



August 22, 2022

VIA ELECTRONIC SUBMISSION

Stephanie Pollack
Deputy Administrator of the Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE,
Washington, DC 20590

RE: Public Comments on FHWA-2022-0008– National Electric Vehicle Infrastructure Formula Program

Dear Ms. Pollack:

The National Electrical Contractors Association (NECA) is a National Trade Association and the leading voice of the \$202 billion electrical contracting industry that brings power, light, and communication technology to buildings and communities across the U.S. NECA collectively represents over 4,000 electrical contractor members served by 118 local chapters across the country. NECA employs a unionized workforce with contracts collectively bargained with the International Brotherhood of Electrical Workers (IBEW).

I. OVERALL ASSESSMENT:

The National Electrical Contractors Association (NECA) submits these comments in response to the Federal Highway Administration’s (FHWA) National Electric Vehicle Infrastructure Formula Program Notice of Proposed Rulemaking (NPRM) and Request for Comments, FHWA Docket No. 2022-0008. NECA provide these comments in support of the NPRM (hereafter “Proposed FHWA Rule”). As outlined in detail below, NECA enthusiastically supports many of the proposals in the FHWA rule and to provide recommendations, suggestions, and improvements to better serve taxpayers and ensure that the electric vehicle (EV) charging network is not plagued by cost overruns, delays, and safety issues.

NECA commends the Administration and Congress for establishing the National Electrical Vehicle Infrastructure Program that will award \$7.5 billion to build out the EV charging network. In particular, NECA commends FHWA for issuing this proposed rulemaking in in the short timeframe provided in the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58.

NECA, along with its labor partner of the IBEW, recognize that our collective success is our highly skilled and trained union workforce. In these comments, we will provide our shared recommendations for revisions to the proposed rule that we believe will better serve taxpayers by



ensuring that the nation’s first EV charging network is not plagued by cost overruns, delays, and safety issues. NECA believes these recommendations will respond to the Administration’s goals of ensuring that federal infrastructure investment reduces climate pollution and addressing the climate crisis by harnessing opportunities to create well-paying, union jobs to build a modern, sustainable infrastructure and provide an equitable, clean energy future¹. In addition, we believe our recommendations will assist FHWA in achieving the goal of the Justice40 initiative that 40 percent of the overall benefits of federal investments flow to disadvantaged communities.²

1. TRANSPARENCY OF PUBLIC-PRIVATE PARTNERSHIPS (P3) PROCUREMENTS – RECOMMENDATIONS TO IMPROVE TRANSPARENCY DURING THE PROCUREMENT PROCESS AND ENSURE THE PRICE OF EV CHARGING IS AS TRANSPARENT AS POSSIBLE.

NECA supports the use of Public-Private Partnerships (P3) for the building, construction, and installation of EV charging infrastructure. NECA recommends that when a state enters into a P3 agreement shall incorporate ‘responsible contractor’ provisions such as detailed in Section 10 detailed below.

2. NUMBER OF DIRECT CURRENT FAST CHARGERS (DCFC) PORT REQUIREMENTS – NEVI FORMULA PROGRAM FUNDED CHARGING STATIONS

NECA supports the Department’s recommendation of a minimum requirement of eight charging ports per charging station. § 680.106(b) would require a minimum of four charging ports capable of simultaneously charging four EVs, but with the growing market of EV charging vehicles being purchased³, the demand for charging station will increase as well. Therefore, the minimum should be set at eight charging stations rather than the proposed four charging ports.

The FHWA is also proposing States can install less than four ports DCFC charging stations and AC Level 2 charging stations under non-NEVI funded programs. NECA recommends that if a state decides to build additional DCFC charging stations at the same location that it meets or exceeds the standards proposed by FHWA NEVI.

3. EVSE RESILIENCE/RELIABILITY IN FLOODPLAINS AND DURING NATURAL DISASTERS. – RECOMMENDED ACTIONS TO BE ADOPTED

The FHWA should encourage State DOT’s to implement flood mitigation plans such as but not limited to:

- Storm water drainage
- Flood pump installation

¹ Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Feb. 1, 2021).

² 86 FR at 7626

³ <https://www.energy.gov/energysaver/articles/new-plug-electric-vehicle-sales-united-states-nearly-doubled-2020-2021>



In a report published by First Street Foundation, the report stated, “23% of all road segments in the country (nearly 2 million miles of road), are at risk of becoming impassable⁴.” To ensure equitable and broad coverage of a national EV charging network, FHWA should issue guidance and recommendations to State DOT’s to ensure there is stormwater management system and flood pump installation along NEVI funded program locations. These are critical to ensure the consumer can reach these locations and access the charging stations in times of national disaster and emergency. The implementation of these flood mitigation plans will also provide safety to the DCFC charging stations as well to ensure all safety mechanisms are in place.

NECA recommends that FHWA clarify in the final rule that construction, installation, operation, maintenance, and repair of flood mitigation plans that use NEVI Program funds that directly impacts a NEVI Program installation site are subject to the prevailing wage requirements of the Davis-Bacon Act. In addition, we recommend that FHWA consult with the Secretary of Interior and United States Army Corps best practices on all flood mitigation tactics.

NECA also recommends that upgrades to grid infrastructure be made in the surrounding areas of proposed port charging stations. NECA strongly believes that upgrades to the electrical-service wiring running to a facility, or even certain components of the local distribution infrastructure will be needed to ensure power to both the proposed port charging station and the surrounding community. While in 2020 there was roughly \$760 million in proposed utility investment⁵, there remains more to be done to ensure equity power supply throughout the corridors.

NECA recommends, when possible, the use of off-grid power sources, through distributed (on-site) electricity generation and on-site energy storage. FHWA should consider the use of solar, wind, geothermal energy generation, and other modes of energy generation to help supplement the energy consumption during peak-hours and energy storage to help supplement consumption. This will in turn help mitigate any potential concerns to the grid to surrounding communities, provide a layer of independence to the facility from natural disasters, physical harm to surrounding power lines, other potential external risks, and provide grid-resiliency from cyber-attacks. FHWA should seek the advice of the Secretary of Energy on best practices and Secretary of Labor on the appropriate labor practices when conducting any energy project.

4. IMPLEMENT PHYSICAL AND CYBERSECURITY STRATEGIES ADDITIONAL REQUIREMENTS- LIGHTING AND FIRE PREVENTION PHYSICAL REQUIREMENTS.

To ensure the safety of the consumer at a NEVI Program location, NECA recommends that State DOTs be required to properly implement sufficient street lighting or parking lighting, Closed-Circuit Television (CCTV) cameras, and fire protection protocols. Street and or parking lighting will provide a clear line of sight to the consumer throughout the NEVI Program funded location to ensure such a person can identify as person(s) that enter the facility. CCTV cameras will also

⁴ <https://firststreet.org/press/press-release-2021-community-risk-launch/>

⁵ <https://us13.campaign-archive.com/?u=26abb7b630884ef648822201c&id=f452ed1321>



provide additional safety to the consumer and the EV charging equipment from any malicious attempt to alter, destroy or tamper with the EV charging station. There also needs to be adequate fire protection systems separate from any internal mechanism within the EV charging station. This will provide sufficient protection to the EV charging station and consumer when using the EV charging station. FHWA should also seriously consider state, city and municipal implemented regulations, including the coordination of permitting, plan review and inspection processes, since these processes are required in most jurisdictions. In addition, NECA recommends that FHWA should mandate adoption of the most current editions of the following NFPA Codes and Standards:

- NFPA 25: Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
- NFPA 70: National Electrical Code®
- NFPA 70B: Recommended Practice for Electrical Equipment Maintenance
- NFPA 900: Building Energy Code
- NFPA 13: Standard for installation of Sprinkler Systems
- NFPA 70E: Standard for electrical Safety in the Workplace®

NECA recommends NEVI give strong consideration to the ANSI-accredited quality and performance standards listed below, as they are directly related to the subject matter covered by this comment.

An American National Standard (ANS) is a voluntary consensus standard that is developed in accordance with the ANSI Essential Requirements: Due process requirements for American National Standards and subject to ANSI's neutral oversight and approval. These requirements are designed to ensure that development of American National Standards is a fair and responsive process that is open to all directly and materially interested parties.

The National Electrical Code (NEC) is the most widely adopted electrical code in the world and is approved by the American National Standards Institute (ANSI). It is the most complete set of electrical code requirements that govern electrical installations in the interest of safety for persons and property as indicated in the scope of the document. The National Fire Protection Association (NFPA) has been the sponsor of the NEC since 1911. Compliance with the NEC rules results in electrical installations and systems that are essentially free from hazards. The NEC is the minimum set of electrical rules that must be followed for compliance and assurances that occupancies are safe from potential electrical hazards. Successful electrical contractors understand how necessary it is to maintain proficiency in the NEC rules, as it is an inherent part of doing business in the electrical industry.

As such, FHWA should adopt the National Electrical Installation Standards (*NEIS*) specifically:

1. ANSI NECA 303–*Standard for Installing Closed-Circuit Television Systems (CCTV)*
2. ANSI NECA 416–*Recommended Practice for Installing Energy Storage Systems (ESS)*



3. ANSI NECA 417–*Recommended Practice for Designing, Installing, Operating, and Maintaining Microgrids*
4. ANSI NECA 701-*Standard for Energy Management, Demand Response, and Energy Solutions*

NECA also recommends that FHWA clarify in the final rule that all light fixtures, CCTV cameras, and fire protection equipment being constructed, installed, operated, maintained, and/or repaired be subject to the prevailing wage requirements of Davis-Bacon Act.

NECA finally recommends that charging stations should provide broadband or cellular access to customers to collect payment, transmit utilization data, including current charger availability, support remote customer service and firmware updates. NECA recommends that FHWA should partner in collaboration with the Federal Communication Commission, Department of Commerce -including on the Broadband Equity, Access and Deployment (BEAD) program and other programs - to ensure prioritization to charging station sites. This collaboration will help support the customer of by allowing for different modes of payment, but also serve as an important customer service and communications purpose to ensure the charging port is in proper function. NECA recommends that all broadband or cellular infrastructure to be added to any NEVI program site being constructed, installed, operated, maintained, and/or repaired be subject to all prevailing wage requirements of the Davis-Bacon Act. In addition, FHWA should seek the advice of the Secretary of Commerce for best practices regarding the of implementation of broadband and wireless technologies.

5. **STATES SHOULD BE REQUIRED TO MAINTAIN CHARGING INFRASTRUCTURE IN COMPLIANCE WITH THE FINAL RULE INDEFINITELY**

Section 680.106(i) proposes to establish a requirement for States to maintain charging infrastructure in compliance with the provisions in this proposed regulation for at least five (5) years. Instead, NECA strongly recommends that these regulations remain in place indefinitely beyond the five-year required maintenance period. If a State would like to enhance or strengthen the requirements detailed in the regulation it should be required to request a Request for Proposal (RFP) to FHWA for approval and public comment.

NECA strongly suggests that the FHWA ensures the use of the Registered Apprenticeship Programs, EVITP program, and a participant must be a State licensed or certified electrician or if the participant works in a States that does not license or certify electricians, the participant must provide These regulations provide a protection to the worker, consumer, and taxpayer the EV charging construction, installation, maintenance, repairing, and/or operation will be conducted with qualified electricians.

6. **ELECTRICAL VEHICLE INFRASTRUCTURE TRAINING PROGRAM (EVITP) AND DOL - RECOGNIZED REGISTERED APPRENTICESHIP EVSE TRAINING PROGRAM.**



A. EVSE/EVITP/ANSI STANDARDS-

Electrical construction, particularly the installation of Electric Vehicle Supply Equipment (EVSE) is an extremely safety-sensitive endeavor. Utilization of an untrained workforce in the buildout of EVSE has the potential to be catastrophic, resulting in loss of life, injury, and significant property loss. Without proper training, workers in this high-hazard industry run the risk of electrical shocks, burns and/or electrocution, which is the third leading cause of death in construction. In addition, faulty electrical installations often prove to not only be hazardous, but tremendously expensive, leading to crippling cost overruns for project owners.

Electric vehicle supply equipment shall be installed and maintained in accordance with ANSI NECA 413-2019, *Standard for Installing and Maintaining Electric Vehicle Supply Equipment (EVSE)*.

Additionally, NECA is supportive of the Electric Vehicle Infrastructure Training Program (EVITP). EVITP provides comprehensive residential, commercial, and industrial charging infrastructure training. The program is regularly updated with the help of its partner advisors and is currently on its fourth generation of updates. EVITP has been evaluated by the California PUC. EVITP provides installer training in the following:

- Level 1 (120V), Level 2 (220V) Residential Charging;
- Commercial / Institutional Level 2 Charging;
- DC Fast Charging;
- Medium Duty (MD) Commercial / Institutional;
- Heavy Duty (MD) Commercial & Industrial;
- Site assessment and load calculations (core);
- Commissioning;
- Wireless Power Transfer Equipment *WPTE* (Inductive Charging);
- EVSE Communications and Networks;;
- Electric Vehicle Battery Types, Specifications and Charging Characteristics;
- Automobile Manufacturer's Charging Performance Integrity Specifications;
- Utility Interconnect Policies and Requirements;
- Utility Grid Stress precautions including demand response integration;
- technologies;
- Role of electrical storage devices as charging intermediaries;
- Integration of electric vehicle infrastructure with distributed generation;
- Electrical Code and Standards requirements;
- Fire protection and OSHA regulations;
- Electrical installation standards for ZEV equipment;
- First responder safety and fire hazard measures;
- Next generation charging;
- EVSE maintenance, troubleshooting, and repair;
- Startup and commissioning of EVSE systems and;
- Safety-related work practices related to EVSE installation and maintenance;



The U.S. Department of Energy sent an evaluator from Washington DC to assess and approve EVITP before the program was featured in two DoE Clean Cities EVSE Guides⁶. The EVITP program curriculum is regularly updated to include new technology, products, best practices, and industry norms. The current curriculum, EVITP 4.0, includes DC fast chargers, inductive charging equipment, liquid-cooled conductors, vehicle-to-grid applications and other installation and maintenance best practices.

The EVITP program has also been enacted by California Public Law AB841⁷ and implemented in California Public Utilities Code 740.20⁸. Within AB841 and CA PUC 740.20 states require that projects funded or authorized, in whole or in part... have at least 25 percent of the total electricians working on the crew for the project, at any given time, who hold Electric Vehicle Infrastructure Training Program certification.” Additionally, CA PUC 740.20 states “One member of each crew may be both the contractor and an Electric Vehicle Infrastructure Training Program certified electrician.”

B. “CLASS A” APPRENTICESHIP QUALITY STANDARDS:

As the United States prepares to build out the first EV charging network, it should ensure the workforce is trained in the highest quality of apprenticeship programs. NECA recommends that FHWA incorporate “Class A” apprenticeship quality standards into the bidding process. These programs, often referred to as “Class A” registered apprenticeship programs, ensure a quality by producing the highest skilled apprentices and electricians. NECA recommends FHWA incorporate the following definition of a “Class A” apprenticeship into the final rule: “A ‘Class A’ Registered Apprenticeship Program must have a) at least a 65 percent graduation rate for all apprentices during the preceding five years and b) have graduated at least five apprentices per year during the preceding five years.”

By requiring the utilization of electricians who have graduated from “Class A” Registered Apprenticeship programs and requiring EVITP or other EVSE-specific apprenticeship training, FHWA will ensure a pipeline of qualified electricians are available to perform EVSE work for years to come. Rather than posing significant hurdles to costs, these revisions would in fact *reduce* overall project costs by mitigating project overruns, safety issues and delays – all of which pose major financial risks.

IBEW and NECA’s joint apprenticeship training program, the Electrical Training Alliance, is the largest private sector trainer of electrical workers in the nation, operating nearly 300 construction

⁶ California Energy Commission Commissioners (2020), EVITP Comments - Answers to Questions, Bernie Kotlier

⁷ https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB841&showamends=false

⁸ CA Pub Util Code § 740.20 (2021)



training centers nationwide and investing nearly \$200 million in apprenticeship training efforts per year, at no cost to participants or taxpayers.⁹

7. REVISIONS TO SECTION 680.106(J) - THE INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF EV CHARGING STATIONS MUST BE CARRIED OUT BY QUALIFIED ELECTRICIANS

Electric vehicle supply equipment (EVSE) units, commonly referred to as “charging stations,” are “the equipment used to deliver electrical energy from an electricity source (such as electrical outlets),” to plug-in electric vehicles.¹⁰ As acknowledged by FHWA in the NPRM and the Preliminary Regulatory Impact Assessment, the only members of the workforce that are appropriately skilled and trained to safely perform EV charging infrastructure work are electricians with *EVSE-specific training*.¹¹ NECA believes that the recommendations below will ensure that the text of the final rule will accurately reflect the IIJA’s statutory intent and FHWA’s goals with respect to an efficient and qualified workforce. Furthermore, these revisions will ensure consistency around quality installation and reliable charging station function and prevent safety issues resulting from a lack of standardized qualifications applicable to the workforce.

Section 680.106(j) reads as follows: “Qualified technician [sic]. States shall ensure that the workforce installing, maintaining, and operating EVSE has appropriate licenses, certifications, and training to ensure that the installation and maintenance of EVSE is performed safely by a qualified and increasingly diverse workforce of licensed technicians and other laborers.”

NECA recommends that the language regarding ‘*qualified technicians*’ be removed entirely from the final rule in favor of ‘*qualified electrician*’ (detailed below). Within the proposed regulation does not detail the specifics of a ‘qualified technical’. Furthermore, within state licensing, there is no such title of ‘licensed technician’. Additionally, without specifying what craft the technician is specialized in will create confusion when Department of Labor Wage and Hour Division, which is responsible for determining the Davis-Bacon wage rate and Service Contract wage rate. Finally, there is no definition of ‘technician’ in the North American Industry Classification System (NAICS) in Division C: Construction.

⁹ A map of joint training programs of the National Electrical Contractors Association (NECA) and the IBEW is available at <http://www.electricaltrainingalliance.org/locateaTrainingCenter/Inside>

¹⁰ U.S. DOE, *Plug-In Electric Vehicle Handbook for Electrical Contractors* at 6 (Apr. 2012), <https://afdc.energy.gov/files/pdfs/51228.pdf>.

¹¹ See FHWA’s Preliminary Regulatory Impact Assessment of Notice of Proposed Rulemaking at pg. 50, <https://www.regulations.gov/document/FHWA-2022-0008-0002>.



NECA also recommend that the terms used to describe the work performed reflect the full scope of the work classifications provided in the Davis-Bacon Act and the Service Contract Act, i.e., to include “repairing” within the defined scope of work along with the “constructing, installing, maintaining, and operating” of EVSE.

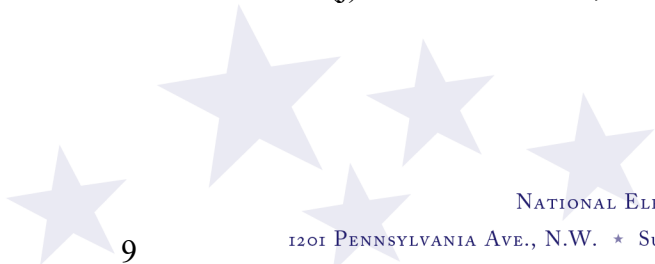
NECA strongly recommends the revision to Section 680.106(j):

“(j) Qualified electricians. States shall ensure that the all electricians constructing, installing, maintaining, repairing, and/or operating EVSE has the appropriate licenses, certifications and training to ensure that such work is performed safely by a qualified and diverse workforce by hearing to the following requirements...” (continued below in recommended revisions proposed to Section 680.106(j)(1)-(5)).

Section 680.106(j)(1) states “Except as provided in paragraph (j)(2) of this section, all electricians installing, operating, or maintaining ESVE must meet one of the following requirements:...” The proposed rule continues on to list EVITP and Registered Apprentice Program that includes EVSE-specific training. As currently proposed, it creates confusion that may go against the spirit of the proposed rule. Additionally, the NPRM does not properly define an electrician and therefore creates confusion of the (j)(4) and (j)(5).

In section 680.106(j)(4), the proposal states: “[f]or projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.” As current drafted, the language reads as long as such employer/contractor employs one electrician from (j)(2) or (j)(3) and one electrician currently enrolled in an electrical registered apprenticeship program the employer/contractor can then employ as many unskilled, unlicensed, or non-registered apprentices or graduates workers to perform the work. By not clearly defining the workforce requirements and definitions, it could prove to be extremely dangerous for safety and quality of the work to persons conducting and the customer as well. Additionally, by requiring that one qualified electrician to meet the standards it would create a massive burden on that one ‘qualified’ electrician to oversee and be responsible for the work of the entire workforce conducting any/all EVSE work.

FHWA should clarify that electrical work should be performed *exclusively* by appropriately skilled and trained electricians who have received EVSE-specific training, and that “*all electricians*” must meet the qualifications listed. NECA therefore recommends revising proposed Section 680.106(j) as set forth below, which we believe more accurately reflects the plain





language meaning of the rule as described by FHWA in the Preliminary Regulatory Impact Assessment of Notice of Proposed Rulemaking¹² included in this docket.

NECA proposes the following revision to Section 680.106(j)(1):-

- (1) All electricians related to or in support to the constructing, installation, maintenance, repairing, and/or operation of EVSE shall meet the following requirements:
 - a. Electricians who have graduated from a “Class A” Registered Apprentices program for electrician that is developed as part of a national guideline standards approved by the Department of Labor in consultation with the Department of Transportation and;
 - i. Received EVSE-specific training as incorporated as part of their training and related instruction during their apprenticeship or;
 - ii. Received EVSE-specific training after successfully completing the apprentices training requirement of the standards of the apprenticeship or;
 - iii. Electricians who have certificate of completion of the Electric Vehicle Infrastructure Program (EVITP).
- (2) All other non-electrical work related or in support to constructing, installing, maintaining, repairing, and/or operating of EVSE shall be performed by workers who have graduated from a Registered Apprenticeship Program or apprentices that are currently enrolled by a Registered Apprenticeship Program.
- (3) For projects requiring more than one total person(s) in the workforce directly constructing, installing, maintaining, repairing, and/or operating EVSE or any other electrical work, at least one member of the workforce must be an electrical apprentice currently enrolled in an electrical Registered Apprenticeship Program.

Finally, we recommend that FHWA consider and address the applicability of the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et. seq.*, when requiring the use of apprentices.

8. EXPANSION OF REGISTERED APPRENTICESHIP PROGRAMS AND APPRENTICESHIP READINESS OR PRE-APPRENTICESHIP PROGRAMS - PROVIDING PATHWAYS THAT ARE INCLUSIVE OF WOMEN, BLACK, LATINO, ASIAN AMERICAN PACIFIC, INDIGENOUS, AND OTHER UNDERREPRESENTED GROUPS.

The National Electrical Contractors Association (NECA) announced in December of 2020¹³ it has formed a Diversity, Equity, Inclusion, and Belonging (DEIB) Task Force, made up of 20 NECA national staff members, chapter staff, and executives from member companies. Task

¹² *Supra* at fn. 2.

¹³ <https://www.necanet.org/news-media/detail/news/2020/12/18/national-electrical-contractors-association-forms-diversity-equity-and-inclusion-task-force>



Force members represent the entire United States, including all 10 NECA districts. This Task Force was formed with the mission of developing an awareness and education platform to foster a work environment within the electrical industry that supports each person’s unique differences. Its members will strive to create a long-term cultural shift, on national and local levels, where each person can thrive and be empowered to contribute to the overall success of our industry.

On May 16, 2022 NECA National during its 2022 Safety Professionals Conference held a session on ‘Elevating Safety Culture Through Equity, Diversity, and Inclusion (EDI) to encourage participation and discussion of NECA Members of EDI outcomes an organization can strive for, how these outcomes can impact workplace safety, and how to envelop safety management systems with an EDI lens.¹⁴

In 2019, New York Electrical Contractors Association (NYECA) and IBEW Local Union #3 to promote diversity, and inclusion in the NYC unionized construction industry. The following were agreed to during the 2019 negotiations¹⁵:

- (1) Supervision Interest Form. Employers were required to reach out to all minority and women workers, in writing and in person, and ask them if they are interested in becoming a supervisor. The supervision form had to be included in the company’s On-Boarding New Hire Packet for field personnel and must include a Supervision Interest Form. The Association provided a sample copy to all members.
- (2) When an individual is terminated, the employer is required to attach the original job ticket to the termination form before returning it to the Joint Industry Board Employment Department.
- (3) The industry developed an equal opportunity statement.

NYECA established a Diversity and Inclusion subcommittee of executive committee members in April 2020. The subcommittee meets regularly, and the chairperson of the committee makes reports at the monthly Finance, Executive, and General Membership meetings of the Association. The President of NYECA also reports all activities at the monthly Joint Industry Board Meeting.

During the 2022 Negotiations, NYECA and Local Union #3, IBEW built on the framework that was agreed to in 2019, further promoting diversity and inclusion in the NYC unionized construction industry.

In July 2021, NECA Greater Boston and IBEW Local 103 launched “Empower DEI” to increase the number of minority- and women-owned electrical contractors within the Boston area, demonstrating their commitment “to dismantling structural racism and sexism within our industry and beyond.”¹⁶

¹⁴ https://www.necanet.org/events/nspc/Elevating_Safety_Culture

¹⁵ https://www.necanet.org/docs/default-source/about-neca/dei-b/new-york-electrical-contractors-association-diversity-and-inclusion-efforts-final-.pdf?sfvrsn=e9943790_4

¹⁶ <https://www.ecmag.com/section/your-business/empower-dei-program-launched-boston>



“Through this program, we aim to ensure that we are adopting and investing in best practices and resource-sharing that will help advance diversity, equity and inclusion within our sector for the benefit of all,” the groups state on the program’s website.

The program will provide access, mentorship, connections, training and business growth opportunities to qualified minority business enterprise (MBE) and woman-owned business enterprise (WBE) contractors “to ensure they thrive.” Contractors qualify if they maintain DEI (diversity, equity and inclusion) employment standards.

On December 15, 2021 NECA Penn-Del-Jersey Chapter hosted a Diversity, Equity, and Inclusion (DEI) Summit. This event featured an “Inclusive Leadership” training session with Dr. Shannon Mason of Exude, Inc., a DEI consulting firm headquartered in Philadelphia. During the highly interactive session, participating Contractor and Associate Members learned how to create more inclusive environments in their companies.¹⁷

9. CUSTOMER SERVICE STRATEGIES – SERVICE, EMERGENCY SERVICES, AND ON-CALL STRATEGIES

The FHWA should require a minimum of two emergency call boxes at each EV charging station that should be monitored by State DOT’s to ensure customer safety in case of emergency and protection to the EV charging port(s). The emergency call boxes should be installed by electricians meet the requirements set forth in Section (7). These measures will ensure protection of the consumer, EV charging port or station infrastructure, and the electrician working on these projects. NECA recommends that FHWA implement the most current edition of the following National Fire Protection Association (NFPA) Standards:

- NFPA 1078: Standard for Electrical Inspector Professional Qualifications
- NFPA 1221: Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems

10. ADDITIONAL REQUIREMENTS

A. FHWA Should Adopt Responsible Contracting Requirements

NECA urge FHWA to adopt the responsible contracting requirements outlined below to ensure that EV infrastructure is developed by responsible companies and/or contractors that have sufficient qualifications, resources and personnel needed for successful project delivery. In addition, by ensuring that EV developers have the proper certifications to perform work in a given

¹⁷ <https://neca-pdj.org/diversity-equity-and-inclusion/>



jurisdiction, responsible contractor policies increase the likelihood that local workers will be utilized to perform such work. .

NECA therefore recommend that the final rule include requirements for subgrantees (including prime contractor(s) and subcontractor(s) at any tier) to adhere to a responsible contractor policy that requires, at minimum:

- a. Labor standards compliance self-certification: As part of their application, project owners/contractors and subcontractors at any tier must attest, under penalty of perjury, that they have had no project defaults or law violations of any kind that have resulted in penalties, back pay, etc. over a specified amount (i.e., \$5,000) within the last three (3) years. FHWA should exclude those subgrantees that have been found liable of serial or willful violations.
- b. Use of “Class A” Registered Apprenticeship Programs: FHWA should require contractors to self-certify that they participate in “Class A” Registered Apprenticeship Programs, which will ensure all construction work is performed by appropriately skilled and trained personnel, leading to successful and timely project delivery.
- c. Self-certification by project owner/contractor and subcontractors that they possess all necessary licenses, registrations, certificates or permits as required by applicable state or local law.
- d. Self-certification by project owner/contractor that they possess all technical and industry-specific qualifications, equipment, financial resources, and personnel needed to successfully complete the project.
- e. Monitoring and enforcement provisions, including disqualification/debarment and penalties for those that submit false or inaccurate information or have been issued
 - i. Two or more willful or repeated violations of the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et. seq.*, in the last five years or;
 - ii. Two or more willful or repeated violations of the Service Contract Labor Standards Act (formerly known as the Service Contract Act of 1965), 41 U.S.C. § 67, in the last five years orl;
 - iii. Two and more willful or repeated violations of the Fair Labor Standards Act, as amended, 29 U.S.C. § 203, in the last five years

B. Craft Labor Certification Requirements

NECA recommends that FHWA require that the prime contractors provide to the State DOT a craft labor certification during the bidding or proposal process in order to be eligible to submit a bid or proposal on the contract.

The craft labor certification should be submitted on a form provided by the FHWA or State DOT and should require the prime contractor to self-certify that it meets the criteria set forth below:



- a. The project workforce that will be employed for the contract, whether directly by the prime contractor or by subcontractors at any tier, shall be comprised of no less than 70 percent of workers who have successfully completed a registered apprenticeship program;
- b. The prime contractor is providing with the certification a complete list of names and addresses of all registered apprenticeship programs used for the construction craft personnel, whether used by it or its subcontractors for the contract;
- c. A subcontractor, at any tier, employed for the contract that is a sole proprietorship subcontractor, has furnished the prime contractor with sufficient proof that it is a legitimate contracting business, as opposed to an improperly misclassified employee; such proof shall be in the form of business records typically used by subcontracting companies, including general liability or other business insurance certificates, bonding certificates, or contractor licenses or registrations.
- d. The prime contractor shall provide to the FHWA or State DOT for which the project is being performed a monthly report indicating the total number of persons employed in the project workforce, the number and names of graduates of registered apprenticeship programs, and the number and names of registered apprentices employed for that month on the contract.
- e. All agency, contractor and subcontractor records required by this section shall be made available to the public within ten days of a request and shall not be redacted or exempted from disclosure for any reason.
- f. The prime contractor shall publish the following records on a publicly available website: the certifications referenced in subsection (b), and the monthly reports referenced in subsection (d) of this section. These records shall be made available within 24 hours from the time they are submitted to the executive agency.
- g. The failure of the prime contractor to comply with the requirements of this section shall constitute a material breach of the covered construction contract and entitle the executive agency to all rights and remedies available as provided by federal law and contract, including but not limited to remedies under the Federal False Claims Act, 31 U.S.C. § 3729, et. seq.
- h. Prime contractors and subcontractors shall be jointly and severally liable for violations of this section.
- i. A prime contractor or subcontractor that engages in conduct that results in a violation of these requirements shall, after notice and opportunity to be heard, be deemed non-responsible for purposes of future covered construction projects for a period of not less than three years.

C. Support of NEVI Program funded site

NECA strongly recommends that all constructing, installing, maintaining, repairing, and/or operating being conducted in direct or indirect support of the NEVI Program site follow all applicable laws and regulations such as but not limited to:

- a. subchapter IV of chapter 31 of title 40, United States Code as amended (hereinafter the “Davis-Bacon Act”);



- b. chapter 67 of subtitle II of title 41, United States Code (commonly and hereinafter referred to as the “Services Contracting Act”);
- c. If such NEVI Program site total (direct and indirect) cost is over \$35 million, it should then be required to adhere to Executive Order 14063, Use of Project Labor Agreements (87 Fed. Reg. 7363).

II. CONCLUSIONS

NECA enthusiastically supports the Federal Highway Administration’s efforts to include the required use of Registered Apprenticeship Programs, EVITP, and ensuring all electricians are State licenses or must provide documentation of a minimum of 8,000 hours of hands-on electrical construction experience. These qualifications provide protections to the consumer, electrical worker, and taxpayer to ensure the NEVI Program is being properly constructed, installed, repaired, operated, and maintained. The proposed rule would greatly improve the overall efficiency of the NEVI Program and ensure State DOT’s can maximize their allotted funding to the greatest extent possible and with the highest efficiency. The FHWA should take into strong consideration of the recommendations made above to ensure the quality of electrical contractors and electrical workers conducting the scope of work at an EV charging station.

NECA calls for the Federal Highway Administration for quick implementation of these above changes to the National Electric Vehicle Infrastructure Program outlined above before the issuance of any program funds to State Department of Transportation agencies. As the Federal Highway Administration embarks on the first ever EV charging network the Federal Highway Administration needs to ensure proper standards and regulations are put in place to create high road construction standards.

NECA’s principal point of contact on this matter is Jared Karbowsky, who can be reached at 443-975-2932 or Jared.Karbowsky@necanet.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Marco A. Giamberardino". The signature is written in a cursive style. There are several light blue stars of varying sizes scattered around the signature area.

Marco A. Giamberardino, MPA
Vice President, Government and Public Affairs