



NORTH DAKOTA PARKDS AND RECREATION DEPARTMENT
RECREATION DIVISION – 701-328-5357 – parkrec@nd.gov

RECREATIONAL TRAIL PROGRAM

2009 Project Sponsor Manual

Introduction

Congratulations, your trail project has been selected as a recipient of a Recreational Trail Program grant. To ensure a trail project selected for funding is successful, the North Dakota Parks and Recreation Department (NDPRD) in cooperation with the North Dakota Division Office of the Federal Highway Administration (FHWA) has prepared this manual to answer questions relating to project management.

Program Overview

The Recreational Trails Program (RTP) is a federal-aid assistance program to help states provide and maintain recreational trails for both motorized and non-motorized trail use. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, and wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, canoe/kayak trails, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

The RTP was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and is continued today through the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) which was passed in 2006 and provides financial assistance for the development and maintenance of recreational trails and trail-related projects. The Act provides funding from the Federal Highway Trust Fund in acknowledgment of off-road recreational fuel use.

The U.S. Department of Transportation, Federal Highway Administration (USDOT/FHWA) administers the RTP program. The Governor of the state of North Dakota has designated the North Dakota Parks and Recreation Department (NDPRD) as the agency responsible for administering apportionments made to the state. RTP funds represent a portion of the federal gasoline tax attributed to recreation on non-gasoline tax supported roads. The federal government prescribes many of the regulations governing this program.

Contributions and Expenses

To be eligible for reimbursement funds, project costs must be incurred after the federal project approval date. Donations of equipment, labor, and materials must be contributed after federal grant approval. Cash contributions may be received at any time. Bid and procurement process must also begin after the federal project approval date, which is indicated on your award letter.

Local Share

At the time of application the project sponsor must have at least 20% of the total project cost available. The local share may include tax sources (appropriations), bond issues or force account contributions. The donated value of land, cash, labor, equipment and materials may also be used.

The time of a person donating services will be valued at a rate paid as a general laborer (per North Dakota Job Service General Laborer Rate in the project area provided by sponsor to NDPRD) unless the person is professionally skilled in the work being performed on the project (i.e. mason doing work on a retaining wall). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. The rates for labor should **not** include payroll additives or overhead costs. Volunteer labor may be used as match only and is never a reimbursable item.

Local Share Continued

Force account is different than volunteer labor or donated equipment and supplies. Force account refers to the use of a project sponsor's staff, equipment, and/or materials. All or part of the project sponsor's share may be provided through force account. Documentation must be verifiable from the project sponsor's record, and must be reasonable and necessary for efficient completion of the project.

Federal Matching Share: RTP grant funds may be matched with funds from other federal programs.

They may be credited as the non-federal share if expended on an eligible project in accordance with the requirements of that particular federal program. In cases where federal funds are pledged as the RTP project match the combined total of RTP grant funds requested and other federal matching share may not exceed 95% of the total project costs. **A minimum of five percent of the project cost must come from state, local, or private co-sponsors.**

Reimbursement

The project sponsor will not receive a cash grant at the time of project approval. Instead, the sponsor must pay the bills and be reimbursed for a maximum of 80% of the expenses incurred for the project. Reimbursement requests may be made periodically during the project period. Land donations will be credited towards the match of the sponsor's share of the project.

As in any program where a reimbursement is requested for a portion of the project costs, adequate documentation and records are essential. There must be definite supporting documentation (i.e. invoices and canceled checks) for each item of cost claimed -- estimates are not sufficient. NDPRD may request additional support documentation in order to process a billing.

- **Reimbursement Requests:** The following is a list of documentation NDPRD will need to process all reimbursement requests: (all required forms are available at <http://www.parkrec.nd.gov/recreation/grants/rtp.htm>)
 - Grant Programs Reimbursement Request Form
 - Affidavit of publication, supplied by the newspaper when you advertise for bids.
 - Minutes of any meeting at which action is taken on bids received. Should be dated and signed by responsible official.
 - Contractor invoices (or final progress payment, if countersigned by contractor acknowledging payment of all prior charges, and if the cost of each major work item is shown) and cancelled checks to contractor (copy of both sides).
 - All other cancelled checks (copy of both sides).
 - Copies of invoices. Not monthly statements.
 - Individual earnings records for the calendar year or payroll journals. Should show gross wages, withholdings and net pay for each pay period – See Force Account Form.
 - Equipment rental time records
 - Detailed schedule showing how you computed owned-equipment rental rates. For donated equipment time, you must use hourly rates via a quote from a local rent all or a published equipment billing chart for a municipality. See Equipment Value Form

- **Partial Billings:** A partial billing along with supporting documentation may be submitted to NDPRD after portions of the work have been completed. Submit the completed "**Reimbursement Request Form**". The state will retain 25% of the grant amount until the project is complete and a final inspection completed. Supporting documentation needed includes the following:
 - Progress Report – **Grant Programs Progress Report Form**
 - Expenditure Records indicated above
 - Volunteer Logs

Reimbursement Continued

- **Final Billings:** In order for a project to be considered completed and ready for final billing, it should be submitted within thirty days of the completion of the project or grant expiration date, whichever comes first. Final project billings must be submitted to NDPRD utilizing the process outlined above. Once a final billing is received NDPRD staff will contact the project sponsor to discuss the completed RTP project and arrange for a final inspection. Final project billing and grant closeout will not be completed until NDPRD has conducted the final inspection and certified the project is indeed complete, meeting the project description outlined in the grant application and/or project amendment.
- **Reimbursement Request Form:**
A separate file should be established and maintained for each RTP project. The project sponsor is responsible to track costs according to the categories on the **Grant Programs Reimbursement Request Form** and must maintain an auditable record for a period of not less than 3 years from the expiration date of a RTP grant award. AN GRANT REIMBURSEMENT FORM MUST BE SUBMITTED FOR ALL PAYMENT REQUESTS AND REIMBURSEMENTS. ONLY THE FORM PROVIDED BY NDPRD WILL BE ACCEPTED.

Procurement

Grant recipients are required to follow the State of North Dakota's procurement guidelines when purchasing goods or services needed to complete a project.

- **Purchases \$2,500 and below:** Use adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the soliciting only one informal bid or proposal. Rotate vendors solicited on an equitable basis (ref. N.D.A.C. § 4-12-08-02). "Fair and reasonable" price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor. Remember, "When in doubt, bid it out."
- **Purchases \$2,500.01 to \$25,000:** Solicit no fewer than three vendors, insofar as practical, to submit oral or written informal bids or proposals. If you do not receive three bids or proposals, provide a written justification (e.g., "only two known vendors" or "contacted three vendors, only two responded").
- **Purchases over \$25,000:** Solicit formal sealed bids or proposals with notice to approved bidders on the State Bidders List (ref. N.D.C.C. § [54-44.4-14](#), N.D.A.C. Chapter [4-12-08](#)). Notice of bid opportunities must be placed weekly in a newspaper for a period of no less than three weeks to ensure notice of a bid opportunity.
- **Limited Competitive and Noncompetitive Procurements:** Occasionally, circumstances arise under which a fully competitive procurement process may be difficult or impossible. Procurement is noncompetitive when there is no bidding process. Limited competition occurs when competition is possible, but the requirements of the solicitation restrict competition to particular bidders. (Ref. N.D.C.C. § [54-44.4-05](#), N.D.A.C. § [4-12-09](#)). Project sponsors must use the State's [Alternate Procurement Request form](#), SFN 51403 to document this process and submit to NDPRD prior to entering into a contract or incurring an expense which is classified as a limited competitive or noncompetitive purchase. In accordance with federal regulations, NDPRD will then forward to FHWA for approval. NDPRD will notify the project sponsor of FHWA's decision within 10 business days of the forms submittal along with a reason, if denied.
- **Documentation Requirements:** Each procurement transaction must be adequately documented for audit and public record purposes. If the purchase is over \$2,500, the procurement file must have evidence that three vendors were solicited or document the reason three bids were not obtained. Include any required approvals, solicitation document used, list of bidders solicited, responses received, bid summary or evaluation worksheets, reasons for rejecting a particular bid, and method of award (e.g. purchasing card

Procurement Continued

or purchase order). Written determinations are required for all emergency, limited competitive and noncompetitive procurements.

- Exemptions by Statute: Please note, certain commodities and services are not subject to state procurement laws. The following commodities and services are exempted from state procurement practices by N.D.C.C. § 54-44.4-02 And N.D.A.C. § 4-12-01-04, as follows:
 - Land, building, space, or the rental thereof, however before making a commitment to obtain land for a RTP project, an appraisal must be submitted to the Parks and Recreation Department for approval. The land is required to be appraised by a certified general appraiser with federal experience according to the Uniform Appraisal Standards for Federal Land Acquisitions (located on the web at www.usdoj.gov/enrd/land-ack). No more than the appraised value can be paid.
 - Telephone and telegraph service, electrical light, and power services.
 - Department of Transportation materials, equipment, and supplies in accordance with N.D.C.C. § 24-02-16.
 - Specific commodities and services as determined by written directive by the Director of OMB in N.D.A.C § 4-12-01-04 such as: A. contracts for public buildings and public improvement contract bids, pursuant to N.D.C.C. Title 48. B. Contracts for architect, engineer, and land surveying services pursuant to N.D.C.C. Chapter 54-44.7.
- Required Contract Language: Attached to this manual is FHWA Form 1273, which is required to be included in its entirety in every RTP contract between a project sponsor and any organization, group, agency or individual they do business with. Failure to include this form can result in forfeiture of RTP funds for the project portion covered by of the contract in question. While including this form is a federal requirement, only certain portions may apply depending on the contracted dollar amount or the location of the project (federal road right of way). Please direct any questions relating to this form to NDPRD grant staff.

Allowable Expenses

Permissible uses of RTP grant funds include:

- Restoration of existing trails: Restoration may be interpreted broadly to include any kind of non-deferred trail maintenance, restoration, rehabilitation, or relocation. This category may include maintenance and restoration of trail bridges, or providing appropriate signage along a trail.
- Development and rehabilitation of trailside and trailhead facilities and trail linkages: This may be interpreted broadly to include development or rehabilitation of any trailside and trailhead facility. The definition of “rehabilitation” means extensive trail repair needed to bring a facility up to standards suitable for public use due to natural disasters or acts of nature. Trailside and trailhead facilities must have a **direct relationship** with a recreational trail.
- Purchase of sole use recreational trail construction and maintenance equipment: Purchase of any trail equipment that can only be used for sole use-trail maintenance is allowable. An example is a snow groomer. This provision does not include purchase of equipment which may be used for purposes unrelated to recreational trails.
- Construction of new recreation trails: For projects on federal land, the most important requirement is that the federal agency land manager must approve of the project in accordance with other applicable

Allowable Expenses Continued

federal laws and regulations. This category may include construction of new trail bridges, or providing appropriate signage along a trail.

- Acquisition: See the Land Acquisitions and Easements section below; please note, RTP legislation **prohibits condemnation** of any kind of interest in property. Therefore, acquisition of any kind of interest in property must be from a willing landowner or seller.
- Water Trails: The definition of “recreational trail” in the RTP legislation includes “aquatic or water activities”. Therefore, water trails are eligible for RTP funding.

Ineligible Expenses

Federal Highway Administration (FHWA) has determined that the following kinds of projects are inconsistent with the RTP legislation:

- Condemned Land as Matching Value: RTP legislation prohibits using RTP funds for condemnation of any kind of interest in property. An RTP project may be located on land condemned with funds from other sources. However, it is not permissible to use the value of condemned land toward the match requirement for an RTP project.
- Feasibility Studies: Trail feasibility studies are not a use permitted in the RTP legislation. The permissible uses relate to actual on-the-ground trail projects.
- Environmental Evaluation and Documentation: Projects intended solely for the purpose of covering environmental evaluation and documentation costs are not permissible. However, reasonable environmental evaluation and documentation costs, including costs associated with environmental permits and approvals, may be included as part of an approved project’s construction engineering costs. Costs incurred developing the environmental evaluation, necessary permits, as well as the construction engineering costs may not exceed 20% of the total funded project cost.
- Law Enforcement: Routine law enforcement is not a use permitted in the RTP legislation.
- Planning: Trail planning is not a permissible use of RTP funds.
- Sidewalks: RTP funds will not normally be used to provide paths or sidewalks along or adjacent to public roads or streets, unless the path or sidewalk is needed to complete a missing link between other recreational trails.
- Roads: RTP funds may not be used to improve roads for general passenger vehicle use.

Ineligible project elements are not eligible as project match. Ineligible projects elements may include, but are not limited to the following:

- Overhead: The regular operating expenses such as rent, building upkeep, utilities and all fixed costs associated with a business, agency or group.
- Indirect Costs: Only direct costs that can be identified specifically with a particular final cost objective directly related to the trail project are eligible.

While the above project elements are not eligible for RTP funds, most of the items listed are recognized as important components of trail planning, design, and development.

Land Acquisitions and Easements

- Acquisition Costs: The following land acquisition costs are allowable and eligible for reimbursement under the Recreational Trails Program.
 - The appraised fair market value of fee simple title or an easement for the use of real property acquired by negotiated purchase.
 - The purchase price for an easement or fee title to real property acquired below appraised value.
 - The donated land value (the difference between the purchase price and appraised value) may be used as a match for federal funds to purchase that parcel of land, purchase other pieces of property, or develop facilities.
 - Similarly, lands for which 100% of the value is donated may only be used as the organization's share of a project to purchase other land or build facilities.
 - Appraisal fees.
 - Boundary surveys, title search, legal filling fees
- Ineligible Costs: Costs ineligible for reimbursement in an acquisition project include:
 - The purchase of real property to which the project sponsor became committed prior to federal approval.
 - Legal fees other than for filling and fines and penalties paid by the project sponsor.
 - Incidental costs relating to real property acquisition and interests in real property unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.
 - Taxes for which the local sponsor would not have been liable to pay.
 - Damage judgments arising out of acquisition whether determined by judicial decision, arbitration or otherwise.
- Easements: In some instances, the applicant will not be able to purchase the property but can acquire an easement. An easement must be for a period of at least 25 years. During the time period, the easement cannot be revoked at will by the landowner unless the applicant or state is guilty of an infraction of the easement. The land must still be retained in public trail use for the duration of the easement period even though the easement has been revoked. Provisions stated in the easement cannot be detrimental to the proposed recreational development.

A draft copy of the easement must accompany the application for acquisition and development projects. If an easement has been or is to be executed prior to the submission of a development project application, a draft copy of the easement should be sent to the NDPRD for review. Advance approval of such agreements may help ensure the eligibility of the site for funding.

Negotiations for easements must follow general negotiated land purchase regulations including the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Progress Reports

Project sponsors are required to submit progress reports by April 1 and November 1 of each year to ensure that NDPRD is aware of the project's progress. Please use the "**Grant Programs Progress Report Form**" located at <http://www.parkrec.nd.gov/recreation/grants/rtp/>. This information is critical, since NDPRD is required to review projects that have not progressed for six months for potential termination of RTP funding. NDPRD considers an absence of a bi-annual report as no progress in the project.

Amendments

During the project period, various situations may result in changes or deviations from the Project description. An amendment is necessary to add to, or alter the approved project. Changes that may necessitate an amendment are increases or decreases in the grant amount, project scope changes, or an extension of the project period.

- Changes in Project Scope: Only those items approved for the project are eligible for federal assistance. Similarly, facilities must be constructed in the same location as designated on the plans submitted with the application. Due to unforeseen changes in project costs or revisions in the plans for the facility, certain items may have to be added or deleted from the project after it is approved. These changes may require submission to the Federal Government for approval. In the case of adding an item to the project, construction on that item cannot begin until the amendment is approved.

The amount of federal assistance specified on the award letter is the maximum amount reserved for that particular project. Costs over this amount have to be paid by the applicant. All changes in project scope should be in accordance with the intent of the original application, and must be justifiable. The need for the change must be documented by a letter to the NDPRD, accompanied by revised cost estimates, construction plans and maps.

- Project Period Extensions: All acquisition and development must take place within the project period, which is identified in the award letter. The award letter is sent to the project sponsor after the project has received Federal approval. For most projects, the target date for project completion will be based on an 18 month project period. The project sponsor is encouraged to complete the project as soon as possible as inflation can add a 5% cost increase each year.

If the project cannot be completed during the period identified on the project letter, a request must be submitted for a time extension. The request must justify why the project cannot be completed before the expiration date. This justification should include a time schedule for completing the remaining items. Typically no more than one six month extension can be granted and then only under unforeseen circumstances. Work performed after the project has expired will not be eligible for federal assistance. Final payments for work done during the project period can be made after the project has expired. These payments should specify the work had been completed before the project expired.

- Submission of an Amendment Request: The sponsoring agency initiates the amendment by submitting a request for the changes to NDPRD. This request should include all project revisions desired, including cost estimates, maps or design plans, and justification of the need for the changes. It is recommended the NDPRD be contacted prior to the submission of the amendment request. Department staff will be able to provide advice on the feasibility of an amendment approval. An amendment for a change in project scope can be requested any time prior to the construction of the added item or acquisition of the added tract. An amendment for an extension of time should be submitted forty-five days before the project is scheduled to expire.

It is essential that amendment requests be kept to a minimum. Amendments are used to cover items that could not be anticipated in the original project. Major deviations from the original project will not be accepted. It is the responsibility of the project sponsor to thoroughly determine the type of project prior to submission and, upon approval, carry through with that project.

Project Completion

Upon notification by the project sponsor that a project has been completed, NDPRD staff will conduct a final inspection. If the project has been completed in accord with the project description, the final billing can be processed. In order for a project to be considered completed and ready for final billing, it should be submitted within thirty days of the completion of the project or expiration date, whichever comes first.

Project Termination

A project sponsor may request withdrawal of the project at any time prior to the first payment or expenditure of grant funds. After the initial payment, the project may be rescinded, modified or amended only by written mutual agreement between the project sponsor and NDPRD.

NDPRD may terminate the project in whole or in part, at any time before the date of completion, if it is determined the project sponsor has failed to comply with the terms of the project proposal or the intent of the program. Failure by the project sponsor to comply with the terms of the grant may cause suspension of all obligations by and a return of any monies received. If a project is terminated the project sponsor will be notified in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the project sponsor or recovery of funds by the NDPRD under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

NDPRD may terminate the grants in whole, or in part at any time before the date of completion, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The project sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. Termination either for cause or for convenience requires the project in question be brought to a state of recreational usefulness agreed upon by the project sponsor and NDPRD or all funds must be returned.

Project Site Retention & Future Responsibilities

At the time of project approval, the project sponsor through the acceptance of funds, commits that the facilities developed with federal assistance must remain open for general public use and will be operated and maintained. If RTP monies are used for land acquisition the land must remain in public trail use for perpetuity. If RTP monies are used for development, the site and facility must remain in public trail use for 25 years or until the facilities become obsolete or are at the end of their useable life.

Signage Requirement

Project sites funded through RTP are required to display a sign stating that the funding assistance for the site came through a partnership between the FHWA and NDPRD.

Forms and Recourses

The following forms are available at <http://www.parkrec.nd.gov/recreation/grants/rtp.htm>:

- Grant Programs Progress Report Form
- Grant Programs Reimbursement Request Form
- Grant Programs Donated Labor Form
- Grant Programs Donated Materials Form
- Grant Programs Donated Equipment Form
- Grant Programs Force Account Form

Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273)
(Rev. January 18, 2009)

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2h.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the

contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. Discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. Employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. **Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.**
 - b. **All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.**
 - c. **All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.**
 - d. **Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.**
 - e. **The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.**
- 4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.**
- a. **The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.**
 - b. **In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)**
 - c. **The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.**
- 5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:**

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - 1. The number of minority and non-minority group members and women employed in each work classification on the project;
 - 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and

women;

3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at

time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - 1. The work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - 2. The additional classification is utilized in the area by the construction industry;
 - 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - 4. With respect to helpers, when such a classification prevails in the area in which the work is performed.

- c. **If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.**
 - d. **In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.**
 - e. **The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.**
- 3. Payment of Fringe Benefits:**
- a. **Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.**
 - b. **If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.**
- 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**
- a. **Apprentices:**
 - 1. **Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her**

first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in

excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after

written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. **Such** records shall contain the name, address, and social security number of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V, **except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).** This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose **from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.** The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. **Contractors and subcontractors shall maintain the full social security number and current address of each covered employee, and shall provide them upon request to the FHWA, the SHA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the SHA.**
- e. Each payroll submitted shall be accompanied by a "Statement of

Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under paragraphs 2b and 2c of this Section V and that such information is correct and complete;
 2. That such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 3. That each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- f. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2e of this Section V.
- g. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- h. The contractor or subcontractor shall make the records required under paragraphs 2b and 2c of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those

specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

- c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable

Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact

in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:
(Applicable to all Federal-aid contracts - 49 CFR 29)
 - a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
 - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
 - c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective

primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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2. **Instructions for Certification - Lower Tier Covered Transactions:**
(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)
 - a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
 - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was

erroneous by reason of changed circumstances.

- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of

the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING
(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution

