D-1

SHELBY COUNTY GOVERNMENT

ENGINEERING DEPARTMENT

SPECIAL PROVISIONS

## SPECIAL PROVISIONS CONTENTS


| Special Provision Regarding: | Special Provisions No. |
|---|---|
| Unbalanced Bids | 102B |
| Employing and Contracting with Illegal Immigrants | 1021 |
| Approval of Shop Drawings | 105A |
| Pre-Construction Submittal Requirement | 105.05 |
| Schedule of Work | 105.06 |
| Damage to Service Lines | 105.07A |
| Control of Work, Construction Stakes, Lines, and Grades | 105.09 |
| Buy American Requirements | 106A |
| Water Quality and Storm Water Permits | 107FP |
| Complaints | 107.15 |
| Specialty Items | 108A |
| Payment Adjustment for Fuel | 109A |
| Price Adjustment for Bituminous Material | 109B |
| Highway Signs, Luminaries, and Traffic Signals | 700 SIG |
| Employing and Contracting with Illegal Immigrants | 1021 |
| Equal Opportunity Employment | 1230 |
| Standard Federal Equal Opportunity Employment Construction Contract Specifications (Executive Order 11246) | 1231 |
| Requirement of Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) | 1232 |
| Disadvantage Business Enterprise Participation | 1246 |
| DBE Contract Goal | 1247 |
| Required Contract Provisions (Federal-Aid Construction Contracts) | 1273 |
| Certificate Regarding Debarment, Suspension, and Other Responsibility Matters-Primary & Lower Tier Covered Transactions | 1275 |
| Labor (State Projects Only) | 1280 |
| Non-Discrimination in Employment | 1290 |
| Tennessee Department of Transportation Minimum Wage Scales or Federal-Aid Construction and State Funded Construction | 1320 |
| Federal Wage Rates | |
| State Wage Rates | |
| Records Retention, Procurement, & Auditing | |
| Storm Water Pollution Prevention Plan (SWPPP) | |

STATE OF TENNESSEE
SPECIAL PROVISIONS # 102B
UNBALANCED BIDS

The Department will review all unit prices submitted by the apparently lowest responsible bidder and will decide whether any of the unit prices are excessively above or below a reasonable cost analysis value determined by the Engineer.

In the event any unit prices are determined to be unbalanced and contrary to the interest of the Department, the right is reserved to reject such bid at the discretion of the Department or to award the Contract and limit progress payments on units of work performed on any excessively priced items to costs that are satisfactorily documented by the Contractor plus 20 percent, until 85 percent of the Contract has been completed. Upon completion of 85 percent of the Contract, the Contractor will be reimbursed in accordance with **Subsection 109.06** of the Standard Specifications for the accepted quantities of work performed on the excessively priced items.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 102I
EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of Governor's Executive Order #41, An Order Regarding Compliance with Federal and State Laws Related to Employing and Contracting with Illegal Immigrants, and the requirements of Public Acts of 2006, Chapter Number 878 of the State of Tennessee (codified at *Tennessee Code Annotated*, Title 12, Chapter 4, Part 1).

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.

2. Prior to the use of any subcontractor in the performance of this Contract, and semiannually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.

3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

4. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors".

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISION #105A
# APPROVAL OF SHOP DRAWINGS

As soon as possible after naming the fabricator of a steel structure and before the shop drawings are prepared, the Contractor shall require the fabricator to submit prints of the shop drawing Title Sheet directly to the Shelby County Engineering Department. Shop drawings for all types of structures shall be submitted directly to the Engineering Department for handling with the checking agency and for distribution. A copy of the letter transmitting the shop drawings to the Engineering Department shall be furnished the project engineer.

Each shop drawing sheet shall contain in the title block the following:

The location, project number, and contract number. Shop drawings shall be submitted in sets with the drawing numbers running consecutively in each set, and if more than five (5) sheets in a set, shall be appropriately bound. Shop drawings marked "APPROVED" or "APPROVED AS NOTED" need not be resubmitted unless specifically asked for. The following minimum number of sets of shop drawings shall be submitted for approval.

Strain Poles and Mast Arm Poles - six (6) sets; Conventional Street Lighting Poles - six (6) sets.

It is recommended that a heading similar to the following be used in all correspondence:

Project Number

Location

Contract Number

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISION 105.05
# PRE-CONSTRUCTION SUBMITTAL REQUIREMENT

The Contractor shall be responsible for submitting asphalt mix design(s), concrete mix design(s), shop drawing(s), certification report(s), etc. for approval at the preconstruction conference or no later than thirty (30) days after the preconstruction conference. This is to allow sufficient time for review and approval.

Under no circumstances shall any materials be used or construction begin using any mix design or shop drawing prior to approval of submittals.

## CONCRETE PLANTS, ASPHALT PLANTS, CEMENT TREATED BASE PLANTS, ETC.:

Regarding mix design submittal(s): The Contractor shall designate the plant location for the item(s) to be produced as per the mix design. The designated location shall not be changed by the Contractor without prior approval of Shelby County. The Contractor shall not be permitted to send any item(s) to the project without this approval. Any approved change(s) in plant location(s) shall require a mix design for that specific location. Any change(s) shall have prior approval and the approved design shall be on file with Shelby County per the requirements for the item(s) being produced per the mix design. Contractor(s) shall not change plant locations at will. Any change(s) shall only be made for an emergency type situation or with prior approval and a notification that such change is to take place. Convenience or poor planning shall not constitute being a valid reason for plant change(s). It shall be the Contractor's responsibility for coordinating the project work with the item(s) being produced and shipped.

## REGARDING PROCESS CONTROL PLAN(S):

The Contractor shall submit a process control plan, with mix design submittals, which shall be approved by the Engineer. This process control plan shall be used by the Contractor per the specification requirements of the item being produced or supplied. This plan shall not be changed or otherwise altered without submittal and approval of a "new" plan.

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISIONS 105.06
# SCHEDULE OF WORK

The Contractor shall, in coordination with the Engineer, develop a proposed work schedule showing estimated work times for all major construction tasks. The schedule shall be updated as needed to afford the Engineer a view as to the progress and completion time. This schedule shall be submitted at the pre-construction conference and shall include a list of suppliers.

The Contractor shall follow this schedule unless a change is necessary. The Contractor shall notify the Engineer in advance of any deviation from this schedule. The plan of operations shall show the controlling item of work during each phase and a revised schedule shall be submitted when changed conditions warrant.

Sub-contractor notification: The successful Contractor shall submit to the Engineer at the pre-construction conference a list of any and all sub-contractor(s) that will be performing work under his supervision. The contractor shall also notify the Engineer before any change is made in sub-contractor(s) or suppliers of materials to the project.

Notification of sub-contractor(s) or suppliers shall in no way release the Contractor from any or all responsibility relating to work or liabilities relating to this contract.

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISION 105.07A
# DAMAGE TO SERVICE LINES

The Contractor shall immediately stop all work to repair any service lines that are damaged during construction. The construction process shall not commence until the damaged lines are satisfactorily repaired and the repair approved by the Engineer or his representative.

The Contractor shall also be responsible for any plumbing damage caused by foreign objects entering a broken water line.

The Contractor shall also be responsible for other damage caused by broken service lines including, but not limited to, damage to equipment due to interrupted service. This does not apply to cable television deemed by the Engineer to have been incorrectly installed.

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISION #105.09
# CONTROL OF WORK
# CONSTRUCTION STAKES, LINES AND GRADES

In the context of this Special Provision, the word "Engineer" is used to mean The Shelby County Engineer or a duly assigned designee.

The word "Department" is used to mean The Shelby County Engineering Department or its assigned designee. The Contractor shall be required to make all calculations involved and to furnish and place all layout stakes, including those required for the location of public utility service lines (waterlines, sewer lines, gas lines, etc.) utility fixtures and right-of-way, as shown on the plans or as directed by the Engineer.

The Contractor shall be responsible for the placement and preservation of adequate ties to all control points, whether established by the Contractor or found on the project, which are necessary for the accurate re-establishment of all base lines or center lines shown on the plans. The contractor shall also be required to provide ROW or slope stakes, ditch or stream bed grades, or other essential survey staking as directed by the Engineer.

Dimensional details, including elevations, shown on the plans shall be checked by the Contractor to assure accuracy of the required layout. Any errors and apparent discrepancies found in previous surveys, or in either the specifications or the special provisions, shall be called to the Engineer's attention by the Contractor for correction or interpretation prior to proceeding with the work. All stakes, references and batter boards, including original, additional or replacement, which may be required for the construction operations, shall be furnished, set and properly referenced by the Contractor. The Contractor shall be solely and completely responsible for the accuracy of the line and grade of all features of the work.

The County reserves to itself the responsibility for making all measurements and surveys that involve the determination of final pay quantities, including original and final cross-sections for all earthwork.

The Contractor shall furnish to the Engineer copies of all data used in establishing line and grade for all features of work, including, but not limited to, the data used in setting and referencing all stakes and layout marking used by the Contractor.

When requested by the Engineer, the Contractor shall provide safe facilities for convenient access by the Department forces to control points, batter boards and references.

All staking shall be performed by qualified engineering or surveying personnel who are trained, experienced and skilled in construction layout and staking of the type required under the contract and who are acceptable to the Engineer. The personnel shall perform this staking under the direct supervision of a Tennessee licensed professional engineer, of engineering background experienced in the direction of such work and acceptable to the Engineer. A certified listing of all personnel used in the performance of the lines and grades on the project shall be submitted to the Engineer before any staking commences.

The Contractor shall not engage the services of any person or persons who are or have been, during the period of the contract, in the employment of the Shelby County Engineer's Office (except regularly retired employees) without the written consent of the Engineer. In addition, the Contractor shall not engage the services of any firm or any principal officer or employee of a firm that participated in the development of the design of the project to be constructed under this contract.

The Engineer may check the control of work, as established by the Contractor, at any time during the progress of the work. The Contractor will be informed of the results of these checks, but the County, by so doing, in no way relieves the Contractor of responsibility for the accuracy of the layout work. The Contractor shall correct or

replace, as required, any deficient layout and construction work which may be the result of inaccuracies in layout operations or of failure to report inaccuracies in layout operations or failure to report inaccuracies found in work done by the Department or by others. If, as a result of these inaccuracies, the Department is required to make further studies, redesign, or both, all expenses incurred by the Department due to such inaccuracies may be deducted from any monies due the Contractor.

The Contractor shall furnish all necessary personnel, engineering equipment and supplies, materials, transportation, and work incidental to the accurate and satisfactory completion of this work.

Basis of Payment
No separate payment will be made for these services. The costs of these services are to be included in the cost of other items contained within the bid.

STATE OF TENNESSEE

(Rev. 6-19-95)
(Rev. 6-1-04)

March 1, 2006

## SPECIAL PROVISION

## REGARDING

## BUY AMERICA REQUIREMENTS

All manufacturing processes for iron and steel products, and coatings applied thereon, used in this project shall occur in the United States except that if the proposal has bid items for furnishing domestic and foreign iron and steel, the bidder will have the option of (1) submitting a bid for furnishing domestic iron and steel, or (2) submitting a bid for furnishing domestic iron and steel and a bid for furnishing foreign iron and steel. If option (2) is chosen the bid will be tabulated on the basis of (a) the total bid price using the bid price for furnishing domestic iron and steel and, (b) the total bid price using the bid price for furnishing foreign iron and steel.

For the total bid based on furnishing foreign iron and steel to be considered for award, the total bid based on furnishing domestic iron and steel must exceed the total bid based on furnishing foreign iron and steel by more than 25 percent.

Iron and steel products are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from iron and steel made in the United States. Iron products are included, however, pig iron and processed, pelletized, and reduced iron ore may be purchased outside the United States.

Coatings include epoxy, galvanizing, painting or any other surface protection that enhances the value and/or durability of a material.

The contractor shall provide a certification to the Engineer with each shipment of iron and steel products to the project site that the manufacturing processes for the iron and steel products occurred in the United States.

The above requirements do not prevent a minimal use of foreign materials, if the cost of such materials used does not exceed 0.1 percent of the total contract cost or $2,500.00, whichever is greater.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 107FP
WATER QUALITY AND STORM WATER PERMITS

**Scope**

The conditions of this Special Provision apply to all construction on this project pursuant to the following:

1. Section 404 of the Federal Clean Water Act (33 U.S.C. §1344), and all implementing regulations, including without limitation regulations of the U.S. Army Corps of Engineers governing permits for discharges of dredged or fill material into waters of the United States in 33 CFR Part 323; and

2. The Tennessee Water Quality Control Act (T.C.A. §69-3-101, et seq.) and all implementing regulations, including without limitation the Rules of the Tennessee Department of Environment and Conservation governing NPDES permits in Chapter 1200-4-10, and Aquatic Resource Alteration permits in Chapter 1200-4-7; and,

3. Section 26a of the TVA Act of 1933 as amended (49 Stat. 1079, 16 U. S. C. sec. 831y1.) and all implementing regulations, including without limitation the regulations of the Tennessee Valley Authority governing construction in the Tennessee River System in 18 C.F.R., Part 1304.

4. The Tennessee Wildlife Resources Agency Reelfoot Lake Watershed Management permit program (T.C.A. section 70-5-1,), and all implementing regulations, including without limitation regulations authorizing any activity, practice, or project which has or is likely to have the effect of diverting surface or subsurface water from the Lake or have the effect of draining or otherwise removing water from Reelfoot Lake.

5. Coast Guard Bridge Permit (USCG) (Section 9 of the Rivers and Harbors Appropriation Act of 1899) and all implementing regulations, including but not without limitation for projects which impact streams deemed navigable by the U.S. Coast Guard.

**Responsibility**

It is understood and agreed that the Contractor assumes all responsibilities of the permittee as indicated in the permit that relates to protection of the "waters of the United States" and/or "waters of the State of Tennessee."

It is also understood and agreed that the Contractor shall be responsible for obtaining any additional permits required by the Contractor's method of construction, including without limitation haul roads, temporary channels or temporary ditches, or off-site waste and/or borrow areas.

It is also understood that the Contractor shall be responsible for implementing the provisions of the Water Quality (including, but not limited to, TDEC ARAP, COE 404, TVA Section 26a, Coast Guard, TWRA) and Storm Water [including, but not limited to, National Pollution Discharge Elimination System (NPDES), TDEC/TDOT Consent Order, Statewide Storm Water Management Plan (SSWMP)] Permits that pertain to construction activities.

The Contractor by signing this contract is indicating that the Contractor has reviewed a copy of the permit provisions, including NPDES Permit provisions at http://www.tdot.state.tn.us/construction/permits/npdes.pdf, the TDEC/TDOT Consent Order provisions at http://www.tennessee.gov/environment/wpc/consentagreement04.pdf, the site specific SWPPP (including the TDEC/TDOT Consent Order Interim Measures Rainfall Monitoring Plan dated March 31, 2004), the contract plans, standard specifications and contract special provisions and finds the permits requirements and erosion prevention and sediment control (EPSC) procedures to be reasonable, workable, and binding.

It is also understood that the Contractor shall not be released from the project site responsibilities under the NPDES permit provisions until the Notice of Termination (NOT) is submitted to TDEC by the TDOT Regional Construction Supervisor. The NOT is a certification that the construction project is permanently stabilized. This means that the use of EPSC measures to alleviate concerns of surface erosion and transport of sediment to surface

water conveyances or to waters of the state is no longer necessary. Further, it means that permanent controls, hard surfaces and/or vegetation, employed at the site are deemed adequate to prevent erosion and sediment transport.

**NPDES Permit Required Action**

In addition to or in conjunction with (preferable) the EPSC inspector (TDOT personnel or TDOT hired consultant), the Contractor shall conduct and document all inspections of the entire construction project including permitted locations and potentially impacted streams.
Inspections are required and shall be performed:

- at least once per week (within a 7 calendar day period),
- before anticipated rainfall events (50% or greater rainfall forecasted) and
- during or within twenty-four hours after any rainfall event of 0.5 inches or greater.

Inspections shall be performed on this schedule thereafter until the site is permanently stabilized to determine if the permit requirements are being met. Where sites have been finally or temporarily stabilized, or runoff is unlikely due to winter conditions (e.g. site covered with snow, ice or frozen ground), such inspection only has to be conducted once per week.

An individual, who has successfully completed TDEC's *Fundamentals of Erosion and Sediment Control*, or the successor, or an equivalent course from other sources, subject to TDEC approval, shall make these inspections as well as the Contractors project supervisor(s). Proof of required personnel training for the individual(s) performing inspections shall be provided to the TDOT Project Supervisor prior to beginning of construction.

The findings from these inspections shall be verbally communicated to the TDOT project supervisor prior to leaving each required inspection and documented in an inspection report. A copy of each inspection report and all repairs shall be provided to TDOT Project Supervisor within 48 of the inspection.

The inspection report shall contain:

- the type of inspection (e.g. anticipated rainfall events, during or within twenty-four hours after 0.5 inch or greater rainfall event, or weekly),
- deficiencies in meeting permit requirements,
- photo documentation of deficiencies,
- repairs needed and completed or schedule of repair if impracticable
- the forecasted rainfall percentage for each day between inspections and
- the approximate duration (or start and ending times) of 0.5 inch or greater rainfall event

If the inspection, required by the Contractor, is performed at the same time as the EPSC inspector (TDOT or TDOT hired consultant), one report will be prepared and submitted for both inspectors by the TDOT EPSC Inspector. The Contractor shall sign the report and any supporting documentation that he is in agreement with the report, recommendations and repair schedule as stated within the documentation.

Additionally, the Contractor shall make necessary maintenance and repairs relative to deficiencies in these permit conditions or requirements within twenty-four hours after inspections, and/or when directed to do so by the TDOT Project Supervisor, unless conditions make a particular activity impracticable. Any such conditions

deemed impracticable shall be documented and provided to the TDOT Project Supervisor, via the inspection report, and be accompanied by an expected repair schedule based on forecasted weather conditions.

The Contractor further agrees that should he be awarded this contract, he will execute two (2) copies of the Notice of Intent (NOI) form of the permit (provided by the Department), indicating his acceptance of the stipulations contained therein. The Contractor further agrees, that should he fail to execute said copies and return them to the TDOT Construction Division within ten (10) calendar days after submittal of the contract proposal to him, that the Department may at its discretion cancel the award with the Contractor forfeiting his bid bond.

Further, the Contractor will also need to refer to the site specific Storm Water Pollution Prevention Plan (SWPPP), that will be made available prior to or at the pre-construction conference, for any additional erosion prevention and sediment control requirements. The Contractor may submit for review and approval changes/revisions to the SWPPP to better prevent erosion and sediment transport at any time after contract execution. Rejection of any submittals does not relieve the contractor of any liability for appropriate Best Management Practices (BMPs).

If at any time during this contract, the requirements for the Water Quality Permits and/or the Storm Water Permits for Construction Related Activities are changed/revised/updated, the Contractor shall be notified in writing by the Department of such requirements. The Contractor shall comply with the new requirements within 30 days of the Department notification.

If at any time the Contractor becomes aware that sedimentation is occurring or has occurred in streams impacted by an on-going project, the Contractor shall immediately notify the TDOT project supervisor to evaluate the EPSC measures employed, repair or replace defective EPSC measures, and install, as applicable, additional or other EPSC measures with the goal of eliminating future sedimentation.

**Failure to Comply**

In the event a Notice of Violation (NOV) or Order pursuant to the Tennessee Water Quality Control Act or the Federal Clean Water Act is issued on this project, any and all fines will be the sole responsibility of the Contractor as outlined in **Subsection 107.01** of the **Standard Specifications for Road and Bridge Construction** of the Tennessee Department of Transportation. TDOT will not participate in any payment or reimbursement for fines and will not authorize time extensions due to delays in project progress for work stoppage required to remedy the violations.

If the Contractor does not make necessary corrections/adjustments in a timely manner as required above, the Department will implement the provisions of **Subsection 209.07** of the **Standard Specifications for Road and Bridge Construction** that provides for the Department making repairs and recovering the costs thereof from the Contractor.

In the event deficiencies are not corrected within twenty-four hours after written notification by the TDOT project supervisor (unless documented conditions make a particular maintenance or repair activity impracticable), a deduction shall be made from monies due the Contractor, not as a penalty, but as liquidated damages, as indicated in **Subsection 108.07** of the **Standard Specifications for Road and Bridge Construction March 1, 1995**, as amended. This deduction shall be made for each location, as determined by the TDOT Project Supervisor, for each calendar day that the deficiency is allowed to remain.

**{ATTACH ACTUAL PERMITS TO THIS PROVISION }**

# SHELBY COUNTY, TENNESSEE
# SPECIAL PROVISION 107.15
# COMPLAINTS

The Contractor shall ensure that all complaints are resolved promptly. Upon notification by the Engineer or his representative, the Contractor shall respond immediately to correct the problem, regardless of severity.

The Contractor shall inform the Engineer in writing as to when and how the complaint was resolved.

If any complaint is not resolved to the satisfaction of the Engineer within 48 hours of receipt of the complaint by the Contractor, then all other work shall cease upon order of the Engineer or his representative until the complaint is resolved to the satisfaction of the Engineer.

It will be the Engineer's responsibility to handle all communication with private property owners and residents.

The Engineer will have the authority to schedule a conference involving the Contractor, the property owner, and the Engineer for the purpose of clarifying the nature of the complaint.

The Engineer will mediate all disputes and his decision will be final. Under no circumstances shall the Contractor negotiate directly with a property owner.

# STATE OF TENNESSEE
# SPECIAL PROVISION 108A
# SPECIALTY ITEMS

In accordance with the provisions of Subsection 108.01, Standard Specifications for Road and Bridge Construction, 2006, all construction items included in the following described work are hereby designated as "Specialty Items:"

All bid items beginning with the numbers "714" and "730" are considered Specialty Items as defined in Special Provision 1320, Part 635 Construction and Maintenance.

STATE OF TENNESSEE

March 1, 2006

(Rev. 10-01-06)

## SPECIAL PROVISION

## REGARDING

## PAYMENT ADJUSTMENT FOR FUEL

This special provision covers the method of payment adjustment for fuel price increases or decreases. Payment adjustments will be made in monthly increments based on the estimated fuel consumed on major items of work, the estimated price per gallon of fuel at the time of letting and the percentage change of the Producer Price Index for Light fuel oils, Series ID Number WPU0573, published by the U.S. Department of Labor, Bureau of Labor Statistics.

The estimated price per gallon of fuel for this contract is $3.84.
The June, 2008 Price Index (Ib) for light fuel oils shall be used for this contract. Adjustments will be based on the price index in effect at the beginning of the estimate period.

Fuel consumption for payment adjustment shall be based on the following:

| Item Number | Description of Work | Gallons per unit | Unit of measure |
|---|---|---|---|
| 203 | Any Road and Drainage Excavation | 0.25 | Cubic Yard |
| 203 | Any Borrow Excavation (Rock) | 0.36 | Cubic Yard |
| 203 | Any Borrow Excavation (Other than Solid Rock) | 0.25 | Cubic Yard |
| 203 | Any Borrow Excavation (Rock) | 0.16 | Ton |
| 203 | Any Borrow Excavation (Other than Solid Rock) | 0.11 | Ton |
| 203-05 | Undercutting | 0.25 | Cubic Yard |
| 203 | Any Embankment (in-place) | 0.25 | Cubic Yard |
| 303, 309, 312 | Any Aggregate Base | 0.79 | Ton |
| 313, 501 | Treated Permeable Base or Lean Concrete Base | 0.10 | Square Yard |
| 307 | Any Bituminous Plant Mix Base (HM) | 2.98 | Ton |
| 411 | Any Bituminous Concrete Surface (HM) | 2.98 | Ton |
| 501 | Any Portland Cement Concrete Pavement | | |
| | ≤ 10 in. thickness | 0.25 | Square Yard |
| | > 10 in. thickness | 0.30 | Square Yard |

No payment adjustment for fuel shall be made on any item of work which is not listed above.

No payment adjustment for fuel shall be made unless the price index varies more than five percent from the index indicated in this Special Provision.

Where the price index varies more than five percent, the payment adjustment will be made as follows:

$$PA = [(Ic \div Ib) - 1] \times Fe \times Fp$$

Where:

PA =Payment Adjustment (may be plus or minus)
Ic =Index for Current Month
Ib =Index for Bidding
Fe =Estimated Fuel in Gallons used based on above table and work paid for during adjustment month. [$\sum$ (Pay quantity x Gallons per unit)= Fe]
Fp = Fuel Price for Bidding

Payment adjustment errors on items of work which have occurred because of quantity errors in previous months for which the time period in which the work was performed cannot be established will be rectified on a subsequent estimate according to the following formula:

$$Fa = \sum [(Fq \div Pq) \times Ea] - Ea$$

Where,

Fa = Final Adjustment (Item of work)
Fq = Final Quantity of work
Pq = Total Quantity of work on previous estimates
Ea = Total amount paid on previous estimates for Fuel Adjustment for this Item of work

The Project Engineer will compute the payment adjustment for fuel on work sheets similar to the ones attached and will furnish a copy of the calculations upon request to the prime contractor and approved subcontractors.

Upon the expiration of the allocated working time, as set forth in the original contract or as extended by Supplemental Agreement, all payment adjustments for fuel will discontinue, except that when the current price indexes are less than the price index for bidding, payment adjustments will continue to be made.

Payment Adjustment for fuel will be made under:

| Item No. | Description | Pay Unit |
|---|---|---|
| 109-01.01 | Payment Adjustment for Fuel | Dollar |

Monthly Payment Adjustment for Fuel Worksheet

Project No._____ Contract No._____

County_____

Fuel Price (Fp)_____Price Index Bidding (Ib)_____Current Price Index (Ic) _____

Estimate Period: Work Performed_____Adjustment Paid_____
(Month/Yr)

| Item | Unit | Quantity | Fuel Factor | Total Fuel |
|---|---|---|---|---|

Total Fuel for Month (Fe)_____

$PA = [(Ic \div Ib) - 1] \times Fe \times Fp$

Final Payment Adjustment for Fuel Worksheet

Project No._____ Contract No._____

County_____

| Item | Final Quantity of Work (Fq) for Specified Item | Total Quantity on Monthly Estimates (Pq) for Specified Item | Total Previous Adjustment (Ea) for Specified Item | Final Adjustment (FA) for Specified Item |
|---|---|---|---|---|
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |
| _____ | [( _____ ÷ | _____) x | _____] - _____ = | _____ |

Total Final Adjustment _____

$$Fa = \sum [(Fq \div Pq) \times Ea] - Ea$$

STATE OF TENNESSEE

(Rev. 6-1-00)
(Rev. 8-1-00)
(Rev. 8-2-00)

March 1, 2006

# SPECIAL PROVISION

# REGARDING

# PRICE ADJUSTMENT FOR BITUMINOUS MATERIAL

This Special Provision covers the method of price adjustment for bituminous materials.

The normal bid items in the contract covering the bituminous material shall remain the same, but the contract unit bid prices for these items will be adjusted to compensate for increases and decreases in the contractor's bituminous material cost in the following manner:

A "Basic Bituminous Material Index" will be established by the Tennessee Department of Transportation prior to the time the bids are opened. This "Basic Bituminous Material Index" is the average of the current quotations on P.G. 64-22 from suppliers furnishing asphalt cement to contractors in the State of Tennessee. These quotations are the cost per ton f.o.b. supplier's terminal.

The "Basic Bituminous Material Index" for this project is ___$491.15___ per ton.

The "Monthly Bituminous Material Index" is also established on the first day of each month by the same method. The "Monthly Bituminous Adjustment Factor" is the difference (+/-) between the "Basic Bituminous Material Index" and the "Monthly Bituminous Material Index".

The "Monthly Bituminous Adjustment Factor" shall be applied to the contract unit price bid provided the increase or decrease differs 5% or more from the "Basic Bituminous Material Index". The Engineer reserves the right to alter the quantities of material or modify the design if the change in prices warrants material or design substitution. If adjustments are made in quantities or design, the contractor shall accept the unit price bid or the applicable monthly adjusted unit prices as full compensation for all work performed according to the provisions of Subsection 104.02 of the Standard Specifications.

The unit price for bituminous material used after the expiration of the allocated working time as set forth in the contract, or as extended by Supplemental Agreement, will revert to the original contract unit bid price or the adjusted unit price as set forth herein, whichever is less.

The adjustment will be calculated in accordance with the following formula only when the percent change of price indexes is five or greater:

$$PA = [Ic - Ib] \times T$$

Where,

PA = Price Adjustment for Adjustment Month
Ib = Basic Bituminous Material Index
Ic = Monthly Bituminous Material Index
T = Tons bituminous material for Adjustment Month

Price adjustment will be applied to all asphalt cement, asphalt emulsion, or bituminous material used for paving on this project.

The quantity of virgin asphalt cement in tons subject to price adjustment in recycled mixes shall be the product of the total tons of each mix multiplied by the difference between (1) the percent of asphalt cement specified for bidding purposes and (2) the percent of asphalt cement obtained from the recycled asphaltic material used in each mix. No price adjustment under this special provision for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be allowed for asphalt cement content in excess of the percent specified for bidding purposes, as all payment adjustments for asphalt cement in the mix design of recycled mixes in excess of the percent of asphalt cement specified for bidding purposes will be made in accordance with the Standard Specifications.

The price adjustment for increases and decreases in the contractor's cost for virgin asphalt cement in recycled mixes will be calculated as follows when the percent change in price indexes is five or greater:

$$PA = [Ic - Ib] \times \frac{[BA - RA]}{100} \times Tm$$

Where,

PA = Price Adjustment for Adjustment Month
Ib = Basic Bituminous Material Index
Ic = Monthly Bituminous Material Index
BA = Percent asphalt specified for bidding purposes
RA = Percent asphalt obtained from recycled asphaltic material used in each mix
Tm = Tons asphalt mix for adjustment month

The above procedure for calculating price adjustments for recycled mixes is also applicable to mixes consisting of one hundred percent virgin material when the asphalt cement is not a separate bid item and the asphalt content in each mix is established for bidding purposes. A totally virgin mix is a special case in which the percent of asphalt obtained from recycled asphaltic material is zero (i.e., RA = 0).

STATE OF TENNESSEE

(Rev. 02-03-07)

March 1, 2006

# SPECIAL PROVISION

# REGARDING

# HIGHWAY SIGNS, LUMINAIRES, AND TRAFFIC SIGNALS

**Scope:**
The design requirements of this Special Provision shall apply to Section 713-Highway Signing, Section 714-Roadway and Structure Lighting, and Section 730-Traffic Signals of the Standard Specifications for Road and Bridge Construction, March 1, 2006.

**Description:**
The design of the supports for overhead sign bridges, cantilever and butterfly configurations, high mast lighting, luminaires and traffic signals shall be in accordance with the American Association of Highway and Transportation Officials (AASHTO) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, current edition, with addenda.

**General Conditions:**
All overhead sign bridge, cantilever and butterfly sign structures, traffic signal mast arm structures and high mast light poles, as well as any luminaire poles 90-ft or greater in height, shall be designed using the Fatigue Category 1 provisions found in the subject specifications except that, design for galloping-induced fatigue, is excluded. Fatigue designs are not required for luminaire poles less than 90-ft in height, span-wire poles or roadside sign poles.

In lieu of designing for galloping-induced fatigue in mast arm pole assemblies, a 60-inch by 16-inch by 0.125 gauge aluminum or galvanized steel panel shall be installed near the end of the mast arm with the long axis of the panel collinear with the long axis of the mast. The panel shall be mounted at such a height as to provide a least a 6-inch clearance from the top of the signal assembly or sign blank located on the mast arm within the length of the anti-galloping panel. The panel and attachment hardware shall be shown on the shop drawings, and is considered an item included in the price bid for the mast arm assembly.

**SP700SIG**



Additionally, all mast arm connections to the support pole shall be accomplished using a wrap-around ring stiffener assembly.

The following design coordinating instructions are as follows:

- The Basic Wind Speed shall be 90 mph.
- The Design Life/Recurrence Interval shall be 50-years.
- The speed for calculating Truck-induced gust loads shall be 65 mph.

STATE OF TENNESSEE

October 1, 2006

REV: February 5, 2007

## SPECIAL PROVISION

## REGARDING

## EMPLOYING AND CONTRACTING WITH ILLEGAL IMMIGRANTS

The State shall endeavor to do business only with those contractors and subcontractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State Contractors including subcontractors. This policy statement is issued to establish implementation guidance to procuring state agencies and contractors reflecting the requirements of Governor's Executive Order #41, An Order Regarding Compliance with Federal and State Laws Related to Employing and Contracting with Illegal Immigrants, and the requirements of Public Acts of 2006, Chapter Number 878 of the State of Tennessee (codified at *Tennessee Code Annotated,* Title 12, Chapter 4, Part 1).

1. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the "Attestation form" provided by the Department, semi-annually during the period of this Contract.

2. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract.

3. The Contractor shall maintain records for its employees used in the performance of this Contract. Said records shall include a completed federal Department of Homeland Security Form I-9, *Employment Eligibility Verification*, for each employee and shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

**SP102I**



4. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

For the Purposes of this policy, "illegal immigrant" shall be defined as a non-citizen who has entered the United State of America without federal government permission or stayed in this country beyond the period allowed by a federal government-issued visa authorizing the non-citizen to enter the country for specific purposes and a particular time period.

Compliance and non-compliance procedures will be as specified in the Tennessee Department of Finance and Administration's Policy on "Ensuring Compliance with Federal Immigration Laws by State Contractors and Subcontractors".

STATE OF TENNESSEE

March 1, 2006

# SPECIAL PROVISION

# REGARDING

# EQUAL EMPLOYMENT OPPORTUNITY

Reference:
Federal-Aid Highway Program Manual
Transmittal 147, June 26, 1975
Replaces FHWA Order Interim 7-2(1)

## Specific Equal Employment Opportunity Responsibilities

### GENERAL

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA-1273 or PR-1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) The contractor will work with the Tennessee Department of Transportation and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c) The contractor and all his/her subcontractors holding subcontracts not including material suppliers, exceeding $10,000, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors an subcontractors). The contractor will include these requirements in every subcontract exceeding $10,000 with such modification of language as is necessary to make them binding on the subcontractor.

**Equal Employment Opportunity Policy**

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their age, race, color, religion, sex, national origin or disability and to promote the full realization of equal employment opportunity through a positive continuing program:

> It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**Equal Employment Opportunity Officer**

The contractor will designate and make known to the Tennessee Department of Transportation contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

**Dissemination of Policy**

(a) 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 equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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:

(1) 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

(b) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity 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.

**Recruitment**

(a) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

(b) 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, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, 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.

(c) 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 equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended).

(d) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

**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 age, race, color, religion, sex, national origin 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.

**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 the Special Provision Regarding Training Program Requirements is provided under this contract, this subparagraph will be superseded as indicated therein.

(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.

**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 equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, religion, sex, national origin 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 Tennessee Department of Transportation 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 age, race, color, religion, sex, national origin or disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor 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 Tennessee Department of Transportation.

**Subcontracting**

(a) The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the Tennessee Department of Transportation.

(b) The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

**Records and Reports**

(a) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(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 to increase employment opportunities for minorities and women. (Applicable only to contractors who rely in whole or in part on unions as a source for their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(b) All such records must be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the of the Tennessee Department of Transportation and the Federal Highway Administration.

(c) Each contractor and subcontractor shall submit to the Tennessee Department of Transportation an annual report for every July during which work is performed 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 PR 1391 and is to be received by the Department not later than the 20th of the month following the reporting period.

(d) The contractor and/or sub-contractor will be required to complete other reports as instructed by the Engineer.

(e) Current estimates may be withheld by the Project Engineer when reports are not received within the above specified time limits.

STATE OF TENNESSEE

March 1, 2006

## SPECIAL PROVISION

## REGARDING

## STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

## CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1) As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941

   d. "Minority" includes:

      I. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      II. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese Culture or origin, regardless of race);

      III. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      IV. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining indentifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation arid which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals (including goals and time tables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a though p of these specifications. The goal set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specification, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and the trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

SP1231



(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources complied under 7b above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screenings procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriation training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor

association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women, generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of age, race, color, religion, sex, national origin or disability.

11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violations of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement' specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records

shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

STATE OF TENNESSEE

March 1, 2006

# SPECIAL PROVISION

# REGARDING

# NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

# TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work are as follows:

| County | Goals for Female Participation in each Trade |
|---|---|
| All Counties | 6.9 |

| County | Goals for Minority Participation for each Trade |
|---|---|
| Lincoln | 11.2 |
| Hamilton, Marion, Sequatchie | 12.5 |
| Bledsoe, Bradley, Grundy, McMinn, Meigs, Monroe, Polk, Rhea | 8.6 |
| Carter, Hawkins, Sullivan, Unicoi, Washington | 2.6 |
| Greene, Hancock, Johnson | 3.2 |
| Anderson, Blount, Knox, Union | 6.6 |
| Campbell, Claiborne, Cocke, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Loudon, Morgan, Roane, Scott, Sevier | 4.5 |

| County | Goals for Minority Participation for each Trade |
|---|---|
| Montgomery | 18.2 |
| Davidson, Cheatham, Dickson, Robertson, Sumner, Williamson, Wilson, Rutherford | 15.8 |
| Bedford, Cannon, Clay, Coffee, Dekalb, Franklin, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Moore, Overton, Perry, Pickett, Putnam, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, White | 12.0 |
| Shelby, Tipton | 32.3 |
| Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Weakley | 26.5 |

These goals are applicable to all the Contractor's construction work whether or not it is Federal or federally assisted.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in CFR Part 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through- out the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs at the following address within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation:

Associate Regional Director
Office of Federal Contract Compliance Program
1371 Peachtree Street, N.E., Room 111
Atlanta, GA 30367

The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

STATE OF TENNESSEE

(Rev. 06-01-03)
(Rev. 06-23-08)

March 1, 2006

## SPECIAL PROVISION

## REGARDING

## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Disadvantaged business enterprises as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of contracts let by the Department. Consequently, the disadvantaged business enterprise requirements of 49 CFR Part 23/26 apply to this contract.

Disadvantaged business enterprises as defined in 49 CFR Part 23/26 shall have the maximum opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23/26 to ensure that disadvantaged enterprises, including enterprises owned and controlled by women, have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of age, race, color, religion, national origin, sex or disability in the award of subcontracts.

The Contractor shall submit to the Small Business Development Program copies of any agreements with DBE/WBEs upon execution.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy deemed appropriate by the Department.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 1247
DBE CONTRACT GOAL

All contractors shall pursue affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises as set forth in this specification which is imposed pursuant to 49 CFR Part 26 Subpart A through F. The bidder shall arrange for 6 percent of the work to be performed by Disadvantaged Business Enterprises (DBEs) or clearly demonstrate adequate good faith efforts as described herein. A new firm can only be considered for DBE goal participation if it has been certified at least 21 calendar days prior to the date set for opening bids.

**A. Disadvantaged Business Enterprise Policy.**

The Contractor shall accept as operating policy and include in all subcontract agreements the following statement, which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:
"The Contractor, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department assisted contracts." Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**B. Counting DBE Participation Toward Meeting Goals.**

The Contractor may count toward the goals only expenditures to DBEs that perform a commercially useful function of a contract, including those functions as a subcontractor. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself (26.55). Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a commercially useful function. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Tennessee. The bidder may count the following DBE expenditures towards the DBE commitment:

1. **Projects where the DBE is the Prime Contractor** - The portions of the contract to be completed by certified DBE firms will be counted toward meeting the goal. Items of the contract subcontracted to non-DBE firms will not be counted in the commitment.

2. **Portions of a bid from a Joint Venture** - A bid from a joint venture, between a DBE and non-DBE Contractor, shall include a "Statement of DBE Commitments" which must be approved by the Department prior to the Letting. Only the DBE's portion will be counted toward the goal. Joint venture agreements have to be approved separately from the bid documents, prior to awarding of contract.

3. **DBE Subcontractors** - The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. Cost of materials purchased from or the cost of equipment leased from the Contractor will not count toward the project DBE commitment. Prior written

approval must be obtained from Small Business Development Office (SBDO) for any DBE use of prime contractor's personnel or equipment.

**Manufacturers** - The Contractor may count toward the DBE commitment 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE firm produces and supplies goods manufactured from raw materials or substantially alters them before resale.

**4. Regular Dealers (e.g. Material Suppliers)** - The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the DBE firm performs a commercially useful function in the supply process. For purposes of this section, a regular dealer is a firm that owns; operates; or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates the distribution equipment. If the DBE supplier does not own the distribution equipment, a lease containing the terms of the agreement shall be available and must be approved in writing by the SBDO.

**5. Brokers and Packagers** - Brokers and packagers will not be regarded as regular dealers within the meaning of this section. Only the cost of the service performed may be used towards meeting the DBE commitment.

**6. Transportation or Hauling of Materials** – As allowed by 49 CFR Part 26 as interpreted by Small Business Development Program (SBDP). TDOT will continue to utilize the trucking regulations, under 49 CFR Part 26.55, as revised in 1999. Essentially, this regulation allows for DBE goal hauling-credit in either DBE trucks or in trucks leased to DBE firms. Leases cannot be TDOT contract-specific and must be approved by the SBDP Staff. The verification of truck drivers employed by DBE firms will continue to be by submission of payrolls independent from any Davis-Bacon regulations.

a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
f) For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

**7. Other Commercially Useful Functions** - The fees paid to certified DBE firms, which are necessary for the completion of the contract and commonplace outside of the DBE program, may be counted towards the commitment.

**8. Interpretations** by the Department regarding participation of DBEs will be in accordance with applicable federal law.

**C. Contract Award Procedures**

The established DBE goal will be shown on the proposal as a percent of the total amount bid. If the total proposed DBE work submitted with the bid is less than the percentage of participation goals set by the Department, the bidder shall, within three (3) business days from the bid openings, propose sufficient additional DBE participation to meet the goal or shall clearly demonstrate by documentation that good faith efforts were made to meet the goal.

**1. Bidder' Responsibility.**

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Tennessee highway construction industry.

Contractor shall develop and maintain records of negotiations with DBEs to reach agreeable prices, quotations and work schedules, including but not limited to a record of dates when the Contractor first contacted each DBE.

**2. Proposals With Established Project DBE Goals.**

For proposals with established project goals, the bidder will be required to complete computer generated Form 1247A. The bidder shall list the following information on Form 1247A that is submitted:

a. All DBE firms being used or being considered for use as part of the bidder's DBE commitment. Only those DBEs listed may be utilized to meet the DBE goal.

b. The type of work items on the contract for which the DBE will be used.

c. The "Amount to DBE" which has been committed to each DBE firm which will be used on the contract.

The completed 1247A form shall be submitted within three (3) business days of the Letting. Failure to provide a completed form or a Good Faith Effort within three (3) business days of the Letting will cause the bid to be rejected as irregular. Only certified DBE firms may be used. Contractor may access this information on the BE list by viewing the TDOT website or the certified DBE listing.

**3. Bidder Selection and Good Faith Efforts**

a. Bidders shall submit proposals that meet the DBE goal or shall submit documentation clearly evidencing that they made good faith effort to meet the DBE goal. Contractors who meet or exceed the contract goal will be assumed to have made good faith efforts to utilize DBE firms. DBE firms who bid as prime contractors will be considered to have met the goal.

b. The following are illustrative of factors which will be considered in judging whether the bidder has made adequate good faith efforts:

1) Whether the bidder selected portions of the work likely to attract DBE participation. The total dollar value of the portions selected should meet or exceed the contract DBE goal. If it is necessary, the bidder should break down subcontracts into economically feasible units in order to facilitate participation.

2) Whether the bidder provided notice to a reasonable number of specific DBEs that their participation in the contract is being solicited in sufficient time to allow them to participate effectively.
3) Whether the bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty if they were interested.
4) Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
5) Whether the bidder attended any pre-bid meetings that were scheduled, at least in part, for the purpose of the Department informing DBEs of participation opportunities.
6) Whether the bidder advertised in general circulation, trade association, or minority-focus media concerning participation opportunities.
7) Whether the bidder contacted a variety of DBEs or only DBEs regularly used by bidder.
8) Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
9) Whether the bidder made efforts to assist interested DBEs in obtaining bonding or insurance required by the bidder.
10) Whether the bidder effectively used the services of available minority community organizations, minority contractors groups, local, state or federal minority business assistance offices, or other organizations that provide assistance in the recruitment and placement of DBEs.
11) Whether the bidder submitted all quotations received from DBEs, and for those quotations not accepted, an explanation of why the DBE was not accepted including price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a bidder's failure to meet contract goal.
12) Whether the bidder has adequate records of its contacts and negotiations with DBEs

**c)** If the Contractor has not met the DBE goal or submitted documentation clearly evidencing good faith efforts within three (3) business days after the bid opening, the Contractor's bid will be considered non-responsive and the Department may consider the next lowest responsive bid for award.

**d)** Failure of the bidder to meet the DBE goal in its bid or failure to provide documentation clearly evidencing good faith efforts to meet the goal, may be cause for the forfeiture of the Proposal Guaranty which shall become the property of the Department, not as penalty, but in liquidation of damages sustained.

As soon as practical after award of the contract, the contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the Project Supervisor and the SBDO. No progress estimate shall be processed until this information is received.

**4. Joint Checking Allowance for DBE**

A DBE must receive pre-approval by the Department before using a joint check. Joint check requests shall be submitted, by the DBE, to the Department's SBDO prior to the contract agreement.

The following are some general conditions that must be met regarding joint check use:

a. The second party (typically the prime contractor) acts solely as a guarantor.
b. The DBE must release the check to the supplier.
c. The use of joint checks must be a commonly recognized business practice in the industry.

d. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1)
e. The DBE is not required to use a specific supplier nor the prime contractor's negotiated unit price.
f. The DBE shall submit receipt/copy of cancelled checks to the Department's Small Business Development Program.

**D. Construction Period Requirements.**

1. After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the SBDO a signed statement saying why they are unable to complete the work. The Contractor shall document their efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the SBDO documentation clearly evidencing good faith efforts. Any request for substitution of a DBE subcontractor shall be made to the Department and approved by the SBDO.

2. Brokering of work by DBEs is not allowed and is a contract violation. A DBE firm involved in brokering of work may have their certification removed or suspended. Any firm involved in brokering of work that engages in willful falsification distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 100.20. Contractor shall place this provision in all subcontracts with DBEs.

3. A TDOT Project Supervisor/Inspector shall complete a DBE Questionnaire (CC-1) to document the first date of work, work items, equipment, and forces of each DBE. This information shall conform to the Project Diary and the Monthly Compliance Reports completed by the SBD Compliance Officers.

4. The Contractor shall provide monthly payment certification to the Department entitled "Prompt Payment Certification Form." The Department shall provide Contractor with the Prompt Payment Certification Form. An officer of the contractor shall sign the Prompt Payment Certification Form. TDOT will hold estimate payments if information is not submitted. Reasons for non payment to a DBE could include the following:
a) Whether the DBE is performing satisfactorily;
b) Whether Contractor has reason to believe the DBE is not performing a commercially useful function, and if so, why and what steps Contractor is taking to rectify the situation.
In the event the Contractor promptly reports questions on the Prompt Payment Certification Form regarding whether a DBE is independent and performing a commercially useful function and takes appropriate steps promptly to address the issue, then the Department will take this effort into account when considering contractor compliance measures as described below.

**E. Post Construction Requirements.**
Prior to receiving final payment, the Contractor shall provide to the Engineer certification of the dollars paid to each DBE firm, using Form CC3, Certification Of DBE Accomplishment. The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in suspension of bidder qualifications. If the contract contained a DBE commitment, the Contract Compliance Officer with the SBDO will verify that the Contractor has attained the DBE commitment specified on Form CC3 or has provided documentation explaining a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

**F. Required Records.**
The Prime Contractor and all subcontractors shall retain, for a period of not less than 3 years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These

records shall be available at reasonable times and places for inspection by authorized representatives of the Department and Federal Agencies.

**G. Contractor Compliance**

1. It is the intent of this Special Provision to require the Contractor to take full responsibility for the performance of a commercially useful function by all DBE subcontractors, manufacturers and materials suppliers who work on the project and are counted by the Contractor toward the project DBE goal. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved (See 49 CFR Part 26).

2. If the Contractor fails to comply with this Special Provision 1247, which includes but is not limited to:

   a) Failure to promptly notify the Department if a DBE subcontractor is not performing a commercially useful function and promptly remedy the DBE non-compliance; and/or
   b) Failure to replace or to provide adequate documentation of good faith efforts to replace any DBE who is unable to perform, then the Commissioner, at his discretion, takes one or a combination of the following steps:

      1) Contractor shall have its entire management staff attend DBE training arranged by the Department and paid by Contractor;
      2) Contractor shall pay for training DBEs in topics selected by the Department;
      3) The next bid when Contractor is the low bidder on a DBE goal project that Contractor shall achieve a DBE participation that is twice the stated goals;
      4) Withhold from Contractor an amount not to exceed the amount of money originally committed to the non-complying DBE subcontractor as liquidated damages;
      5) Suspend the Contractor from participation in Department bid lettings for up to four (4) lettings;
      6) For repeated failures to comply with these specifications, debar the Contractor pursuant to rules promulgated by the Department;
      7) Invoke other remedy available by law and/or in the contract; and/or
      8) Invoke remedy agreed upon by the Commissioner and Contractor in writing.

**H) DBE SUBCONTRACTOR COMPLIANCE.**

All subcontracts with DBEs shall contain the following provision:

**If the contractor complies with D(4) and the Department agrees that the subcontractor** is not performing a commercially useful function as defined under 49 CFR Part 26, then Contractor is entitled to withhold from the DBE subcontractor a portion of any damages incurred by Contractor arising from the DBE's failure to perform a commercially useful function, including but not limited to amounts due the Department and additional costs incurred due to obtaining a replacement DBE subcontractor.

# REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS


| | | Page |
|---|---|---|
| I. | General | 1 |
| II. | Nondiscrimination | 1 |
| III. | Nonsegregated Facilities | 4 |
| IV. | Payment of Predetermined Minimum Wage | 4 |
| V. | Statements and Payrolls | 7 |
| VI. | Record of Materials, Supplies, and Labor | 8 |
| VII. | Subletting or Assigning the Contract | 8 |
| VIII. | Safety: Accident Prevention | 9 |
| IX. | False Statements Concerning Highway Projects | 9 |
| X. | Implementation of Clean Air Act and Federal Water Pollution Control Act | 10 |
| XI. | Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion | 10 |
| XII. | Certification Regarding Use of Contract Funds for Lobbying | 12 |


## 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 2g.

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, preapprenticeship, 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 have 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.)

a. 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.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, 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).

c. 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 a 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. The payroll records shall contain the name, social security number, and address 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. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. 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 paragraph 2b 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 that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. 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 2d of this Section V.

f. 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.

g. The contractor or subcontractor shall make the records required under paragraph 2b 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 that $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, ELIGIBILITY 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.

* * * * *

**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 judgement 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.

* * * * *

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 Nonprocurement 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.

* * * * *

**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.

* * * * *

## XII. 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.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 1275
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
PRIMARY AND LOWER TIER COVERED TRANSACTIONS

The prospective Primary and/or Lower Tier participant certifies, by signing and submitting this proposal, to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

Have not within a three-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.

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 the preceding paragraph of this certification; and

Have not within a three- year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective Primary and/or 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.

(Exceptions to the above are to be submitted on a separate sheet with the bid proposal)

For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 1280
LABOR (STATE PROJECTS ONLY)

The contractor will be required to comply with the provisions of Title 12, Chapter 4, Part 4, Tennessee Code Annotated, relative to payment of prevailing wages and also the following rules and regulations as established by the Tennessee Department of Labor:

(1) Classify all laborers and mechanics conformably with schedule of classification in the contract.

(2) Apprentices may be employed only under a bona fide apprenticeship program, registered with the Bureau of Apprenticeship, U.S. Department of Labor.

(3) Wages rates must be posted in a prominent place on the site of construction and must be made available to all mechanics and laborers employed on the project at all times.

(4) Pay all laborers and mechanics unconditionally and not less often than once each week the full wages earned.

(5) Pay hourly rates which are not less than those listed for the class of labor being employed.

(6) Pay overtime compensation as required by any applicable federal or state laws, rules or regulations.

(7) Make no deductions from wages other than those authorized by law.

(8) The contractor shall submit each week in which any contract work is performed a certified copy of all payrolls to the contracting agency. The address and social security number of each employee shall be shown the first time the employee appears on a payroll, and on any subsequent payroll when the employee's address changes.

The certifications will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Commissioner of Labor, and that the classifications set forth for each laborer and mechanic conform with the work performed. The contractor will make his employment records available for inspection by representatives of the contracting agency and the Department of Labor, and will permit such representatives to interview employees during working hours on a project.

Failure to submit payrolls within one week or to resubmit corrected payrolls within one week after notification may be reason to withhold progress payments.

The rates of pay for each classification of labor employees on this project as set out by the Labor Department of the State of Tennessee and made a part of this proposal contract, shall remain unchanged for the life of this contract.

Watchman and clerical employees are not to be covered by the Wage Scale, therefore, may be paid at or above the National Wage and Hour Law Rates.

STATE OF TENNESSEE
SPECIAL PROVISIONS # 1290
NON-DISCRIMINATION IN EMPLOYMENT

Bidders are cautioned as follows:

By signing this bid, the bidder will be deemed to have signed and agreed that all persons, firms or corporations supplying goods, material, equipment or service of any kind to the State of Tennessee will not discriminate against any employee or applicant for employment on the basis of handicap, race, religion, national origin or sex and further, that while under contract with the State will show proof upon request that all employment practices including, but not limited to, promotion, rates of pay, transfers, recruitment, recruitment advertising, terminations, layoffs and training and apprenticeship programs are not discriminatory in nature. Each contractor shall be required to post in conspicuous places, available to all employees and applicants for employment, notices of non-discrimination.