

Equal Employment Opportunity Construction Contract Compliance Workbook January 2012 Edition



Summary of Workbook Changes

- Chapter 1 General Information
- Chapter 2 Disadvantaged Business Enterprises
- Chapter 3 Company EEO/AA Requirements
- Chapter 4 Project EEO/AA Requirements
- Chapter 5 On-the-Job Training
- Chapter 6 Wages and Payrolls
- Chapter 7 Index of Compliance Forms & Documents

This Edition Supersedes & Replaces In Its Entirety All Previous Editions

This Document Is Available On The Following Website:
www.dot.state.fl.us/equalopportunity/

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Section 1.1

OVERVIEW

1.1.1 Background

The Florida Department of Transportation (FDOT), a recipient of funds for the construction of highways and bridges, is required to ensure EEO contract compliance on all highway construction projects. Contractors who participate on FDOT contracts are required to comply with certain Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), On-the-Job Training (OJT) and Wage Rate Special Provisions to be eligible for participation. An extensive review of the program began in the year 2000 to improve the program's efficiency, effectiveness and provide clear guidance to all stakeholders. This workbook is designed to assist contractors in complying with the required specifications.

1.1.2 Authority

23 CFR 230 prescribes the policies, procedures, and guidance for equal opportunity on federal construction contracts.

23 CFR 230.111 prescribes State agency requirements for an On-the-Job Training program for all Federal Aid Highway construction contracts. Other regulations governing State compliance programs include: Title VI of the Civil Rights Act of 1964, Federal Aid Required Contract Provisions (known as FHWA-1273), the Davis Bacon Act, the Copeland Act and the Contract Work Hours and Safety Standards Act.

FDOT Standard Specifications for Road and Bridge Construction, Section 9, Measurement and Payment, FHWA-1273, 23 CFR Part 230 and 49 CFR Part 26 authorize FDOT to take sanctions for the condition and state of noncompliance.

1.1.3 Scope

Contractors of highway and bridge construction contracts are subject to EEO Construction Contract Compliance. The main elements of the compliance program are:

- Disadvantaged Business Enterprise (DBE) Utilization
- Equal Employment Opportunity and Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wages and Payrolls.

Specific contract characteristics such as funding, contract days, contract dollars, subcontract amount, etc. determine which program elements apply to which contracts.

1.1.4 Government Agency Responsibilities

Multiple government agencies have responsibilities for and interest in the various elements of the construction contract compliance program.

The Federal Highway Administration (FHWA) approves the FDOT's compliance program, reviews overall compliance activity through specified periodic reports, and reviews individual contracts and / or contractors as deemed appropriate.

The U.S. Department of Labor (USDOL), Wage and Hour Division oversee wages and payrolls, including payroll deductions. The USDOL Office of Federal Contract Compliance (OFCCP) ensures employers comply with nondiscrimination and affirmative action laws and regulations when doing business with the federal government. Agents of the USDOL may visit project sites, observe or interview workers at will, and inspect documents related to the above matters.

The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination or harassment filed by project workers.

1.1.5 FDOT Responsibilities

Under the FDOT's Office of Administration, the Equal Opportunity Office (EOO) is responsible for the development and monitoring of policies and procedures that provide assurances to the Federal Highway Administration.

Under each District Construction Office, District Contract Compliance Managers (DCCMs) are responsible for the day-to-day administration of the contract compliance program. Resident Compliance Specialists (RCS) monitor contract compliance at the project level.

FDOT's State Construction Office is responsible for the administration of the Davis Bacon Act requirements relating to wage rates. The State Construction Office Prevailing Wage Rate Coordinator establishes policies and procedures pertaining to that requirement; districts are responsible for the day-to-day project administration of wages.

1.1.6 Prime Contractor Responsibilities

The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor. The contractor, subrecipient, subcontractor or rental agreement shall not discriminate on the basis of race, color, national origin, or sex in the performance of contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of their contract which may result in the termination of that contract or such remedy as FDOT deems appropriate.

As a recipient of federal funds, each contract FDOT executes with a contractor (and each subcontract the prime contractor signs with a subcontractor, rental company or material supplier), must include the exact wording of the nondiscrimination assurance shown in Attachment 1.1.6

Attachment 1.1.6 Nondiscrimination Assurance Required in Each Contract & Subcontract (49 CFR 26.13)

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

The prime contractor is responsible for ensuring that FHWA 1273 Required Contract Provisions for Federal Aid Construction is inserted, in its entirety, in all contractor agreements including each subcontract and 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. FHWA 1273 is available as a PDF file on the FHWA website or it may be used in another file format provided the text is verbatim and complete.

The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the Required Contract Provisions.

In the event a prime contractor defaults on a contract and their contract compliance data is incomplete or incorrect, the Resident Compliance Specialist will proceed with all noncompliance communications and actions such that the surety company and/or the successor contractor are fully aware of the conditions. A surety company is exempt from contract compliance reporting requirements but is responsible for ensuring that the successor contractor carries out the requirements.

1.1.7 Training

The District Contract Compliance Managers and the Equal Opportunity Office provide training to contractor personnel as well as compliance staff regarding the requirements of the FDOT Construction Compliance Program.

1.1.8 How to Use the Workbook and Associated Documents

Chapters One through Six (1-6) of the Construction Contract Compliance Workbook describes the compliance program requirements. The workbook includes instructions for completing compliance program forms and identifies other documents used in the program (e.g. posters). The last section of each chapter includes an index of forms and documents pertinent to that chapter and a copy of that data.

Chapter Seven (7) is an index of all forms and documents.

Forms are subject to update and are not included in the workbook. The forms should be downloaded and printed for use in conjunction with this workbook.

1.1.9 Disclaimer

The information in this Construction Contract Compliance Workbook was compiled by the FDOT with the cooperation of the construction industry, and others. This information is intended to be used exclusively on Florida Road and Bridge Construction projects.

This workbook is intended as a general reference but should not be solely relied upon for matters of personnel, payroll or contract administration. Contractors are directed to consult with legal counsel of their choice regarding such matters.

Section 1.2

DEFINITIONS

1.2.1 Scope

This section is intended as an initial reference for understanding contract compliance laws, regulations, and terminology. Statements are deliberately brief. Although pertinent to the Construction Contract Compliance Program, the full scope of laws and secondary definitions are excluded from this section.

1.2.2 Laws & Regulations

23 CFR 140: Prescribes the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

28 CFR 35: Prohibits discrimination on the basis of disability by public entities.

29 CFR 1630: Regulates implementation of the Equal Employment provisions of ADA.

29 CFR, Part 3 (Copeland “Anti-Kickback” Law): Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of \$2,000 shall comply with the provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which (s) he is otherwise entitled.

40 USC 3141-4147 (Davis-Bacon Act of 1931 and as amended) Under the provisions of this Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates which can be found in a document named “General Decision Number”.

41 CFR 60: The purpose of the regulations in this part is to achieve the aims of Parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with government contractors or with contractors performing under federally assisted construction contracts.

41 CFR 60.1: Clarifies the existing requirement that a nonexempt construction contractor's total construction workforce is covered under 41 CFR 60 even though some employees may perform work on or nonfederal assisted contracts.

40 USC Chapter 37, Sections 3701-3708 (Contract Work Hours and Safety Standards Act): Where applicable, all contracts awarded in excess of \$2,000 for construction contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Subparts 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Subsection 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Subpart 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous.

42 USC 12101: Regulates Equal Opportunity for individuals with disabilities.

49 CFR 23 and 26: Regulates participation by Disadvantaged Business Enterprises in Department of Transportation programs.

American Recovery and Reinvestment Act (ARRA): This is an economic stimulus package enacted by the United States Congress in February 2009 and it is intended to provide a stimulus to the U.S. economy in the wake of the economic downturn. Provisions for domestic infrastructure spending provided FDOT additional road and bridge construction monies.

Equal Pay Act of 1963: A law which requires equal pay between the sexes on jobs that is equal in skill, effort, and responsibility.

Equal Pay Act of 1976 (EPA): This legislation prohibits discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Executive Order 11246: This legislation bans discrimination and requires contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, color, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran.

Rehabilitation Act of 1973: Prohibits job discrimination because of disabilities and requires affirmative action to employ and advance in employment qualified individuals with disabilities who with reasonable accommodation can perform the essentials of a job.

Title I of the Americans with Disabilities Act (ADA) of 1990: Prohibits employment discrimination against qualified individuals with disabilities.

Title VI of the Civil Rights Act Of 1964: Prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal funding.

Title VII of the Civil Rights Act of 1964 (and as amended): Prohibits employment discrimination based on race, color, religion, sex and national origin.

Title VIII of the Civil Rights Act of 1964 (and as amended): The portion of the Civil Rights Act of 1968 (also known as the Fair Housing Act), as amended by the Housing and Community Development Act of 1974 and the Fair Housing Amendments Act of 1988, which prohibits discrimination in the sale, lease, rental, advertising, financing, and brokerage services of housing and real property based on race, color, religion, sex, national origin, disability, or familial status.

Vietnam Era Veterans Readjustment Assistance Act of 1972, (38 USC 4212) Prohibits discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans and qualified disabled veterans.

1.2.3 Glossary

Adverse Impact: The selection of protected-class members at a rate lower than that of other groups. A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5 or 80%) of the rate for the group with the highest rate will generally be regarded by the enforcement agencies as evidence of adverse impact.

Affected Class: A group of individuals who have been denied equal employment opportunities or benefits, as a result of discriminatory practices or policies. Evidence of the existence of an affected class requires identification of the discriminatory practices, identification of the effects of the discrimination, and identification of those suffering from the effects of the discrimination.

Affirmative Action: Specific actions in recruitment, hiring, upgrading, and other areas designed and taken for the purpose of eliminating the present effects of past discrimination, or to prevent discrimination. Affirmative action achieves, maintains, or leads to equal employment opportunity.

Affirmative Action Program (AAP): A written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness.

Affirmative Recruitment: Special targeted and focused recruitment efforts undertaken to assure that qualified minorities and females are well represented in the applicant pool for positions to be filled.

Age Discrimination In Employment Act of 1967 (ADEA): Protects individuals forty years of age or older except where age is a bona fide occupational qualification or where the person is a key executive or policy-maker and meets other criteria.

Agency for Workforce Innovation (AWI): A Florida State agency that administers a wide variety of labor services including statewide operation of One Stop Centers where employers can electronically post job openings for review by the public. See also ‘One Stop Centers’.

American Indian or Alaskan Native (not Hispanic or Latino): A person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

Applicant: A person who is seeking work and conforms to the employer’s policy definition of an “applicant”. An employer’s definition of applicant, for example, may be limited to include only those who submit a completed company employment application.

Applicant Log: A record of applicants for employment detailing each applicant’s name, date of application, referral source, position applied for, race, and sex. The status of the applicant is also recorded.

Applicant Flow: The number of applicants for employment for a given job over a stated period of time.

Applicant Pool: The collection of candidates from which an employer selects persons to fill available positions.

Apprentice: A person employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with the State Apprenticeship Agency, recognized by the Bureau, or a person in the 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.

Asian (not Hispanic or Latino): A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent including, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Banking: Trainees completed in excess of contract requirements in which the contractor wishes to hold in reserve for utilization for credit on another project. Training may occur on state funded projects for banking purposes.

Banking Certificate of Training: Certificate issued as verification that the contractor has banked credit for completion of training in excess of contract requirements.

Department: The State Highway Agency (Florida Department of Transportation) charged by its laws with the responsibility for highway construction. The term “State” is considered equivalent to State Highway Agency.

Black or African American (not Hispanic or Latino): Persons having origins in any of the Black racial groups of Africa.

Bona Fide Occupational Qualification (BFOQ): A qualification established by the employer that is required in order to be able to perform the duties of a particular job.

Calendar Day: Every day shown on the calendar, ending and beginning at midnight.

Certification: The contractor’s sworn statement that the company has complied with the Equal Opportunity Special Provisions Requirements for Federal Aid Construction Projects.

Certificate of Training: Certificate issued as verification of the trainee’s successful completion of the training requirements for the classification in which training occurred. This is also known as a graduation certificate.

Civil Rights Act of 1964: The nation’s first comprehensive law making it illegal to discriminate on the basis of race, color, religion, sex, and national origin. Title VII of that law, which is enforced by the Equal Employment Opportunity Commission, is specifically aimed at discrimination in employment.

Classification: A craft in which a trainee receives On-the Job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

Clerical: A job category on the FDOT EEO Report, which includes personnel performing all clerical/administrative type work regardless of level of difficulty, and regardless of where the activities are performed (field site or office). Job classifications typically included are bookkeepers, typists, clerks, accounts receivables/ payables, etc.

Collective Bargaining Agreement: A written contract between an employer and a labor union, for a definitive period of time, spelling out conditions of employment, wages, hours of work, rights of employees, rights of the union, and procedures to be followed in settling disputes.

Commercially Useful Function (CUF): A determination of CUF is made in regards to proper reporting of work for Disadvantaged Business Enterprise (DBE) utilization purposes. A DBE performs a CUF when it is (1) responsible for execution of the work of the contract (2) carries out its responsibilities by actually performing, managing, and supervising the work involved (3) is responsible, with respect to materials and supplies used on the contract, for negotiating price directly with the supplier, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself.

Complainant: The person(s) who files a complaint.

Complaint: A formal (written) employment discrimination charge filed in accordance with the company policy or Equal Employment Opportunity Commission (EEOC) guidelines or Florida Commission on Human Relations (FCHR) guidelines, which allege a violation of state and/or civil rights laws.

Compliance: A contractor's status when fully meeting the requirements and obligations imposed by the contract provisions and the state highway department pertaining to Equal Employment Opportunity, Disadvantaged Business Enterprise, On-the-Job Training, Wages and Payrolls and their implementing laws and regulations.

Concentration: Preponderance of persons by race, sex and/or race and sex combination.

Contract: A legally binding agreement between the parties (FDOT and the prime contractor).

Contract Time: The number of calendar days allowed for completion of the contract work, including authorized time extensions.

Contractor: The individual, firm, joint venture, or company contracting with the Department to perform the work.

- A) Prime Contractor: A company having a contract with the FDOT.
- B) Subcontractor: A company having a contract with a prime contractor or subcontractor regardless of tier.
- C) Tier indicates that a company is subordinate to another company on the contract. A subcontractor is first tier to the prime. A company that subcontractor engages is "2nd tier", and if they in turn engage another company, that company is "3rd Tier".

Corrective Action Plan: A contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (This is sometimes called a conciliation agreement or a letter of commitment).

Craft Workers: Hourly paid workers exercising independent judgment and performing jobs of relatively high skill level based on extensive training. This includes all those in the construction trades, as well as hourly paid supervisors and lead operators. The EEO Categories included in craft workers are Equipment Operators, Mechanics, Truck Drivers, Ironworkers, Carpenters, Cement Masons, Electricians, Pipe Fitters, Pipe Layers, Painters, and Semi Skilled Laborers.

Culture: The customs, skills, arts, language, and other related behaviors of a people that set them apart as a distinct group or society.

Day Labor Agencies: A staffing agency which employs and places workers in day-to-day jobs at client sites.

Disadvantaged Business Enterprise (DBE): A for-profit small business concern (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Discrimination: A distinction in treatment based on race, color, religion sex, national origin or disability.

Deficiency: A shortfall, insufficiency, lack or void regarding the equal opportunity requirements of the contract and/or the FDOT Construction Compliance Program.

Disparity: Inadequate representation of minorities and / or women in a work force or applicant pool.

Diversity: The employment of women and minorities in each job category and in classifications typical of the workforce.

DUNS Number: The Data Universal Numbering System (DUNS) used to keep track of how federal grant money is dispensed. The DUNS number is also used in ARRA project reporting.

Economically Disadvantaged: Individual participating in the Department's On-the-Job Training program determined to be below or at poverty level as determined by the following; (1) Certification from the Florida State Employment Service and/or Joint Training Partnership Act Program or (2) Prior year unemployment verification using a W-2 or other income tax data reflecting the person's economic status (or) AFDC (Aid for Families with Dependent Children) Recipient Verification (or) Other public services established to enhance family economics verification.

Employment Discrimination: Any action associated with employment, which denies equal treatment or opportunity to an individual, or group of individuals, as compared to others similarly situated, based on race, color, disability, sex or other protections.

Employment Practice: Recruitment, hiring, and selection practices, transfer or promotion policies, and other provisions or functions associated with the employer's employment or selection process, which contributes, intentionally or not to the analysis, screening hiring and/or upgrading of employees.

Equal Employment Opportunity (EEO): The absence of partiality or distinction in employment treatment so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained.

Equal Employment Opportunity Commission (EEOC): An independent commission created by the Civil Rights Acts of 1964, as amended, which is responsible for enforcing Title VII. The EEOC may bring suit, subpoena witnesses, issue guidelines which have the force of law, render decisions, and provide technical assistance to employers and legal assistance to Complainants.

Equal Employment Opportunity Officer (EEO Officer): The person appointed the responsibility for effectively administering and promoting a company's active Equal Employment Opportunity Program and ensuring that the company's policy, plan and program are being carried out

Ethnic Group: A group identified on the basis of religion, color, or national origin.

FDOT: The Florida Department of Transportation also abbreviated as DOT.

Employer Identification Number or FEID Number: This is a nine-digit number the Internal Revenue Service assigns to legal entities (e.g. a corporation, partnership, or sole proprietorship). This number is used by that entity to identify itself in reporting to the IRS, the Social Security Administration and to the FDOT EOR System.

Federally or Federally Assisted Construction Contract: Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the government or borrowed on the credit of the government pursuant to any program involving a grant, contract, loan, insurance or guarantee under which the applicant itself participates in the construction work.

FHWA: The Federal Highway Administration is a division of the U.S. Department of Transportation and is responsible for setting policies, writing procedures, and providing oversight, guidance, and direction to State Departments of Transportation receiving funds.

Florida Commission on Human Relations (FCHR): The state commission responsible for investigating employment discrimination charges filed in accordance with Chapter 760, F. S.

Foremen/Forewomen: A job category on the FDOT EEO Report which includes salaried or hourly paid employees primarily responsible for the work of craft and/or laborer personnel on construction projects.

Good-Faith Efforts: Affirmative action measures designed to implement the established objectives of an affirmative action plan.

Graduation: Action requested by the prime contractor when a trainee completes all training requirements. Graduation is based upon satisfactory completion of proficiency demonstrations set up as milestones in each specific training classification, completion of the minimum hours in a training classification range and the employer's satisfaction that the trainee does meet journeyman status in the classification of training.

Handicapped or Disabled Individual(s): Any person who: (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. Persons with certain drug and/or alcohol abuse situations are excluded from this definition.

Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin regardless of race.

Inspector: An authorized representative of the engineer, assigned to make official inspections of the materials furnished and of the work performed by the contractor.

Job Category (or EEO Job Category): Broad categories to which individual job classifications are assigned for reporting purposes.

Journeyman/Journeywoman: One who is able to perform all of the tasks of their trade or occupation. This includes those who have graduated from formal apprenticeship or formal On-the-Job training programs such as the FDOT/FTBA program.

Lack of Diversity: Homogeneous grouping void of persons reflective of the available workforce.

Local Agency: A unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

Local Agency Program: FDOT has legislative authority to contract with Florida's Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these local agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in *Sections 20.23(3) (a), 334.044(7), 339.05, and 339.12* of the *Florida Statutes*.

Minority (or Minorities): Persons of Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native races. The term may mean these groups in the aggregate or an individual group.

National Origin: Pertains to one's origin based on birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. National origin may be expressed as a country (e.g. Nigeria, China, Jamaica or as a continent or geographical area (e.g. African, Asian, Caribbean).

NAICS Code (pronounced 'nakes') North American Industry Classification System (NAICS) - A five to six digit numerical coding system classifying businesses by industry, (not product).

Native Hawaiian or Other Pacific Islander (not Hispanic or Latino): A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Noncompliance (or Violation): Failure to (a) conform to compliance related requirements of the contract and/or (b) failure to meet the requirements of the FDOT Compliance program in the time period(s) required; and/or (c) timely submittals, which, upon review, evidence a lack of conformity with program requirements. Noncompliance pertains to EEO, DBE, OJT and payrolls/wages.

Office of Federal Contract Compliance Programs (OFCCP): OFCCP has the responsibility of assuring that employers doing business with the Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. OFCCP is part of the U.S. Department of Labor's Employment Standards Administration.

Officials (Managers): A job category on the FDOT EEO Report which includes personnel who set broad policies, exercise overall responsibility for the execution of these policies and direct individual departments or sections of a business' operations. Typically includes, but may not be limited to officers of the company, executives, middle managers, department managers, etc.

One Stop Center: A unit within Florida's Agency for Workforce Innovation providing free job announcement and applicant screening services to employers and placement services to job seekers. See also Agency for Workforce Innovation (AWI).

Parity: The percentage of minorities and women in the workplace mirrors the percentages of minorities and women in the available workforce.

Proficiency Demonstration: The actual performance of work by a trainee in the presence of an FDOT/CEI observer and contractor's representative prior to graduation. Upon determination by the contractor that the trainee has reached journeyman/journeywoman status, the trainee should demonstrate a minimum of 3 pre-established essential proficiencies for the classification in which training has occurred. The proficiency demonstration must occur prior to graduation and be evaluated at a single demonstration.

Promotion: A personnel action, which results in a employee moving to a position requiring higher skill, knowledge, or ability and usually involving greater pay or title.

Project Workforce: Employees working at the physical location of a construction project; employees working 'on the site of work'.

Recruitment Source: Any person, organization or agency used to refer or provide workers for employment consideration.

Race: A group of people united or classified together on the basis of history, nationality, or geographical distribution.

Rehire: To hire a formerly employed person.

Retaliation: The act of discriminating against a person due to their filing of an employment discrimination charge or testifying, assisting, or participating in any manner in such a charge.

Segregated Facilities: These are facilities belonging to or used in the course of business by an employer which provide different or separate accommodations for members of one race or sex than those provided others. Separate lavatories, lockers, showers, and other personal facilities for men and for women are not considered segregated facilities.

Sex Discrimination: This is a type of discriminatory or disparate treatment of an individual based on gender.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other written, verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; 2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual Harassment is inclusive of unwelcome heterosexual and homosexual advances.

Special Provision: Specific clauses adding to or revising the Standard Specifications, setting forth conditions varying from or additional to the Standard Specifications for a specific project.

Show Cause Notice: A written notification to a contractor based on the determination of the reviewer (or in appropriate cases by a higher level of authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

Supportive Services: Those services provided in connection with approved On-the-Job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the

performance of functions which are not generally considered as part of actual on-the-job craft training.

Supervisors: Employees primarily responsible for the work of other employees.

Temporary Employment Agency: A staffing agency which employs and places workers in temporary jobs at client work sites for a limited period of time.

Termination: When an employee leaves employment voluntarily or involuntarily.

Terms and Conditions of Employment: This phrase includes all aspects of the employment relationship between an employee and their employer including, but not limited to, compensation, fringe benefits, leave policies, job placement, physical environment, work-related rules, work assignments, training and education, opportunities for promotion, etc. and maintenance of a non discriminatory working environment.

Timetable: A specified time frame, required in all affirmative action plans and programs within which an employer seeks to achieve specific commitments.

Trainee: A trainee is one who has not previously worked in or been paid as a journeyman in the classification for which they are to be trained and has not previously completed such a program.

Training Classification: A craft in which a trainee receives On-the-Job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

Two or More Races (not Hispanic or Latino): A person who identifies with more than one of the other races i.e., white, black, American Indian or Alaskan Native, Native Hawaiian or other Pacific Islander, and/or Asian.

Unskilled Laborers: An employee who works under close supervision and performs basic tasks that are learned in a few days or hours. Unskilled laborers lift, dig, load, pull etc. and operate no equipment and use no tools.

USDOL (United States Department of Labor): A department of the Federal Government responsible for promoting the working conditions of wage earners in the United States; USDOL issues Wage Determinations, responds to Additional Wage Requests and issues regulations, mandates and interpretive memorandum pertaining to the 180 federal wage related laws it administers.

Wage Rate Decision: Minimum hourly rate and fringe benefit rate for individual job classifications for a specified type of work.

White (Not of Hispanic or Latino): Persons having origins in any of the original peoples of Europe, North Africa or the Middle East.

Women: Adult females.

Workforce: The total number of people employed in a company.

Workplace: A place where work is performed, may include, work sites, properties, buildings, offices, structures, automobiles, trucks, trailers or other means of conveyance (private or public, while engaged in performance of duties), and parking areas, whether owned, leased or rented.

Working Day: The period of time in a day during which the contractor is expected to work.

Section 1.3

EQUAL OPPORTUNITY REPORTING SYSTEM

1.3.1 Purpose

To provide a centralized reporting system for contractors and to report and monitor payments made to DBE's and MBE's subcontractors and material suppliers.

1.3.2 Scope

Prime Contractors, FDOT Staff, and DBE companies.

1.3.3 What is the EOR System

The Equal Opportunity Reporting (EOR) system is an internet based tracking system that consists of three separate components, BizWeb, BizNet and BizTrak. BizWeb and BizTrak are the two components that are relevant to EEO Construction Contract Compliance. A revision to the EOR system is targeted for release in 2012.

Biz Web is a password secured application that allows prime contractors or Local Agencies to log in and submit DBE monthly payment data electronically to the internal BizTrak System. The Equal Opportunity Office enters company addresses, EEO Officer and DBE Officer data into Biz Web. BizTrak is a password secured internal web application used by the Equal Opportunity Office and the District Contract Compliance Managers to monitor submitted information.

1.3.4 How to Access the System; Addressing System Problems

The following details are required when submitting any service request:

- Your full name (e.g. Mary Smith)
- Your email address (e.g. MSmith@aol.com)
- Your phone number (e.g. 888-999-0000)
- Your company or organization name (e.g. ABC Company or City of XYZ)
- The contract number associated with your request (e.g., ABC55, E4A77, T1234)
- Describe the problem you are having or the access you are requesting. If applicable, attach a screen print reflecting the problem.

Contractors and Local Agencies and reporting services:

Email your service request to: eoohelp@dot.state.fl.us

Resident Compliance Specialists

Email your service request the District Contract Compliance Office

Section 1.4

DIRECTORY OF COMPLIANCE WEBSITES & ADDRESSES

Web Sites		
Agency for Workforce Innovation		www.floridajobs.org
One Stop Centers		www.floridajobs.org/onestop
FDOT	DBE Directory	https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp
	DBE Payment Reporting	http://www.dot.state.fl.us/equalopportunityoffice/equalopportunityreporting.shtm
	Equal Opportunity Office	www.dot.state.fl.us/equalopportunityoffice/
	Forms & Procedures	www.dot.state.fl.us/proceduraldocuments/
	FDOT Specifications	http://www.dot.state.fl.us/specificationsoffice/
	State Construction Office	www.dot.state.fl.us/construction
	Wage Information	www.dot.state.fl.us/construction/Wage.shtm
FHWA		www.fhwa.dot.gov
U.S. Dept. of Labor	Main address	www.dol.gov
	Wage Tables/Determinations	www.dol.gov/dba.aspx#0
U.S. Mail Addresses		
FDOT Equal Opportunity Office or 605 Suwannee St., MS 65 Tallahassee, FL 32399		FDOT State Construction Office 605 Suwannee St. MS 31 Tallahassee, FL 32399
E-Mail Addresses		
FDOT Biz Web Computer Service		eoohelp@dot.state.fl.us
Prevailing Wage Coordinator		Susan.roberson@dot.state.fl.us
Contractor Submittals for Approval of ➤ DBE AA Plans; ➤ Notification to FDOT of EEO Officer (275-021-13)		EEOforms@dot.state.fl.us

Section 1.5

CONTRACTOR COMPLIANCE REGISTER

1.5.1 Purpose

The Equal Opportunity Reporting System stores the basic identification-type compliance data of contractors in a file referred to as the “Contractor Compliance Register”. Compliance staff (District and project) may read data stored in the Register. This data is not accessible to contractors.

1.5.2 Scope

Prime contractors and subcontractors are included in the Compliance Register.

1.5.3 How a Contractor is added to the Register

A company’s name and their Identification Number (FEID) may be added to the register by any of the following

The FDOT Transport System

Or Contractor’s submission to FDOT Equal Opportunity Office, Tallahassee, A “Notification to FDOT of EEO Officer” (Form 275-021-13).

Or Contractors’ submission to FDOT Equal Opportunity Office, Tallahassee, a company DBE AA Plan.

1.5.4 Data Reported in the Register

The data reported in the register and the source of that data is shown in Table 1.5.4.1.

Table 1.5.4.1 Data Reported in the Register

Section	Data	Where Data is Obtained
Contractor	Name of Company FEID number	Automatically supplied by the FDOT Transport System -or- input by EO office
Summary of Deduction Authorization	Uniform Authorization Expiration Date Other Authorized Deductions: Type of Deduction and Expiration Date	Updated by Prevailing Wage Rate Coordinator, Tallahassee, upon receipt of Authorization approval letter
EEO Officer	Last name, first name, Title Phone/Fax numbers Email address	Notification to FDOT OF EEO Officer (Form 275-021-13) Prime can update their EEO Officer Information. EEO Officer of others is updated by EO Office
President	Last name, first name, Title Phone/Fax numbers Email address	Notification to FDOT OF EEO Officer (Form 275-021-13)
DBE AA Officer	Last name, first name, Title Phone/Fax numbers Email address	Contractor's DBE AA Plan. Prime can update their Officer information. DBE AA Officer of others is updated by EO Office.
EEO/AA Date	Date EEO/AA plan was entered in EOR system	Updated by Equal Opportunity Office
DBE AA Plan	Expiration Date	Set by Equal Opportunity Office
Compliance Review Information	Date of Review	Updated by Equal Opportunity Office

Section 1.6

PERFORMANCE DEFICIENCY COMMUNICATIONS AND ACTIONS

1.6.1 Purpose

Describes the Department's sanctions, communications, and timeframes for informing prime contractors of instances where the prime contractor and/or subcontractor(s) do not fulfill compliance requirements and/or meet timeframe requirements.

1.6.2 Noncompliance; Consideration of Good Faith Efforts

Deficiency communications may be issued to the prime, for the prime and/or subcontractor's noncompliance with compliance program requirements including the submission of required data in any element of the program:

- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity/Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wage Rates and Payrolls.

A review of the contractor's good faith efforts to achieve compliance in any of the compliance areas (DBE, EEO, OJT and Wages) may be considered prior to issuance of noncompliance communications. Verifiable good faith efforts by the contractor evidence efforts to fulfill requirements and timeframes. A contractor's total efforts, which may include formal corrective action plans, demonstrate a contractor's good faith efforts. Actual good faith efforts vary from situation to situation. Characteristics of good faith efforts are summarized in Table 1.6.2., Characteristics of Good Faith Efforts.

If the contractor requests that deficiency communications be waived due to their good faith efforts to achieve compliance, the concurrence of the District Contract Compliance Manager is required.

1.6.3 Noncompliance Sanctions

Two (2) sanctions are concurrently applied when a performance deficiency exists:

- Withholding of Monthly Progress Estimate (s)
- Issuance of a Performance Deficiency Letter (s)

A project's Monthly Progress Estimate is withheld in its entirety for a performance deficiency. Subsequent Monthly Progress Estimate(s) are also withheld until the performance deficiency is satisfactorily resolved.

Upon the Department’s receipt and verification of compliance with outstanding requirements, the withheld Monthly Progress Estimate(s) is released for payment processing. The Department’s receipt and verification of compliance with outstanding performance deficiency requirements does not eradicate the Performance Deficiency. Continued performance warnings of performance deficiency may adversely affect the Contractors Performance Rating on the project.

Table 1.6.2 Characteristics of Good Faith Efforts

Good Faith Efforts are not:	Good Faith Efforts are:
A single action or ‘a hit and run effort’	Integrated activities designed to achieve objectives
Put in place and then walked away from	Evaluated and redefined to obtain better results
Unverifiable	Documented and verifiable actions
A haphazard collection of voluminous documents	Evidenced by organized documentation
Random	Planned & thought out to achieve objective(s)
Static	Redirected by an analysis of results being obtained
A gamble; a long-shot	Sincere and designed to achieve results

1.6.4 Contractor’s Past Performance Rating and Report

Performance Deficiency warnings and notices are included in the Department’s Contractor Performance Rating program. Refer to Form No. 700-010-25, Contractor’s Past Performance Report for complete information. The following Performance Category is most applicable to the Construction Contract Compliance Program:

Category 3: Timely and Complete Submittal of Documents.

Following consultation with the District Contract Compliance Manager, the following Performance Categories may be cited for certain aspects of noncompliance:

Category 5: Coordination/Cooperation with Department Personnel, etc.

Category 8: Conformance with Contract Documents.

1.6.5 Noncompliance Communications

All communications regarding performance deficiency are addressed to the prime contractor for resolution. Communications may be via traditional mail or electronically via email. Table 1.6.5.1 “Summary of Noncompliance Communications” identifies the

progressive level of Noncompliance Communications issued for each of the program areas (DBE, EEO, OJT, and Payroll).

A single Deficiency Warning and/or single Performance Deficiency letter addresses all deficiency conditions pertaining to all contractors on a project for one specific timeframe. Letters may include multiple performance rating categories and/or for multiple contractors.

One Notice of Noncompliance letter may be issued monthly summarizing noncompliance related to Disadvantaged Business Enterprises, Equal Employment Opportunity and On-the-Job Training.

Initial communication of non receipt of payroll or a payroll violation is communicated immediately; they are not grouped into the monthly Notice of Noncompliance letters.

Nonreceipt of Payroll is cited in a Notice of Noncompliance letter which may be issued any day of the month and as many times as necessary; notification that payroll has not been received does not wait for the monthly time frames in Table 1.6.5.2. Likewise, Payroll Violations (FDOT Form 700-010-59) are issued throughout the month and as many times as needed.

In cases of blatant or severe noncompliance a Performance Deficiency letter may be issued without a Notice of Noncompliance and/or without a Deficiency Warning letter.

Table 1.6.5.2 "Issuance of Performance Deficiency Communications" summarizes the four levels of communication, which are available. Attachment 1.6.4 provides examples of a citing for noncompliance communications.

Table 1.6.5.3 "Dates for Performance Deficiency Communications" identifies the standard issuance and documentation due dates for each level of noncompliance communication.

The format and content for each letter is shown in the noted attachments:

Notice of Noncompliance (Attachment 1.6.1)

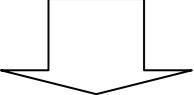
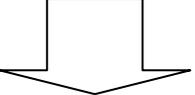
Performance Deficiency Warning Letter for Contract Noncompliance
Attachment 1.6.2)

Performance Deficiency Letter for Contract Noncompliance (Attachment 1.6.3)

Attachment 1.6.4 contains examples of Citing for noncompliance

Table 1.6.5.1 Summary of Non Compliance Communications

Basis of Non Compliance

	DBE-EEO-OJT: Non Compliance With Requirements	Non Receipt Of Payroll	Payroll Violation
Issue What?	Notice of Delinquency for Non Compliance Letter	Notice of Delinquency for Non Compliance Letter	Payroll Violation Form (#700-010-59) Including Notice and Intent to Withhold
Issue When?	See Table 1.6.5.3 for dates	Any Day of Month	Any Day of Month
Issue How Many Each Month?	One	Any Number	Any Number
When is the data due?	See Table 1.6.5.3 for dates	1 st , 10 th or 20 th Day of Month (RCS' decision)	20 days following receipt of Payroll Violation
Continued Non-Compliance			
Issue What?	Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate		@ Performance Deficiency Warning Letter Including Notice of Intent to Withhold Monthly Progress Estimate
Issue When?	See Table 1.6.5.3 for dates		
Issue How Many Each Month?	One		
When is the data due?	See Table 1.6.5.3 for dates		
Continued Non Compliance			
Issue What?	Performance Deficiency Letter Including Notice of Payment Withholding		
Issue When?	See Table 1.6.5.3 for dates		
Issue How Many Each Month?	One		
When is the data due?	Contractor's discretion		
When is Payment Released	Upon receipt and verification of data		

Footnotes:

@	Issuance of the letter is optional; depending on compliance history of contractor
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Table 1.6.5.3 Dates of Noncompliance Communications

2012 Compliance Periods	Notice of Noncompliance Letter (Notice)		Performance Deficiency Warning Letter and Intent to Withhold (WDL)		Performance Deficiency Letter And Notice of Withholding (DL)	Monthly Progress Estimate	
	Dates are adjusted for Early Estimate Cut Offs due to Holidays						
	Issue 6 Business days (BD) after 20 th Submit 6 BD after Issue Date		Issue 5 Business Days (BD) Before Submit By Date Submit last BD before Cut Off		Issue 1 st BD after Cut Off		
	Issue Date	Submit by Date	Issue Date	Submit by Date	Issue Date	Estimate For Month & Year	Cut Off for this Estimate
Dec 1-31,2011	12-27-11	1-3-12	1-6-12	1-13-12	1-17-12	Jan 2012	1-15-12
Jan 1-31, 2012	1-30-12	2-7-12	2-10-12	2-17-12	2-20-12	Feb 2012	2-19-12
Feb 1-29, 2012	2-28-12	3-7-12	3-9-12	3-16-12	3-19-12	Mar 2012	3-18-12
Mar 1-31, 2012	3-28-12	4-5-12	4-6-12	4-13-12	4-16-12	Apr 2012	4-15-12
Apr 1-30, 2012	4-30-12	5-8-12	5-11-12	5-18-12	5-21-12	May 2012	5-20-12
May 1-31 2012	5-22-12	5-30-12	6-1-12	6-8-12	6-11-12	Jun 2012	6-10-12
Jun 1-30, 2012	6-25-11	7-3-12	7-6-12	7-13-12	7-16-12	July 2012	7-15-12
July 1-31, 2012	7-30-12	8-7-12	8-10-12	8-17—12	8-20-12	Aug 2012	8-19-12
Aug 1-31, 2012	8-27-12	9-5-12	9-7-12	9-14-12	9-17-12	Sept 2012	9-16-12
Sep 1-30, 2012	9-28-12	10-8-12	10-12-12	10-19-12	10-22-12	Oct 2012	10-21-12
Oct 1-31, 2012	10-24-12	11-1-12	11-2-12	11-9-12	11-13-12	Nov 2012	11-11-12
Nov 1-30, 2012	11-26-12	12-4-12	12-7-12	12-14-12	12-17-12	Dec 2012	12-16-12
Dec 1-31, 2012	12-31-12	1-9-13	1-11-13	1-18-13	12-22-13	Jan 2013	1-20-13

1.6.6 Recurring Notices of Noncompliance

The Notice of Noncompliance letter is the initial step in the sanction process; it is not a routine reminder of compliance requirements.

Following consultation with the District Contract Compliance Manager, a Performance Deficiency Letter may be issued due to recurring issuance of the Notice of Noncompliance letter and/or recurring issuance of payroll violations.

**Attachment 1.6.1
NOTICE OF NONCOMPLIANCE LETTER**

Date MM/DD/YY
Delivery Via Fax (#)
Or Delivery Via Email (specify email address)

Contractor's Superintendent
Prime Contractor's Company Name
Local Mailing Address

Financial Project ID:
FAP No:
Contract No.:
County:

RE: NOTICE OF NONCOMPLIANCE

A review of Department and project records indicates the following Noncompliance condition(s):

CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

(REPEAT FOR EACH CONTRACTOR &/OR AREA OF NONCOMPLIANCE)

This noncompliance is to be resolved by the close of business on mm/dd/yy. Resolution for items not related to payroll may be accomplished by mailing, faxing, or emailing the completed document(s) to me, the project's RCS, at the addresses shown. Payroll related resolutions may only be submitted by US mail.

Failure to comply may result in the issuance of a Performance Deficiency Warning Letter.

Please call me at xxx-xxx-xxxx or email me at (address) if I can provide additional information or assistance. Thank you for your cooperation.

Sincerely,

Project RCS

CC: Project Administrator
Prime's EEO Officer
District Contract Compliance Manager

Attachment 1.6.2	
Performance Deficiency Warning Letter for Contract Noncompliance	
Date MM/DD/YY	
Delivery via Certified Mail # xxx; Return Receipt Requested Or Delivery Via Email to (specify email address) with Electronic Return Receipt	
Contractor's Superintendent	
Prime Contractor Company Name	
Local Mailing Address	
Financial Project ID:	
FAP No:	
Contract No.:	
County:	
RE PERFORMANCE DEFICIENCY WARNING LETTER FOR CONTRACT NONCOMPLIANCE; NOTICE OF INTENT TO WITHHOLD MONTHLY PROGRESS ESTIMATE	
This is to advise that a Performance Deficiency Warning is hereby issued on this project for the following category(s):	
(List all pertinent performance categories)	
Category No.	Performance Category Name
A Notice of Noncompliance was issued mm/dd/yy and the following noncompliance conditions have not been resolved as directed therein.	
(List all unresolved Noncompliance conditions)	
CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT
This performance deficiency warning is to let you know that your company is out of compliance on the above Performance Category(s). If your company continues to work out of compliance a Performance Deficiency Letter will be issued, the Monthly Progress Estimate for mm/yy will be withheld, and your Contractor's Past Performance Rating will be adversely impacted. Your company needs to make all necessary corrections to ensure that all work is being performed in accordance with the contract.	
This noncompliance is to be resolved by the close of business on mm/dd/yy.	
Resolution for items not related to payroll may be accomplished by mailing, faxing, or emailing the completed document(s) to the project's RCS at the addresses shown. Payroll related resolutions may only be submitted by US mail.	
Failure to comply may result in the withholding of the mm/yy Progress Estimate and issuance of a Performance Deficiency Letter. Please call me at xxx-xxx-xxxx or email me at (address) if I can provide additional information or assistance. Thank you for your cooperation	
Sincerely, Project Administrator	
Cc: Resident Engineer Prime's corporate official Prime's EEO Officer Project RCS District Contract Compliance Manager District Construction Engineer	

Attachment 1.6.3

Performance Deficiency Letter for Contract Noncompliance

Date MM/DD/YY
Delivery via Certified Mail # xxx; Return Receipt Requested
Or Delivery Via Email to (specify email address) with Electronic Return
Contractor's Superintendent
Prime Contractor Company Name
Local Mailing Address

Financial Project ID:
FAP No:
Contract No.:
County:

**RE PERFORMANCE DEFICIENCY LETTER FOR CONTRACT NONCOMPLIANCE;
WITHHOLDING OF MONTHLY PROGRESS ESTIMATE**

This is to advise that a Performance Deficiency is hereby issued on this project for the following category(s):

(List all pertinent performance categories)
Category No. Performance Category Name

Previous notification on noncompliance conditions have been issued as follows:

mm/dd/yy –Notice of Noncompliance
mm/dd/yy –Performance Deficiency Warning Letter & Notice of Intent of Withhold Monthly Progress Estimate

This Performance Deficiency is issued due to the following unresolved Noncompliance Conditions (List all unresolved Noncompliance conditions)

CONTRACTOR'S NAME:	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE:	DBE, EEO/AA, OJT, or WAGES
DOCUMENT OR REQUIREMENT:	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

This performance deficiency has impacted your final grade on your Contractor's Past Performance Rating. That rating will remain regardless of subsequent receipt and verification of the cited documentation.

The Monthly Progress Estimate for mm/yy has been withheld It will be released upon receipt and verification of data specified for each of the noncompliance conditions cited.

Resolution for items not related to payroll may be accomplished by mailing, faxing, or emailing the completed document(s) the project's RCS at the addresses shown. Payroll related resolutions may only be submitted by US mail.

Should you wish to contest the Department's action in issuing this Performance Deficiency, you may request a meeting with me within ten (10) calendar days of receipt of this letter. Please be advised that failure to resolve these conditions may result in the issuance of additional Performance Warnings and the withholding of subsequent Monthly Progress Estimates.

Sincerely,
Resident Engineer

Cc: District Construction Engineer, Project Administrator, DCCM, RCS
District Monthly Estimates Office
Prime's Corporate Officer, EEO Officer

**Attachment 1.6.4
 Examples of Citing for Noncompliance**

REQUIRED ELEMENTS	
CONTRACTOR'S NAME	NAME OF CONTRACTOR IN NONCOMPLIANCE
AREA OF NONCOMPLIANCE	DBE, EEO/AA, OJT, WAGES
DOCUMENT OR REQUIREMENT	DOCUMENT NAME & FORM NO. OR DESCRIPTION OF REQUIREMENT
REPORTING TIMEFRAME:	SPECIFIC STATEMENT

Example 1: ONE CONTRACTOR MISSING ONE PROJECT EEO/AA REQUIREMENT	
CONTRACTOR'S NAME	XYZ Asphalt, Inc.
AREA OF NONCOMPLIANCE	EEO/AA
DOCUMENT OR REQUIREMENT	Job Site Bulletin Board (no form #)
REPORTING TIMEFRAME:	Job Site bulletin boards not erected as of begin work date of mm/dd/yy.
Example 2: PRIME CONTRACTOR MISSING AN OJT REQUIREMENT	
CONTRACTOR'S NAME	Consolidated Construction, Inc.
AREA OF NONCOMPLIANCE	OJT
DOCUMENT OR REQUIREMENT	OJT Training Schedule (#275-020-96)
REPORTING TIMEFRAME:	A revised OJT Schedule is required when a start date on the last approved schedule is missed by 14 or more days. No record of enrollment for the Rough Roller Operator Trainee scheduled to begin training on mm/dd/yy.
Example 3: ONE CONTRACTOR MISSING ONE OR MORE CERTIFIED PAYROLLS	
CONTRACTOR'S NAME	Subcontracting Specialist, Inc.
AREA OF NONCOMPLIANCE	Wages
DOCUMENT OR REQUIREMENT	Wage and Hour Record (#700-010-69) and accompanying payroll
REPORTING TIMEFRAME:	Certified Payroll for Pay Period ending mm/dd/yy not received within seven (7) days of regular payment date.

Attachment 1.6.4-continued Examples of Citing for Noncompliance	
Example 4: ONE CONTRACTOR MISSING MULTIPLE ITEMS IN ONE PROGRAM AREA	
CONTRACTOR'S NAME	T's Roadway, Inc.
AREA OF NONCOMPLIANCE	EEO/AA
(A)DOCUMENT OR REQUIREMENT	EEO Officer Notice
(A)REPORTING TIMEFRAME:	EEO Officer not recorded prior to first work day
(B) DOCUMENT OR REQUIREMENT	Job Site Bulletin Board (no form #)
(B) REPORTING TIMEFRAME:	Job Site bulletin boards not erected as of begin work date of mm/dd/yy.
Example 5: ONE CONTRACTOR MISSING ITEMS IN TWO PROGRAM AREAS	
CONTRACTOR'S NAME	T's Roadway, Inc.
1ST AREA OF NONCOMPLIANCE	EEO/AA
(A)DOCUMENT OR REQUIREMENT	EEO Officer Notice
(A)REPORTING TIMEFRAME:	EEO Officer not recorded prior to first work day
2ND AREA OF NONCOMPLIANCE	WAGES
(A)DOCUMENT OR REQUIREMENT	Wage & Hour Record (#700-010-69) and accompanying payroll
(A)REPORTING TIMEFRAME:	Certified payroll for pay period ending mm/dd/yy not received within seven (7) days of regular payment date.

Section 1.7

COMPLIANCE REQUIREMENT SUMMARY

1.7.1 Purpose

The Contract Compliance program for FDOT construction contracts consists of four program areas:

- Disadvantaged Business Enterprises (DBE)
- Equal Employment Opportunity/Affirmative Action (EEO/AA)
- On-the-Job Training (OJT)
- Wages and Payrolls (PAYROLL).

Two functional areas in the Florida Department of Transportation, the Equal Opportunity Office and the State Construction Office, administer details pertinent to application of the Construction Contract Compliance program.

The following requirements administered by each of these offices impact the specific application of the Construction Contract Compliance Program:

Equal Opportunity Office

- EEO Construction Contract Compliance Workbook
- FDOT DBE Program

State Construction Office

- Standard Specifications for Bridge and Road Work ("Specifications")
- Construction Program Administration Manual ("CPAM")

There are many other FDOT offices, at the State and District level, with responsibility regarding the execution and content of construction contracts including, but not limited to:

Contract Administration Office(s): construction contracts administration including advertisement, bid opening and review, award and execution.

Specification and Design Office(s): technical content of the construction contract.

1.7.2 Disclaimer

This section of the Construction Contract Compliance Workbook is intended to serve as a general reference to contractors and compliance personnel regarding the specific compliance program requirements.

The procedures and practices of multiple FDOT offices impact each construction contract and various special circumstances impact these procedures and practices on a temporary or permanent basis.

In all cases, and for each construction contract, the procedures and practices of each office take precedent over the citing in this section of the workbook.

1.7.3 Construction Contract Characteristics Directing Compliance Requirements

The specific characteristics of an individual construction contract determining which of the contract compliance program areas apply include:

- Type of Work
- Contract Funding
- Original Contract Days
- Original Contract Dollars.

These characteristics can be identified by reviewing the contract's Bid Blank and the contract's Specifications Package (which includes Standard Specifications, Special Provisions, and Technical Special Provisions).

When a project is funded with both FAP funds and state funds, the entire construction project is administered wholly under Federally Funded compliance requirements.

FDOT may on occasion, award emergency contracts for construction work related to government declared emergencies. Compliance reporting requirements on an emergency contract are determined at the time each contract is awarded.

1.7.4 Subcontracts and Rental Agreements

The prime contractor is responsible for assuring that all subcontractors are in compliance with the required Equal Employment Opportunity Special Provisions of the contract.

Prime contractors may accomplish the work of a project by entering into subcontract arrangements with written agreements ("subcontracts") containing the requirements and pertinent provisions of the prime's contract. Subcontractors may further subordinate their contract and such relationships are known as second tier, third tier (etc.) subcontracts.

Subcontract documentation submitted to FDOT by the prime includes a Certification of Sublet Work (Form 700-010-36) and a Schedule A indicating the sublet items and contract amount. The Subcontract is furnished to FDOT upon request.

Primes may also accomplish project work through the use of rental equipment which may or may not include an operator. Primes submit written documentation (“Notice of Rental Agreement”, Form 700-010-11) to FDOT advising of rental arrangements, except where the rental (without an operator) is from equipment dealers or firms whose principle business is equipment rental.

The type of activity performed determines whether a subcontract or rental agreement is required. The dollar amount of the agreement and the inclusion of labor, directs compliance requirements.

Refer to Table 1.7.4.1 ‘Subcontract and Rental Agreement Summary’ for guidance on Subcontracting and Rental Agreement requirements for federally funded and state funded projects.

Table 1.7.4.1 Subcontract and Rental Agreement Summary

line #	Activity #	Rental Agreement *	Sublet *	EEO Required if over \$10K	Payrolls required	Subject to Trucker Interview to confirm owner operator?
1	Work within project limits	Yes &	Yes &	Yes	Yes	Yes
2	Hauling: within project limits	Yes &	Yes &	Yes	Yes	Yes
3	Suppliers (drop off & go)	No	No	No	No	No
4	From Commercial Plant/Pit to Project	No	No	Yes	No	No
5	Haul from Project to Commercial Plant/Pit	No	No	Yes	No	No
6	Haul from project to some other place- e.g. haul removed timber from project to lumber mill, etc.	No	No	Yes	No	No
7	From/To Project From/To dedicated/Adjacent facility	Yes	Yes	Yes	Yes	Yes

Footnotes:	
General:	Not requiring submission of a sublet or a rental agreement for work in the amount of \$10,000 or more does not preclude the prime contractor from assuring that all subcontractors are in compliance with the required EEO Special Provisions of the contract.
&	Either Rental Agreement or Sublet, whichever is appropriate.
#	Regardless of ‘Activity’, the Department may interview the driver of a truck being counted in DBE Utilization.
*	A sublet, subcontract or rental agreement etc may be required for DBE monitoring/credit calculations.

1.7.5 Agencies Supplying Craft and Labor Workers

Prime contractors and subcontractors may elect to staff their project workforce with persons provided by staffing agencies. Staffing agencies which employ and place workers in temporary jobs at client work sites for a limited period of time are often referred to as Temporary Employment Agencies. Staffing agencies which employ and place workers in day to day jobs at client sites are often referred to as Day Labor Agencies.

At the job site, the contractor typically exercises supervisory control over agency workers. The contractor and the agency are joint employers of the temporary workers. Agencies are typically responsible for all personnel and payroll administration of the worker, including recruitment, hiring, payment of wages, payroll withholding, workers' compensation, etc.

The contractor or subcontractor using a staffing agency issues written communication to FDOT outlining their use of an agency prior to any of their temporary workers appearing on the project. FDOT Form 275-021-15, Notification for Use of Temporary Employment Agency/Day Laborers is used by prime contractors and subcontractors to communicate to Resident Compliance Specialists their use of Temporary or Day Labor workers.

The contractor or subcontractor using a staffing agency is encouraged to provide copies of the following documents to the staffing agency prior to use of their personnel on a project:

- 1) Notification for Use of Temporary Employment Agency/Day Laborers
- 2) Contractor's EEO/AA Policy and Plan including EEO Officer
- 3) Project's Wage Table(s).
- 4) FHWA 1273, Required Contract Provisions, Federal Aid Construction

1.7.5.1 Directions for Completing the Notification for Use of Temporary Employment Agency/Day Laborers Form (275-021-15)

Distribution & Due Date: This form is to be submitted to the projects' Resident Compliance Specialist (RCS) by each contractor who will employ project workers through a Temporary Employment Agency ('TEA') or Day Labor Agency. The form is due to the RCS before any TEA workers report to the project site.

Section 1: Project Identification

Box 1 Financial Project No. – The Financial Project Number

Box 2 F.A.P. No. – The Federal Aid Project Number assigned to federally funded projects.

Box 3 Contract No. - The Project Contract Number

Box 4 County – County or counties where project work is being performed

Box 5 District – The Department's District number in which project work is being performed (Districts are 1-7, and the Turnpike District)

Box 6 Prime Contractor's Name – The name of Prime Contractor

Box 7 Prime Contractor's FEID No. – The Prime Contractor's Identification Number

Box 8 Wage Table(s) applicable to this project – Check yes or no if construction type is Highway or Heavy and identify General Wage Decision Number *EG FL020001); Modification No (E.G. 1); Publication Date (E.G. 6/12/2005)

Section 2: Identification of Contractor & Temporary Agency

Box 9 Name of Contractor Using the Temporary Employment Agency – The name of contractor that hired temporary employment agency.

Box 10 FEID Number of Contractor Using Temporary Employment Agency - Identification Number of the contractor that hired temporary employment agency.

Box 11 Full Name of Temporary Employment Agency Used – The full name of temporary employment agency that will be providing temporary workers.

Box 12 FEID Number of Temporary Employment Agency – The temporary employment agency's Identification Number that will be providing temporary workers.

Box 13 Temporary Agency LOCAL Phone Number including area code – Area code and phone number of local temporary employment agency that will be providing temporary workers to the project.

Box 14 Temporary Agency Main Office Phone Number including area code – Area code and phone number of temporary employment agency main office.

Box 15 Temporary Agency LOCAL addresses street, city, state, and zip code – Local temporary employment agency address (street, city, state and zip code).

Box 16 Temporary Agency Main Office addresses street, city, state, and zip code – Main temporary employment agency office address (street, city, state and zip code).

Box 17 Name of LOCAL contact for Temporary Employment Agency - First name and last name of contact person for local temporary employment agency.

Box 18 Phone number of LOCAL contact for Temporary Employment Agency - Area code and phone number of contact person for local temporary employment agency.

Box 19 Workers from the Temporary Employment Agency will work under the supervision of the contractor Shown in Box 9 – Identify what company will be supervising the temporary workers at the project site. If the hiring contractor (identified in box 9) will not be supervising workers, enter full name of organization that will be providing the supervision

Box 20 Date (mo/day/yr) workers will first be placed on the project

Section 3: Contractor's Acknowledgement That the Temporary Agency has been informed of the Contract Requirements

The hiring contractor acknowledges communicating to the temporary agency their responsibility for compliance with the following contract requirements:

Box 21. Pay at least the Minimum rates shown in the Wage Table Rates(s) Listed in # 8 above apply - Mark yes or no if temporary employment agency has been informed of the wage table rates listed in box 8.

Box 22 FHWA-1273, "Required Contract Provisions on Federal Aid Construction Contracts" applies – Mark yes or no if temporary employment agency has been informed of FHWA-1273 requirements.

Box 23 Certified payroll (Statement of Compliance and payroll records) is due to FDOT within 7 days of the regular pay – Mark yes or no if temporary employment agency has been informed of certified payroll due dates to FDOT.

Box 24 U.S. Dept. of Labor approval is required for non standard deductions – Mark yes or no if temporary employment agency has been informed of USDOL Approval requirements for non standard wage deductions.

Box 25 Workers will not be charged a fee or commission by the Temporary Agency – Mark yes or no if temporary employment agency has been informed that workers may not be charged a fee or commission.

Box 26 Payroll violations corrections will be required – Mark yes or no if temporary employment agency has been informed payroll violations corrections will be required.

Box 27 The contractor's EEO/AA program encompasses the agency and the temporary workers – Mark yes or no if temporary employment agency has been informed that Equal Employment Opportunity/Affirmative Action program encompasses the agency and each temporary worker for this project.

Box 28 The Temporary Employment Agency is responsible for complying with the Contract provisions of the contract including but not limited to EEO, Payrolls, etc. – Mark yes or no if temporary employment agency has been informed that they are responsible for complying with the contract provisions of the contract including but not limited to Equal Employment, payrolls, etc.

Section 4: Signature of Prime and Hiring Contractor

Box 29 Prime Contractor Signature - Signature of Prime Contractor and date of signature

Box 30 Hiring Contractor Signature – Signature of hiring contractor and date of signature (complete only if hiring contractor is not the prime contractor).

1.7.6 Summary of Contract Compliance Reporting Requirements by Program Area

The following tables summarize the reporting requirements of each area of the compliance program.

Table 1.7.6.1	Summary of DBE Requirements
Table 1.7.6.2	Summary of Company EEO Requirements
Table 1.7.6.3	Summary of Project EEO Requirements
Table 1.7.6.4	Summary of On-the-Job Training Requirements
Table 1.7.6.5	Summary of Payroll and Wage Requirements

Refer to individual Compliance Workbook Chapters for comprehensive information on these requirements.

Table 1.7.6.1 Summary of DBE Requirements

PROGRAM ELEMENT	TIME FRAME	FEDERALLY FUNDED		STATE FUNDED	
		PRIME	Sub-contract (\$10,000+) Rental (\$10,000 +) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers	PRIME	Sub-contract (\$10,000+) Rental (\$10,000 +) with operator Suppliers or Subs (under \$10k) or Rental w/out operator Agencies supplying job site workers
DBE /AA Plan	Initial submission before submission of bid	YES	NO	YES	NO
DBE Liaison Officer	Initial appointment at time of DBE/AA Plan adoption and throughout the term of the contract	YES	NO	YES	NO
Bid Opportunity List	Submitted with bid	YES	NO	YES	NO
Anticipated DBE Participation Statement	Initial submitted at or before Preconstruction Conference.	YES	NO	YES	NO
Actual Payments to DBE's	Monthly entry of payments to DBEs in the EOR System	YES	NO	YES	NO
Footnotes:					
YES		Data is submitted in timeframe specified			
YES		Data is not routinely submitted for contracts let Jan. 2005 and after (i.e. Element is included in Certification of Compliance)			
YES		Data is submitted as required on projects let prior to Jan. 2005			

Table 1.7.6.2 Summary of Company EEO Requirements

PROGRAM ELEMENT	TIME FRAME	FEDERALLY FUNDED				STATE FUNDED		
		PRIME	Sub Contractor (\$10,000+) Rental Agreement (\$10k+ with operator)	Supplier Subs Contract (under \$10,000) Rental with no operator	Agencies supplying job site workers	PRIME	Sub Contractor (\$10,000+)	Suppliers Sub Contractor (under \$10,000) Rental w/out operator Agencies supplying job site workers
EEO/ AA Policy & Plan	Comply as Required by FHWA- 1273	YES	YES	NO	NO*	NO	NO	NO
EEO Officer	Initial appointment before 1 st work day	YES	YES	NO	NO*	YES	YES	NO
Supervisory and Office Personnel EEO Meetings	Initial Meeting prior to 1 st work day.	YES	YES	NO	NO*	NO	NO	NO
Company Wide EEO Report	To be made available upon request for a compliance review or determination of OJT.	YES	YES	NO	NO	NO	NO	NO
Contractor Recruitment Program	Initiate before 1 st work day. Records to be made available upon request of FDOT or FHWA.	YES	YES	NO	NO	NO	NO	NO
Nonsegregated facilities	Throughout the term of the contract(s)	YES	YES	YES	YES	NO	NO	NO
Analysis for Non-discrimination	Throughout the term of the contract(s)	YES	YES	NO	NO*	NO	NO	NO
Footnotes:								
YES	Data is submitted in timeframe specified							
YES	Data is not routinely submitted for contracts let Jan. 2005 and after (i.e. Element is included in Certification of Compliance) Data is submitted as required on projects let prior to Jan. 2005							

ELEMENT	TIME FRAME	FEDERALLY FUNDED				STATE FUNDED		
		P R I M E	Sub Contractor (\$10,000+)	Supplier	Agencies supplying job site workers	P R I M E	Sub Contractor (\$10,000+)	Supplier
			Rental Agreement (\$10k+ with operator)	Sub-contractor (under \$10k)			Rental Agreement (\$10k+ with operator)	Sub Contractor (under \$10k)
			Rental with no operator			Rental with no operator		
Job Site Bulletin Board	In place on or before workers first appear on the project; removed when workers are no longer on the project.	Y E S	YES Bulletin Board includes EEO Officer Info	NO	NO*	NO	NO	NO
Annual July EEO Report	Due by August 20 th	Y E S	Y E S	NO	Included on Report of employing contractor if On-the-job the week reported	NO	NO	NO
EEO Information to Project Personnel	For contracts let Jan. 2005 and later, the EEO policy & procedures to implement that policy will be brought to the attention of employees by means of meetings, employee handbooks or other appropriate means. See 'Project Meeting' Footnote below for Contracts let before Jan. 2005	Y E S	Y E S	NO	Included in communications of employing contractor	N O	NO	NO
Race & Sex Annotation on certified payrolls	Each payroll submitted is annotated to include employee race and sex	Y E S	Y E S	Y E S	Y E S	NO	NO	NO
Project EEO Report(s)	To be made available upon request.	Y E S	Y E S	NO	Included on Report of employing contractor if on the job the week reported	NO	NO	NO

Footnotes:

YES	Data is submitted in timeframe specified
YES	Data is not routinely submitted for contracts let Jan. 2005 and after (i.e. Element is included in Certification of Compliance) Data is submitted as required on projects let prior to Jan. 2005
*	Covered under data of employing contractor
“PROJECT MEETING”	Contracts let prior to Jan. 2005: Initial meeting conducted within 30 days of 1 st work day; Subsequent meetings at 6 mo. intervals or if inactive at that time, within 30 days of resuming work. Submit Report and/or EOR Input by 20 th day of month following each meeting.

TABLE 1.7.6.4 Summary of On-the-Job training Requirements

PROGRAM ELEMENT	TIME FRAME	FEDERALLY FUNDED (Contract of at least \$1 million and 225 days)		STATE FUNDED (OJT may be authorized on a voluntary basis for banking purposes provided the Contract is at least \$1million and 225 days) and an RCS is avail. To monitor	
		PRIME	Sub-contractor Enrolling & Instructing a Trainee	PRIME	Sub-contractor Enrolling & Instructing a Trainee
Company Wide EEO Report	Due as requested and/or at or before Training Evaluation Meeting	YES	YES	YES	YES
Post Pre-Construction Training Evaluation Meeting	Conducted no more than thirty days prior to beginning construction or at another date agreeable to attendees. Meeting minutes are distributed with 14 days of their finalization with initial minutes issued as soon as practical and 14 days provided for requests to revise	YES	YES	YES	YES
On-the-Job Training Schedule	Due or developed at or within ten days of the Training Evaluation Meeting. Schedule Revisions are due when events are missed by 14 or more days, the use of additional classifications is requested or trainees terminate.	YES	YES	YES	YES
Proficiency Statements for each Training Classification on the OJT Schedule	Due or developed at or within ten days of the Training Evaluation Meeting for each training classification listed on the Schedule. Proficiency statements for additional classifications accompany OJT Schedule Revisions.	YES	YES	YES	YES
Notification of Trainee Personnel Action	Due within seven days of proposed effective date; Request to Graduate is due once minimum hours are accumulated and satisfactory observation occurs.	YES	YES	YES	YES
Request for Proficiency Observation	First and second observation request may be submitted based on trainee readiness and accumulation of at least minimum hours. Third and subsequent observation request require accumulation of maximum hours.	YES	YES	YES	YES
Trainee Monthly Time Reports	Due on the 10 th day of the month for each month following enrollment of the trainee up to graduation of trainee	YES	YES	YES	YES

Footnotes:

YES	Data is submitted in timeframe specified
YES	Data is not routinely submitted for contracts let Jan. 2005 and after (i.e. Element is included in Certification of Compliance) Data is submitted as required on projects let prior to Jan. 2005
*	Covered under data of employing contractor

Table 1.7.6.5 Summary of Payroll & Wage Requirements

PROGRAM ELEMENT	TIME FRAME	FEDERALLY FUNDED				STATE FUNDED		
		P R I M E	Sub Contract (all dollar amounts)	Supplier	Agencies supplying job site workers	P R I M E	Sub Contract (all dollar amounts)	Supplier
			Rental Agreement with operator (all dollar amounts)	Rental with no operator			Rental Agreement with operator- ALL dollar amounts	Rental with no operator
Labor/EEO Compliance Interview of craft and laborer Workers	Conducted each month. This form is completed by FDOT	Y E S	Y E S	NO	Y E S	NO	NO	NO
Certified Payrolls	Due 7 days after regular pay day for each week in which any contract work is performed	Y E S	Y E S	NO	Y E S	NO	NO	NO
Payroll Annotated with employee race and sex	Each payroll is annotated to include employee race and sex	Y E S	Y E S	NO	Y E S	NO	NO	NO
Additional classification Request	As needed during the term of the contract and after contract award	Y E S	Y E S	NO	Y E S	NO	NO	NO
Request to U.S. DOL for Authorization of Payroll Deductions	Prior to employing workers on the project and as needed to ensure continuity of authorization.	Y E S	Y E S	NO	Y E S	NO	NO	NO
Supplemental Certified Payrolls submitted to resolve Payroll Violation(s)	Due within twenty (20) calendar days following receipt of payroll violation notification (FDOT Form 700-010-59)	Y E S	Y E S	NO	Y E S	NO	NO	NO
Footnotes:								
YES	Data is submitted in timeframe specified							
YES	Data is not routinely submitted for contracts let Jan. 2005 and after (i.e. Element is included in Certification of Compliance) Data is submitted as required on projects let prior to Jan. 2005							
*	Covered under data of employing contractor							

1.7.7 Local Area Projects including American Recovery and Reinvestment Act Projects

FDOT has legislative authority to contract with Florida's Local Agencies to plan, develop, design, acquire right-of-way, and construct transportation facilities. FDOT reimburses these Local Agencies for services provided to the public. The formal name given to this program is the Local Agency Program (LAP). Authority for LAP is provided in Sections 20.23(3) (a), 334.044(7), 339.05, and 339.12 of the Florida Statutes.

A Local Agency is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has responsibility for planning, construction, operation or maintenance of, or jurisdiction over, a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization (MPO), an expressway or transportation authority, a road and bridge district, a special road and bridge district, or a regional governmental unit.

Some LAP construction projects are funded by the American Recovery and Reinvestment Act ('ARRA') and are identified with a Federal Aid Project number which begins with 'ARRA'. The Davis-Bacon and Davis-Bacon Related Acts apply to all ARRA funded projects regardless of the classification of the highway system.

FDOT's LAP and ARRA projects are federally funded and therefore, required to conform to FHWA 1273, Required Contract Provisions of Federal Aid Construction Contracts.

If the work of a LAP or ARRA project does not include a Federal Aid Highway, the National Highway System or the State Highway system, compliance with the Davis-Bacon and Copeland Acts generally does not apply; however there are certain exceptions:

Projects of the following types are subject to Davis-Bacon and Copeland Act prevailing wage requirements, notwithstanding that they may be located "off-system":

1. Safe Routes to Schools projects
2. Non-motorized Transportation Pilot Projects
3. High Priority and other congressionally designated projects (unless the requirement is specifically waived in legislation).

The FDOT District LAP Administrator, or District Contract Compliance Manager, or Prevailing Wage Coordinator should be consulted prior to the start of construction for written confirmation that a LAP or ARRA project is exempt from Davis-Bacon and Copeland Act payroll and reporting requirements.

Contractors of LAP projects (including ARRA projects) may evidence compliance with FHWA 1273 and Davis-Bacon and Copeland Acts by adhering to either the forms and reporting requirements of the specific local agency or by conforming to the forms and requirements of the FDOT EEO Construction Contract Compliance Workbook. The Local Agency informs contractors of the requirements to be followed.

The applicability of the DBE, EEO, Payroll, and OJT compliance for LAP projects (including ARRA projects) is summarized in Table 1.7.7.1

**Table 1.7.7.1
 EEO Construction Contract Compliance Requirements for
 Local Area Program ('LAP') including
 American Reinvestment & Recovery Act ('ARRA') projects**

Contract Compliance Program Area	Project On State Highway System including Federal Aid Highways, National Highway System, State Highway System	Project on all other roads including Rural Minor Collector Rural Local Urban Local Roads
DBE	Yes (&)	Yes
EEO	Yes (@)	Yes
Certified Payrolls/Wages	Yes (+)	Yes if ARRA Project; No if not ARRA project (^)
OJT	Yes (#) if 225 or more days and \$1M or more and not an enhancement project	No
	No if enhancement project (regardless of contract days and/or dollars)	
	No if less than 225 days and/or under \$1M	
Footnotes:		
&	See Federally Funded columns on Table 1.7.6.1, Summary of DBE Requirements	
@	See Federally Funded columns on Table 1.7.6.2, Summary of Company EEO Requirements, and See Federally Funded columns on Table 1.7.6.3, Summary of Project EEO Requirements	
+	See Federally Funded columns on Table 1.7.6.5, Summary of Payroll & Wage Requirements	
#	See Federally Funded columns on Table 1.7.6.4, Summary of On-the-Job Training Requirements	
^	The FDOT District LAP Administrator, or District Contract Compliance Manager, or Prevailing Wage Coordinator should be consulted prior to the start of construction for written confirmation that a LAP or ARRA project is exempt from Davis Bacon and Copeland Act payroll and reporting requirements	

1.7.8 Contractors with Collective Bargaining Agreements

FHWA 1273, Required Contract Provisions Federal Aid Construction Contracts apply to all contractors with contracts of \$10,000 or more including contractors with signatory collective bargaining union agreements. The following provisions in FHWA 1273 are specific to contractors with collective bargaining agreements:

- II. Nondiscrimination,
 - 4a., 4b. Recruitment,
 - 6. Training
 - 7. Unions
 - 9. a (2) Records and Reports

A collective bargaining agreement does not preclude the contractor's compliance with EEO/AA requirements including the employment of a diverse workforce.

The provisions of a collective bargaining agreement and/or the failure of the union to provide equal opportunity does not excuse a contractor from complying with the EEO/AA requirements of FHWA 1273.

1.7.8.1 Collective Bargaining Agreement

Prior to starting work on a federally funded project, contractors with collective bargaining agreements covering the construction craft and labor workforce are to submit a copy of current executed agreements, in their entirety, to the District Contract Compliance Manager. The contract will be reviewed relative to the following compliance requirements:

- Scope: geographical area and work classifications
- Hiring requirements
- Training programs
- Union dues and initiation fees

1.7.8.2 Florida: A Right to Work State

Florida's Constitution states, "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization". Florida is therefore known as a 'Right to Work state' meaning that workers are free to join unions or refrain from joining unions. In Florida, employers may not require an employee to join a union, pay union dues or be a union member as a condition of employment.

1.7.8.3 Collective Bargaining Agreement: Hiring Hall Requirements

A "hiring hall" is an arrangement where employers obtain job candidates from the union. A hiring hall furnishes recruits to contractors who have a collective bargaining agreement

with the union. The contractor's use of the hiring hall may be voluntary or it may be compulsory (exclusive) per the terms of the collective bargaining agreement.

A union's failure to send minority and/or female candidates to a contractor is not justification for the contractor's non-compliance with EEO/AA requirements including the employment of a diverse workforce. The contractor must use its best efforts to obtain the cooperation of their union to increase opportunities for women and minority groups within their membership and to effect the referral of minority and female candidates.

In the event the union is unable to provide the contractor with a timely flow of diverse, qualified candidates, the Department will look to the contractor to initiate the recruitment activities detailed in Workbook Section 3.5, Recruitment.

1.7.8.4 Record Keeping for Contractors having Collective Bargaining Agreements

The contractor is to maintain records that evidence efforts to secure the union's commitments to EEO/AA including minority and female recruitment. The contractor's applicant log is to include all union referrals such that the diversity of referrals may be analyzed. If the contractor refers applicants to the union, the contractor is to maintain a log of the outcome of those referrals.

Section 1.8

PRIME CONTRACTOR CERTIFICATION OF COMPLIANCE WITH EQUAL OPPORTUNITY PROVISIONS

1.8.1 Purpose

The main purpose of the Certification of EEO Compliance is to reinforce to the prime contractor the importance of the EEO Requirements in their contract and the responsibility the prime has for the compliance of their subcontractors.

General information is offered to prime contractors to foster understanding and effective fulfillment of their Certification of EEO Compliance requirements. Prime contractors are to develop and apply a process sufficient to ensure that they and their subcontractors are complying with specified EEO requirements.

Each month, the prime submits a Certification of EEO Compliance Statement and documentation of exceptions to the Department. Submission of Certification(s) waives routine reporting but does not release the contractors from compliance with requirements.

1.8.2 Scope

The Certification of Compliance with EEO Provisions on Federal Aid Contracts applies to construction contracts let January 2005 and after. It encompasses the EEO compliance of the prime contractor, their subcontractors and their Temporary Employment/Day Laborer agencies and rental agreements with operators.

The scope of Certification of Compliance includes two specific sections of the contract document FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts".

Table 1.8.2, FHWA-1273, Sections II and III, lists the topics included in the Certification of Compliance. Detailed information regarding each section and subsection are included in FHWA-1273.

Table 1.8.3 lists the sections of FHWA-1273 not covered by the Certification of Compliance. The prime contractor and subcontractors are responsible for compliance with these sections of FHWA-1273 and other applicable contract provisions.

Table 1.8.2 FHWA-1273, *
Required Contract Provisions Federal Aid Construction Contracts
Section II and Section III Included in Certification of Compliance

* Refer to FHWA-1273 for detailed information

Section II. Nondiscrimination

1. Equal Employment Opportunity; Equal Opportunity Policy
2. EEO Officer Designation
3. Dissemination of Policy
4. Recruitment
5. Personnel Actions
6. Training & Promotion
7. Unions
8. Selection of Subcontractors, Procurement of Materials, Leasing of Equipment
9. Records & Reports

Section III. Nonsegregated Facilities

- A. Certification of Nonsegregated Facilities
- B. Scope; definitions
- C. Subcontractor and material supplier Certifications regarding nonsegregated facilities

Table 1.8.3 FHWA-1273, *
Required Contract Provisions Federal Aid Construction Contracts
Compliance Requirements
Not covered by the Certification of Compliance

* Refer to FHWA -1273 for detailed information

Section I. General

Section IV. Payment of Predetermined Minimum Wage

Section V. Statements and Payrolls

Section VI. Record of Materials, Supplies and Labor

Section VII. Subletting or Assigning the Contract

Section VII. Safety: Accident Prevention

Section IX. False Statements Concerning Highway Projects

Section X. Implementation of Clean Air Act and Federal Water Pollution Control

Section XI. Certification Regarding Debarment, Suspension, etc.

Section XII. Certification Regarding use of Contract Funds for Lobbying

1.8.3 Prime Contractor Process for Certification of Compliance

The prime contractor is to establish a process whereby they can affirm to the Department each month that they and their subcontractors on a project are in compliance with FHWA-1273, Sections II and Section III or certain subcontractors are in noncompliance with certain requirements and action has been taken to overcome noncompliance. The prime's process is to be viable and results oriented.

The prime's process may entail any one of a multitude of approaches including, but not limited to, requiring documentation submissions, collection of subcontractor certifications, verification of subcontractors to confirm compliance, etc. Relying solely on a subcontractor's certification would not be considered adequate.

The prime contractor, at the time of executing subcontracts, should discuss/review their certification of compliance process. The prime's process should include subcontractor record keeping, record submission, and timeframe requirements and a definition of how and when incidents of subcontractor noncompliance will be addressed by the prime. The Department is available to assist contractors in their development of a Certification of Compliance process.

Prime contractors are encouraged to remain cognizant that subcontractors work for a variety of primes and, accordingly, are subjected to multiple individual Certification of Compliance processes. A prime's Certification of Compliance process should be clearly defined, documented, simple and straightforward. The collection of document copies versus originals should be allowed; Primes can always ask a subcontractor for additional data if compliance appears questionable based on such documents.

When a prime has a recurring contractual relationship with a subcontractor, the prime may wish to establish subcontractor compliance files in order to reduce duplication of subcontractor submissions.

The prime's Certification of EEO Compliance process should include a series of actions and sanctions aimed at overcoming subcontractor noncompliance and timeframes for taking such action. Noncompliance communications may include a series of verbal and written notices; sanctions may include the holding of subcontractor progress payments, contract termination and/or denial of subsequent subcontracts.

1.8.4 Monthly Certifications of Compliance

Form 700-011-13, Certification Compliance with Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts is completed by the prime contractor for each project

each month and it accompanies every monthly Estimate. The Monthly Estimate will not be processed unless this form accompanies it.

Subcontractors found by the prime to be in noncompliance are listed on the form and a copy of notifications of noncompliance sent to them is attached.

The prime contractor is responsible for taking good faith efforts to bring into compliance those who are not. Records of such actions should be maintained. It is not enough for a prime to certify that they have made good faith effort; those efforts in fact must be made and they must be verifiable.

The form is signed and notarized by the Contractor whose signature attests to a statement regarding penalties for false statements and omissions:

“A false statement or omission made in connection with this certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of non responsibility and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State law.”

The instructions for completing form 700-011-13, Certification of Compliance with Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts are found at the bottom of the form.

1.8.5 Record Keeping

Prime contractors are to ensure that records are developed, collected and maintained to attest compliance with the requirements for a period covered by Certification(s). Such records shall be retained for a period of three (3) years following completion of the contract work and shall be made available at reasonable times and places of inspection by FDOT and FHWA representatives.

1.8.6 Department Review

The Department will periodically check the prime contractor's process to determine if one is in place, to ensure that they and their subcontractors are in compliance and that verifiable records are collected and retained.

Section 1.9

GENERAL PROGRAM FORMS & DOCUMENTS

This is list of forms and documents referenced in this chapter. Following this page, in numerical order are the forms and then in alphabetical order the documents.

NUMERICAL SEQUENCE

FDOT Form No.	Document Title	Work Book Section
275-021-15	Notification for Use of Temporary Employment Agency/Day Laborers	1.7.5
700-011-13	Certification of Compliance With Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts	1.8
700-010-25	Contractor's Past Performance Rating	1.6.4
n-a	FHWA 1273, Required Contract Provisions, Federal Aid Construction	1.1.6

ALPHABETICAL SEQUENCE

Document Title	FDOT Form No.	Work Book Section
Certification of Compliance With Equal Employment Opportunity (EEO) Provisions on Federal Aid Contracts	700-011-13	1.8
Contractor's Past Performance Rating	700-010-25	1.6.4
FHWA 1273, Required Contract Provisions, Federal Aid Construction	n-a	1.1.6
Notification for Use of Temporary Employment Agency/Day Laborers	275-021-15	1.7.5

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**CONTRACTOR NOTIFICATION TO FDOT FOR USE OF
 TEMPORARY EMPLOYMENT AGENCY / DAY LABORERS**

SECTION 1: PROJECT IDENTIFICATION

1. Financial Project No.	2. F.A.P. No.	3. Contract No.	4. County	5. District
6. Prime Contractor's Name		7. Prime Contractor's FEID No.		
8. Wage Table(s) Applicable to this Project (Indicate Yes or No for each type and identify Decision No., Modification No & Publication Date)				
	<i>CONSTRUCTION TYPE</i>	<i>GENERAL DECISION NO. (E.G. FL030037)</i>	<i>MODIFICATION NO.(E.G. 1)</i>	<i>PUBLICATION DATE (E.G. 6/12/2009)</i>
<input type="checkbox"/> Yes <input type="checkbox"/> No	HIGHWAY			
<input type="checkbox"/> Yes <input type="checkbox"/> No	HEAVY			

SECTION 2: IDENTIFICATION OF CONTRACTOR AND TEMPORARY AGENCY

9. Name of Contractor Using the Temporary Employment Agency	10. FEID Number of Contractor Using Temporary Agency
11. Full Name of Temporary Employment Agency Used	12. FEID Number of Temporary Employment Agency
13. Temporary Agency LOCAL Phone Number including area code	14. Temporary Agency Main Office Phone Number including area code
15. Temporary Agency LOCAL address street, city, state, zip code	16. Temporary Agency Main Office address street, city, state, zip code
17. Name of LOCAL contact for Temporary Employment Agency	18. Phone number of LOCAL contact for Temporary Employment Agency
19. Workers from the Temporary Employment Agency will work under the supervision of the contractor shown in box 9. <input type="checkbox"/> Yes <input type="checkbox"/> No; If No, identify which company/workers will provide supervision	20. Date (mo/day/year) workers will first be placed on the project

SECTION 3: CONTRACTOR'S ACKNOWLEDGEMENT THAT THE TEMPORARY AGENCY HAS BEEN INFORMED OF THE FOLLOWING CONTRACT REQUIREMENTS

21. Workers are to paid at least the minimums show in the Wage Table Rates(s) Listed in # 8 (above)	<input type="checkbox"/> Yes <input type="checkbox"/> No
22. FHWA 1273, "Required Contract Provisions on Federal Aid Construction Contracts" applies	<input type="checkbox"/> Yes <input type="checkbox"/> No
23. Certified payrolls (Statement of Compliance and payroll records) are due to FDOT within 7 days of the regular pay	<input type="checkbox"/> Yes <input type="checkbox"/> No
24. U.S. Dept. of Labor approval is required for non-standard deductions	
25. Workers will not be charged a fee or commission by the Temporary Agency	<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Payroll violations require correction and submission of a supplemental certified payroll	<input type="checkbox"/> Yes <input type="checkbox"/> No
27. The contractor's EEO/AA program applies to the Agency and the temporary workers	<input type="checkbox"/> Yes <input type="checkbox"/> No
28. The Temporary Employment Agency is responsible for complying with the Contract provisions of the contractor including but not limited to EEO, Payrolls, etc.	<input type="checkbox"/> Yes <input type="checkbox"/> No

SECTION 4: SIGNATURE

28. Prime Contractor Signature	Date	30. Hiring Contractor Signature	Date

**CERTIFICATION
COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY (EEO)
PROVISIONS ON FEDERAL AID CONTRACTS**

FIN PROJECT I.D. _____ DATE _____
CONTRACT NO. _____

_____, prime contractor
for the above referenced contract, hereby certifies that this company and all of it's subcontractors have made every Good Faith Effort to comply with the EEO provisions of FHWA Form-1273 (Section II. Nondiscrimination and Section III. Nonsegregated facilities) on this contract.

Exception:
The following subcontractor(s) have been found to be in noncompliance with the provisions stated above. Attached is notification sent to the respective subcontractor(s) explaining their noncompliance with these provisions.

Subcontractor Name _____ Street Address _____
City/State/Zip _____

State of Florida
County of _____
Sworn to and subscribed before me this _____ day
of _____, by _____
(Print name of person signing Certification)

A false statement or omission made in connection with this certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of nonresponsibility, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State law.

Notary Public _____ Contractor _____
Commission Expires _____ By _____
Personally Known OR Produced Identification Title _____
Type of Identification Produced _____

Instructions:

1. Attach copy of any notifications of noncompliance sent to each applicable subcontractor.
2. List the subcontractors found not in compliance at the time of this certification.
3. A separate certification is required for each contract.
4. To be signed by an officer or director of the Contractor with the authority to bind the Contractor and notarized.
5. To avoid delay in payment, certification must be submitted to the Project Engineer no later than the Friday before the monthly estimate cutoff date (generally the 3rd Sunday of the month).

**CONTRACTOR'S PAST
PERFORMANCE REPORT**

(Contractor Name)	(FIN Project No.)
(Address)	(County) (Contract No.)
(Final Contract Amount)	(Type Of Work)
(Proj. Administrator/Firm or Residency)	(Date Final Accepted)

ANSWER ALL QUESTIONS

<u>Performance</u>	<u>Maximum Value</u>	<u>Rated Value</u>
1. Pursuit of the Work.	12	_____
2. Proper MOT and Minimize Impacts to Traveling Public	12	_____
3. Timely and Complete Submittal of Documents.	8	_____
4. Timely Completion of Project.	14/20 <small>note # 4</small>	_____
5. Coordination / Cooperation with CEI Personnel, Property Owners and Utilities Company.	10	_____
6. Mitigate Cost and Time Overruns	12	_____
7. Environmental Compliance	10/12 <small>note # 4</small>	_____
8. Conformance With Contract Documents.	20	_____
9. DBE Utilization	0/4 <small>note # 4</small>	_____
Total Score	98/110	<u>0</u>

Project Administrator (signature)	Date	Resident Engineer (signature)	Date
--	------	--------------------------------------	------

Notes:

1. Where percentages are used, the standard rules of rounding are to apply to calculate the nearest whole number.
2. Documentation (or document) unless otherwise noted is defined as Daily Report of Construction, Stop Work Orders, Speed Memos, or other such notes or communication in the project files or to the contractor from the CEI. Proper documentation on a daily basis is essential in providing an accurate, well established grade.
3. The term contractor includes the prime and all subcontractors and suppliers. The prime contractor is responsible for the quality of material, workmanship and timeliness for all work on the project.
4. Bonus points are available on categories 4, 7, and 9. Category 4 bonus points (6 points) and Category 9 bonus points (4 points) apply to all projects. Category 7 bonus points (2 points) apply only to projects over 300 days of allowable contract time.
5. Performance Deficiency Warning Letter – under normal circumstances, project personnel will notify the contractor of shortcomings/non-compliances with the contract prior to issuing a Performance Deficiency letter. However, blatant violations or noncompliances may result in a Performance Deficiency letter being issued without a warning. Prior to issuing a warning letter, the Project Administrator should discuss the performance concerns with the Resident Engineer. A single warning letter can be used to address concerns in more than one performance category.
6. Performance Deficiency Letter – letters from the Resident Engineer to the contractor for the sole purpose of addressing specific performance concerns or issues. This does not include those items previously covered under the definition of Documentation. Performance Deficiency letters shall be signed by the Resident Engineer and sent out via certified mail, return receipt requested. A single Performance Deficiency letter can be used to address concerns in more than one performance category. It is recommended that the Project Administrator keep a file for each project for all warning and deficiency letters.
7. The Performance Deficiency letter factor will apply for all jobs over one (1) year. The factor will be based on 365 days/year divided by the allowable contract time. This factor will then be multiplied by the number of Performance Deficiency letters in each grading category to obtain a “pro-rated” (annualized) number of Performance Deficiency letters. The standard rules of rounding will apply. For projects with contract time less than 365 days, the Performance Deficiency letter frequency and the corresponding grades shown in this document will apply.

365 days/year

allowable contract days = Deficiency Letter Factor (DLF)

$$\frac{\text{\# Deficiency letters issued}}{\text{(DLF) x in a particular grading category}} = \frac{\text{“pro-rated” \# deficiency letters for}}{\text{the particular grading category}}$$

The Performance Deficiency letter factor example

$$\frac{365 \text{ days/year}}{500 \text{ allowable days}} = \text{DLF } 0.7 \times \frac{\text{\# deficiency letters}}{\text{category 2 total 6 letters}} = \text{pro-rated \# letters total 4.2 DL} \quad \text{grade} = 4.0$$

8. Appeals process – if a contractor receives a Performance Deficiency letter and feels that it was not warranted, the contractor may appeal the issue at the District Construction Engineer (DCE) level within 10 days of receiving the letter. If an appeal is successful, the DCE will issue a letter rescinding the Performance Deficiency letter. In addition, for those performance categories that do not include the use of Performance Deficiency letters, the contractor may use the appeals process (for categories # 1, 4, and 8) when issued ten (10) days of the receipt of the letter to appeal performance issues/concerns for that month. The Department will communicate performance progress in categories # 1, 4, and 8 on a monthly basis.

9. Contractor Responsibility – the contractor is responsible to keep abreast of performance issues. This can be done by discussing performance with the Project Administrator on a daily basis, reviewing the Department's daily diaries and discussing contractor performance at the weekly progress meetings.

CONTRACTOR PAST PERFORMANCE RATING

1. **Pursuit of The Work** - Contractor diligently and systematically pursues the work with sufficient labor, materials, and equipment at all times. Active progress is made on critical path items each day in accordance with the approved schedule. The contractor schedules the subcontractors so that they are pursuing their work as well. Contractor worked five (5) days a week unless the contract states otherwise, excluding weather days. Percent is based on allowable contract time (minus weather days) and on a five (5) workday week unless otherwise stated in the contract.
 - 12 The contractor aggressively pursued the work 90% of the days. Documentation in the project files by the CEI reveals that the progress of the work was unsatisfactory no more than 10%.
 - 9 The contractor aggressively pursued the work 80% of the days. Documentation in the project files by the CEI reveals that the progress of the work was unsatisfactory no more than 20%.
 - 6 The contractor aggressively pursued the work on at least 70% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 30%.
 - 3 The contractor aggressively pursued the work on at least 60% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 40%.
 - 0 The contractor did not aggressively pursue the work on at least 50% of the days. Documentation in the project files by the CEI reveals that progress of the work was unsatisfactory no more than 50%.

Note: Grades between those shown will be based on an extrapolation of the actual percentage of the days the contractor aggressively pursued the work., i.e., 86% of the days would equate to a grade of 11. The status of performance in this category should be shared with the Contractor on a monthly basis.

2. **Proper MOT and Minimize Impacts to Traveling Public** - Provide maintenance of traffic (MOT) in accordance with all applicable standards. Coordinate construction operations that directly affect the traveling public so as to minimize impacts to the public. Effectively use the worksite Traffic Supervisor to monitor and correct deficiencies. The contractor takes the initiative to identify and fix MOT concerns in a timely manner.
 - 12 The contractor met all project requirements in all areas considered. The contractor corrected deficiencies promptly (maximum of 24 hours) based on timely internal reviews as well as external feedback. Contractor took immediate action, as appropriate, to minimize impacts to the public and businesses, including adjusting operations as necessary. No deficiency letter to the contractor by the CEI noting MOT deficiencies.
 - 10 No more than one (1) deficiency letter to the contractor by the CEI noting MOT deficiencies.
 - 8 No more than two (2) deficiency letters to the contractor by the CEI noting MOT deficiencies.
 - 6 No more than three (3) deficiency letters to the contractor by the CEI noting MOT deficiencies.
 - 4 No more than four (4) deficiency letters to the contractor by the CEI noting MOT deficiencies.
 - 2 No more than five (5) deficiency letters to the contractor by the CEI noting MOT deficiencies.
 - 0 Six (6) or more deficiency letters to the contractor by the CEI noting MOT deficiencies.

3. Timely and Complete Submittal of Documents - Contractor submits all required documents in a timely and accurate manner and with all the required information and detail. Documents include sublet requests, rental agreements, certification of materials, shop drawings, responses to correspondence, monthly certification, time extension requests, project schedules and schedule updates, claims for delay or extra work, quality control plans, test results, work plans, weekly MOT, NPDES reviews, etc. For EEO/DBE submittals, trainee submittals, certified payrolls, and statewide DBE utilization reporting, a deficiency letter will only be issued on these documents when a monthly estimate is actually withheld.

- 8 The contractor submitted documents in a complete and accurate manner and in a time frame required in the contract.
- 6 No more than one (1) deficiency letter to the contractor by the CEI documenting late or insufficient submittal documentation.
- 4 No more than two (2) deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.
- 2 No more than three (3) deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.
- 0 Four (4) or more deficiency letters to the contractor by the CEI documenting late or insufficient submittal documentation.

4. Timely Completion of Project - The contractor completes the project in a timely manner.

- 20 * The contractor finished the project within the original contract time.
(no adjustments for weather)
- 18 * The contractor finished the project within 90% of allowable contract time.
- 16 * The contractor finished the project within 95% of allowable contract time.
- 14 * The contractor finished the project within the allowable contract time.
- 7 The contractor did not complete the project within the allowable contract time, but did finish the project in less than 10% over the allowable contract time.
- 0 The contractor completed the project more than 10% over the allowable contract time.
- * 14 is the normal, expected standard because the vast majority of the projects finish within the allowable time. A score of up to 20 is a bonus, which recognizes that a contractor may have to work thru weather, utilities, added work, or other unforeseen conditions or delays.

5. Coordination / Cooperation with Construction Engineering Inspection Personnel, Property Owners and Utilities Companies - The contractor coordinates/cooperates with CEI personnel responsible for administration of the contract requirements and inspection of the work. The contractor coordinates/cooperates well with property owners, utilities companies, and adjacent projects throughout the contract. The contractor responds to third party damages in a timely manner.

- 10 The contractor was cooperative and communicated well with the CEI, utility companies, and property owners, with very little direction from the Engineer. The contractor always gave advance notices to the CEI and utility companies (when work was in the vicinity of a utility), of work activities that required inspection. The contractor worked with the property owners to eliminate access problems for businesses and private property. No deficiency letter in the files by the CEI noting contractor's failure to cooperate/coordinate with the CEI, utility companies, and property owners. Contractor identified conflicts in advance, to allow timely resolution.

- 8 No more than one (1) deficiency letter by the CEI noting contractor's failure to coordinate/cooperate with the CEI, utility companies or property owners.
- 6 No more than two (2) deficiency letters by the CEI noting contractor's failure to coordinate/cooperate with the CEI, utility companies or property owners.
- 4 No more than three (3) deficiency letters by the CEI noting contractor's failure to coordinate/cooperate with the CEI, utility companies or property owners
- 2 No more than four (4) deficiency letters by the CEI noting contractor's failure to coordinate/cooperate with the CEI, utility companies or property owners
- 0 Five (5) or more deficiency letters by the CEI noting contractor's failure to coordinate/cooperate with the CEI, utility companies or property owners

6. Mitigate Cost and Time Overruns - The contractor takes the initiative and works diligently to avoid cost or time increases and to mitigate the effects of changed conditions whenever they do occur. Requests for additional money or time are well documented (complete and accurate), fair, and submitted timely.

- 12 The contractor worked diligently to avoid cost and time increases or to mitigate the effects of changed conditions. All requests for additional money or time were in good faith, accurate, timely, and well documented. If additional documentation is requested, it was promptly provided. No more than one (1) deficiency letter by the CEI noting contractor's failure to mitigate cost and time impacts.
- 9 No more than two (2) deficiency letters by the CEI noting contractor's failure to mitigate cost and time impacts.
- 6 No more than three (3) deficiency letters by the CEI noting contractor's failure to mitigate cost and time impacts.
- 4 No more than four (4) deficiency letters by the CEI noting contractor's failure to mitigate cost and time impacts.
- 0 Five (5) or more deficiency letters by the CEI noting contractor's failure to mitigate cost and time impacts.

7. Environmental Compliance - The contractor complied with all federal, state, and local environmental regulations, including permit requirements, National Pollutant Discharge Elimination System (NPDES), and the contract erosion control plan. Contractor takes the initiative to review environmental compliance and corrects deficiencies as necessary to minimize the affects on the environment. (*) Note: On projects over 300 days of allowable contract time, a bonus of 2 points will be given if the contractor did not receive any deficiency letters in this category.

10/12 * The contractor met all contract requirements in all areas considered. The contractor promptly (within 24 hours) identified and corrected all deficiencies. These areas were promptly and appropriately addressed to minimize adverse affects on the environment. No deficiency letter to the contractor by the CEI.

- 8 No more than one (1) deficiency letter to the contractor by the CEI.
- 6 No more than two (2) deficiency letters to the contractor by the CEI.
- 4 No more than three (3) deficiency letters to the contractor by the CEI.
- 2 No more than four (4) deficiency letters to the contractor by the CEI.
- 0 Five (5) or more deficiency letters to the contractor by the CEI.

- 8. Conformance With Contract Documents** - The contractor ensured conformance to all contract requirements including quality of materials and workmanship of temporary as well as final products and services. Contractor provided sufficient supervision, management, and oversight to ensure quality control at all times. Contractor's efforts are such that the Department's CEI efforts are not essential to ensure quality.
- 20 Contractor worked diligently throughout the life of the project to provide quality products and services in accordance with the contract documents. Contractor personnel performed all quality controls, management, and oversight necessary to ensure quality. CEI personnel had documented quality control or contract performance concerns on (5% or less) of the chargeable workdays.
 - 16 The CEI personnel had documented quality control or contract performance concerns on 10% of the chargeable workdays.
 - 12 The CEI personnel had documented quality control or contract performance concerns on 15% of the chargeable workdays.
 - 8 The CEI personnel had documented quality control or contract performance concerns on 20% of the chargeable workdays.
 - 4 The CEI personnel had documented quality control or contract performance concerns on 25% of the chargeable workdays.
 - 0 The CEI personnel had documented quality control or contract performance concerns on more than 25% of the chargeable workdays.

- NOTES: A) Grades between those shown will be based on an extrapolation of the actual percentage of the days the contractor conformed with contract documents, i.e., 93% of the days would equate to a grade of 18.4 rounded to 18.0.
- B) In order to track "conformance with the contracts documents", project personnel should document all deficiencies on the daily diary so as to have one location to find all the information. For instance, if the Department sends a letter to the contractor outlining a number of shortcomings, with shop drawing submitted, the daily should include a note that this letter was sent with documented concerns (i.e., the daily diary entry could simply state: "Letter date 07/10/01 documents shop drawing deficiencies").

- 9. Disadvantaged Business Enterprises (DBE) Utilization** – The contractor will receive 4 bonus points for achieving or exceeding the DBE availability percentage shown in the bid proposal. If no DBE availability percentage is shown in the bid proposal, the contractor will receive 4 bonus points for achieving 8% or more DBE utilization. In order to get credit for DBE utilization, the contractor must enter the information into the Department's Equal Opportunity Reporting tracking system.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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I. General	1
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III. Nonsegregated Facilities	3
IV. Payment of Predetermined Minimum Wage	3
V. Statements and Payrolls	5
VI. Record of Materials, Supplies, and Labor	5
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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 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA

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

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

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

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of 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 judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

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

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

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

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

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