



**MISSOURI
HIGHWAYS and TRANSPORTATION
COMMISSION**

JEFFERSON CITY, MISSOURI

**GENERAL PROVISIONS AND
SUPPLEMENTAL SPECIFICATIONS TO 2016
MISSOURI STANDARD SPECIFICATIONS FOR
HIGHWAY CONSTRUCTION**

Effective October 1, 2016

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GENERAL PROVISIONS

SECTION 404 NATIONWIDE PERMIT GENERAL CONDITIONS

General Conditions. The following general conditions shall be followed in order for authorization by a Nationwide Permit (NWP) to be valid. Permit authorization from U.S. Army Corps of Engineers (USACE) may have additional conditions that will be binding to the project. The contractor shall refer to the permit authorization letter included in the contract.

1.0 Navigation. No activity shall cause more than a minimal adverse effect on navigation.

2.0 Soil Erosion and Sediment Controls. Appropriate erosion and sediment controls shall be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, shall be permanently stabilized at the earliest practical date. Work within waters of the USA shall be performed, when possible, during periods of low-flow or no-flow.

3.0 Aquatic Life Movements. No activity shall substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams shall be installed such that low flow conditions are maintained.

4.0 Equipment. Heavy equipment working in wetlands shall be placed on mats, or other measures shall be taken to minimize soil disturbance.

5.0 Regional and Case-by-Case Conditions. The contractor's activity shall comply with any regional conditions that may have been added to the contract by the USACE Division Engineer, (see 33 CFR 330.4(e)), and with any case-specific conditions added by the USACE or by the state in the Section 401 water quality certifications.

6.0 Wild and Scenic Rivers. No activity shall occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status.

7.0 Tribal Rights. No activity shall impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

8.0 Endangered Species.

8.1 No activity will be authorized under any NWP that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or that is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the USACE District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the USACE District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

8.2 Authorization of an activity by a NWP shall not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization from the U.S. Fish and Wildlife Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act.

9.0 Historic Properties. No contractor activity, that may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, will be authorized until the Commission has complied with the provisions of 33 CFR Part 325, Appendix C.

10.0 Section 404 Conditions. In addition to the General Conditions, the following conditions will apply only to activities that involve the discharge of dredged or fill material into waters of the USA, and shall be followed to maintain authorization by the NWPs.

10.1 Water Supply Intakes. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, shall occur in the proximity of a public water supply intake, except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

10.2 Suitable Material. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, shall consist of unsuitable material such as trash, debris, car bodies, asphalt, etc. Material used for construction or discharged shall be free from toxic pollutants in toxic amounts in accordance with Section 307 of the Clean Water Act.

10.3 Mitigation. The project shall be constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practical at the project site.

10.4 Spawning Areas. Activities, including structures and work in navigable waters of the USA or discharges of dredged or fill material in spawning areas during spawning seasons shall be avoided to the maximum extent practical. Activities that result in the physical destruction of an important spawning area, such as excavation, fill or smother downstream by substantial turbidity, will not be permitted.

10.5 Management of Water Flows. Discharges shall not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water, unless the primary purpose of the fill is to impound waters. The structure or discharge of dredged or fill material shall withstand expected high flows.

10.6 Adverse Effects from Impoundments. If the activity creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of the water's flow shall be minimized.

10.7 Waterfowl Breeding Areas. Activities into breeding areas for migratory waterfowl shall be avoided.

10.8 Removal of Temporary Fills. Any temporary fills shall be completely removed entirety, and the affected areas shall be returned to the pre-existing elevation.

10.9 Section 404 Nationwide Permit No. 3.

10.9.1 The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for the fill in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in material, construction techniques, or current construction codes or safety standards necessary to make repair, rehabilitation, or replacement will be permitted, provided the environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable shall mean useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. The NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of the destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the COE District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

10.9.2 Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediment and debris in the vicinity of, and within, existing structures, such as bridges, culverted road crossings, water intake structures, etc., and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the COE District Engineer in accordance with General Condition 13. The removal of sediment shall be limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet (60 m) in any direction from the structure. The placement of riprap shall be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated material shall be deposited and retained in an upland area unless otherwise specifically approved by the COE District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the COE District Engineer.

10.9.3 Discharges of dredged or fill material, including excavation, into all waters of the U.S. for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove minor obstructions in a water of the U.S. The NWP applies to activities in waters of the U.S. associated with the replacement of the uplands. The restoration of the damaged areas shall not exceed the contours, or ordinary high water mark, that existing before the damage. Minor dredging to remove obstructions from the adjacent waterbody shall be limited to 50 cubic yards (38 m³) below the plane of the ordinary high water mark, and shall be limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging shall not be done primarily to obtain fill for any restoration activities. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit shall not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding.

10.10 Section 404 Nationwide Permit No. 12. Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the U.S. shall be as follows.

10.10.1 Utility lines. The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there is no change in preconstruction contours. A “utility line” will be defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the U.S., provided that the material is not placed in such a manner that the material is dispersed by currents or other forces. The COE District Engineer may extend the period of temporary side casting, not to exceed a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches (150 to 300 mm) of the trench shall be backfilled with topsoil from the trench. Furthermore, the trench shall not be constructed in such a manner as to drain waters of the U.S., such as backfilling with extensive gravel layers, creating a french drain effect. For example, utility line trenches may be backfilled with clay blocks to ensure that the trench does not drain the waters of the U.S. through which the utility line is installed. Any exposed slopes and stream banks shall be stabilized immediately upon completion of the utility line crossing of each waterbody.

10.10.2 Foundations for Overhead Utility Line Towers, Poles, and Anchors. The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) shall be used where feasible.

10.10.3 Access Roads. The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, provided the discharges do not cause the loss of greater than 1/2 acre (0.20 ha) of non-tidal waters of the U.S. Access roads shall be the minimum width necessary. Access roads shall be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in waters of the U.S. shall be properly bridged or culverted to maintain surface flows. The term “utility line” does not include activities which drain a water of the U.S., such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the U.S. includes the filled area plus waters of the U.S. that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph 1.1 through 1.3 may not exceed a total of 1/2 acre (0.20 ha) loss of waters of the U.S. Waters of the U.S. temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the U.S. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the U.S. that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material shall be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the U.S. even if there is no associated discharge of dredged or fill material (See 33 CFR, Part 322).

10.11 Section 404 Nationwide Permit No. 13. The following bank stabilization activities will be necessary for erosion prevention provided the activity meets all of the following criteria.

10.11.1 No material is placed in excess of the minimum needed for erosion protection.

10.11.2 The bank stabilization activity is less than 500 feet (150 m) in length.

10.11.3 The activity will not exceed an average of one cubic yard per running foot (2.5 m³ per running meter) placed along the bank below the plane of the ordinary high water mark.

10.11.4 No material is placed in any special aquatic site, including wetlands. Special aquatic sites include wildlife sanctuaries and refuges, wetland, mudflats, vegetated shallow and riffle and pool complexes.

10.11.5 No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area.

10.11.6 No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas).

10.11.7 The activity is part of a single and complete project.

10.11.8 This NWP shall not be used for the channelization of a water of the U.S.

10.12 Section 404 Nationwide Permit No. 14. Activities required for the construction, expansion, modification, or

improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the U.S., including wetlands, if the activity meets the following criteria.

10.12.1 The discharge does not cause the loss of greater than 1/2-acre (0.20 ha) of waters of the US.

10.12.2 The width of the fill shall be limited to the minimum necessary for the crossing.

10.12.3 This permit does not authorize stream channelization, and authorized activities shall not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream.

10.13 Section 404 Nationwide Permit No. 15. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills will not be included in this NWP and will require an individual or regional Section 404 permit.

10.14 Section 404 Nationwide Permit No. 23. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the COEUSACE Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination.

10.15 Section 404 Nationwide Permit No. 33. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the USACE or the U.S. Coast Guard, or for other construction activities not subject to the USACE or U.S. Coast Guard regulations. Appropriate measures shall be taken to maintain near normal downstream flows and to minimize flooding. Fill shall be of materials, and placed in a manner that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the USACE District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill shall be entirely removed to upland areas, or dredged material returned to the original location, following completion of the construction activity, and the affected areas shall be restored to the pre-project conditions. Cofferdams shall not be used to dewater wetlands or other aquatic areas changing the use of these areas. Structures left in place after cofferdams are removed will require a Section 10 permit if located in navigable waters of the U. S. (See 33 CFR, Part 322).

SECTION 401 WATER QUALITY CERTIFICATION CONDITIONS

1.0 Description. When a Clean Water Act Section 404 Nationwide Permit is in effect, the contractor is automatically permitted to perform this work under a Water Quality Certification (Section 401) by the Missouri Department of Natural Resources (MDNR). The contractor shall adhere to the following conditions:

1.1 During construction, clearing of vegetation shall be kept to the minimum necessary to accomplish the project.

1.2 Petroleum products, equipment and solid waste shall not be stored after construction working hours below the ordinary high water mark.

1.3 Equipment shall not be operated, except where permitted, nor petroleum products stored in wetlands.

1.4 Riparian areas and stream banks shall be restored to a stable condition as soon as possible after final contouring.

1.5 Work done in streams shall be conducted during low flows whenever possible.

1.6 Petroleum products spilled into any water of the state, or in areas where material could enter waters of the state, shall be cleaned up immediately and disposed of properly.

1.7 The following material shall not be used for streambank stabilization: earthen fill, gravel, fragmented asphalt, broken concrete with exposed rebar, tires, vehicle bodies and liquid concrete, including grouted riprap.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

1.0 Disadvantaged Business Enterprise (DBE) Program Requirements. The subsequent Sections will apply only to contracts involving U.S. Department of Transportation (USDOT) federal-aid or federal financial participation. Federal-aid or federal financial participation includes, but is not limited to, any funds directly or indirectly received by MoDOT, or authorized for distribution to or through MoDOT, by the USDOT or any operating administration within the USDOT. These provisions will not apply to Commission contracts funded exclusively with state funds, or state and local funds. Any contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of a federal-aid contract shall be aware of and fully understand the terms and conditions of the USDOT DBE Program, as the terms appear in Title 49 CFR Part 26 (as amended), the USDOT DBE Program regulations; Title 7 CSR Division 10, Chapter 8 (as amended), the Commission's DBE Program rules.

2.0 DBE Program Distinguished From Other Affirmative Action Programs. The USDOT DBE Program established by the U.S. Congress is not the same as, and does not involve or utilize, any of the elements or authority of other state or local affirmative action programs, nor does the program rely upon state legislation or gubernatorial executive orders for implementation or authorization, other than the general authority given the Commission in Section 226.150, RSMo. The USDOT DBE Program is implemented by the Commission and MoDOT, through and in conjunction with the FHWA, FTA and FAA, as a "recipient" defined in Title 49 CFR 26.5.

3.0 Policy Regarding DBE Firms. It is the policy of the U. S. Department of Transportation and MoDOT that businesses owned by socially and economically disadvantaged individuals have an opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the requirements of 49 CFR Part 26 (as amended) and the Commission's implementing state regulations in Title 7 CSR Division 10, Chapter 8, "Disadvantaged Business Enterprise Program", will apply to any contract with federal funds.

4.0 Opportunity for DBEs to Participate. Each contractor, subcontractor and supplier working on a contract financed in whole or in part with federal funds shall take all necessary and reasonable steps to ensure that DBEs have an opportunity to compete for, and participate in performance on project contracts and subcontracts.

5.0 Required Contract Provision. The federal-aid contract will include the following provision, as mandated by USDOT at Title 49 CFR 26.13(b):

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

In this provision, "contractor" will be defined as the contractor on the contract; "subrecipient" will be defined as any subcontractor performing the work. For the purposes of any federal-aid contract awarded by the Commission, "the recipient" will be defined as either the Commission, or MoDOT, or both. The contractor shall include this same contract provision in every supply contract or subcontract the contractor makes or executes with a subrecipient.

6.0 Bank Services. The contractor, and each subrecipient on a federal-aid contract, is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services, and the fees charged for services, typically will not be eligible for DBE Program contract goal credit. Any questions on this subject should be directed to the MoDOT External Civil Rights Division. See [Sec 7.0](#).

7.0 DBE Program Information. DBE Program information may be obtained from the MoDOT External Civil Rights Division, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Phone (573) 751-7801, Fax (573) 526-0558, E-Mail: dbes@modot.mo.gov. It will be the duty of each contractor, for the contractor and for the contractor's subrecipients and surety, to take the steps necessary to determine the legal obligations and limitations under the DBE Program, as an element of responsibility. It will be the duty of each certified DBE firm to know, understand and comply with the DBE firm's legal obligations and limitations under the DBE Program, as a requirement of program participation. A surety providing a bid or contract bond will be bound by those bonds to the duties of the surety's principal.

8.0 DBE Certification, and the Missouri Unified Certification Program. The Missouri Department of Transportation and other certifying agencies within Missouri have partnered to form the Missouri Regional Certification Committee (MRCC) and developed a Unified Certification Program (UCP) pursuant to 49 CFR 26.81 and 7 CSR 10-8.061. Only DBE firms certified by the MRCC are eligible to perform work on a federal-aid contract for DBE contract goal credit. It is the contractor's responsibility to ensure firms identified for participation are approved certified DBE firms. The MRCC DBE Directory can be found at the following link:

http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/DBE_program.htm

9.0 DBE Program-Related Certifications Made By Bidders and Contractors. If the bidder makes a written, express disclaimer of one or more certifications or assurances in the bid, the bid will be considered non-responsive. By submitting a bid on any call involving USDOT federal financial participation, and by entering into any contract on the basis of that bid, the contractor makes each of the following DBE Program-related certifications and assurances to USDOT, to the Commission, and to MoDOT:

(a) The bidder certifies that management and bidding officers have reviewed and understand the bidding and project construction and administration obligations of the USDOT DBE Program regulations at Title 49 CFR Part 26 (as amended), the USDOT DBE Program regulations; Title 7 CSR Division 10, Chapter 8 (as amended), and the Commission's DBE Program rules. The bidder further certifies that the contractor's management personnel on the project understand and are familiar with the requirements of these federal and state DBE Program regulations; and if the bidder was not familiar with or did not understand the requirements of these regulations, they have contacted the External Civil Rights Division of MoDOT and have been informed as to their duties and obligations under the DBE Program regulations by MoDOT staff and/or by USDOT DBE Program staff.

(b) The bidder certifies that the bidder has complied with the federal and state DBE Program requirements in submitting the bid, and will comply fully with these requirements in performing any federal-aid contract awarded on the basis of that bid.

(c) The bidder agrees to ensure that certified DBE firms have a full and fair opportunity to participate in the performance of the contract financed in whole or in part with federal funds. The bidder certifies that all necessary and reasonable steps were taken to ensure that DBE firms have an opportunity to compete for, and perform work on the contract. The bidder further certifies that the bidder not discriminate on the basis of race, color, age, national origin or sex in the performance of the contract, or in the award of any subcontract.

(d) The bidder certifies, under penalty of perjury and other applicable penal laws that if awarded the federal-aid contract, the contractor will make a good faith effort to utilize certified DBE firms to perform DBE work at or above the amount or percentage of the dollar value specified in the bidding documents. The bidder further certifies the bidder's understanding that the bidder may not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract, in whole or in any part, with another DBE, any non-DBE firm or with the contractor's own forces or those of an affiliate of the contractor, without the prior written consent of MoDOT as set out below.

(e) The bidder certifies, under penalty of perjury and other applicable penal laws that a good faith effort was made to obtain DBE participation in the contract, at or above the DBE participation contract goal. The bidder further certifies, under penalty of perjury and other applicable penal laws, that if the bidder is not able to meet the Commission's DBE contract goal, and if the bidder is not able to meet that DBE's contract goal by the time the proposed DBE participation information must be submitted, within three business days after bid opening, the bidder has submitted with and as a part of the bid, a true, accurate, complete and detailed written explanation of good faith efforts to meet the DBE Contract Goal.

(f) The bidder understands and agrees that if awarded the contract the contractor is legally responsible to ensure that the contractor and each DBE subcontractor and supplier, comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract fully perform the designated tasks, with the DBE's own forces and equipment, under the DBE's own direct supervision and management. The bidder certifies, under penalty of perjury and other applicable penal laws, that if it awarded the contract and if MoDOT or the Commission determine that the contractor, a DBE or any other firm retained by the contractor has failed to comply with the DBE Program requirements or federal or state DBE Program regulations, the Commission, through MoDOT, shall have the sole authority and discretion to determine the extent of the monetary value to which the DBE contract goals have not been met, and to assess against and withhold monetary damages from the contractor in the full amount of that breach. The Commission, through MoDOT, may impose any other remedies available at law or provided in the contract in the event of a contract breach. The bidder further understands and agrees that this clause authorizes the Commission, through MoDOT, to determine and fix the extent of the damages caused by a breach of any contractual or regulatory DBE Program requirement and that the damage assessment will be enforced in addition to, and not in lieu of, any other general liquidated damages clause in the contract. By submitting a bid for a federal-aid contract, and by entering into a contract, the bidder irrevocably agrees to such an assessment of liquidated damages for DBE Program purposes, and authorizes the Commission and MoDOT to make such an assessment of liquidated damages against the contractor, and to collect that assessment from any sums due the contractor under the contract, or any other contract, or by other legal process. The bidder makes this certification, agreement and authorization on behalf of itself, its subcontractors and suppliers, and the bid bond and contract bond sureties, for each federal-aid contract.

(g) The surety upon any bid or contract bond acknowledges the surety is held and firmly bound to the Commission for each and every duty of the surety's principal provided in any bid or contract regarding the DBE program.

10.0 Designation of DBE firms to perform on contract. The bidder states and certifies, under penalty of perjury or other applicable penal laws, that the DBE participation information submitted in the bid or within the stated time thereafter is true,

correct and complete and that the information provided includes the names of all DBE firms that will participate in the contract, the specific line item (s) that each DBE firm will perform, and the creditable dollar amounts of the participation of each DBE. The specific line item must reference the MoDOT line number and item number contained in the proposal. The bidder further states and certifies that the bidder has committed to use each DBE firm listed for the work shown to meet the DBE contract goal and that each DBE firm listed has clearly confirmed that the DBE firm will participate in and perform the work, with the DBE's own forces. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR 26.53.

(a) The bidder certifies the bidder's understanding that as the contractor on a contract funded in whole or in part by USDOT federal funds, the bidder may not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract, in whole or in any part, with another DBE, any non-DBE firm or with the contractor's own forces or those of an affiliate, without the prior written consent of MoDOT. The bidder understands it must receive approval in writing from MoDOT for the termination of a DBE firm, or the substitution or replacement of a DBE before any substitute or replacement firm may begin work on the project in lieu of the DBE firm participation information listed in the executed contract.

(1) The bidder further certifies understanding, that if a DBE firm listed in the bid or approved in the executed contract documents ceases to be certified at any time during the performance of the contract work, and a contract or subcontract with that firm has not yet been executed by the prime and subcontractor, the contractor can not count any work performed by that firm after the date of the firm's loss of eligibility toward meeting the DBE contract goal. However, if the contractor has executed a subcontract with the firm before the DBE lost eligibility and ceased to be a certified DBE, the contractor may continue to receive credit toward the DBE contract goal for that firm's work.

(2) The bidder further certifies understanding, that if a DBE subcontractor is terminated, or fails, refuses or is unable to complete the work on the contract for any reason, the contractor must promptly request authority to substitute or replace that firm. The request shall include written documentation that the DBE firm is unwilling or unable to perform the specified contract work. The contractor shall make good faith efforts to find another DBE subcontractor to substitute or replace the dollar amount of the work that was to have been performed by the DBE firm. The good faith efforts shall be directed at finding another DBE to perform the same, or more, dollar amount of work that the DBE firm that was terminated was to have performed under the executed contract. The substitute or replacement DBE firm may be retained to perform the same or different contract work from that which the terminated firm was to have performed. The contractor shall obtain approval from MoDOT in writing before the replacement or termination of one firm with another before the work will count toward the project DBE goal.

(3) The bidder further certifies the bidder's understanding, that the dollar value of any work completed by a DBE firm prior to approval of the DBE's substitution or replacement, in writing, by MoDOT will not be credited toward meeting the DBE contract goal. The contractor will remain subject to appropriate administrative remedies, including but not limited to, liquidated damages for the full dollar amount that the DBE contract goal is not met. Liquidated damages will also be assessed against the contractor if the original, substitute or replacement DBE firms perform the required contract work, but are not paid in full for some or all of that work by the contractor, including back charges. No credit toward the DBE goal will be given for any amount withheld from payment to the DBE or "back charged" against monies owed to the DBE, regardless of the purpose or asserted debt.

11.0 Good Faith Effort to Secure DBE Services. The bidder shall make a good faith effort to seek DBEs in a reasonable geographic area to where the solicitation for subcontracts and material is made. If the bidder cannot meet the goals using DBEs from that geographic area, the bidder shall, as a part of the effort to meet the goal, expand the search to a wider geographic area.

11.1 Bidding Procedure. The following bidding procedure shall apply to the contract, for DBE program compliance purposes.

11.2 Contract Goal, Good Faith Efforts Specified. The bidder may submit the completed "DBE Identification Submittal" information in the bid documents at the same time as, and within the sealed bid, at the time the bid is submitted. However, if that information is not completed and submitted with the initial sealed bid, then as a matter of responsiveness and responsibility, the apparent low and second low bidder shall file the completed "DBE Identification Submittal" pages with MoDOT on or before 4:00 p.m. of the third business day after the bid opening date, directly to the External Civil Rights Division, Missouri Department of Transportation, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Telefax transmittal to MoDOT will be permitted at fax no. (573) 526-0558. The complete and signed original documents shall be mailed to MoDOT no later than the day of the telefax transmission. No extension of time will be allowed for any reason. The means of transmittal and the risk of timely receipt of the information shall be the bidder's.

11.3 Bid Rejection, Bid Security Disposition. The failure of either the apparent low bidder or the second low bidder to file the completed and executed "DBE Identification Submittal", listing actual, committed DBE participation equal to or greater than the DBE contract goal percentage specified in the bid by 4:00 p.m. on the third business day after the bid opening, will be cause for rejection of that bid, and the bid surety bond or bid guaranty of that bidder will be forfeited to and become the property of the Commission upon Commission demand.

(a) Any bidder rejected for failure to submit the completed and executed “DBE Identification Submittal” information in the bidding documents, with full documentation of sufficient DBE participation to satisfy the DBE contract goal cannot submit a bid on the same, or substantially similar, project, when and if the project is re-advertised for bids. By submitting a bid on a federal-aid project, the bidder accepts and agrees to this provision, and the disposition of the bidders bid bond or guaranty, on behalf of the bidder and the bidders bid surety or guaranty.

(b) The surety separately acknowledges the surety to be held and firmly bound to the Commission to immediately upon demand pay to Commission the face amount of the bid bond.

11.4 Good Faith Efforts Described. Good faith efforts to meet the DBE contract goal may include, but are not limited to, the following:

(a) Attending a pre-bid meeting, if any, scheduled by the department to inform DBEs of contracting and subcontracting opportunities.

(b) Advertising in general circulation trade association and socially and economically disadvantaged business directed media concerning subcontracting opportunities.

(c) Providing written notice to a reasonable number of specific DBEs so that the DBE’s interest in the contract are solicited in sufficient time to allow the firm to participate effectively.

(d) Following-up on initial written notice or solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.

(e) Maintaining documentation of responses received in the effort to solicit DBE participation.

(f) Selecting portions of work to be performed by DBEs to increase the likelihood of meeting the DBE goal, including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.

(g) Providing interested DBEs adequate information about plans, specifications and requirements of the contract.

(h) Negotiating in good faith with interested DBEs, not rejecting DBEs as unqualified without sound business reasons based on a thorough investigation of the DBE’s capabilities.

(i) Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance required by MoDOT or by the bidder.

(j) Making effective use of available disadvantaged business organizations, minority bidders' groups, local, state and federal disadvantaged business assistance offices, MoDOT and other organizations that provide assistance in the recruitment and placement of DBEs.

11.5 Documentation, and Administrative Reconsideration of the Bidder's Good Faith Efforts. In the bidding documents, the bidder has the opportunity and responsibility to provide certified written documentation as to whether the bidder made a good faith effort to meet the DBE contract goal as proposed by the Commission. Any bidder that has not met the Commission’s proposed DBE contract goal at the time of bid opening must submit the completed “Certification of Good Faith Efforts to Obtain DBE Participation”. The certification should be included in the bidding documents, fully and in detail, at the time its sealed bid is submitted; however, if that information is not completed and submitted with the initial sealed bid, the bidder must submit the documentation to MoDOT on or before 4:00 p.m. of the third business day after the bid opening date, directly to the External Civil Rights Division, Missouri Department of Transportation, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Telefax transmittal to MoDOT will be permitted at fax no. (573) 526-0558. The complete and signed original documents shall be mailed to MoDOT no later than the day of the telefax transmission. No extension of time will be allowed for any reason. The means of transmittal and the risk of timely receipt of the information shall be the bidder’s. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain certified DBE firm participation in the proposed contract work. If the apparent low bidder appears to have failed to adequately document in the bid that the bidder made a good faith effort to achieve sufficient DBE participation in the contract work, that firm will be offered the opportunity for administrative reconsideration upon written request, before MoDOT and the Commission reject that bid as non-responsive. However, regardless of the DBE contract goal participation level proposed by the bidder, or the extent of good faith efforts shown, the apparent low and second low bidders shall each timely and separately file their completed and executed “DBE Identification Submittal” or face potential sanctions and the bid bond or guaranty, as specified in [Sec 10.0](#) of these provisions, may become the property of the Commission subject to Commission’s demand.

12.0 DBE Participation for Contract Goal Credit. DBE participation on the contract will count toward meeting the DBE contract goal as follows:

(a) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the DBE contract goal, only if that firm is certified by the Missouri Regional Certification Committee as a DBE before the due date for bids or offers on a contract which a firm seeks to participate as a DBE, and only for the value of the work, goods or services that are actually performed, or provided, by the DBE firm itself in the area(s) in which the DBE firm is certified.

(b) When a DBE performs work as a participant in a joint venture, the contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the contract work that the DBE has performed with the DBE's own forces. The MoDOT External Civil Rights Division shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to review and approve the contractor's organizational structure and proposed operation. When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a MoDOT certified DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime contractor or the prime's affiliated firms, or from another non-DBE subcontractor, will not count toward the DBE contract goal.

(c) The contractor may count expenditures to a DBE subrecipient toward the DBE contract goal only if the DBE performs a commercially useful function (CUF) on that contract.

(d) A contractor may not count the participation of a DBE subcontractor toward the contractor's final compliance with the contractor's DBE contract goal obligations until the amount being counted has actually been paid to the DBE. A contractor may count 60 percent of the contractor's expenditures actually paid for material and supplies obtained from a DBE certified by MoDOT as a regular dealer, and 100 percent of such expenditures actually paid for materials and supplies obtained from a certified DBE manufacturer.

(1) A regular dealer will be defined as a firm that owns, operates, or maintains a store, warehouse or other establishment in which the material, supplies, articles or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

(2) A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt, without owning, operating or maintaining a place of business where it keeps such items in stock, if the DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement, and not on an *ad hoc* or contract-by-contract basis.

(3) If a DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the regular dealer, who shall be responsible for their distribution.

(4) A manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises, the material, supplies, articles or equipment required under the contract and of the general character described by the project specifications. A manufacturer will include firms that produce finished goods or products from raw or unfinished material, or that purchases and substantially alters goods and materials to make them suitable for construction use before reselling them.

(e) A contractor may count toward the DBE contract goal the following expenditures to certified DBE firms that are not "regular dealers" or "manufacturers" for DBE program purposes:

(1) The contractor may count toward the DBE contract goal the entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive, compared with fees customarily charged for similar services.

(2) The contractor may count toward the DBE contract goal the entire amount of that portion of the construction contract that is performed by the DBE's own forces and equipment, under the DBE's supervision. This includes the cost of supplies and material ordered and paid for by the DBE for contract work, including supplies purchased or equipment leased by the DBE except supplies and equipment a DBE subcontractor purchases or leases from the prime contractor or its affiliates.

