- 4) Fiber optic cable including drop cable
- 5) Optical fiber
- 6) Lumber
- 7) Engineered wood
- 8) Drywall

All manufacturing processes for these materials as defined in 2 CFR 184.6 must occur in the United States.

Furnish construction materials to be incorporated into the work with certificates of compliance with each project delivery. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to compliance with its 2 CFR 184.6 standard.

Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.

STATE OF CALIFORNIA—DEPARTMENT OF TRANSPORTATION
POSTCONSUMER RECYCLED MATERIALS CONTENT CERTIFICATION
Interim CEM-4402 (2007)

ATTACHMENT 1

(a)	(b)	(c)
Material Category	Total Dollar Value of Materials, Recycled and non-Recycled, Provided Under this Contract	<i>If Col (b) > \$0,</i> Percent of Col (b) Composed of Postconsumer Recycled Materials
Paper products, including building insulation	\$	%
Printing paper, envelopes, newsprint, brochures	\$	%
Mulch, compost, co-compost, soil amendments, organic erosion control	\$	%
Glass Products	\$	%
Lubricating Oils and Antifreeze (excludes oil and antifreeze used in Contractor-owned vehicles)	\$	%
Plastic Products	\$	%
Paint	\$	%
Tires (excludes tires used on Contractor-owned vehicles)	\$	%
Tire-derived Products (excluding crumb rubber)	\$	%
Tire-derived Products (only crumb rubber produced from US domestic sources)	\$	%
Metal Products, including rebar, pipe, corrugated metal pipe, guardrail elements, girders, steel beams, fasteners, sign panels.	\$	%

I certify under penalty of perjury that the information provided is complete and accurate.

Contractor's Signature

Date

Emergency Force Account Terms and Conditions (EFA Federal or State Funded)

[FHWA-1273–Revised October 23, 2023](#)

Required Contract Provisions Federal-Aid Construction Contracts

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 CFR633.102(e).