

ATTACHMENT E: EMPLOYMENT OF ELIGIBLE WORKERS

- a) Labor standards for contracts involving H-2B workers or migrant and seasonal agricultural workers.

1. General

This contract is subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 United States Code (U.S.C) 1801-1872, and to the U.S. Department of Labor (DOL) regulations implementing MSPA 29 Code of Federal Regulations (CFR) Part 500. MSPA eliminates activities detrimental to migrant and seasonal agricultural workers, requires registration of Farm Labor Contractors, and ensures necessary protection for the workers. Information regarding MSPA can be found at <http://www.dol.gov/whd/mspa/index.htm>.

If workers are hired under the H-2B program, (8 CFR Section 274A provisions of the Immigration and Nationality Act (INA) for the admission of nonimmigrants to the U.S. to perform temporary labor or services) a Temporary Employment Certification issued by the Office of Foreign Labor Certification (OFLC) in the Department of Labor Employment and Training Administration is required. For further information on the requirements of the H-2B program, visit OFLC's website at <http://www.foreignlaborcert.doleta.gov/> or Wage and Hour's website at <http://www.dol.gov/whd/immigration/H2BFinalRule/index.htm>.

Compliance with MSPA and the INA is a material condition of this contract. If the contractor employs any unauthorized worker(s) during the performance of this contract that violates section 274A of the INA, the District may terminate the contract, in addition to other remedies or penalties prescribed by law.

2. Definitions

- a) **H-2B worker:** as used in this part means a nonimmigrant holding a visa authorizing the individual to legally work in the US to perform temporary labor or services. A worker with an H-2B visa ("H-2B worker") may also be considered a migrant agricultural worker under MSPA depending on the type and nature of work performed.
- b) **Migrant Agricultural Worker and Seasonal Agricultural Worker:** as used in this part means individuals employed for agricultural (including forestry) work on a seasonal or temporary basis.
- i) A worker, moving from one seasonal activity to another, is employed on a seasonal basis even though the worker may continue to be employed during a major portion of the year.
 - ii) An overnight absence from the migrant workers permanent place of residence is required.
 - iii) Members of the contractor's immediate family are not considered migrant or seasonal workers. Immediate family includes:
 - Spouse
 - Children, stepchildren, or foster children

- Parents, stepparents, or foster parents, or
- Brothers and sisters

- c) **Farm Labor Contractor (FLC).** As used in this part means a person including an individual, partnership, association, joint stock company or a corporation, who, for any money or other valuable consideration, paid or promised to be paid, performs any recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural worker.

3. Registration Requirements

- a) Any contractor providing or hiring H-2B nonimmigrants for work under this contract shall provide a copy of their Temporary Employment Certificate. General information about the H-2B program can be found on Fact Sheet # 78 at <http://www.dol.gov/whd/regs/compliance/whdfs78.htm>. Contractors can apply for the certificate through the US DOL Employment & Training Administration's on line iCERT Visa Portal System at <https://icert.doleta.gov/> or by paper application.
- b) Any contractor who meets the definition in (2.iii.) above providing or hiring migrant or seasonal workers to perform agricultural or manual forestry work shall first obtain a Federal DOL Farm Labor Contractor Certificate of Registration (http://www.dol.gov/whd/forms/fts_wh530.htm). The contractor shall carry the certificate at all times while engaged in contract performance and shall display it upon request. Any of the contractor's employees who perform any one or more of the activities defined as an FLC in paragraph (2.iii.) must have their own FLC Employee Certificate. General information about MSPA can be found on Fact Sheet #49 at DOL Wage and Hour Divisions webpage <http://www.dol.gov/whd/regs/compliance/whdfs49.htm>.

4. Certifications

The Contractor shall provide applicable H-2B Temporary Employment Certificate or Farm Labor Contractor Certificate as part of their representations, certifications, and acknowledgements. Subcontractor(s) meeting the definitions above shall follow the same requirements as the Prime Contractor. It is the Prime Contractor's responsibility to ensure the Subcontractor's information is provided to the Project Manager.

5. Worker Protections

- a) Worker Information Posters
- i. A contractor who uses the H-2B program to meet its temporary employment needs must post and maintain the H-2B poster (WH-1505) in a conspicuous location accessible to workers at the job site.

ii. The contractor shall display and maintain the MSPA poster (WH-1376) on the job site in a conspicuous location accessible to workers during the contract performance period.

b) Personal protective equipment

i. 29 CFR 1910 Subpart I, OSHA's General Industry personal protective equipment (PPE) standard contains the general requirements for the provision of personal protective equipment and requires employers to perform a hazard assessment to select appropriate PPE for hazards that are present or likely to be present in the workplace. OSHA requires that many categories of personal protective equipment meet or be equivalent to standards developed by the American National Standards Institute (ANSI).

ii. Before a worker begins operating equipment, the contractor shall train the workers on the safe operation and use of the equipment.

iii. The contractor shall provide the appropriate personal protective equipment for the work required to be performed in the contract, wherever necessary by reason of hazards or processes encountered that may cause injury or impairment in the function of any part of the body. Except for foot protection, all PPE must be provided by the employer at no cost to the employee. Includes:

- Head Protection
- Hearing Protection
- Eye/Face Protection
- Leg Protection
- Foot Protection
- Hand Protection

iv. PPE must be sanitary and in reliable condition. Do not use defective or damaged PPE. PPE must be inspected prior to use on each work shift to ensure it is in serviceable condition.

v. A checklist of applicable PPE guidelines typical for the work performed under this contract is provided. This does not relieve the contractor of the responsibility of performing a risk assessment or providing the necessary PPE for their operations.

Reference

<https://www.osha.gov/SLTC/personalprotectiveequipment/index.html> or OSHA 3151-12R 2003 Personnel Protective Equipment Booklet.

- MSPA – Forestry Working Conditions Checklist
- Manual Logging activities:
https://www.osha.gov/SLTC/etools/logging/manual/logger/personal_equip.html
- General Machine and Vehicles Logging activities:
<https://www.osha.gov/SLTC/etools/logging/mechanical/machines.html>

- c) **Field Sanitation.** OSHA established minimum standards for field sanitation in covered agricultural settings. Refer to Fact Sheet # 51 Field Sanitation Standards under the Occupational Safety and Health Act.

6. Employment Requirements - Fact Sheets with relevant information may be found at <http://www.dol.gov/WHD/fact-sheets-index.htm>.

- Contractors employing workers in forestry related work are required to comply with wage and payroll standards and recordkeeping requirements. Refer to Fact Sheet #63: Application of Federal Labor Laws to Reforestation found on the DOL Wage and Hour Division webpage.
- Contractor Employee List.** Contractors are required to provide/maintain an active list of all employees performing work on the job site under this contract. The Employee List will identify employees by full name (aliases), supervisory duties if applicable, and appropriate labor Occupation Code for work performed under the Service Contract Act Wage Rates applicable to this contract. If Subcontractors are utilized, all tiers of subcontractor(s) are responsible for providing the same information for their employees to the Prime for submittal to the Project Manager.
- Contractor awarded bid items must certify, in writing, that all employees working on the Concow Resilience Project have been “E-Verified” to legally work in the United States. Please refer to the website <https://www.e-verify.gov/>

7. Transportation

- The contractor shall be registered to transport employees, unless employees provide their own transportation or carpool by their own arrangement in one of their own vehicles. Authorization for each vehicle that will be used to transport employees must appear on the contractor's certificate. If the contractor directs or requests employees to carpool, the registration requirement is applicable.

Any driver, who transports workers for a fee or at the direction of the contractor, shall be registered as an FLC or an FLC employee.

- b) See Fact Sheet #50: Transportation Under MSPA, for more information about the vehicle safety standards, driver's licensing requirements, and vehicle insurance requirements. Note that separate transportation requirements may apply if there are H-2B workers.

8. Housing

- a) The authorization to furnish housing, other than commercial lodging certified by a health authority or other appropriate agency, must appear on the contractor's certificate. Contractors should contact their local Wage and Hour Division of the DOL for further information on the requirements of the Act.
- b) **Camping Requirements.** The Forest Service (FS) has various camping opportunities. Check with local FS unit for camping requirements, camping permits may be required. Verify local fire restriction policies. If camps will be used to house workers subject to MSPA, they are also subject to the temporary labor camp standards at 29 CFR 1910.142. The Forest Service reserves the right to terminate a camping permit at any time. These requirements are in addition to those contained in or provided for under the clause titled "452.236-72 Use of Premises" in this contract. Any violation of these conditions constitutes a breach of contract and may result in revocation of camping approval.
 - i) Every structure used as shelter must provide protection from the elements. Where adequate heat is not provided, make other arrangements to protect workers from the cold. Cut firewood only after a District Firewood Permit is obtained.
 - ii) The campsite must not encroach beyond the boundaries designated by the Forest Service. The campsite location must minimize impacts on streams, lakes, and other bodies of water. Camping is not permitted within developed recreational sites or along primary recreational roads.
 - iii) The campsite must have a clean appearance at all times. Upon abandonment of any campsite, or termination, revocation, or cancellation of camping privileges, the contractor shall remove, within 10 calendar days, all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in the camping permit. Structures or improvements the contractor fails to remove within the 10 calendar day period becomes the property of the United States, however, the contractor remains liable for the cost of the removal and restoration of the site.
 - iv) Unless otherwise designated by the CO, the use of the area is not exclusive and may be granted to other permittees, contractors, or recreating public. Disorderly conduct is not permitted.
 - v) Damaging or removing any natural feature or other property of the Forest Service is prohibited.

- vi) Servicing of equipment in the campsite is not permissible unless the campsite is within the project area.
- vii) Provide sanitary facilities for storing food. Provide ice chests or coolers, with ice supply made from potable water, and replenish as necessary. Provide sufficient storage for perishable food items.
- viii) Provide an adequate and convenient potable water supply in each camp for drinking and cooking purposes.
- ix) Provide adequate toilet facilities and toilet paper for the capacity of the camp. Service and maintain facilities in a sanitary condition.
- x) Collect, store, and dispose of garbage in a manner to discourage rodent access, minimize attraction of flies, and prevent scattering by wind.
- xi) Maintain basic first aid supplies available, which must be under the charge of a person trained to administer first aid.

The basic supplies must include:

- Gauze pads (at least 4x4 inches)
 - Two large gauze pads (at least 8x10 inches)
 - Box adhesive bandages (band-aids)
 - One package of gauze roller bandage (at least 2-inches in width)
 - Two triangular bandages
 - Scissors
 - At least one blanket
 - Tweezers
 - Adhesive tape
 - Latex gloves, and
 - Resuscitation device such as a resuscitation bag, airway, or pocket mask.
- xii) Wash laundry in such a way that washing and rinsing will not pollute lakes, streams, or other flowing water.
- xiii) Dispose waste water away from living and eating areas and in such a way that minimizes pollution to lakes, streams, and other flowing water.
- xiv) The contractor shall take all reasonable precautions to prevent and suppress forest fires. Do not dispose of material by burning in open fires during the closed season established by law or regulation without the written permission from the Forest Service.
- xv) If authorized to have an open fire, the Contractor shall comply with the following fire regulations:
 - A shovel, axe or Pulaski, a 10-quart pail, which is full of water for immediate use, and a fire extinguisher with an Underwriters Laboratory (UL) rating of at least 1:A 10:BC is required.

- All fire rings or outside fireplaces must be approved by the Forest Service representative. The area must be cleared down to mineral soil for a distance of one foot outside of the ring or fireplace, and it must not have any overhanging material. Fire rings must be dismantled and material disposed prior to leaving the site.
- All generators and other internal combustion engines must be equipped with Forest Service approved spark arrestors and/or factory designed muffler and exhaust system in good working order. They will be located in a cleared area with the same requirements as in described in the previous paragraph.
- All fuel must be stored in UL approved flammable storage containers and be located at least 50 feet from any open flame or other source of ignition.

c) Include the instructions below, Representations, certifications, and other statements of offerors or respondents. Contractors are required to provide certification of employment status as part of their representations, certifications, and acknowledgements.