



# INDIANA DEPARTMENT OF TRANSPORTATION

*Driving Indiana's Economic Growth*

## Memorandum

January 9, 2007

### CONSTRUCTION MEMORANDUM 07-01

TO: District Deputy Commissioners  
District Highway Operations Directors  
District Construction Engineers  
District Testing Engineers  
District Area Engineers  
Project Engineers/Supervisors  
District EEO Officers

FROM: Mark A. Miller, Director *mem*  
Division of Construction Management

SUBJECT: DBE Program Policy and Revised Recurring Special Provision

In an effort to clarify the Department's requirements and procedures for administration of the Disadvantaged Business Enterprise (DBE) program, the Division of Economic Opportunity has issued a Policy defining the responsibilities associated with the DBE program. A copy of the Policy, effective January 8, 2007, is attached.

In addition, Recurring Special Provision 100-C-151 has been revised to comply with the Policy and further define how the DBE program is applied. The revised provision will be included in all Federal Aid contracts with a DBE goal beginning with the January 10, 2007 letting. A copy of the revised provision is attached for your information. The major changes to the provision involve determination of good faith efforts prior to contract award and good faith efforts related to extra work.

Please review the Policy and revised Recurring Special Provision for any changes that may affect your area.

MAM:RLH:rlh

**INDIANA DEPARTMENT OF TRANSPORTATION**  
**Departmental Policy**

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**Policy:**                    **Policy for Disadvantaged Business Enterprise (DBE) Program**

**Purpose:**                    The purpose of this Policy is to define responsibility for implementation and maintenance of the Department's DBE program for federally funded highway construction contracts.

**Effective Date:**        This Policy shall become effective on **January 1, 2007**

**Supersedes:**            This Policy supersedes all previously published DBE program policies, including, but not limited to those contained in the General Instruction for Field Employees.

**Responsible**  
**Division:**                    Economic Opportunity Division

**Authority:**                 Date 1/08/07  
Mark G. Ahearn  
Deputy Commissioner and Chief Legal Counsel

1. General Provisions

- 1.1. As a recipient of federal funds, it is the responsibility of the Department, through its Economic Opportunity Division, to establish a Disadvantaged Business Enterprise (DBE) program. To this end, the Economic Opportunity Division requires policies and contractual provisions to be established to administer the program in accordance with the provisions set forth in 49 CFR Part 26.
- 1.2. The Division of Construction Management will maintain highway construction contract specifications to administer the DBE program and provide basis for contractual enforcement of program requirements. These specifications will be maintained in the Indiana Department of Transportation Standard Specifications (Specifications).
- 1.3. The Division of Construction Management will maintain procedural instructions for application of the specifications. These instructions will be maintained in the Indiana Department of Transportation General Instructions to Field Employees.
- 1.4. The Economic Opportunity Division will conduct process reviews to verify compliance with this Policy by the Department.
- 1.5. The Economic Opportunity Division and the District Equal Employment Opportunity officer (EEO) will conduct process reviews to verify compliance with the Specifications by a contractor doing business with the Department through a highway construction contract (Contract).

**INDIANA DEPARTMENT OF TRANSPORTATION**  
**Departmental Policy**

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2. Determination of Good Faith Efforts Prior to Contract Award

- 2.1. The requirements for meeting good faith efforts will be defined in the Specifications.
- 2.2. The Economic Opportunity Division will make an initial determination of adequate good faith efforts prior to award of a Contract. Final determination of good faith efforts will be made by the Commissioner of the Indiana Department of Transportation.
- 2.3. The Specifications will define the process for a Contractor electing to appeal a recommendation made by the Division of Economic Opportunity or a final determination made by the Commissioner.
- 2.4. The guidelines for determination of good faith efforts are set forth in 49 CFR Part 26, Appendix A and the Indiana Department of Transportation Standard Specifications.

3. Determination of Good Faith Efforts After Contract Award

- 3.1. The requirements for meeting good faith efforts for extra work authorized by a construction Change Order will be defined in the Specifications.
- 3.2. The District EEO Officer will make a determination of adequate good faith efforts for extra work.
- 3.3. The Specifications will define the process for a Contractor electing to appeal a determination made by the EEO.

FHWA-1273

REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

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

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

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

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

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

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

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

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

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

#### 6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

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

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any

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

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

## **3. Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**



## a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

## b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## c. Helpers:

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

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

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

**6. Withholding:**

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

**7. Overtime Requirements:**

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

**8. Violation:**

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

**9. Withholding for Unpaid Wages and Liquidated Damages:**

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

**V. STATEMENTS AND PAYROLLS**

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

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

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

**2. Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less 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.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

### **VIII. SAFETY: ACCIDENT PREVENTION**

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

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

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

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

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

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

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

**X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION****1. Instructions for Certification - Primary Covered Transactions:**

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

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

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

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

#### **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

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

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**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,

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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.

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## DISADVANTAGED BUSINESS ENTERPRISE PROCEDURE AND GOOD FAITH EFFORTS

The Standard Specifications are revised as follows:

SECTION 103, AFTER LINE 1, DELETE AND INSERT AS FOLLOWS:

**SECTION 103 – AWARD AND EXECUTION OF CONTRACT**

**103.01 Disadvantaged Business Enterprise Program**

This requirement will apply only to a federal aid contract.

**(a) General Requirements**

Failure to carry out the requirements set forth in 49 CFR ~~23.43(a)~~ 26, *as outlined in the Department's DBE Program Manual*, shall constitute a breach of contract and, after notification may result in termination of the contract or such remedy as the State deems appropriate.

The above referenced CFR section requires the following policy and disadvantaged business enterprise obligation to be included in all subsequent agreements between the Contractor and all subcontractors as follows:

1. It will be the policy of the Department ~~that disadvantaged business enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contract work financed in whole or in part with Federal funds provided under this contract to create a level playing field on which DBE's can compete fairly for federally funded contracts.~~ Consequently, the disadvantaged business enterprise requirements of 49 CFR Part ~~23~~ 26, *as outlined in the Department's DBE Program Manual*, apply to this contract.
2. ~~The Contractor agrees to ensure that disadvantaged business enterprises certified by the State shall have the maximum opportunity to participate in the performance of contract work or subcontract work financed in whole or in part with Federal funds provided under this contract. In this regard, the Contractor shall take all necessary and reasonable steps, in accordance with 49CFR Part 23, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform work in this contract. The Contractor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of this contract. The Contractor shall carry out the applicable DBE requirements in the award and administration of federally funded contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the Department deems appropriate. The Contractor shall include language prohibiting discrimination on the basis of race, color, national origin, or sex in the performance of this contract in all subcontracts.~~

SECTION 103, BEGIN LINE 58, DELETE AND INSERT AS FOLLOWS:

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#### 4. Certified DBE

A business enterprise which has completed and filed a request for certification with the ~~Indiana Department of Administration~~, and that the business enterprise has been reviewed and determined to comply with the guidelines established in 49 CFR Part ~~23~~ 26. Business enterprises which are determined to be eligible will be certified as DBEs *to perform specific types of work.*

##### (c) Goal

A contract provision *DBE* goal may be shown on the Proposal sheet. Such goal, if required, has been established as the *desired minimum* amount to be contracted to DBEs. The Contractor shall meet or exceed the goal, or demonstrate that it could not be met despite ~~best~~ *good faith* efforts. Achievement of the ~~contract provision~~ goal does not relieve the Contractor of the requirement for affirmative action on subsequent subcontracting on this contract. Only work with listed DBEs ~~which~~ *that* are certified prior to the date of the letting will count toward the goal. *Credit towards contract goals will be given only for work performed by certified DBEs in the work areas for which they have been certified. The same requirements with respect to obtaining the goal apply for a Contractor that is certified as a DBE. A DBE Contractor must either achieve the goal utilizing other DBE firms or demonstrate that the goal could not be met despite good faith efforts.*

Contracting may be in the form of *a* subcontract, lease agreement, or material supply *agreement*. Full credit will be given for subcontracts and lease agreements. Credit for utilization of a DBE material supplier will be limited to those DBEs certified as suppliers prior to the letting at the rate of 60% of the expenditure to the supplier unless the supplier is also the manufacturer. Suppliers that do not manufacture the items shall also perform a commercially useful function in order for credit to be received.

*A written request for changes in utilization of race/gender conscious DBE firms listed in the Affirmative Action Certification shall be approved prior to start of listed services or purchase of listed materials. Requests to reduce or eliminate the services or material provided by a listed race/gender conscious DBE that include written approval by the DBE will be considered sufficient justification if the committed DBE utilization after the requested change will meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract. If the committed DBE utilization after the change does not meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract, or the listed race/gender conscious DBE does not approve the change, the Contractor shall submit documented evidence that the DBE is unable to perform successfully. Disposition of the request for change will be determined on the basis of the affirmative actions taken as required herein.*

*When a race/gender conscious DBE firm is removed from eligibility, the Contractor shall take the following steps:*

1. *If a subcontract has not yet been executed, the Contractor shall not count work performed by the firm toward the contract goal. The Contractor will be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.*

2. *If a subcontract has been executed before the firm has been declared ineligible, the Contractor shall continue to count work performed by the firm toward the contract goal.*

SECTION 103, BEGIN LINE 92, DELETE AND INSERT AS FOLLOWS:

DBE joint ventures type A do not require DBE joint venture certification. DBE joint venture type B do require DBE joint venture certification. A request for DBE joint ventures type B certification shall be submitted not later than 9:00 a.m. local time the last ~~work~~ *business* day before the letting and shall be approved prior to bidding in order to receive credit toward the DBE goal. The DBE shall be certified with the Department prior to requesting DBE joint venture certification. The work for the DBE shall be identified, performed, managed, and supervised by its forces.

SECTION 103, DELETE LINES 99 THROUGH 115.

SECTION 103, DELETE LINES 138 THROUGH 232.

SECTION 103, AFTER LINE 233, INSERT AS FOLLOWS:

***(e) Determination of Good Faith Efforts***

*Appendix A of 49 CFR Part 26 has been used for guidance in preparing the Department's procedures to determine the adequacy of good faith efforts. Additional factors consistent with 49 CFR Part 26, and the Department's policies and procedures have also been utilized.*

***1. Good Faith Efforts Prior to Award***

*The following factors will be considered in determining good faith efforts prior to award of a contract. The Contractor, including DBE Contractors, shall submit evidence on each of the factors.*

1. *The Contractor shall make reasonable effort to contact all ready, willing, and able DBEs who express a desire to work on any of the pay items of the contract.*
2. *To effectively participate, the DBE shall have the opportunity to analyze the contract and submit quotations prior to letting. Information provided by the Contractor to the DBEs shall include, at a minimum, the contract number, pay items, quantities for those pay items to be subcontracted, and the date the subcontract bid is desired.*
3. *The Contractor shall select the portions of the work to be performed by DBEs in order to increase the likelihood of DBE participation. This shall include, where appropriate, an attempt to break down the contract into economically feasible units to facilitate DBE participation.*
4. *The Contractor shall provide the interested DBEs with complete information about the plans, specifications, and requirements of the contract. Attempts shall be made to have plans available or to notify*

*the DBE of the location of available plans. The Contractor shall notify the DBE of revisions to the contract.*

5. *It will be considered unacceptable to avoid subcontracting to DBEs if such subcontracting to DBEs results in the need to further subdivide remaining work items.*
6. *The Contractor shall negotiate in good faith with interested DBEs and not reject such DBEs as unqualified without sound reasons based on thorough investigation of their capabilities. Confirmed documentation that a DBE has not been able to perform previous work through no fault of others will be considered to be sound reason. Unacceptable criteria include, but are not limited to, unsubstantiated oral statements and unsigned documentation.*
7. *The Contractor shall make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the State. However, the Contractor shall affirmatively consider waiving requirements it may have in order to assist the DBE.*
8. *Only firms certified as DBEs prior to the letting date can be used to meet the contract goal for the Department's DBE program.*

*The Contractor will be considered to have made good faith efforts if it either:*

1. *Documents that it has obtained enough DBE participation to meet the goal, or*
2. *Documents that it made adequate good faith efforts in accordance with the factors set out above to meet the goal even though it did not succeed in obtaining enough DBE participation to do so.*

*If a DBE goal has been established for the contract, the Contractor shall take good faith efforts to achieve the established goal prior to the bid opening. The Affirmative Action Certification shall be completed and submitted with the Proposal Book to indicate both race/gender conscious and race/gender neutral proposed DBE utilization.*

*The award of the contract will be made to the lowest and best bidder when all other requirements have been met and good faith efforts have been taken toward meeting the DBE goal, if required, in accordance with these requirements.*

*If the apparent low bidder has not achieved the contract DBE goal, the bidder shall respond in writing within three business days after notification by the Department of the failure to meet the DBE goal. The response shall provide evidence identifying the bidder's good faith efforts and all affirmative actions taken prior to letting to achieve the required DBE goal. Failure to respond within the three business day period will result in rejection of the bid, and may result in forfeiture of the bid bond, and the referral of the*

*bidder to the Prequalification Committee.*

*Responses shall be sent to the Department's Division of Contract Administration. The Department will review the bidder's good faith efforts for compliance with these requirements.*

*If the Department determines that adequate good faith efforts have been made, and the bidder has met all other bidding requirements, the contract will be awarded.*

*If the Department determines that good faith efforts were inadequate, the Department will issue written notification of the determination to the bidder. The determination will outline the reasons for determination of non-compliance with good faith effort requirements.*

*The bidder may request a review of a determination of non-compliance by making a written submittal within five business days of the bidder's receipt of notification of non-compliance from the Department. The request for review shall include evidence disputing the Department's reasons for issuing a determination of non-compliance. The request shall be sent to the Department's Division of Contract Administration.*

*Upon receipt of a request, the Department will contact the bidder to schedule a review. The review will be held by the Department's Deputy Commissioner and Chief Counsel, or a designee who did not participate in the original determination of non-compliance. The review will be conducted in accordance with the Department's policy for review of good faith efforts requirements. A copy of the policy is available on the Department's website or through the Division of Contract Administration.*

*If the Deputy Commissioner's finding determines that the bidder's good faith efforts were adequate, and the bidder has met all other bidding requirements, the contract will be awarded and the Department will adjust the contract time by the number of calendar days from the date of the original determination of non-compliance to and including the date of the Deputy Commissioner's findings.*

*If the Deputy Commissioner's finding determines that the bidder's good faith efforts were inadequate, the finding will be forwarded to the Commissioner. The Commissioner will review the Deputy Commissioner's finding and issue a written Contract Award Determination.*

*If the Commissioner's Contract Award Determination finds that the bidder's good faith efforts were adequate, and the bidder has met all other bidding requirements, the contract will be awarded and the Department will adjust the contract time by the number of calendar days from the start of the original determination of non-compliance to and including the date of the Commissioner's determination.*

*If the Commissioner's Contract Award Determination finds that the bidder's good faith efforts were inadequate, at the Commissioner's sole option and without further proceedings, either all bids will be rejected or the contract will be awarded to the next lowest and qualified bidder. An apparent low bidder who has not met the DBE goal and*

*requirements for good faith efforts may be requested not to rebid on this contract during subsequent lettings.*

*The bidder may elect to appeal the Commissioner's Contract Award Determination through an administrative hearing as outlined further below. If the Contract Award Determination is ultimately overruled through the administrative hearing process, the remedy to the bidder will be limited to monetary damages.*

*To appeal the Commissioner's Contract Award Determination, the bidder shall file a written objection within 15 calendar days of the receipt of the Contract Award Determination. The written objection shall be sent to the Division of Contract Administration and shall contain a complete statement of all objections and a request for a hearing. Upon receipt of a written objection, the Commissioner will appoint an administrative law judge. The administrative law judge will set or arrange the administrative hearing.*

*The hearing will be held in accordance with Indiana's Administrative Orders and Procedures Act. The bidder will be notified of the date, time, and place of the hearing. A record of the hearing will be kept. The bidder shall bear the burden of proof to establish the factual basis of its objections. Prior to the hearing, the bidder may have access to the data submitted to the Department and the DBE Certification attached to the Proposal Book. The bidder will not be entitled to any information whatsoever concerning the Schedule of Pay Items. The bidder, at its option and sole cost and expense, may be represented by counsel, subpoena witnesses and cross examine witnesses.*

*Subsequent to the hearing, the administrative law judge will make a written findings of fact and conclusions of law and make a written notice of the recommended order to the Commissioner and all persons who were parties to the hearing.*

*The bidder may, within 15 calendar days after receipt of the administrative law judge's recommended order, file with the Commissioner its objections to the recommended order. Written objections shall contain a complete statement of all objections and a request for a review of the administrative law judge's recommended order.*

*Upon receipt of an objection, the Commissioner will proceed in accordance with the provisions of Indiana Code 4-21.5-3-29(f). If no objection is filed, the Commissioner will issue a final order pursuant to IC 4-21.5-3-29(f).*

*The Commissioner's final order will be the final decision of the Department. A party objecting to the Commissioner's decision may seek legal remedies through judicial review.*

## **2. Good Faith Efforts for Extra Work**

*When extra work in accordance with 104.03 is added to a contract with a DBE goal, the Contractor shall hire or make good faith efforts to hire a DBE subcontractor to perform significant extra work.*

*For purposes of DBE good faith efforts, significant extra work is defined as new pay items added to a Contract that result in a new contracting opportunity not reasonably related to existing pay items being performed by the Contractor or a subcontractor.*

*When significant extra work related to existing pay items being performed by a DBE subcontractor is added to a contract with a DBE goal, the Contractor shall offer that same DBE subcontractor the opportunity to perform the extra work whether or not the existing pay items are counted toward the DBE goal. The Contractor shall consider other DBE subcontractors if the extra work would result in the original DBE subcontractor exceeding its prequalification limits. The Department may consider an exception to a DBE subcontractor's prequalification limit. If the DBE subcontractor is unable to perform the extra work, the Contractor shall hire or make good faith efforts to hire an alternate DBE subcontractor to perform the work.*

*When significant extra work related to existing pay items being performed by a non-DBE subcontractor is added to a contract with a DBE goal, the non-DBE subcontractor may perform the extra work. If the non-DBE subcontractor is unable to perform the extra work, the Contractor may self-perform the extra work. If the Contractor chooses not to self-perform the extra work, the Contractor shall hire or make good faith efforts to hire a DBE firm to perform the work.*

*When significant extra work related to existing pay items being performed by the Contractor is added to a contract with a DBE goal, the Contractor may self-perform the extra work. If the Contractor chooses not to self-perform the extra work, the Contractor shall hire or make good faith efforts to hire a DBE firm to perform the work.*

*The Contractor shall forward documentation of good faith efforts to hire a DBE subcontractor to perform extra work to the District Equal Employment Opportunity (EEO) Officer for review. The EEO Officer will determine if good faith efforts have been met in accordance with 103.01(e)1.*

*If the EEO Officer determines that the Contractor failed to make good faith efforts to hire a DBE firm when required as a result of significant extra work, written notice will be sent to the Contractor. The Contractor may appeal the determination in accordance with 103.01(e)1.*

**(f) Affirmative Action Certification**

The Affirmative Action Certification, included in the Proposal book, shall be completed when the Proposal book is submitted to the Department. The certification shall list ~~DBEs or shall state the reasons DBEs are not listed~~ all DBE firms the Contractor plans to utilize, either race/gender consciously or race/gender neutrally. Blank certifications shall cause the bid to be rejected. If a portion of a pay item is to be performed by a DBE, an explanation shall be included stating exactly what the DBE is performing or supplying. Failure to do so may affect the award of the contract. *The Contractor shall ensure that DBE firms listed on the Affirmative Action Certification are certified DBE firms as listed in the Department's DBE directory at the time of letting. In addition to the listing of DBE firms that will be used race/gender consciously to meet the*

*goal, the Contractor shall also provide a total for the amount of work that it anticipates will be performed by other DBE firms used race/gender neutrally on the contract beyond the goal requirements.*

*Race/gender neutral awards involve the utilization of a DBE firm because the DBE firm is the best firm to perform the work. Race/gender conscious awards involve the utilization of a DBE firm primarily to achieve the contract DBE goal.*

SECTION 103, BEGIN LINE 258, DELETE AND INSERT AS FOLLOWS:

Upon receipt of notification from the Department, a Disadvantaged Business Enterprise Utilization Affidavit, Form ~~MBE-3~~ DBE-3, shall be completed by the Contractor and returned to the Department. The Contractor and the subcontractor/lessor/supplier shall certify on Form ~~MBE-3~~ DBE-3 that specific amounts have been paid and received. A DBE-3 Form certification shall be completed and submitted for every DBE utilized on the contract, not just those listed on the Affirmative Action Certification.

SECTION 103, BEGIN LINE 274, DELETE AND INSERT AS FOLLOWS:

~~the DBE, or leased from another DBE, that are utilized on the project. DBE hauling lessors who sublease a portion of their hauling shall take positive affirmative actions to sublease to DBEs and shall provide Form MBE 2 to the Department, evidencing those efforts prior to commencing work. Trucks that are leased by a DBE for a period of at least 12 months will be considered the same as trucks owned by the DBE. In addition, DBE credit will also be given for any fee or commission the DBE receives as a result of the lease arrangement for any additional non-DBE trucks.~~

*In order to count leased trucks toward the goal, the lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goals.*

*The Contractor shall provide the Engineer copies of any lease agreements between DBE trucking subcontractors and any DBE or non-DBE trucking firms or owner/operators that will be used to supplement the DBE trucking subcontractor's trucks for the purpose of meeting the DBE goal. Copies of these lease agreements shall be provided by the time of use of any supplemental trucks on the Contract.*

*In addition to delivery ticket information required by Section 106, the following information shall be included on each ticket for material delivered to the job site by a DBE trucking subcontractor or lessee:*

- 1. Name of trucking firm*
- 2. Printed name of the driver*



*The Contractor shall submit weekly reports to the Engineer on forms provided by the Department, documenting the number of DBE trucks utilized and a breakdown of the dollar amount credited toward the Contract DBE goal. The reports shall be submitted within 5 business days of the end of the week being reported. Forms are available on the Department's website or from the Division of Contract Administration.*

SECTION 103, BEGIN LINE 293, DELETE AND INSERT AS FOLLOWS:

**(i) Records and Reports**

The Contractor shall keep such records as necessary to determine compliance with its DBE utilization obligations and compliance with Determination of Good Faith Efforts ~~for Goal Contracts~~. The records kept by the Contractor shall indicate the minimum requirements as follows:

SECTION 103, AFTER LINE 330, INSERT AS FOLLOWS:

**103.02.1 Record Keeping**

*All firms performing work on Department contracts, bidding on Department contracts, or offering quotes for subcontract or trucking services shall register with the Department, annually, by submitting the following information to the Department's Economic Opportunity Division.*

- (a) firm's name;*
- (b) firm's address;*
- (c) firm's status as a DBE or non-DBE;*
- (d) the age of the firm; and*
- (e) the annual gross receipts of the firm*
- (f) approximately how many Department projects has the firm bid or quoted in the past 12 months. (If none, please indicate 0)*
- (g) in which of the following markets has the firm participated?*
  - 1. prime Contractor*
  - 2. subcontractor*
  - 3. trucking firm*
  - 4. consultant*

SECTION 109, AFTER LINE 589, INSERT AS FOLLOWS:

*Within 10 business days of receipt of payment for any such estimate, the Contractor shall make payment to all subcontractors for the value of their work performed and materials complete in place in accordance with this contract. Failure to comply with this clause shall constitute a material breach of the contract and may result in sanctions under the contract.*

*Any delay or postponement of payment among the parties may take place only for good cause, with the Department's written approval. The explanation from the Contractor shall be made in writing to the Department.*

The Standard Specifications are revised as follows:

SECTION 103, LINE 331, DELETE AND INSERT AS FOLLOWS:

**103.03 ~~Blank~~. Executive Order 11246: Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity**

*This requirement will apply only to a federal aid contract. The Code of Federal Regulations 41 CFR 60-4.2(d) is amended by revising Paragraph 2 of the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246), to read as follows:*

2. *The Contractor's or Bidder's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.*

**(a) Timetables**

*The timetables for minority and female participation for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:*

**1. Minorities**

*Immediately.*

**2. Women**

*April 1, 1980 to indefinite.*

*The goals are shown in 103.03(j) and 103.03(k).*

*Contractors who are signatory to an area (Hometown) plan are covered by 103.03(b). All Contractors, signatory or not to an area (Hometown) plan, will be covered by the minority goals as shown in 103.03(j).*

*These goals are applicable to all the Contractor's construction work, whether or not it is Federal or federally-assisted, performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed, in accordance with 41 CFR 60-4 as set out in Volume 45, No. 194 of the Federal Register dated October 3, 1980. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.*

**(b) Area (Hometown) Plans**

*Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally-assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective covered areas. The goals are applicable to the Contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally-assisted construction contract or subcontract.*

**1. Cincinnati, Ohio Area**

*Area Covered: Ohio counties of Clermont, Hamilton, and Warren; Kentucky counties of Boone, Campbell, and Kenton; and Indiana county of Dearborn. The minority hiring goal in Dearborn County, Indiana is 11 percent.*

## **2. Indianapolis, Indiana Area**

*Area Covered: Marion County. The minority hiring goal in Marion County is 12.5 percent.*

### **(c) Written Notification**

*The Contractor shall provide written notification to the Department within ten work days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, employer identification number, estimated dollar amount of the contract, estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.*

### **(d) 41 CFR 60-4.3 Equal Opportunity Clauses**

*The equal opportunity clause published as 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all non-exempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all non-exempt federally-assisted construction contracts and subcontracts. In addition to the clause described above, all Federal contracting officers, all applicants and all non-construction Contractors, as applicable, shall include the specification set forth in this section in all Federal and federally-assisted construction contracts in excess of \$10,000.00 to be performed in geographical areas designated by the Department pursuant to 41 CFR-60-4.6 of this part and in construction subcontracts in excess of \$10,000.00 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.*

#### **1. As used in these specifications:**

- a. *“Covered area” means the geographical area described in the solicitation from which this contract resulted.*
- b. *“Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.*
- c. *“Employer Identification Number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.*
- d. *“Minority” includes:*
  - (1) *Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);*

- (2) *Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);*
  - (3) *Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and*
  - (4) *American Indian or Alaskan Native original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.*
2. *Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.*
3. *If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.*
4. *The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7.a through 7.p of this specification. The goals set forth in the solicitation form which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization, the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.*
5. *Neither the provisions of any collective bargaining agreement, nor*

*the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.*

6. *In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.*
7. *The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:*
  - a. *Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.*
  - b. *Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organization when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.*
  - c. *Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.*

- d. *Provide immediate written notification to the Department when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.*
- e. *Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the source compiled under 7b above.*
- f. *Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.*
- g. *Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.*
- h. *Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.*
- i. *Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and*

- training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.*
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.*
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.*
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to see or to prepare for, through appropriate training, etc., such opportunities.*
  - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.*
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.*
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.*
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.*
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations under 7.a. through 7.p. of this specification. The efforts of a contractors' association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or*

*more of its obligations under 7.a. through 7.p. of this specification provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.*

9. *A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).*
10. *The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.*
11. *The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.*
12. *The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.*
13. *The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, of*



*these specifications, the Department will proceed in accordance with 41 CFR 60-4.8.*

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

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

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

*The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally-Assisted Construction published as 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions. The New Form shall not be used after the regulations in 41 CFR part 60-4 become effective.*

***(e) 41 CFR 60-4.5 Hometown Plans***

*If the Contractor is participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) it shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the Plan: Provided, that each Contractor or subcontractor participating in an approved Plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the Plan in which it has employees; and that the overall good performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan's goals and timetables. If the Contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in 41 CFR 60-4.3 and with the goals and timetables for the appropriate area as listed in the Notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of 41 CFR 60-4, the Contractor is not participating in a Hometown Plan for a particular trade if it:*

1. *Ceases to be signatory to a Hometown Plan covering that trade.*
2. *Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade.*
3. *Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade.*
4. *Is signatory to a Hometown Plan for that trade and is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment in the Hometown Plan for that trade.*
5. *In participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs.*
6. *Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the Contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.*
7. *If the Contractor participates in Hometown Plans, it must be able to demonstrate its participation and document its compliance with the provisions of the Hometown Plan.*

**(f) 41 CFR 60-4.6 Goals and Timetables**

*The Department, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals shall be applicable to each construction trade in a covered Contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the Federal Register, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2.*

**(g) 41 CFR 60-4.7 Effect on Other Regulations**

*The regulations in this part are in addition to the regulations contained in this chapter which apply to construction Contractors and subcontractors generally. So particularly, 41 CFR 60-1.4(a), (b), (c), (d), and (e); 60-1.5; 60-1.7; 60-1.8; 60-1.26; 60-1.29; 60-1.30; 60-1.32; 60-1.42; 60-1.43; and 41 CFR part 60-3; part 60-20; part 60-30; part 60-40; and part 60-50.*

**(h) 41 CFR 60-4.8 Show Cause Notice**

*If an investigation or compliance review reveals that a construction Contractor or*

*subcontract has violated the Executive Order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Department will issue to the Contractor or subcontractor a notice to show cause which shall contain the items specified in Ii10-(iv) of 41 CFR 60-2.2(c)(1). If the Contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes where appropriate, make up goals and timetables, back pay, and seniority relief for affected class members, the compliance agency shall follow the procedure described in 41 CFR 60-1.26(b), provided that where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of enforcement proceedings.*

***(i) 41 CFR 60-4.9 Incorporation by Operation of the Order***

*By operation of the Order, the equal opportunity clause contained in 41 CFR 60-1.4, 41 CFR 60-4.2 and 41 CFR 60-4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by the Order and regulations in this chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.*

**(j) Minority Hiring Goals by County**

<i>COUNTY</i>	<i>PCT.</i>	<i>COUNTY</i>	<i>PCT.</i>	<i>COUNTY</i>	<i>PCT</i>
<i>Adams</i>	<i>4.4</i>	<i>Hendricks</i>	<i>12.5</i>	<i>Pike</i>	<i>3.5</i>
<i>Allen</i>	<i>4.4</i>	<i>Henry</i>	<i>3.9</i>	<i>Porter</i>	<i>20.9</i>
<i>Bartholomew</i>	<i>9.7</i>	<i>Howard</i>	<i>4.4</i>	<i>Posey</i>	<i>4.8</i>
<i>Benton</i>	<i>1.5</i>	<i>Huntington</i>	<i>4.4</i>	<i>Pulaski</i>	<i>18.4</i>
<i>Blackford</i>	<i>3.9</i>	<i>Jackson</i>	<i>9.7</i>	<i>Putnam</i>	<i>9.7</i>
<i>Boone</i>	<i>12.5</i>	<i>Jasper</i>	<i>18.4</i>	<i>Randolph</i>	<i>3.9</i>
<i>Brown</i>	<i>9.7</i>	<i>Jay</i>	<i>3.9</i>	<i>Ripley</i>	<i>9.2</i>
<i>Carroll</i>	<i>1.5</i>	<i>Jefferson</i>	<i>9.6</i>	<i>Rush</i>	<i>9.7</i>
<i>Cass</i>	<i>3.7</i>	<i>Jennings</i>	<i>9.7</i>	<i>St. Joseph</i>	<i>7.1</i>
<i>Clark</i>	<i>11.2</i>	<i>Johnson</i>	<i>12.5</i>	<i>Scott</i>	<i>9.6</i>
<i>Clay</i>	<i>3.1</i>	<i>Knox</i>	<i>3.5</i>	<i>Shelby</i>	<i>12.5</i>
<i>Clinton</i>	<i>1.5</i>	<i>Kosciusko</i>	<i>6.2</i>	<i>Spencer</i>	<i>3.5</i>
<i>Crawford</i>	<i>9.6</i>	<i>LaGrange</i>	<i>6.2</i>	<i>Starke</i>	<i>18.4</i>
<i>Daviess</i>	<i>9.7</i>	<i>Lake</i>	<i>20.9</i>	<i>Steuben</i>	<i>4.4</i>
<i>Dearborn</i>	<i>11.0</i>	<i>LaPorte</i>	<i>18.4</i>	<i>Sullivan</i>	<i>3.1</i>
<i>Decatur</i>	<i>9.7</i>	<i>Lawrence</i>	<i>9.7</i>	<i>Switzerland</i>	<i>9.2</i>
<i>Dekalb</i>	<i>4.4</i>	<i>Madison</i>	<i>4.9</i>	<i>Tippecanoe</i>	<i>2.7</i>
<i>Delaware</i>	<i>5.3</i>	<i>Marion</i>	<i>12.5</i>	<i>Tipton</i>	<i>4.4</i>
<i>Dubois</i>	<i>3.5</i>	<i>Marshall</i>	<i>7.1</i>	<i>Union</i>	<i>3.9</i>
<i>Elkhart</i>	<i>4.0</i>	<i>Martin</i>	<i>9.7</i>	<i>Vanderburgh</i>	<i>4.8</i>
<i>Fayette</i>	<i>3.9</i>	<i>Miami</i>	<i>3.7</i>	<i>Vermillion</i>	<i>3.1</i>
<i>Floyd</i>	<i>11.2</i>	<i>Monroe</i>	<i>3.1</i>	<i>Vigo</i>	<i>3.1</i>
<i>Fountain</i>	<i>1.5</i>	<i>Montgomery</i>	<i>1.5</i>	<i>Wabash</i>	<i>3.7</i>
<i>Franklin</i>	<i>9.2</i>	<i>Morgan</i>	<i>12.5</i>	<i>Warren</i>	<i>1.5</i>
<i>Fulton</i>	<i>6.2</i>	<i>Newton</i>	<i>18.4</i>	<i>Warrick</i>	<i>4.8</i>
<i>Gibson</i>	<i>4.8</i>	<i>Noble</i>	<i>4.4</i>	<i>Washington</i>	<i>9.6</i>
<i>Grant</i>	<i>3.7</i>	<i>Ohio</i>	<i>9.2</i>	<i>Wayne</i>	<i>3.9</i>
<i>Greene</i>	<i>9.7</i>	<i>Orange</i>	<i>9.6</i>	<i>Wells</i>	<i>4.4</i>
<i>Hamilton</i>	<i>12.5</i>	<i>Owen</i>	<i>9.7</i>	<i>White</i>	<i>1.5</i>
<i>Hancock</i>	<i>12.5</i>	<i>Parke</i>	<i>2.5</i>	<i>Whitley</i>	<i>4.4</i>
<i>Harrison</i>	<i>9.6</i>	<i>Perry</i>	<i>3.5</i>		

**(k) Female Hiring Goal**

The female hiring goal is 6.9 percent throughout the State. Minority females may be counted both as a minority and as a female. Double counting will be permitted for reporting on Form CC-257.

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