
REQUEST FOR PROPOSALS

RFP NO. GS2009-10

DISASTER DEBRIS REMOVAL, REDUCTION, AND DISPOSAL



**City of St. Augustine
General Services Department
P.O. Box 210
St. Augustine, FL 32085-0210**

**Due Date/Time for Receipt of Proposals:
Thursday, August 6, 2009 – 2:00 P.M. EDT**

RFP NO. GS2009-10

CITY OF ST. AUGUSTINE REQUEST FOR PROPOSALS

The City of St. Augustine, a municipal corporation of the State of Florida, is soliciting from qualified and licensed contractors, sealed proposals (NO FACSIMILE PROPOSALS WILL BE ACCEPTED) for the following Professional Services: **DISASTER DEBRIS REMOVAL, REDUCTION, AND DISPOSAL.**

PROJECT DESCRIPTION

Hurricanes, tornadoes, and other natural and manmade events frequently produce substantial volumes of debris, creating hazardous conditions that impact public health, welfare, and safety by obstructing roads, by creating obstacles to safe passage of emergency and essential pedestrian and vehicular traffic, and by notably increasing exposure to fire and hazardous materials. To mitigate the hazardous conditions, it is mandatory that there be an early, safe, and rapid response to restoring safe and economically viable conditions by the removal of the debris in a prompt and environmentally protective manner.

SCOPE OF WORK

General

Proposals are being solicited from licensed and qualified firms to establish a prepositioned contract for debris removal, reduction, and disposal. These services will not be rendered until such time as a Purchase Order has been issued by the City. The Selected Contractor shall be tasked with the collection, temporary staging, and final disposal of debris generated by any type of disaster and documenting the same in accordance with the Federal Emergency Management Agency (FEMA) guidelines. Other services that may be required will include damage assessment and the ability to communicate with local, state, or federal agencies to maximize any funding or reimbursement services.

The City's Project Manager or other duly appointed designee will direct the debris removal and disposal operations. When a disaster occurs or is imminent, the City will contact the Selected Contractor to advise them of the City's intent to activate the Contract. Debris removal will generally be limited to debris in, upon or brought to City public streets and roads, right-of-ways, municipal properties and facilities and other City sites. Disposal of debris will be at a lawfully permitted landfill of the Selected Contractor's selection and the City's approval, or at a Temporary Debris Staging and Reduction Site identified by the City. All landfills to be used must be properly permitted by the Florida Department of Environmental Protection and/or any other pertinent regulatory agency.

The general concept of debris removal operations includes multiple, scheduled passes of each site, location or right-of-way. This will allow residents to return to their properties and bring

debris to the right-of-way as recovery progresses. The Selected Contractor may also be tasked with removing trees leaning on houses or other structures, hazardous stump grinding and removal, or other disaster response and recovery services as the City may direct. The City will prescribe the specific schedule to be used after ascertaining the scope and nature of the disaster's impacts.

The City will identify properties within municipal city limits that may be utilized as Temporary Debris Staging and Reduction Sites. Further coordination between the City and the Selected Contractor is required prior to use of any of these sites.

Commercial and industrial hazardous waste such as chemicals, gas containers, transformers, and any other form of hazardous or toxic matter will not be collected by the Selected Contractor.

Household garbage will be collected by the City's Solid Waste Division and is not to be collected or transported by the Selected Contractor's forces.

Scope of work to include, but not be limited to:

- Disaster-related debris removal from public roadways, rights-of-way, and easements.
- Separation, staging, clearing, reduction, and disposal of disaster-related debris.
- *Hazardous* stump grinding and removal.
- Record keeping of all debris quantities.
- Certification of all equipment used in debris removal.
- A full understanding of and compliance with the most current procedures and documentation requirements of the Federal Emergency Management Administration (FEMA) as applicable to debris removal and disposal.
- Coordination with City staff to respond to all problems including complaints from residents, business owners, etc.
- Total quantity reconciliation with the City and/or the Federal Emergency Management Agency (FEMA), the Federal Highway Administration (FHWA) or any other funding entity.
- A full understanding of and compliance with the Required Contract Provisions Federal Aid Construction Contracts (FHWA Form 1273), attached as **Exhibit B**.

The City of St. Augustine seeks to establish contractual arrangements with at least one (1) primary and up to two (2) additional qualified firms to provide professional services in regard to the collection and disposal of disaster related debris on an as needed basis. The contractual period shall be for three (3) years, with an option for two (1) one (1) year renewals. The City reserves the right to award more contracts if in its best interest.

The response of the Selected Contractor to the disaster recovery process must be immediate, rapid, and efficient with acceptable cost controls, accountability procedures, written reports and submittals to assure that the City shall have the means to be reimbursed for all eligible disaster recovery costs from appropriate Federal, State, and private agencies. Response will typically be activated only in the event of an emergency and in accordance with an awarded contract. Response activation will be through a Purchase Order issued to the Selected Contractor.

Equipment

All trucks and equipment must be in compliance with all applicable federal, state, and local rules and regulations. Trucks used to haul debris must be capable of rapidly dumping their load without the assistance of any other equipment, and be equipped with a tailgate that will effectively contain the debris during transport and that will permit the trucks to be filled to capacity. The Selected Contractor shall submit to the City certifications indicating the type of vehicle, make and model, license plate number, equipment number, and measured maximum volume, in cubic yards, of the load bed of each piece of equipment utilized to haul debris. The measured volume of each piece of equipment shall be calculated from actual internal physical measurement performed and certified by the Selected Contractor. Maximum volumes may be rounded up to the nearest cubic yard. The reported measured maximum volume of any load bed shall be the same as shown on the signs fixed to each piece of equipment. The City reserves the right to re-measure trucks at any time to verify reported capacity.

All trucks and trailers utilized for hauling debris shall be equipped with a tailgate that will permit the vehicle to be loaded to capacity and effectively contain the debris on the vehicle while hauling. Sideboards, if installed, must be constructed of 2" x 6" boards or greater and may not extend more than 2 feet above the metal bedsides. Once installed, all sideboard extensions must remain in place throughout the operation, or the vehicle must be re-measured and re-marked. All extensions to the vehicle bed are subject to acceptance or rejection by the City's Project Manager or other duly appointed designee. Prior to commencing operations, the Selected Contractor shall affix to each piece of equipment signs or markings indicating the Contractor's name and a unique equipment identification number. One sign shall be placed on each side of the equipment. For those trucks, trailers and other equipment intended to haul debris, the maximum volume, in cubic yards, of the load bed shall also be shown. Signs shall be maintained in an easily readable fashion for the duration of the work. Minimum letter size shall be 3" in height.

Safety and Health Standards

- A. Whenever on a loading site or a debris management site, all personnel of the Selected Contractor must wear required safety equipment as necessary to comply with all OSHA, Federal, State, and local requirements. The following are mandatory:
 - Hard hat
 - Reflective vest
 - Safety shoes
 - Long pants
 - Appropriate cold or rainy weather clothing
 - Eye and hearing protection
- B. The Selected Contractor shall maintain a telephone contact list, at each loading site and debris management site, of the employees' supervisor, the City's Project Manager, and nearest fire, police, and emergency medical facilities.
- C. The Selected Contractor shall ensure that their personnel adhere to all appropriate site safety requirements.

Other Considerations

- A. The Selected Contractor shall supervise and direct all work using qualified labor and proper equipment for all tasks. Safety of the Selected Contractor's personnel and equipment is the responsibility of the Selected Contractor. Additionally, the Selected Contractor shall pay for all materials, personnel, taxes, and fees necessary to perform work under the terms of the proposed contract.
- B. The Selected Contractor must be duly licensed in accordance with federal and state statutory and regulatory requirements to perform the work being sought through this RFP.
- C. The Selected Contractor shall be responsible for determining what permits shall be necessary to perform work under the proposed contract. Copies of all permits shall be submitted to the City's Project Manager before commencing work.
- D. During the performance of this contract, the Selected Contractor shall be responsible for correcting any notices of violations issued as a result of their actions and/or operations or those of their subcontractors. Corrections for any such violations shall be at no additional cost to the City.
- E. The Selected Contractor shall be responsible for paying any and all costs associated with violations of law or regulations relative to the activities of the Selected Contractor. Such costs might include but are not limited to: site clean-up and remediation, fines, administrative and civil penalties, third party claims imposed on the City by any regulatory agency or by any third party as a result of noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by the Selected Contractor, its subcontractors, or any other persons, corporations or legal entities retained by the Selected Contractor under this contract.
- F. The Selected Contractor will supply door hangers and tags for ineligible debris. The City must approve the format for both. Door hangers will be distributed at the discretion of the City for all ineligible debris piles.

Deliverables

- A. The deliverables must be provided by the City at the completion of the contract. The deliverables shall include, but not be limited to, the following list. At its sole discretion, the City may add/or delete deliverables to meet the needs of the City.
 - Original load tickets shall be boxed, bound by date, and sorted by ticket number.
 - Ticket logs including all information from ticket.
 - List of all personnel with signatures and initials.
 - Binder(s) with damage reports, completed repairs, and releases, if applicable.
 - Binder(s) with issues and final resolution.
 - Each debris removal pass may, at the discretion of the City, have a door hanger placed at each residence or street sign hanger placed at key intersections to indicate pick-up has occurred. A report describing the location of hangers shall be provided to the City.

- Each pile of ineligible debris will be tagged and a list compiled and submitted to the City. The City must approve format of the ineligible debris tag.
- Daily Report – The Selected Contractor shall prepare and submit daily operational reports throughout the duration of the recovery operations. Daily reports shall document the debris contractor's activities and progress from the previous day and shall be submitted by 10:30 a.m. to the City's Project Manager. Each daily report shall contain the following minimum information:
 - Contract and/or Purchase Order number;
 - Correctly and accurately completed load tickets consistent with all reporting documents;
 - The times of operation of all debris loading trucks;
 - Reports, maps, and graphs to delineate production rates of crews and their equipment, progress by area and estimations of total quantities remaining, time to completion, and daily cumulative cubic yards of debris removed, processed, and hauled.

- B. All deliverables will be submitted both electronically in a PDF format and on paper.
- C. The Selected Contractor shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City reserves the right to determine record keeping method in the event of nonconformity. These records shall be maintained for five (5) years after final payment has been made and shall be readily available to City personnel, with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Payment

- A. Debris loaded and hauled from the right-of-way to an approved landfill/disposal site or Temporary Debris Staging and Reduction Site, or loaded and hauled from a Temporary Debris Staging and Reduction Site to an approved landfill/disposal site, will be paid based upon the price per truck measured cubic yard according to the fee schedule. All load tickets, forms, reports and other deliverables shall be accurately and correctly submitted in the initial instance of submittal. The Selected Contractor shall not bill and shall not be paid for time spent by any personnel to correct a load ticket, form, report, or other deliverable.
- B. Payment Schedule – Invoices will be processed for payment only after approval by the City's Project Manager. Approval for payment shall not be granted until appropriate deliverables are received and determined to be correct, accurate, and consistent by the City's Project Manager.
- C. The Davis-Bacon Act, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits

paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates. A “wage determination” is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics, which the Administrator of the Wage and Hour Division of the U.S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

Project wage determinations are issued at the specific request of a contracting agency; each is applicable to the named project only; and expires one hundred and eighty (180) calendar days from the date of issuance unless an extension of the expiration date is requested by the agency and approved by the Wage and Hour Division. If such a determination is not used in the period of its effectiveness, it is void. Project determinations are issued in response to contracting agencies submitting to the Wage and Hour Division a Standard Form 308 requesting a wage determination.

Debris monitoring activities on federal roads for which cost reimbursement is being sought from the Federal Highway Administration may be subject to Davis-Bacon Act requirements. Debris monitoring activities to which Davis-Bacon Act requirements are applicable shall be reimbursed at the Proposer(s) hourly rate(s) as stipulated in the contract to be executed as a result of this RFP or at the prevailing wage rate as determined by Davis-Bacon Act procedures, whichever is higher. It shall be the responsibility of the Proposer(s) to submit a Standard Form 308 and/or other necessary form(s) to the Wage and Hour Division of the Department of Labor to request a Davis-Bacon Act wage determination. The wage determination secured from the Wage and Hour Division of the Department of Labor shall be provided by the Proposer(s) to the City. It shall additionally be the responsibility of the Proposer(s) to abide by all Davis-Bacon Act requirements and to be knowledgeable about the applicability of the Act. The Proposer(s) shall be financially responsible for any expenses denied reimbursement due to failure to adhere to Davis-Bacon Act requirements.

- D. Project Completion – The project will be considered completed when the City’s Project Manager accepts all work specified under this contract has been completed to his/her satisfaction and all eligible debris has been picked-up with the jurisdictions of the City, and all damage and issues relating to the disaster recovery have been resolved.

INQUIRIES

Questions related to this RFP should be in writing and directed to:

City of St. Augustine
General Services Department
Attn: Timothy W. Fleming
P.O. Box 210
St. Augustine, FL 32085-0210
Phone: (904) 825-1010
Fax: (904) 825-1051
Email: tfleming@ci.st-augustine.fl.us

Inquiries related to the work scope, clarification or correction(s) must be in writing to the contact name shown above via fax, email or mail and must be received no later than 11:00 A.M. EDT on Thursday, July 30, 2009. All addendum(s) will be issued by the General Services Department no later than 12:00 NOON EDT on Monday, August 3, 2009. **Do not contact any other staff member of the City of St. Augustine, except the above, with regard to this RFP. All inquiries will be routed by the General Services Department to the appropriate staff member for response.**

PROPOSAL DUE DATE/LOCATION

Qualified firms desiring to provide the required professional services must submit three (3) proposal packages, clearly marked on the outside of the envelope: **“Sealed Proposal for RFP #GS2009-10: Disaster Debris Removal, Reduction & Disposal”**. FAX SUBMISSIONS WILL NOT BE ACCEPTED. Sealed proposals will be received no later than 2:00 P.M. EDT on Thursday, August 6, 2009. Submit all proposals to:

Mailing Address

City of St. Augustine
Office of the City Manager
Attn: Tim Fleming
P.O. Box 210
St. Augustine, FL 32085-0210

Physical Address

City of St. Augustine
Office of the City Manager
Attn: Tim Fleming
75 King Street, 4th Floor, Lobby “C”
St. Augustine, FL 32084

QUALIFICATION OF PROPOSER(S)

Proposals will be considered only from firms normally engaged in the services specified herein. Proposer(s) must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the City of St. Augustine. In their Letters of Interest or Proposals, the Proposer(s) should provide sufficient information, examples, and references to allow the evaluation team to make an informed decision regarding their ability to provide the request professional services. The City reserves the right, before recommending any award, to inspect the facilities and organization, or to take any other action necessary to determine ability to perform in accordance with the specifications, terms, and conditions.

The City of St. Augustine will determine whether the evidence of ability to perform is satisfactory and will make awards only when such evidence is deemed satisfactory and reserves the right to reject proposals where evidence submitted, or investigation and evaluation, indicates inability of the Proposer(s) to perform.

PERMITS AND LICENSES

Permits and licenses necessary for the performance of this work shall be secured and paid for by the awarded contractor prior to execution of the contract or purchase order.

Proposer(s) should determine whether a City and/or St. Johns County occupational license, competency license or State certified contracting license is required. Specific information on

licensing requirements for the City of St. Augustine may be obtained from the Planning and Building Department at (904) 825-1065.

Failure to provide evidence of any required occupational or competency licenses may be cause for rejection of the proposal.

INSURANCE REQUIREMENTS

Listed below are various insurance requirements that must be met by the company that the City contracts with for services. Proposer(s) **are not required** to submit proof of insurance with this RFP however, failure to provide proof of insurance as proscribed by this document no later than three (3) working days after the Proposer is notified that it has received a first place ranking will automatically disqualify that firm from further consideration.

Workmen's compensation insurance in accordance with the laws of the State of Florida sufficient to secure the benefits of the Florida Workmen's Compensation Law for all employees of the Contractor and employer's liability coverage providing limits as specified in the following paragraph:

Comprehensive General Liability	\$1,000,000 per person
Bodily Injury, including Death	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence \$1,000,000 aggregate
Comprehensive Auto	
Auto Liability	\$ 500,000 each person
Bodily Injury, including Death	\$ 500,000 each occurrence
Property Damage	\$ 200,000 each accident

Furthermore, the Selected Contractor will be required to indemnify, hold harmless, and defend the City of St. Augustine, and their officers and directors, representatives, and employees from any and all suits or claims for damages or injuries, including death, to any and all persons or property, arising out of the Selected Contractor's work, product, services or operations under this procurement including any negligent act or omission on the part of the selected firm or its subcontractors, if any.

BRIBERY AND LOBBYING CLAUSE

By submission of a statement of qualification response, the Proposer certifies that no one in their organization, any affiliate or sub-consultant has bribed or lobbied, or attempted to bribe or lobby, any employee of the City of St, Augustine.

VENUE

Venue for any legal proceeding arising from any contract or agreement resulting from this RFP shall be in a court of competent jurisdiction located in St. Johns County, Florida.

EVALUATION OF PROPOSALS

Proposals will be evaluated in accordance with, but not necessarily limited to, the following criteria:

- A. Experience of the Proposer(s)
- B. Project Management Team Credentials
- C. Ability to respond timely with adequate resources
- D. Responsiveness to RFP
- E. Price
- F. Performance on similar recent contracts
- G. Local to the City of St. Augustine

Please see attached Evaluation Criteria and Evaluation Sheet. Proposals will be reviewed by an evaluation team. Final team rankings will be summarized and a recommendation will be presented to the City Commission for approval and authorization to negotiate a contract with the highest ranked firm.

The evaluation team will make every reasonable effort to make recommendations based upon the written submittals alone. However, if the single number one ranked firm cannot be clearly determined, then the evaluation team shall request that the Purchasing Manager set up the top ranked firms for presentations/interviews. The selected firms will be notified if presentations/interviews are required. All expenses, including travel expenses for interviews, incurred in the preparation of the proposal shall be borne by the Proposer.

It is expressly understood that the City Commission's preference/selection of any proposal does not constitute an award of a Contract with the City. It is further expressly understood that no Contractual relationship exists with the City until a Contract has been formally executed by both the City and the selected Proposer. It is further understood, no Proposer may seek or claim any award and/or reimbursement from the City for any expenses, costs, and/or fees (including attorney's fees) borne by any Proposer, during the entire RFP process. Such expenses, costs, and/or fees (including attorney's fees) are the sole responsibility of the Proposer.

It is anticipated that the City of St. Augustine will issue an original professional service contract with single or multi year renewal options. Any contract(s) negotiated with any firm(s) responding to this Request for Proposals will be nonexclusive. The City reserves the right to: (1) enter into contracts with firms for some or all of the services; and to (2) subsequently solicit proposals and negotiate contracts, for such services with respect to specific projects. All such actions shall be subject to the sole discretion of the City.

The City reserves the right to reject any or all proposals, waive minor formalities or award to/negotiate with the firm whose proposal best serves the interest of the City of St.

Augustine. The City also reserves the right to waive minor variations to specifications (interpretation of minor variances will be made by applicable City staff).

*** * * END OF SECTION * * ***

City of St. Augustine
Definitions of Evaluation Criteria for Ranking of Proposers

A. Experience of the Proposer(s) (0 to 15 points):

Evaluate on the numbers of years of experience in relevant business area. Number of similar projects. Background in handling similar size of project. Degree of experience in disaster debris. Experience with FEMA programs and funding issues.

B. Project Management Team Credentials (0 to 15 points):

Assurance of dedicated project team. Experience of key consulting team members in areas identified under experience of the firm. Education, professional licenses, relevant experience.

C. Ability to respond timely with adequate resources (0 to 15 points):

Demonstrated ability to respond to similar projects. Demonstrate adequate resources to support this and all current commitments.

D. Responsiveness to RFP (0 to 10 points):

Responsive to each requirement in the RFP. Provide insight to needs of project through submitted proposal. Provide creative alternatives that meet the intent of the Scope of Work in this solicitation.

E. Price (0 to 20 points):

All bids will be evaluated and ranked by the same hypothetical storm event.

F. Performance on similar recent contracts (0 to 15 points):

Provide contacts on all recent (five years) contingent and active contracts for similar work. Proof of satisfactory or better performance on contracts of similar scope and size.

G. Local to the City of St. Augustine (0 to 10 points):

Proposer(s) has an office in the City of St. Augustine for at least the past twelve (12) months. Proposer(s) Staff Management Plan specifies the use of local talent for monitoring. Number of Management Team living in the City of St. Augustine. History on previous work utilizing local labor forces.

EXHIBIT A:

FEES - EMERGENCY DEBRIS REMOVAL FOR CITY OF ST. AUGUSTINE

MOBILIZATION AND DEMOBILIZATION \$ _____
(FIRM LUMP SUM PRICE PER STORM EVENT)

UNIT COST PER CUBIC YARD FOR DISPOSAL \$ _____

*Bidder will specify preferred site. City reserves the right to negotiate
a reasonable disposal rate or alternate site to be specified by the City.

UNIT COST PER CUBIC YARD TO CUT, LOAD, AND TRANSPORT
UP TO 20 MILES ONE WAY TO DISPOSAL SITE \$ _____

STUMP GRINDING AND REMOVAL UP TO 10" DIAMETER, EACH \$ _____

STUMP GRINDING AND REMOVAL 11" TO 20" DIAMETER, EACH \$ _____

STUMP GRINDING AND REMOVAL 21" TO 30" DIAMETER, EACH \$ _____

STUMP GRINDING AND REMOVAL 31" TO 40" DIAMETER, EACH \$ _____

UNIT COST/CUBIC YARD CHIPPING VEGETATIVE DEBRIS ON SITE \$ _____

ABILITY TO MOBILIZE WITHIN 24 HOURS AS PER SPECIFICATIONS:

_____ YES _____ NO

ABILITY AND COMMITMENT TO COMPLY WITH ALL FEMA PROCEDURES AND
DOCUMENTATION REQUIREMENTS ASSOCIATED WITH DEBRIS REMOVAL AND
DISPOSAL:

_____ YES _____ NO

ABILITY AND COMMITMENT TO COMPLY WITH ALL FHWA FORM 1273
PROCEDURES AND DOCUMENTATION REQUIREMENTS ASSOCIATED WITH
DEBRIS REMOVAL AND DISPOSAL:

_____ YES _____ NO

NAME OF PROPOSER: _____

ADDRESS: _____

PHONE: _____ FAX: _____

SIGNED BY: _____

PRINTED NAME: _____

TITLE: _____ DATE: _____

EXHIBIT B:

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS (FHWA FORM 1273)

1. General
2. Nondiscrimination
3. Nonsegregated Facilities
4. Payment of Predetermined Minimum Wage
5. Statements and Payrolls
6. Record of Materials, Supplies, and Labor
7. Subletting or Assigning the Contract
8. Safety: Accident Prevention
9. False Statements Concerning Highway Projects
10. Implementation of Clean Air Act and Federal Water Pollution Control Act
11. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
12. Certification Regarding Use of Contract Funds for Lobbying

Attachments

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

1. GENERAL

- A. 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.
- B. 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.
- C. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
- D. 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.

E. 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.

F. **Selection of Labor:** During the performance of this contract, the contractor shall not:

1. 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
2. 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.

2. NONDISCRIMINATION

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

A. **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:

1. 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.
2. 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."

- B. **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.
- C. **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:
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 EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 2. 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.
 3. 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.
 4. 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.
 5. 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.
- D. **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.
1. 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.
 2. 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.)

3. 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.

E. **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:

1. 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.
2. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
3. 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.
4. 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.

F. **Training and Promotion:**

1. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
2. 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.

3. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
4. 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.

G. **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:

1. 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.
2. 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.
3. 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.
4. 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.

H. **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.

1. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 2. 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.
 3. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
- I. **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.
1. The records kept by the contractor shall document the following:
 - a. The number of minority and non-minority group members and women employed in each work classification on the project;
 - b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - d. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 2. 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.

3. 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, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- 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.

4. 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.)

A. General:

- 1. 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.

2. 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.
3. 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.

B. Classification:

1. 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.
2. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - a. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - b. the additional classification is utilized in the area by the construction industry;
 - c. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - d. with respect to helpers, when such a classification prevails in the area in which the work is performed.

3. 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.
4. 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.
5. 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.

C. Payment of Fringe Benefits:

1. 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.
2. 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.

D. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

1. Apprentices:

- a. 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.
- b. 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.
- c. 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.
- d. 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.

2. Trainees:

- a. 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.
- b. 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.
- c. 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.
- d. 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.

3. Helpers:

- a. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

5. 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.)

A. 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.

B. Payrolls and Payroll Records:

1. 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.
2. 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.

3. 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.
4. 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:
 - a. 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;
 - b. 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;
 - c. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
5. 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.
6. 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.

7. 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.

6. RECORD OF MATERIALS, SUPPLIES, AND LABOR

- A. 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:
 1. 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.
 2. 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.
 3. 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.
- B. 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.

7. SUBLETTING OR ASSIGNING THE CONTRACT

- A. 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).

1. "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.
 2. "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.
- B. 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.
- C. 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.
- D. 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.

8. SAFETY: ACCIDENT PREVENTION

- A. 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.
- B. 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).

- C. 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).

9. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.”

10. 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:

- A. 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.
- B. 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.
- C. 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.
- D. 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.

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

A. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- 1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- 2. 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.
- 3. 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.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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” (Non-procurement List) which is compiled by the General Services Administration.
9. 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.
10. 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.

B. 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)

1. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
2. 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.

3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

12. 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)

- A. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 1. 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.
 2. 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.
- B. 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.
- C. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's

permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.