

20221005 - October's Specification Committee Meeting

October Specifications Committee Meeting Agenda

Meeting Date

Wednesday, October 5, 2022 @ 9:00am

Meeting Location: 1334 Smith Street, Charleston, WV in Lower Level Conference

Also meeting virtually via Google Meet video conference. E-mail distribution message includes instruction.

Approved Permanent Specification changes from last Committee meeting (8/16/22)

- **Section 410-Asphalt Base and Wearing Courses, Percent within Limit (PWL).** Entire Section updated, adds two lane NHS roadway criteria, and removal of bonus structure.
- Two specification changes removing bonus structure from Section 508 and Section 720.
 - **Section 508, Subsection 508.9-Smoothness**
 - **Section 720-Smoothness Testing**
- **109.20-Weight Tickets & 109.20.1-Electronic Ticket Delivery.** The revision adds electronic ticket delivery subsection, mandating e-tickets (in addition to paper tickets) for asphalt, aggregate, and concrete.
- **Section 401-Asphalt Base, Wearing, and Patching and Leveling Courses.** It is a complete section rewrite, updating typos & terminology; removal of thin lift corrections; acceptance testing responsibly to the Division; and bonus structure was removed.
- **661.2.3-Retroreflective Sheeting and Matched Components.** The update clarifies fluorescent yellow sheeting requirements on road signage.

Approved Project Specific Special Provisions (SP) from last Committee meeting (8/16/22)

- **SP221-Rockfall Mitigation**
- **SP 601-Surface Resistivity**
- **SP 601-FRP**
- **SP 628-Exploratory Drilling and Sampling**

Items removed from Committee Agenda

- **None**

Old Business-Provisions discussed at last Committee meeting

SECTION	TITLE	DESCRIPTION
642	642.7.1-Temporary Pollution Control, Unit Value Method, & 642.9-Pat Item S. Boggs	3rd time to Committee. Discussed in June & August. Proposed specification change to Section 642- Temporary Pollution Control; adding unit value method to the section. The specification has been updated; it is redline copy showing the latest changes. Approval is expected in October.

711	<p>711.5.3-Approval, 711.6.1.1-General, 711.22.1-General, 711.22.4-Top Coat, & 711.23-Sample Submission and Approval</p> <p>K. Trent</p>	<p>4th time to Committee. Discussed in June, August, & Special Meeting.</p> <p>Proposed specification change to Section 711-Paints, Coating, Oil, and Inks. Update clarifies NTPEP testing & adds subsection on Sample Submission and Approval.</p> <p>Specification updated, per comments at the last meeting; it is redline copy showing the revisions.</p> <p><i>Approval is expected in October.</i></p>
DBE	<p>SP for DBE</p> <p>S. Johnson</p>	<p>This is an update to previously approved SP. 3rd time to Committee. Discussed in August & Special Meeting.</p> <p>Update to the DBE utilization Special Provision used on Federally Funded projects. The revision adds reference to the Civil Rights Compliance Division and updates DBE Participation Plan submission requirements.</p> <p>Provision updated per comments at the last meeting; it is redline copy, showing the changes/updates to the existing special provision.</p> <p><i>Approval is expected in October.</i></p>
106	<p>106.1-Source of Supply and Quality Requirements</p> <p>D. Simmons</p>	<p>2nd time to Committee. Discussed in August.</p> <p>Proposed specification change to Section 106-Measurement and Payment. Updating the Buy America requirements to correlate with new federal law (Infrastructure Investment and Jobs Act). The revision separates the subsection into state funded and federal funded projects.</p> <p>The specification has been updated; it is redline copy showing the latest changes.</p> <p><i>Approval is expected in October.</i></p>
623	<p>623.2-Materials & 623.6.5-Combined Aggregate Gradation</p> <p>M. Perrow</p>	<p>1st time to Committee.</p> <p>Proposed specification change to Section 623-Shotcrete. Update adds tolerances and quality assurance sampling requirements to ensure a move uniform concrete mix.</p> <p>Specification updated per comments at the last meeting; it is redline copy showing the revisions.</p> <p><i>Approval is expected in October.</i></p>

New Business - New Provisions for Spec Committee

SECTION	TITLE	DESCRIPTION
708	708.3-Joint And Crack Sealant, Hot-Poured for Concrete and Asphalt Pavements 708.4.1.2-Test Requirements D. Simmons	1st time to Committee. Two specification changes to Section 708-Joint Materials. Update adds NTPEP testing requirements. The specification is redline copy showing the revisions.

Comments

Comments are requested on these Specifications Changes and Project Specific Special Provisions. Please share your comments by **September 30, 2022**, they help in the decision making process.

Please Send Comments to: DOHSpecifications@wv.gov

Deadline for new items & updates to these provision is **November 11, 2022**.

If you are the 'champion' of any specification changes and/or project specific special provisions currently in the Specification Committee, it is your responsibility to edit/update/modify them in a timely manner per comments and discussion in Spec Committee. *Failure to submit updates may result in removal of item and/or delays.*

Next Meeting

Wednesday, **December 7, 2022 at 9:00 a.m.**

Meeting will be held virtually via Google Meet video conference. E-mail distribution message includes instruction.

2017 Standard Specification Roads and Bridges & 2022 Supplemental Specifications

Electronic Copy (pdf): The 2017 Standard Specifications Roads & Bridges & 2022 Supplemental Specifications can be viewed, printed, or downloaded from the Specifications Website. A link to the Specifications pages is here:

<http://transportation.wv.gov/highways/contractadmin/specifications>

Print Version: We are out of hard copies of the 2017 Standard Specifications Roads and Bridges. Hard copies of the 2022 Supplemental Specifications are available thru Technical Support Division. An order form for the book is on Specifications Website. A link to the page is here: <http://transportation.wv.gov/highways/contractadmin/specifications>

2022 Specifications Committee

The Specification Committee typically meet every other month; on the first Wednesday. 2022 meetings will be held in February (2/2), April (4/6), June (6/1), August (8/3), October (10/5), and December (12/7).

Calendar subject to change, updates will be given, as needed.

Specifications Committee Website

A copy of the meeting agenda can be found on the Specifications Committee Website
<http://transportation.wv.gov/highways/contractadmin/specifications>

Materials Procedures

Material Procedures (MPs) referenced in provisions are available upon request.

For questions regarding the Standard Specifications Road and Bridges, Supplemental Specifications, Project Specific Provisions, or the Specifications Committee please email
DOHSpecifications@wv.gov

File Format Structure and Progression of items thru Specifications Committee

The purpose of the below protocol is to provide guidance on the file structure of Proposed Specifications & Project Specific Provisions as they progress thru Specifications Committee. This procedure would facilitate a means of tracking changes from meeting to meeting; as the agenda & provisions are posted publicly online on the Spec Committee website.

TYPES OF PROVISIONS:

There are three standard types of provisions typically discussed in committee:

1. Specification Changes – These are permanent changes to the WVDOT Standard Specifications.
 - Unless inserted into a project proposal, these changes typically go into effect in January (of subsequent year) with the Supplemental Specifications
2. Project Specific Special Provisions (SP) – Are applied to specifically designated projects.
3. Updates to previously approved SP – Changes/edits/updated to SP that have been approved by spec committee.

NEW BUSINESS ITEMS:

New items should be setup & submitted in the following format:

1. Specification Changes – Show as red-line copy (see note)
2. Project Specific Special Provisions (SP) – Will be shown in all black.
3. Updates to approved SP – Shown as red-line copy.

Each item should also include a description with:

- Brief overview of item
- Background info and/or reason for change

NOTE: Red-line copy is a form of editing which indicates removal or addition of text. You can redline a Microsoft Word document by using the built-in “Track Changes” feature or you can manually reline document with font color changes & strike-through.

OLD BUSINESS ITEMS:

Updated provisions that were discussed at the last committee meeting should be setup in the following format:

- Redline copy from prior meeting would not be shown
- Redline copy of new changes/updates (from previous meeting)

PROGRESSION OF ITEMS THRU COMMITTEE AND APPROVAL:

Depending on how important the project and/or comments/discussion of item at previous meeting, then several things can happen in no particular order.

- Few comments/discussion/minor changes...will recommend approval of item at next meeting
- A lot of comments/discussion...will not recommend approval at next meeting; item will be updated and reviewed again at the next meeting.
- SP's in committee may be used in advertised project. Hope to work to address comments & finish approving at subsequent meeting.

DRAFT

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SUPPLEMENTAL SPECIFICATION
FOR
SECTION 642
TEMPORARY POLLUTION CONTROL

642.7-METHOD OF MEASUREMENT:

ADD THE FOLLOWING:

642.7.1-Temporary Pollution Control, Unit’s Value Method: For “Temporary Pollution Control” for which a number of units are established in the contract, will be measured by each temporary pollution control device used and accepted.

Unless listed elsewhere within the Contract Documents, the relative value of each temporary pollution control device shall be as shown in Table 642.7.1 calculated from the table posted at : <http://www.transportation.wv.gov/> (this link will be revised prior to publication of 2023 standard).

The total units of temporary pollution control shown in the Contract is an estimated amount only and may be adjusted up or down by the Engineer in accordance with the project needs.

642.9-PAY ITEMS:

ADD THE FOLLOWING ITEM TO THE TABLE:

ITEM	DESCRIPTION	UNIT
642000-001	Temporary Pollution Control	Unit

NOTE: This table will be posted at : <http://www.transportation.wv.gov/> (this link will be revised prior to publication of 2023 standard).

TABLE 642.7.1

Description	(Item)	Unit	Value per Unit	Specification Note 2
Temporary Berm	(642001-001)	LF	2	<u>Yes</u>
Slope Drain	(642002-001)	LF	21	<u>Yes</u>
Seed Mixture, Temporary	(642004-001)	LB	2	<u>Yes</u>
Seed Mixture, B	(642004-002)	LB	5	<u>Yes</u>
Seed Mixture, D	(642004-003)	LB	12 20	<u>Yes</u>
Seed Mixture, L	(642004-004)	LB	18	<u>Yes</u>
Mulch, Straw or Hay	(642005-001)	TN	450	<u>Yes</u>
Mulch, Wood Cellulose Fiber	(642005-002)	TN	810 2,500	<u>Yes</u>
Mulch	(642005-003)	TN	2,500	<u>Yes</u>
<u>Hydraulic Erosion Control Product, function longevity (1 to < 6 months)</u>		<u>LB</u>	<u>1</u>	-
<u>Hydraulic Erosion Control Product, function longevity (> 6 months)</u>		<u>LB</u>	<u>1</u>	-
<u>Hydraulically Applied Polymers</u>		<u>LB</u>	<u>1</u>	-
<u>Biotic Soil Amendment</u>		<u>LB</u>	<u>1</u>	-
Fertilizer	(642006-001)	TN	850	<u>Yes</u>
Fiber Matting	(642007-001)	SY	2	<u>Yes</u>
Temporary Pipe	(642008-001)	LF	73	<u>Yes</u>
Contour Ditch	(642009-001)	LF	2	<u>Yes</u>
Agricultural Limestone	(642010-001)	TN	68	<u>Yes</u>
<u>Wattle, ≥ 8 IN</u>		<u>LF</u>	<u>12</u>	-
Silt Fence	(642012-001)	LF	34	<u>Yes</u>
Super Silt Fence	(642015-001)	LF	10	<u>Yes</u>
<u>SMARTFence, 36 IN</u>		<u>LF</u>	<u>5</u>	-
<u>SMARTFence, 42 IN</u>		<u>LF</u>	<u>10</u>	-
<u>Simplified Diversion Fence</u>		<u>LF</u>	<u>5</u>	-
Compost Filter Sock, 8 IN	(642016-001)	LF	107	<u>SP</u>
Compost Filter Sock, 12 IN	(642016-002)	LF	58	<u>SP</u>
Compost Filter Sock, 18 IN	(642016-003)	LF	89	<u>SP</u>
Compost Filter Sock, 24 IN	(642016-004)	LF	10	<u>SP</u>
Compost Filter Sock, 32 IN	(642016-005)	LF	11	<u>SP</u>
Rock Check Dam	(642031-001)	EA	93	<u>Yes</u>
Sediment Trap	(642033-001)	CY	17	<u>Yes</u>
Sediment Basin	(642034-001)	CY	17	<u>Yes</u>
Riser	(642035-001)	EA	7,050 9,000	<u>Yes</u>

TABLE 642.7.1

Description	(Item)	Unit	Value per Unit	Specification Note 2
Skimmer	(642035-002)	EA	1,625 <u>2,800</u>	<u>SP</u>
Sediment Removal	(642036-001)	CY	7	<u>Yes</u>
Inlet Protection	(642040-001)	EA	270	<u>Yes</u>
Flocculant Block	(642042-001)	EA	180	<u>SP</u>
<u>Polyacrylamide</u>		<u>LB</u>	<u>1</u>	<u>-</u>
Premanufactured Ditch Check	(642043-001)	EA	67	<u>-</u>
Turbidity Curtain	(642045-002)	FT	100	<u>SP</u>
<u>Coir Baffles</u>		<u>LF</u>	<u>9</u>	<u>-</u>
Dewatering Device	(642050-001)	EA	720	<u>Yes</u>
Erosion Control Matting	(642055-001)	SY	2	<u>-</u>
<u>Coconut Matting</u>		<u>SY</u>	<u>4</u>	<u>-</u>
<u>Non-Woven Geotextile Fabric</u>		<u>SY</u>	<u>3</u>	<u>-</u>
<u>Rock Borrow Excavation</u>	<u>(211008-000)</u>	<u>TN</u>	<u>75</u>	<u>Yes</u>
<u>Impervious Core</u>	<u>(211017-001)</u>	<u>SF</u>	<u>4</u>	<u>Yes</u>
<u>Seed Mixture, B, C-1, or C-2</u>	<u>(652003-001)</u>	<u>LB</u>	<u>20</u>	<u>Yes</u>
<u>Seed Mixture, D</u>	<u>(652003-002)</u>	<u>LB</u>	<u>20</u>	<u>Yes</u>
<u>Mulch, Straw or Hay</u>	<u>(652004-001)</u>	<u>TN</u>	<u>450</u>	<u>Yes</u>
<u>Mulch, Wood Cellulose Fiber</u>	<u>(652004-002)</u>	<u>TN</u>	<u>850</u>	<u>Yes</u>
<u>Fertilizer, 10-20-10</u>	<u>(652002-001)</u>	<u>TN</u>	<u>500</u>	<u>Yes</u>
<u>Fertilizer, Urea Formaldehyde</u>	<u>(652002-002)</u>	<u>TN</u>	<u>60</u>	<u>Yes</u>
<u>Tied Concrete Block Mattress</u>	<u>(655002-002)</u>	<u>SY</u>	<u>90</u>	<u>SP</u>

Note 1: Units are calculated by multiplying the quantity of temporary pollution control devices installed on project by the rate value.

Example: 175 lbs of “Seed Mixture, Temporary” X 2 = 350 Units

Note 2 Items not covered by WVDOH Specification or Special Provision (SP) shall be handled and installed according to the manufacturer’s recommendations.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATION

FOR

SECTION 711

PAINTS, COATING, OILS, AND INKS

711.5-CONCRETE PROTECTIVE COATINGS AND STAIN:

711.5.2-Physical Requirements:

DELETE BULLET NUMBER iv. IN SUBSECTION 711.5.2 AND REPLACE WITH THE FOLLOWING:

- iv. Color–The color choices ~~permissible~~ shall conform to SAE International AMS-STD-595 A, Federal Standard Colors. The color difference, ΔE , of the acceptance samples shall not be more than five units from the chosen Federal Standard Numbers ~~37925, 36650, 37925, 36622~~.

711.5.3-Approval of Concrete Coatings:

DELETE THE CONTENTS OF SUBSECTION 711.5.3 AND REPLACE WITH THE FOLLOWING:

For approval of concrete coatings, the manufacturer shall submit copies of certified test reports to the Materials Control, Soils and Testing (MCS&T) Division for review and approval. An independent testing laboratory acceptable to the Division shall perform the tests described herein on representative samples of the material. Tests listed herein are the minimum testing requirements to be met. Attach copies of test procedures which differ from those stated herein. In addition, provide brochures or booklets containing detailed instructions and explanatory remarks about surface preparation, application procedures, and ~~other pertinent~~ operations. The Division may ~~also choose~~ approved products from coating materials tested by the National Transportation Product Evaluation Program (NTPEP) and/or the North East Protective Coating Committee (NEPCOAT) ~~tested materials for development of the Approved Product List for this material~~.

DRAFT

711.12-EPOXY COATINGS:

711.12.2-Composition:

DELETE BULLET NUMBER i. IN SUBSECTION 711.12.2 AND REPLACE WITH THE FOLLOWING:

- i. Color–The color ~~permissible-choice~~ shall conform to SAE International AMS-STD-595 A, Federal Standard Colors. The color difference, ΔE , of the acceptance samples shall not be more than five units from the chosen Federal Standard Numbers ~~20062, 26373~~.

711.22-ZINC RICH LOW VOC SYSTEM:

711.22.1-General:

DELETE THE CONTENTS OF SUBSECTION 711.22.1 AND REPLACE WITH THE FOLLOWING:

~~Initial approval of the system will be based on testing of the complete system for specification compliance.~~—Each product in the system shall be from the same paint manufacturer. Each coat shall be a contrasting color to the one previously applied. The use of the intermediate coat meeting 711.22.3, shall be at the option of the paint manufacturer. In either case, the adhesion of the system shall be a minimum of 4A when tested in accordance with ASTM D3359, Method A. The adhesion test shall be conducted approximately 14 days after application of the top coat. All products shall have a maximum VOC of 2.8 lbs / gallon ~~(336 g/l)~~ with exception of the primer, which shall have a maximum VOC of 3.5 lbs / gallon ~~(420 g/l)~~. The paint storage life will be based on manufacturer recommendations. The prime fabricator is responsible for choosing the paint system when shop applied.

711.22.4-Top Coat:

711.22.4.1-Physical Requirements:

DELETE BULLET NUMBER ii. IN SUBSECTION 711.22.4.1 AND REPLACE WITH THE FOLLOWING:

- ii. Color–The color choices ~~permissible~~ shall conform to SAE International AMS-STD-595 A, Federal Standard Colors. The color difference, ΔE , of the acceptance samples shall not be more than five units from the chosen Federal Standard Number ~~20062, 26373~~.

ADD THE FOLLOWING:

711.23-MATERIAL/SYSTEM APPROVAL:

711.23.1-The Division will develop an approved list of products meeting this specification. This list will be placed on the Division’s website. The list may be based upon previous testing performed by the Division, or the Division may choose materials from the National Transportation Product Evaluation Program (NTPEP) and/or the North East Protective Coating Committee (NEPCOAT) tested materials. Upon approval by the Division, further testing will not be required provided the Manufacturer does not alter the formulation of previously tested materials and systems. The Division may request random samples to assure compliance with specification requirements. Any material not previously tested by the Division, NTPEP or NEPCOAT shall be submitted to MCS&T for evaluation and approval. Upon request, the manufacturer shall supply the MCS&T Division with the following for each product:

- i. One, one-gallon kit of the product
- ii. One gallon thinner
- iii. Instructions for mixing, thinning and application
- iv. Materials Safety Data Sheet for both the paint and thinner
- v. Product data sheet

711.24-SAMPLE SUBMISSION:

711.24.1-Any samples for approval testing and all supporting documentation shall be shipped to the address provided below:

West Virginia Division of Highways
Materials Control, Soils and Testing
Paint Laboratory
190 Dry Branch Drive
Charleston, West Virginia, 25306

711.24.2-Paints and coatings submitted for approval testing shall be furnished to the MCS&T Division in appropriate containers not holding more than one gallon of material. Each component shall be labeled appropriately, and the following information shall be provided with the sample:

- i. Name and address of Manufacturer
- ii. Trade Name or Trade Mark
- iii. Type of Paint
- iv. Lot or Batch number
- v. Date of manufacturing
- vi. All SDS/PDS information pertaining to the material
- vii. Reference to the Division’s Standard Specifications

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SPECIAL PROVISION

FOR

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

I. GENERAL:

The West Virginia Division of Highways (Division) is committed to assuring the participation of Disadvantaged Business Enterprises (DBEs) in our highway construction program managed by the Civil Rights Compliance (CRC) Division. In support of this commitment and in compliance with the requirements for contracts funded, in whole or part, with assistance from the United States Department of Transportation (USDOT), the Division requires that any contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Division deems appropriate.

The contractor shall designate and make known to the Division a liaison officer who is assigned the responsibility of effectively administering and promoting an active program for utilization of Disadvantaged Business Enterprises (DBEs).

If a formal goal has not been designated for this contract, all contractors are encouraged to consider DBEs for subcontract work as well as for the supply of materials and services needed for the performance of this work.

The contractor is encouraged to use the services of banks owned and controlled by minorities or women. Agreements between a bidder/proposer and the DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

II. DEFINITIONS:

- A. “Disadvantaged Business Enterprise”** means a firm that is certified as a DBE, in accordance with the provisions of 49 CFR §26, by the West Virginia Department of Transportation’s DBE Unified Certification Program.
- B. “USDOT-assisted contract”** means any contract between the Division and a contractor (at any tier) funded in whole or part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- C. “Good faith efforts”** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- D. “Joint venture”** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their

property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- E. **“Primary industry classification”** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States*, which is available via the internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

III. DBE CERTIFICATION REQUIREMENTS:

- A. In order to be classified as a DBE under this specification, a firm must be approved by the DBE Unified Certification Program prior to the letting date of any project in which a firm wants to participate as DBE.
- B. Under 49 CFR Part 26.71(n), DBE firms are not certified in general terms, in a way that makes every type of work performed eligible for DBE credit. Rather, the WVDOT, through its Unified Certification Program, will grant certification to a firm only for specific types of work which the socially and economically disadvantaged owners have the ability to control.
- C. The DBE rule requires all certification actions, including those expanding the types of work a firm is authorized to perform for DBE credit, to be made final before the date on which bidders on a prime contract must respond to a solicitation [49 CFR 26.81(c)].
- D. The DBE Uniform Certification Application and related documents, as well as the directories of certified DBE consulting and contracting firms, may also be obtained from the Division online at: <http://www.transportation.wv.gov/eo/DBE/Pages/default.aspx>

IV. DBE GOAL:

- A. The DBE goal determined by the West Virginia Division of Highways for this contract is _____% of the contract bid amount.
- B. The contractor shall indicate its goal in the appropriate space in Section C, Item 3 – Contractor’s Goal for DBE Participation, of the Notice contained in the project proposal. The goal so indicated will be used in determining the award of the contract in accordance with this Special Provision and Section 103 of the Standard Specifications.

V. CONTRACTOR’S DBE PLAN:

- A. **Plan requirements.** All bidders ~~are encouraged to shall~~ submit their DBE Participation Plan (Section C – Contractor’s Plan for DBE Participation) ~~with their bid; or no later than 5 calendar days after bid opening when submitting his/her bid on www.Bidx.com, as described in the Notice contained in the project proposal. A Participation Plan form is attached to this provision.~~ The Plan shall include the following:
1. Name of DBE Subcontractor(s) or Suppliers(s).
 2. Description of work each is to perform, to include: Line Number, Item Number, Description, ~~Type of Work~~, Quantity, Unit, Unit Cost and Total Cost.
 3. The dollar value of each proposed DBE subcontract and the percentage of the total contract value represented by combined DBE participation; the extent to which

payments to DBEs may be counted as DBE participation is set forth in Section VIII., DBE Participation Requirements, below.

4. ~~Written and signed documentation Submitting the Plan to the Division on www.Bidx.com, as described in Section C of the proposal document shall be considered assurance~~ of the bidder's commitment to use a DBE subcontractor whose participation is being utilized to meet the DBE contract goal.
 5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment, and any other documentation deemed necessary by the Civil Rights Compliance (CRC) Division, must be submitted to the CRC Division before a contractor's DBE Plan will be approved.
 6. Plans ~~may shall~~ be submitted ~~by e-mail to Error! Hyperlink reference not valid., fax 304-558-4236, or personal delivery and must be received by the WVDOT CRC Division no later than 4:00 p.m. eastern time on the submission due date with the bid in www.Bidx.com.~~
- B. Effect of Failure to Submit a Plan.** ~~The bidder who does not submit a DBE Participation plan with the bid shall submit it no later than 5 calendar days after the bid opening as a matter of responsibility. Failure to submit all required information within the required time frame shall be just cause for the annulment of award; and the amount of the guaranty deposited with the Proposal may be retained by the Division and deposited in the Division of Highways Fund, not as a penalty, but as liquidated damages. a DBE Plan with the bid, or failure to provide the Division any requested documentation within five (5) calendar days of the request, is cause to deem the bidder irresponsible. An irresponsible bidder forfeits its guaranty bond, and the bond will be deposited to the Division of Highways fund. The award may then be made to the next lowest responsible bidder, or the work may be readvertised or otherwise, as decided by the Division may decide.~~
- C. Qualification of DBEs in Plan.** In order to be accepted under this program all DBE subcontractors and suppliers of materials or services must be certified for the applicable Type of Work and NAICS code, in accordance with Section III of this provision, at the time of the letting.
- If a DBE firm has not been certified for the type of work it is intending to perform on a given contract, then the Division of Highways cannot count the firm's participation on that contract toward meeting DBE contract goals or the agency's overall DBE goal. If a bidder has submitted a bid with DBE participation in response to the DBE goal, and the DBE firm named in the bid documents has not been certified in the type of work that the DBE firm would perform on the contract, then the bid shall not be considered because it does not qualify as a responsible bid.
- D. Changes to DBE Participation Plan.** The contractor shall utilize the specific DBEs listed on the DBE Participation Plan to perform the work and supply the materials for which each is listed unless the contractor obtains written consent by the CRC Division. Unless written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
- E. Termination of a DBE from DBE Participation Plan.** A prime contractor cannot terminate a DBE subcontractor listed on an approved DBE Participation Plan without good cause, documented by the prior written consent of the Division. For the purposes of this paragraph, good cause includes, but is not limited to, the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's after-bid-award reasonable, non-discriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable State law;
6. The WV Department of Transportation has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides written notice to the Division of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause as determined by the Division.

F. Termination without Good Cause. Good cause does not exist if the prime contractor seeks to terminate a DBE upon which it relied to obtain the contract if the reason for the proposed termination is so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

G. Procedure for Terminating DBE from DBE Participation Plan. In order to obtain Division approval to terminate and/or substitute a DBE subcontractor, the following steps are required:

1. The prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Division, of its intent to request to terminate and/or substitute; the notice must state the reason for the termination and/or substitution and must give the DBE subcontractor five (5) calendar days to respond to the notice.
2. The DBE subcontractor must respond to the notice within the five calendar day period and advise the Division and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Division should not approve the prime contractor's action; if required in a particular case as a matter of public necessity (*e.g.* safety), the Division may provide a response period shorter than five days.
3. In addition to post-award terminations, the provisions of this bullet (G) *Procedure for Terminating DBE from DBE Participation Plan* apply to pre-award deletions of, or substitutions for, DBE firms put forward by offerors in negotiated procurements.

VI. CONTRACT AWARD REQUIREMENTS:

A. Good Faith Efforts Required. In order to be deemed responsible and be awarded this contract, a bidder must demonstrate good faith efforts to meet the DBE goal established by the Division. The bidder can meet this good faith requirement in either of two ways:

1. The bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose on a Contractor's Plan for DBE Participation (a sample is attached to this Special Provision), or
2. The bidder can document adequate good faith efforts showing that the bidder took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, would be reasonably expected to obtain sufficient DBE participation, even if they were not fully successful.

The following is a list of types of actions that will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs.
 - i. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - ii. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of

the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Division or contractor.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

B. Determining Good Faith Efforts. In determining whether a bidder has made good faith efforts, the Division may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Division may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the Division may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

C. Documentation of Good Faith Effort. When the established contract goal is not being met, all documentation of good faith effort must be submitted to the CRC Division, and must be received no later than five (5) calendar days after bid opening as a matter of responsibility. Contractors who fail to demonstrate that good faith efforts were made prior to the bid shall not be eligible to be awarded the contract. The Division may take any efforts it deems appropriate to assure the completeness and accuracy of documentation submitted to demonstrate good faith efforts.

D. Bidder's Assurance. ~~The bidder's signature in Section J of the Notice contained in this proposal~~ Submitting the bid to the Division on www.Bidx.com shall be ~~written considered~~ assurance he/she will comply with this special provision. The Contractor's proposed DBE goal percent (Section C-~~Item 3~~) must be completed or the bid will be deemed irregular.

E. Failure to Demonstrate Good Faith Effort. A bid that fails to demonstrate good faith effort MUST be excluded from consideration as non-responsible. Under 49 CFR 26.53(a), when there is a contract goal the Division "must award the contract only to a bidder who makes a good faith effort to meet it." Federal funds cannot be used to fund contract activities that are not in compliance with 49 CFR Part 26. If the Division determines that the apparent successful bidder has failed to meet the requirements to demonstrate good faith effort, the Division will, before taking any further action, provide

the bidder an opportunity for administrative reconsideration of the Division's determination.

1. As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith effort, by either meeting the contract goal or by documenting its actions to do so.
2. The Division's decision on reconsideration will be made by an official who did not take part in the original determination that the bidder failed to make adequate good faith effort.
3. The bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it made adequate good faith effort.
4. The Division will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not make good faith effort.
5. The result of the reconsideration process is not appealable to the U.S. Department of Transportation.

VII. CONTRACT COMPLIANCE REQUIREMENTS:

Each contractor or subcontractor that fails to carry out the requirements set forth below will be subject to a breach of contract and, after notification to the Federal Highway Administration, the West Virginia Division of Highways may terminate the contract or subcontract or initiate other such remedy as deemed appropriate.

- A. Policy.** It is the policy of the West Virginia Division of Highways to ensure non-discrimination in the award and administration of USDOT-assisted contracts, to create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts, to ensure that the DBE program is narrowly tailored in accordance with applicable law, to ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs, to help remove barriers to the participation of DBEs in USDOT-assisted contracts, and to assist in the development of firms that can compete successfully in the marketplace outside the DBE program. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.
- B. DBE Obligation.** By execution of the contract, the contractor expressly accepts and agrees to the following assurance, and further agrees to include this assurance in each and every subcontract executed between the prime contractor and a subcontractor: The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT-assisted contracts.
- C. Sanctions.** Failure by the prime contractor to fulfill the DBE requirements and to demonstrate good faith efforts constitutes a breach of contract. In the event of a breach of contract, the Division may take the following actions:
 1. Withholding of progress payments.
 2. Withholding payment to the prime contractor in an amount equal to the unmet portion of the contract goal.
 3. Termination of the contract.
 4. Such other remedy as the Division deems appropriate.

D. Records and Reports. All contractors must keep detailed records and provide regular reports to the Division on a quarterly basis, or as requested, on their progress in meeting contractual DBE obligations. These records may include, but are not be limited to, payroll, lease agreements, cancelled payroll checks, cancelled supply and material checks, and executed subcontracting agreements. At the end of each quarter, prime contractors will be requested to submit certified reports on monies paid to each DBE subcontractor/supplier on all active USDOT-assisted contracts.

DRAFT

VIII. COUNTING DBE PARTICIPATION TOWARD GOAL REQUIREMENTS:

The Division will only count expenditures to a DBE contractor toward DBE goals if the DBE is performing a commercially useful function on the contract. A commercially useful function is generally being performed when a DBE is responsible for the execution of a distinct element of the work and is carrying out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations and these guidelines) and when the DBE firm receives due compensation as agreed upon for the work performed. Regardless of whether an arrangement between the contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or does not meet the commercially useful function requirement, sanctions against the DBE firm and the prime contractor may be pursued.

A. DBE Management: The DBE must be responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering materials, and installing (where applicable) and paying for the material itself. The DBE must perform the work of the contract with its own work force.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Division will presume that the DBE is not performing a commercially useful function; the DBE may present evidence to rebut this presumption.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

The Division's decisions on commercially useful function are reviewable by the Federal Highway Administration, but are not appealable to the USDOT.

B. Equipment: In order to perform a commercially useful function the DBE subcontractor shall be responsible for any equipment necessary to complete the work within the approved Participation Plan.

1. The DBE may lease equipment consistent with standard industry practices.
 - a. The DBE shall be responsible for negotiating the cost, arranging for the delivery of, and paying for leased equipment.
 - b. Copies of the lease agreements shall be submitted for approval by the Division prior to the work being performed.
 - c. The DBE subcontractor shall provide paid invoices to the Division for all leased equipment.
2. The cost of equipment leased from the prime contractor or its affiliates will not be counted towards the goal. The Division does not consider a DBE subcontractor as performing a commercially useful function when it leases equipment from a prime contractor and the equipment is a critical element of the DBE's ability to perform its contract. All leasing agreements, including incidental equipment leasing agreements between the prime contractor and the DBE subcontractor must be

submitted to and approved by the WVDOT ~~EEO-CRC~~ Division prior to performance of the work.

C. Materials: The DBE shall negotiate the cost, determine quality and quantity, arrange delivery of, install (where applicable) and pay for the materials and supplies required for the work of the contract. Invoices for materials should be in the name of the DBE firm not the prime contractor. The Division will count expenditures by DBEs for materials or supplies toward DBE goals as provided in the following;

1. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. For the purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of materials or supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. The Division will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

The WVDOT may allow the use of joint checks to purchase material/supplies used by the DBE when the following conditions are met: (1) the prime contractor acts solely as a guarantor, (2) the DBE must release the check to the supplier, (3) such payment arrangements are available to all subcontractors and not restricted to DBE's, (4) advance approval is obtained by WVDOT ~~EEO-CRC~~ Division.

4. If the materials or supplies are obtained from the prime contractor or an affiliate of the prime contractor, the cost of the materials or supplies will not be counted toward the goal.

D. DBE Trucking Firms: To be certified as a DBE trucking firm, the firm must own at least one fully operational truck that is fully licensed and insured and that is used on a day to day basis. DBE trucking firms must be covered by a subcontract or a written agreement approved by the DOT ~~EEO-CRC~~ office prior to performing their portion of the work. In order to perform a commercially useful function, the DBE trucking firm is restricted to the same subcontracting limitation in effect for other contractors. The DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a this contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

1. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
2. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
3. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by DBE-owned trucks on the contract. The DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract.

Example – DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with firm Z.

4. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

G. Suspensions and Decertification's: If any DBE listed on the *Contractor's DBE Plan* has been suspended or decertified as a DBE **before** the execution of a subcontract agreement between the Prime and the DBE, the DBE's proposed work cannot be counted toward the project's DBE goal. Conversely, if a DBE has been suspended or decertified **after** the Prime and the DBE have executed a subcontract agreement, the contractor may continue to use the DBE and will continue to receive credit toward the project's DBE goal.

H. North American Industrial Classification (NAIC):

DBE work can only be counted toward meeting the contract DBE goal if the work to be performed by the DBE is:

1. Within the Type of Work for which the DBE is certified AND
2. Within the classification of the North American Industry Classification System (6 digit NAIC codes) approved for the DBE.

PARTICIPATION OF A DBE SUBCONTRACTOR WILL NOT BE COUNTED TOWARD A CONTRACTOR'S FINAL COMPLIANCE WITH ITS DBE OBLIGATIONS ON A CONTRACT UNTIL THE AMOUNT BEING COUNTED HAS ACTUALLY BEEN PAID TO THE DBE.

DRAFT

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION
CONTRACTOR'S PLAN FOR DBE PARTICIPATION**

[1] DBE Sub-Contractor or Supplier	[2] Line Number	[3] Item Number	[4] Description	[5] Type of Work (from DBE Directory)	[6] Quantity	[7] Unit	[8] Unit Cost	[9] Total Cost

[10] CONTRACTOR'S DBE GOAL: TOTAL COST OF ALL DBE PARTICIPATION \$ _____ . PERCENT OF TOTAL BID AMOUNT: _____

EXPLANATORY NOTES:

- "DBE Sub-Contractor" (column [1]), for the purpose of this certificate, means a disadvantaged business as defined by Special Provisions in this Proposal.
- If material is to be supplied, the figure in column [9] shall not exceed 60% of the actual cost unless the material is manufactured by a DBE; if material IS manufactured by a DBE, 100% of the cost may be recorded.
- If material is not supplied by a regular dealer as defined in 49 C.F.R. 26.55€(2)(ii), the figure in column [9] shall only include a reasonable and customary fee or commission for providing a bona fide service.
- For line [10], enter the total cost of DBE participation and the percentage of the total contract bid amount that this total DBE cost represents.
- The Contractor's authorized signature on this plan shall serve as documentation of commitment to use the DBE subcontractor(s) listed above by the contractor to meet the contract goal.
- The Contractor shall submit written and signed confirmation from the DBE that it is participating in the contract **as provided in the prime contractor's commitment.**

Authorized Signature _____

Title _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATION

FOR

SECTION 106

CONTROL OF MATERIALS

106.1-SOURCE OF SUPPLY AND QUALITY REQUIREMENTS:

106.1.1-Definitions: Unless the context in which used clearly requires a different meaning, as used in this section:

“Aluminum and glass products” means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum and glass.

“Coating” means all processes that protect or enhance the value of a material or product to which it is applied, such as, but not limited to, epoxy coatings, galvanizing, and painting.

“Construction material” means an article, material, or supply that is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, or drywall. A “construction material” does not include an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, are treated as manufactured products and not as construction materials.

“Domestic aluminum and glass products” means aluminum and glass products for which all manufacturing processes, including application of a coating, have occurred in the United States.

“Domestic steel products” means steel products for which all manufacturing processes, including application of a coating, have occurred in the United States.

“Federal-aid highway project” means highway construction, maintenance, and utility projects funded in whole or in part with Federal-aid funds.

“Manufacturing process” means any process which modifies the chemical content, the physical size or shape, or the final finish of a material, including melting and mixing, rolling, extruding, machining, bending, grinding, drilling, and coating.

“Manufacturing process” for construction materials means the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

“Manufacturing process” for steel and iron means any process which modifies the chemical content, the physical size or shape, or the final finish of a material, including melting and mixing, rolling, extruding, machining, bending, grinding, drilling, and coating.

“Material” means any tangible substance incorporated into a ~~Federal-aid~~ highway project.

“Public Works” includes roads, highways, streets, bridges, sidewalks, sewage systems, buildings, engineering and architectural works, and any other structure, facility or improvement constructed or undertaken by the Division.

“State contract project” means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited.

“Steel products” means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

“United States” means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

106.1.2-State and/or Federal Use of Domestic Steel and Iron: Any steel or iron materials used for either Federal-aid highway and state contract projects shall be manufactured, including the applications of any coatings, in the United States and compliant with 23 U.S.C. 313 and 23 CFR 635.410, entitled “Buy America Requirements.” and compliant with Chapter 5, Article 19 and Chapter 5A, Article 3, Section 56 of the West Virginia Code, entitled the “West Virginia American Steel Act of 2001.

Buy America requirements do not apply to non-ferrous alloy materials used to make steel or any raw materials (iron ore and alloys), scrap, pig iron, or processed, pelletized, and reduced iron ore. Buy America requirements do not apply to temporary elements not permanently incorporated into a project, such as falsework, temporary sheet piling, detour bridges and the like; temporary elements left in place at the Contractor’s convenience, unless the contract plans and specifications require steel or iron components (i.e. stay-in-place forms, ties for steel, sheet piling, etc.) or imply that the item be left in place; or items that are simply moved from one place to another within the same project.

When steel or iron materials are used, the Contractor shall furnish a certificate of compliance which covers all materials and products involved, including those of any subcontractors and suppliers certifying compliance with Buy America requirements prior to the permanent incorporation of the materials into the project. The Division shall not authorize or make any payments to a Contractor not fully compliant with this requirement. Any payment made to any Contractor who did not fully comply with this requirement may be recovered by the Division.

Any exception to Federal Buy America requirements for domestic steel and iron will be in accordance with MP 106.10.50 and shall be compliant with 23 U.S.C. 313 and 23 CFR 635.410

106.1.3-Preference for Domestic Aluminum and Glass Products: Any aluminum or glass products to be supplied in the performance of any contract or subcontract for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works or for the purchase of any item of machinery or equipment to be used at the sites of public works shall be manufactured in the United States and compliant with Chapter 5, Article 19 of

the West Virginia Code. This requirement applies to all federal and state public works contracts, including state purchase order contracts; ~~This requirement however~~ does not apply to any State funded projects with a contract awarded ~~in an~~ amount of less than or equal to \$50,000, or less.

The Division shall not authorize or make any payments to a Contractor not fully compliant with this requirement. Prior to any payment, the Division shall require the Contractor to furnish a certificate of compliance which covers all materials and products involved, including those of any subcontractors and suppliers. Any payments made by the Division to any Contractor who did not fully comply with this requirement may be recovered by the Division.

106.1.4-Use of Domestic Construction Materials: Any construction materials, as defined in Section ~~106.1.2.1~~ 106.1.1, ~~used for a Federal-aid highway construction project~~ shall be manufactured in the United States and compliant with the “Infrastructure Investment and Jobs Act,” Section 70901-52, entitled the “Build America, Buy America Act.” Section 70901-52, entitled the “Build America, Buy America Act” as implemented by the Office of Management and Budget (OMB) in the “Preliminary Guidance for Construction Materials” in OMB Memorandum M-22-11. No construction material may be used ~~for a Federal-aid highway project unless all manufacturing processes, including application of a coating, the manufacturing process for the manufacture of the construction material~~ occurs in the United States.

Buy America also applies to all ~~Federal-aid eligible~~ projects within the scope of a finding, determination, or decision under the National Environmental Policy Act (NEPA), regardless of the funding source, if at least one contract within the scope of the NEPA decision is funded with Federal funding provided under Title 23.

Buy America only applies to construction materials that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, removed at or before completion of the project. Nor does Buy America apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished project, but are not an integral part of or permanently affixed to the structure.

When construction materials are used, the Contractor shall supply adequate documentation certifying compliance with Buy America requirements prior to the permanent incorporation of the materials into the project.

Any exceptions to ~~Federal~~ Buy America requirements for domestic construction materials will be in accordance with MP 106.10.50 and shall be compliant with the Build America, Buy America Act.

106.1.5-Exceptions: Any exceptions to state preference requirements for domestic aluminum, glass, and steel products will be in accordance with MP 106.10.50 and shall be compliant with Chapter 5, Article 19 and Chapter 5A, Article 3, Section 56 of the West Virginia Code

When foreign-made aluminum, glass, and steel products are used or supplied in compliance with an approved exception, the Contractor shall be responsible for providing procedures acceptable to the Division for determining that specification requirements are met, including all inspections at no additional cost to the Division. The use of foreign-made products will not be reason for grant an extension of contract time.

DRAFT

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SUPPLEMENTAL SPECIFICATION
FOR
SECTION 623
PNEUMATICALLY APPLIED MORTAR OR CONCRETE (SHOTCRETE)

623.2-MATERIALS:

DELETE THE PARAGRAPH AND TABLE AT THE END OF THE SUBSECTION AND REPLACE THE FOLLOWING:

The aggregate gradation shall comply with the ~~following~~ requirements of Table 623.2.

TABLE 623.2

Sieve Size	<u>Allowable Percent by Mass Passing Each Individual Sieve in Mix Design</u> ^{Note 1}
½ inch (12.5 mm)	100
¾ inch (9.5 mm)	90-100
No. 4 (4.75 mm)	70-85
No. 8 (2.36 mm)	50-70
No. 16 (1.18 mm)	35-55
No. 30 (600 µm)	20-35
No. 50 (300 µm)	8-20
No. 100 (150 µm)	2-10

Note 1 ~~The maximum and minimum ranges of the allowable % by mass passing on each sieve size noted in Table 623.2 shall not be exceeded during production.~~

623.6-TESTING DURING CONSTRUCTION:

ADD THE FOLLOWING TO THE END OF THE SUBSECTION:

623.6.5-Combined Aggregate Gradation: The aggregate gradation shall be performed by the contractor once for every 50 cubic yards of shotcrete that is produced from the same mix design. The aggregate gradation shall meet the requirements of Table 623.2 ~~and be within the allowable design mix tolerance of the approved mix design~~. However, not more than one aggregate gradation test (for each mix design) shall be required per calendar day as long as not more than 400 cubic yards of shotcrete is produced in a single day from the same mix design.

In situations when more than 400 cubic yards of shotcrete is produced in a single day from the same mix design, two aggregate gradation tests shall be required (one in the AM and one in the PM) for that mix design. During any calendar week (Sunday through Saturday) in which shotcrete is being produced, a minimum of one aggregate gradation test shall be required (for each mix design from which shotcrete is being produced). This aggregate gradation test shall be conducted on the first day of production of that calendar week.

Should the ~~moving average of any five consecutive~~ aggregate gradation tests ~~have a result for any of the sieve sizes listed outside of the limits set forth in the gradation of the original mix design with the production tolerances of Column 3 on Table 623.2, results for any sieve size listed be outside of the limits set forth in Table 623.2 then~~ production shall be discontinued until appropriate corrections are made. Corrections shall be made either in the aggregate proportions in the shotcrete mix (the mix design), the gradation of the aggregates, or the storage and loading of the aggregate, as the Contractor may elect.

When the small quantity work condition applies, the aggregate gradation test required after 50 cubic yards of shotcrete production shall be performed on the day that the 50 cubic yard quantity is achieved. All shotcrete produced on that day (the day that the 50 cubic yard quantity is achieved) shall be represented by the previous aggregate gradation test. The aggregate gradation test conducted on the day that the 50 cubic yard quantity is achieved shall represent the next 50 cubic yards of shotcrete produced, beginning with the shotcrete produced on the next day of production.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATION

FOR

**SECTION 708
JOINT MATERIALS**

708.3-JOINT AND CRACK SEALANT, HOT-POURED FOR CONCRETE AND ASPHALT PAVEMENTS:

DELETE THE CONTENTS OF THE SUBSECTION AND REPLACE THE FOLLOWING:

This material shall meet the requirements of ASTM D6690, and shall be evaluated by NTPEP. Unless otherwise specified, Type II sealant shall be used.

708.4-SILICONE JOINT SEALANT; JOINT BACK-UP MATERIAL:

708.4.1-Silicone Joint Sealant:

708.4.1.2-Test Requirements:

DELETE THE FIRST PARAGRAPH OF SUBSECTION 708.4.1.2 AND REPLACE THE FOLLOWING:

The sealant shall meet the following requirements, and shall be evaluated by NTPEP.