

West Virginia Department of Transportation

2004

Contract Award Manual



Issued Date: July 1, 2004

Presented By



Contract Administration Division
WVDOT/DOH

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Part 1-Contract Bidding Process

Bidding Process

Rules and Regulations

There are four basic steps to conducting highway contracting business with the WVDOH. These steps include

- Prequalification of Bidders,
- Identify Projects,
- Purchase Plans and Proposals, and
- Delivery of Proposals.

Prequalification of Bidders

All bidders on projects let to contract by the Division shall be prequalified as provided for by rules or regulations, or both, of the Commissioner. A Certificate of Qualification will be issued by the Commissioner, which fixes the amount of incomplete work a Contractor may have under contract at any one time and the type for which the Contractor is qualified.

To obtain a Certificate of Qualification, the Contractor must file a "Contractor's Prequalification Statement" containing the information as required based on the category of work for which prequalification is being requested.

Application for prequalification will be accepted by the Commissioner until 15 calendar days prior to the date set for receiving bids on projects on which the applicant may wish to submit a Proposal. However, no contractor will be issued a Certificate of Qualification until the Division has had adequate time to review and verify the adequacy of the information provided in the "Contractor Prequalification Statement".

Identify Projects

Review the descriptions contained within the Notice To Contractors of projects recently advertised for bidding by WVDOH noting the date which bids are due. They can be found at the following locations, Lettings, local newspaper, or through Electronic Bidding.

A letting is identified as one of two types:

1. General Advertisement and Awarded Process (GAAP), or
2. Special Advertisement and Award Process (SAAP). For bidding purposes there are no real differences except for advertisement dates.

After identifying a project or projects of interest, you can find more detail on the WVDOH Web Site or you may purchase plans and proposals by obtaining and faxing an order form.

Purchase Plans and Proposals

Upon request, the Division will furnish prequalified bidders or their authorized representatives with proposal forms. Proposals issued for information purposes, available to all interested parties, will be marked "Not Valid for Bidding Purposes" and will not be accepted as a bid from any company. Plans and proposals for advertised projects are identified by the Call Number (Call No) as identified in the corresponding notice or advertisement.

Download the Proposal and Plans order form or pick up plans in person by coming to our plan room located:

**7th floor, Room A737, Building 5, Capitol Complex
1900 Kanawha Boulevard E
Charleston, West Virginia 25035-0430**

Hours: 7:30 A.M. - 4:00 p.m. on all regular business days.

WVDOT Finance Division invoices plans and proposals after the Bid Opening date.

Delivery of Proposals

Proposals shall be deposited at the proper designated office of the Division prior to the hour set in the Proposal for opening of the bids.

**West Virginia Department of Transportation
Transportation Business Manager,
Building 5 Room A148, Capitol Complex
1900 Kanawha Boulevard E
Charleston, West Virginia 25035-0430**

For additional information on turning in completed bid packages, please call (304) 558-2874.

The results of bids can be viewed by selecting the specific letting date and then the Bid Results section for the letting in which you are interested.

WVDOH Electronic Bidding System (EBS 4.3b)

All prospective bidders must **request permission** to submit electronic bids. This request must include the **bidder's company name, FEI number, mailing address, E-mail address, phone number**, and the **names and signatures** of the company representative authorized to sign the computerized bid. For each bid submitted, no contractor may use any part or portion of the Electronic Bidding System, including without limitation the Schedule of Bid Items, without prior consent of the Division of Highways.

Separate requests must be submitted for joint bids, joint ventures, or in the event that a bidder's company name changes or a bidder chooses to bid under a different company name.

EBS 4.3b System Specifications

The Windows version of Trns•port Expedite runs on an Intel Pentium PC using Microsoft Windows 9x, or a Windows NT (Workstation or Server) 4.0 or later operating system. Expedite requires additional specifications as shown. Citizenship or permanent residence in the United States or Canada is required for use of the optional digital signatures and encryption technology.

Memory: 16 MB RAM
for Windows 9x; 32
MB for Windows NT

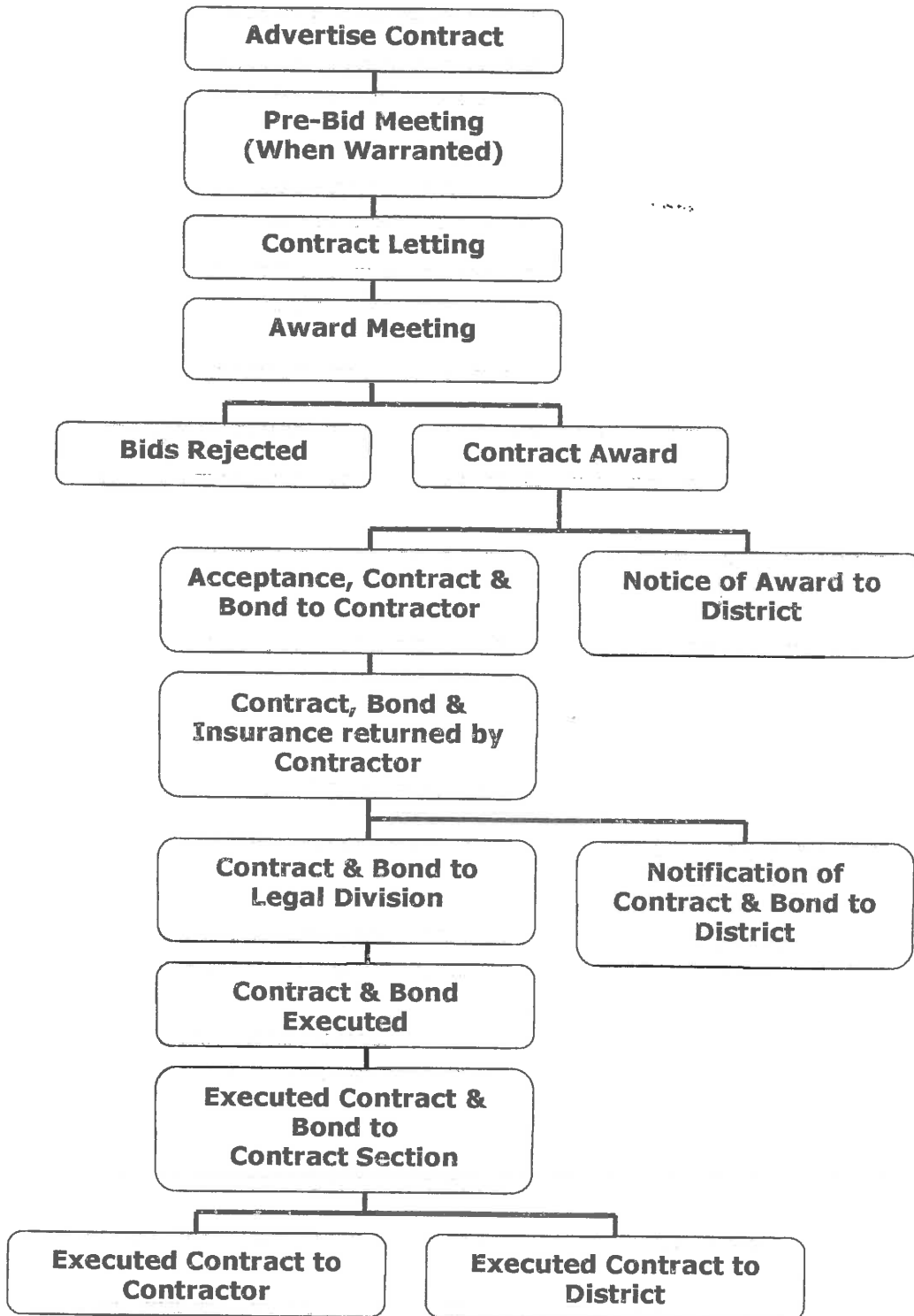
Disk Space: 20 MB

Programs and Downloads are available on Department of Transportation, Division of Highways, Contract Administration Division Website:

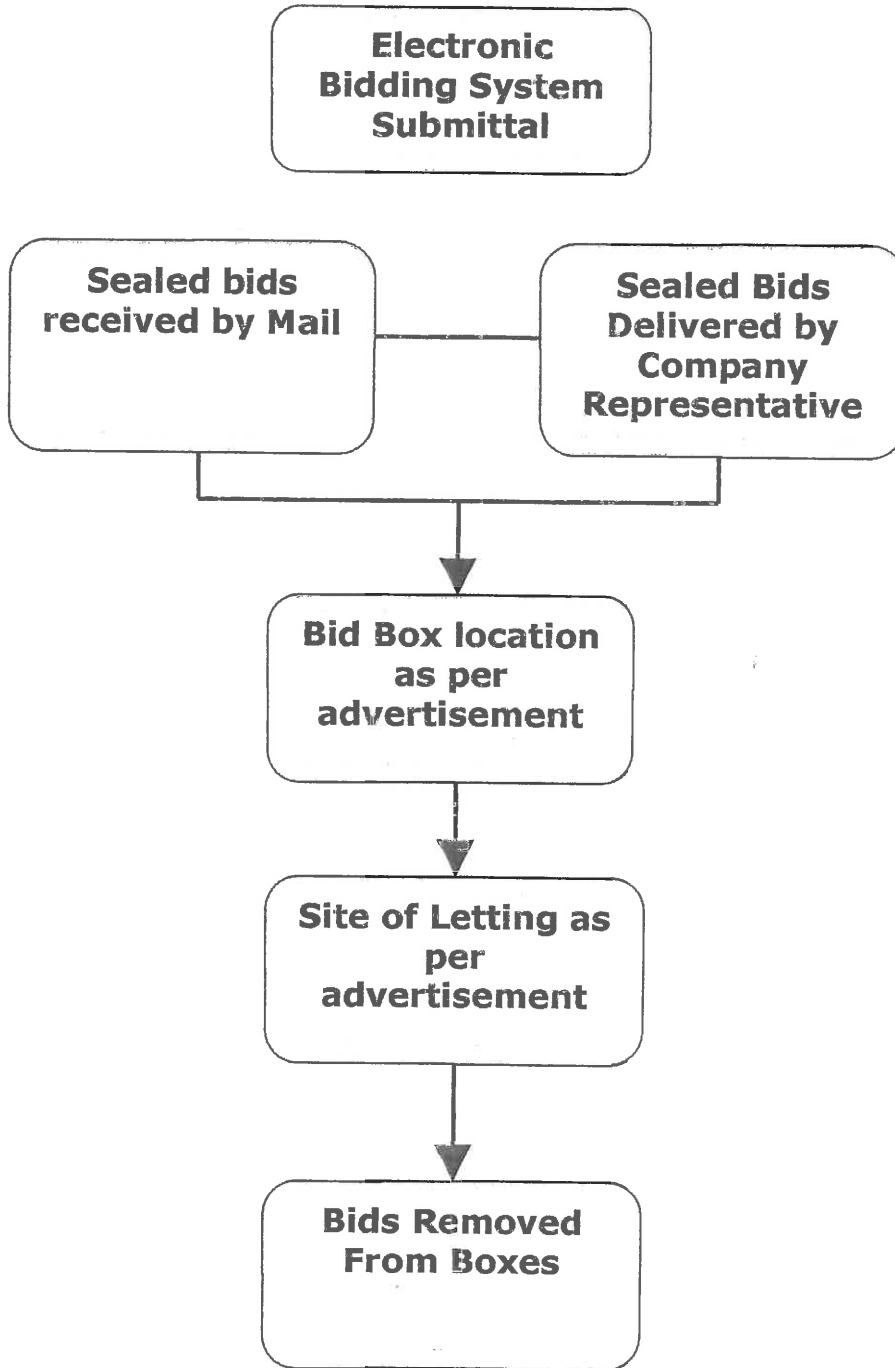
http://www.wvdot.com/10_contractors/10e1_downloads.htm

Part 2-Flow Diagrams

Contract Flow Diagram



Receipt of Bids Flow Diagram



Part 3-West Virginia State Code

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-33a. Definitions.

For purposes of the provisions of sections thirty-three-a through thirty-three-f of this article:

(a) "Debarment" means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.

(b) "The state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(c) "Vendor" means any person or entity that is eligible to bid on contracts to supply the state or its subdivisions with commodities or services, including contracting services for the construction and improvement of roads and buildings.

§5A-3-33e. Debarment procedure.

(a) The director shall obtain lists of vendors declared ineligible under federal laws and regulation and lists of vendors who are in default on state obligations, and shall initiate debarment proceedings with respect to such vendors, ~~except when good cause is shown which includes evidence that the vendor has become responsible.~~

(1) In the case of federal ineligibility restrictions applicable to state agencies, the director shall also notify the appropriate agencies of any ineligibility determined under federal authority.

(2) The director may also initiate debarment proceedings if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d of this article.

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.

(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;

(2) The causes relied upon for the proposed debarment;

(3) That within thirty working days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;

(4) The procedures governing debarment decision-making; and

(5) The potential effect of the proposed debarment.

(c) In the event a vendor wishes to contest the debarment decision, the director shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(d) In any debarment decision, the director shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.

(e) In any debarment decision, the director shall specify the length of the debarment period. The debarment period must be for the period of time that the director finds necessary and proper to protect the public from an irresponsible vendor.

(f) Proof of grounds for debarment must be clear and convincing.

CHAPTER 17 ROADS AND HIGHWAYS

ARTICLE 2. STATE ROAD COMMISSION

§17-2-1 to 17-2-11.

Repealed.

Acts, 1995 Reg. Sess., Ch. 169.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

The office of state road commissioner heretofore existing is hereby continued in all respects as heretofore constituted, but is hereby designated as the West Virginia division of highways. All duties and responsibilities heretofore imposed upon the state road commissioner and the powers

exercised by him are hereby transferred to the West Virginia division of highways and such duties and responsibilities shall be performed by said division and the powers may be exercised thereby through the West Virginia commissioner of highways who shall be the chief executive officer of the division.

There is hereby continued the office of West Virginia commissioner of highways who shall be appointed by the governor, by and with the advice and consent of the Senate, subject to the provisions of section two-a, article seven, chapter six of this code.

§17-2A-8. Powers, duties and responsibilities of commissioner.

In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;

(27) Contract for the construction, improvement and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement and maintenance of state roads and highways;

(39) Take actions necessary to alleviate any conditions as the governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the department of highways; and

ARTICLE 4. STATE ROAD SYSTEM

17-4-18. Approved types of paving to be determined and advertised.

Before the state road commissioner shall advertise for any contract for the paving of any state road, he shall determine upon and approve plans and specifications for the construction of standard types of paving suitable for the project contemplated, and shall include in the advertisement and proposals for such work the types of paving approved.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

(a) All work of construction and reconstruction of state roads and bridges, and the furnishing of all materials and supplies therefore, and for the repair thereof shall be done and furnished pursuant to contract, except that the commissioner may not be required to award any contract for work which can be done advantageously, economically and practicably by commission forces or prison labor and by use of state road equipment, or for materials and supplies, which are manufactured, processed or assembled by the commissioner: *Provided*, That the commissioner may not be required to award any contract for work, materials or supplies for an amount less than three thousand dollars. In all the work, the commissioner shall utilize state road forces or prison labor and state road equipment and shall manufacture, process and assemble all the materials and supplies for the work whenever and wherever the commissioner, in his or her discretion, finds work and services advantageous, economical and practicable in the state road program.

(b) If the work is to be done, or the materials therefore are to be furnished by contract, the commissioner shall thereupon publish the following described advertisement as a Class II legal advertisement, in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county or municipality in which the road lies.

(c) The advertisement shall also be published at least once in at least one daily newspaper published in the city of Charleston and in other journals or magazines as may to the commissioner seem advisable. The advertisement shall solicit sealed proposals for the construction or other improvement of the road, and for the furnishing of materials therefore, accurately describing the same, and stating the time and place for opening the proposals and reserving the right to reject any and all proposals: *Provided*, That whenever the estimated amount of any contract for work or for materials or supplies is less than three thousand dollars, the commissioner may not be required to advertise the letting of the contract in newspapers as above required, but may award the contract to the lowest responsible bidder, when two or more sealed proposals or bids have been received by him or her without the advertisement, but the contract may not be so awarded unless the bid of the successful bidder is three thousand dollars or less.

(d) The commissioner shall have the power to prescribe proper prequalifications of contractors bidding on state road construction work: *Provided*, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(e) To all sealed proposals there shall be attached the certified check of the bidder or bidder's bond acceptable to the commissioner, in the amount as the commissioner shall specify in the advertisement, but not to

exceed five percent of the aggregate amount of the bid; but the amount shall never be less than five hundred dollars. The proposals shall be publicly opened and read at the time and place specified in the advertisement, and the contract for the work, or for the supplies or materials required therefore shall, if let, be awarded by the commissioner to the lowest responsible bidder for the type of construction selected.

(f) In case all bids be rejected, the commissioner may thereafter do the work with commission forces or with prison labor, or may readvertise in the same manner as before and let a contract for the work pursuant thereto.

§17-4-20. Bidder's bond required; return or forfeiture of bond.

In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall promptly and within twenty days after notice of award execute a formal contract to be approved as to its form, terms and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the state of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed the contract price, conditioned that such contractor shall well and truly perform his contract and shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by him in and about the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of such contract. An action either at law or in equity, may be maintained upon such bond for breach thereof by any person for whose benefit the same was executed or by his assignee. The bidder who has the contract awarded to him and who fails within twenty days after notice of the award to execute the required contract and bond shall forfeit such check or bond, and the check or bond shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute such contract and bond. Upon the execution of such contract and bond by the successful bidder his check or bond shall be returned to him. The checks or bonds of the unsuccessful bidders shall be returned to them promptly after the bids are opened and the contract awarded to the successful bidder. A duplicate copy of such contract and bond shall be furnished by the commissioner of highways in loose-leaf form, to the clerk of the county court of the county in which such contract is to be performed and it shall be the duty of the clerk to bind and preserve the same in his office, and index the same in the name of the commissioner and of the contractor.

17-4-21. Form and signing of deeds and contracts made by commissioner.

Every deed and contract made by the state road commissioner shall be made in the name of the state road commission and shall be signed by the commissioner, and every contract shall also be signed by the contractor.

§17-4-22. Combination in restraint of trade; persons limiting competition in bidding.

Contracts authorized by this chapter shall not be let to any person, association of persons, firm, company or corporation, connected, directly or indirectly, with any combination in the form of an unlawful trust in restraint of trade, or who has an understanding, directly or indirectly, to limit, in any manner, competition in bidding upon the construction of any state road or bridge, or for furnishing any materials. Any such combination or unlawful trust is hereby forbidden. Any person, association of persons, firm or corporation entering into, or being a part of, any such combination or unlawful trust shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars; and every person, county or state officer, or any employee of any county of the state, or of the state road commissioner or other person connected therewith, directly or indirectly, and any officer or member of a corporation, who shall be engaged in any way in promoting any such combination or unlawful trust, or in aiding or abetting the same, or knowingly committing any acts in pursuance thereof, in addition to being subject to the fine aforesaid, may, in the discretion of the court, be imprisoned not exceeding six months.

CHAPTER 21 LABOR.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT

§21-11-6. Necessity for license; exemptions.

(a) On or after the first day of October, one thousand nine hundred ninety-one, no person shall engage in this state in any act as a contractor, as defined in this article, unless such person holds a license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting

advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection shall be subject, after hearing, to a warning, a reprimand, or a fine of not more than two hundred dollars.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia public service commission and its employees;

(6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

CHAPTER 59 FEES, ALLOWANCES AND COSTS; NEWS-PAPERS; LEGAL ADVERTISEMENTS

§59-3-1. Definitions and general provisions.

(a) As used in this article, elsewhere in this code or in any other provision of law:

(1) "Legal advertisement" means any notice, advertisement, statement, information or other matter required by law or court to be published.

(2) "Publication area" means the area or areas for which a legal advertisement is required by law or court to be made.

(3) "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication.

(4) "Once a week for three successive weeks" means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication and with at least an interval of six full days within the period between the date of the second publication and the date of the third publication.

(5) "Publication date" means the date on which a qualified newspaper is first placed in circulation.

(6) "General circulation" means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of interest to the general public in the area in which it circulates, but also a newspaper meeting said other qualifications, the actual circulation of which throughout the publication area is large enough to give basis for a reasonable belief that publication of a legal advertisement in the newspaper will give effective notice to the residents of the publication area.

(b) Wherever the term "qualified newspaper" or "qualified newspapers" is used in this article, or the term "newspaper" or "newspapers" is used elsewhere in this code or in any other provision of law in connection with a legal advertisement as herein defined in this section, the terms shall be taken to mean only a newspaper or newspapers, as the case may be, published (unless otherwise expressly provided) in the state of West Virginia and which meet the following qualifications:

(1) Any newspaper shall be of regular issue and must have a bona fide, general circulation in the publication area. A newspaper is considered to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty weeks during the calendar year as prescribed by its mailing permit; and has been published for at least one year immediately preceding the date on which the legal advertisement is delivered to the newspaper for publication. A newspaper is considered to be of bona fide, general circulation in the publication area if it meets the definition of "general circulation" as defined in this section and is circulated to the general public at a definite price or consideration.

(2) Any newspaper shall bear a title or name, consist of not less than four pages without a cover, and be a newspaper to which the general public resorts for passing events of a political, religious, commercial and

social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

(c) Notwithstanding any other provision of this code or law to the contrary, a qualified newspaper shall for all purposes be considered to be published where it is first placed in circulation.

§59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing.

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks and a Class III legal advertisement shall be published once a week for three successive weeks in a qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door of the county courthouse, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates

specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together in continuous columns on one page of the newspaper publishing them under a general heading styled "Legal Advertisements", unless the number or size of the legal advertisements requires the use of more than one page, in which event the legal advertisements shall be published as near as practicable in continuous columns on as many pages as necessary under the same heading as above required.

Part 4-WVDOT/DOH Standard Specifications

SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

102.1-PREQUALIFICATION OF BIDDERS:

All bidders on projects let to contract by the Division shall be prequalified as provided for by rules or regulations, or both, of the Commissioner. A Certificate of Qualification will be issued by the Commissioner fixing the amount of incomplete work a Contractor may have under contract at any one time and the type of work for which the Contractor is qualified.

To obtain a Certificate of Qualification, the Contractor must file a "Contractor's Prequalification Statement" containing the information as required based on the category of work for which prequalification is being requested.

Application for qualification will be accepted by the Commissioner until 15 calendar days prior to the date set for receiving bids on projects on which the applicant may wish to submit a Proposal. Award of a certificate may be held in abeyance until such time as the Commissioner is able to verify all references and be satisfied as to the applicant's qualifications.

No Contractor will be issued a Certificate of Qualification until the Division has had adequate time to review and verify the adequacy of the information provided in the "Contractor's Prequalification Statement".

102.2-CONTENTS OF PROPOSAL FORMS:

The proposal forms will show the location and description of the proposed work, the approximate estimates of the various quantities of work to be performed for materials to be furnished, the amount of the proposal guaranty, the number of working days or date on which the work is to be completed, and the date, time and place of opening of proposals. The form will also include any special provisions or requirements not contained in the Standard Specifications. All papers bound with or attached to the proposal form are considered a part thereof and must not be detached or altered.

The Plans, Specifications, and other documents designated in the proposal form are considered a part of the proposal form whether attached or not attached.

Upon request, the Division will furnish prequalified bidders or their authorized representatives with proposal forms. Proposals issued for informational purposes, available to all interested parties, will be marked "Not Valid for Bidding Purposes" and will not be accepted as a bid from any company.

102.3-ISSUANCE OF PROPOSAL FORMS:

Proposal forms, on which the name of the bidder is to be typed or written in ink before issuance, will be issued to Prequalified Contractors only or to

their authorized representatives, or to Contractors who have filed on a Division standard form an application for prequalification 15 calendar days prior to the date set for receiving bids on projects on which the applicant desires to bid.

The Division may at its discretion issue to a Contractor a Proposal requiring prequalification in excess of the amount allotted the Contractor provided it considers that this Contractor is particularly fitted by reason of their experience or equipment, or both, to perform work of this type involved in an amount exceeding their prequalification limits and further provided that the prospective bidder furnish the Division with a letter from a reputable Surety advising of their willingness to furnish bond to the Contractor for the project.

When more than one project is advertised, Proposals will be issued on as many projects as the Contractor requests, providing the Contractor is qualified as above for each individual project, but no contracts will be awarded exceeding the permissible limit of the Contractor's prequalification rating except as otherwise provided in 103.1.

102.4-INTERPRETATION OF APPROXIMATE ESTIMATES:

The quantities appearing in the proposal form are approximate only and are prepared for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and accepted, or for materials furnished in accordance with the Contract. If upon completion of the construction the actual quantities show either increase or decrease, the unit bid prices offered in the Proposal will prevail except as further provided.

102.5-EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK:

The bidder is required to examine carefully the Plans, Specifications, Supplemental Specifications, contract forms, and the site of the work contemplated. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and has judged for and satisfied themselves as to the character, quality, and quantity of work to be performed and material required to be furnished under the Contract.

102.6-PREPARATION OF PROPOSAL:

The bidders Proposal must be submitted on the form furnished by the Division. In lieu of using the Division's Schedule of Items, the bidder may submit a computer generated substitute schedule with the Proposal. The substitute schedule must be in a format approved in writing by the Division prior to use. The bidder must furnish a unit price or a lump sum price as called for in the Proposal, in numerical figures, for each pay item listed, except that in the case of alternates, the bid may be made on only one

alternate if so desired. The bidder must also show the products of the respective unit prices and quantities in numerical figures in the column provided for that purpose and the total amount of the Proposal obtained in adding the products of the items. All figures shall be in ink or typed. In case of discrepancy between the unit price and its extensions, the unit price will govern.

The Proposal must be signed in ink by the bidder or a qualified and authorized agent; by one or more bidders or officers of each firm represented in a joint venture; by one or more officers of a corporation duly authorized to act for and on behalf of the corporation; or by all partners or their individually qualified and authorized agents in case of a partnership.

The Proposal must contain the name and post office address of an individual bidder, the name and post office address of each individual or firm represented in a joint venture, the name and business address of a corporation and its corporate officials, or the name and post office address of each member of a partnership.

The proposal shall comply with West Virginia Contractor Licensing Act, Chapter 21, Article 11 Code of West Virginia, except that on Federal-Aid Projects a Contractor's license is not required at time of bid, but will be required before work can begin.

102.7-IRREGULAR PROPOSALS:

Proposals will be considered irregular and will be rejected for any of the following reasons:

- i. When the Proposal is on a form other than that furnished by the Division or if the form is altered. Use of a Division approved computer generated Schedule of Items shall not be considered an alteration of form or format within the meaning of these Specifications.
- ii. When there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning. Also, when Division approved computer generated Schedule of Items show any alteration of format, additions or amendments not called for, errors or omissions in units of measure, or erasures.
- iii. When the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award. This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, providing that any selection of awards will be made by the Division.

- iv. When the Proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items.
- v. Failure to sign, properly execute or return the bid bond on the official form in the case of authorized alternate pay items.
- vi. Failure to sign, properly execute, or notarize the Proposal.
- vii. Failure to indicate a proposed goal in Section C, Item 3 of the Notice contained in the Proposal, when a Division determined goal is indicated in paragraph 5 of the Special Provision for Disadvantaged Business Enterprise Utilization.
- viii. Failure to properly acknowledge receipt of addendum(s) in accordance with Section I of the notice contained in the proposal.
- ix. Failure to show the West Virginia Contractor's License Number when required in Section H of the notice contained in the proposal.

102.8-PROPOSAL GUARANTY:

No proposal will be considered unless accompanied by a guaranty in the form of a certified or cashier's check, or bid bond, in the amount specified in the Proposal, made payable to the West Virginia Division of Highways. Bid bonds will be accepted only if executed on the official form furnished by the Division, and any Proposal accompanied by a bond executed on a copy, duplicate, or facsimile will be rejected.

102.9-DELIVERY OF PROPOSALS:

Each Proposal shall be submitted in a special envelope furnished by the Division with the Proposal. In the event of loss of the envelope, a similar one of the same general size and shape may be used. The envelope shall be endorsed on the outside "Proposal for the Improvement of the _____ Road or Bridge Number _____, Project No. _____, County _____, West Virginia." and shall have the name of the bidder thereon. Envelopes shall be addressed to The West Virginia Division of Highways, Charleston, West Virginia, and shall have the name and address of the bidder. Proposals shall be deposited at the proper designated office of the Division prior to the hour set in the Proposal for opening of bids. Proposals received after the time for opening of bids will be returned to the bidder unopened.

102.10-WITHDRAWAL OF PROPOSALS:

At any time prior to the opening of Proposals, bidders may withdraw Proposals already deposited with the Division, provided the request is made in writing or by telegraph; provided further that any bidder may withdraw their bid during the course of reading of bids prior to the actual reading of

bids on the project for which the bid is withdrawn; further provided that the requested withdrawal is made in writing in the following form:

"I, the undersigned, of _____, Contractor(s) hereby acknowledge that I have this day withdrawn the sealed bid of _____, Contractor(s) on West Virginia Division of Highways Project No. _____."

Contractors who are found to be low bidders on a number of projects of which the total exceeds the Contractor's rating may withdraw, with the approval of the Commissioner, bids on such project or projects as will bring the remaining total to within the limit of the rating. At their discretion, the Commissioner may award contracts for the project or projects on which bids have been so withdrawn to the next lowest qualified bidder.

102.11-COMBINATION PROPOSALS:

If the Division so elects, Proposals may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Division reserves the right to make awards on combination bids or separate bids to the best advantage of the Division. No combination bids other than those specifically set up in proposals by the Division will be considered. Separate Contracts will be written for each individual project included in the combination.

102.12-PUBLIC OPENING OF PROPOSALS:

Proposals will be opened and read publicly at the time and place indicated in the notice to Contractors. Bidders, their authorized agents, and other interested parties are invited to be present.

102.13-DISQUALIFICATION OF BIDDERS:

Either of the following reasons may be considered as being sufficient for the disqualification of a bidder and the rejection of their Proposal or Proposals.

- i. More than one Proposal for the same work from an individual, firm, or corporation under the same or different name.
- ii. Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Division until any such participant shall have been reinstated as a qualified bidder.

102.14-MATERIAL GUARANTY:

The successful bidder shall furnish a complete statement of the origin, composition and manufacture of all materials to be used in the construction of the work, together with samples when required. Samples may be

subjected to the tests provided for in these Specifications to determine their quality and fitness for the work.

102.15-FREE COMPETITIVE BIDDING AFFIDAVIT:

Prior to the approval of Federal-Aid Contracts, a sworn statement in the form of an affidavit shall be executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded. This affidavit must be sworn to before a Notary Public who must affix their seal thereto if outside the State of West Virginia.

The affidavit, with accompanying endorsement and acknowledgment sections, is contained in the contract Proposal.

102.16-PRE-CONSTRUCTION DATA:

Prospective bidders may review files at the West Virginia Division of Highways, Capitol Complex, Charleston, West Virginia. These files may contain additional information not included in the contract documents including, but not limited to, old plans, old shop drawings, geotechnical information, environmental documents, permit applications, permits, asbestos reports, hazardous waste reports and other data. Copies may be obtained upon request and payment of printing fees.

SECTION 103 AWARD AND EXECUTION OF CONTRACT

103.1-CONSIDERATION OF PROPOSALS:

After the Proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be made immediately available to the public. In the event of discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The right is reserved to reject any or all proposals, to waive technicalities or to advertise for new proposals if, in the judgment of the Commissioner, the best interests of the State will be promoted.

If Proposals for more than one project are issued to a bidder, which projects individually would be within the bidder's qualification established provided in 102.1, but a combination of more than one, considering also the work under contract and incomplete, would be in excess of their qualification, the right is reserved to consider only such Proposal or Proposals as, in the opinion of the Commissioner, are most advantageous to the Division.

103.2-AWARD OF CONTRACT:

The award of Contract, if it be awarded, will be made within 30 calendar days after the opening of Proposals to the lowest responsible and prequalified bidder. The Commissioner may, with the agreement of the successful bidder, withhold award for any length of time. The successful

bidder will be notified by letter, mailed to the address shown on their Proposal, that their bid has been accepted and that they have been awarded the Contract.

103.3-CANCELLATION OF AWARD:

The Division reserves the right to cancel the award of any Contract at any time before the execution of the Contract documents by all parties without any liability against the Division.

103.4-RETURN OF PROPOSAL GUARANTY:

All proposal guaranties, except those of the two lowest bidders, will be returned immediately following the opening and checking of the Proposals. The retained proposal guaranty of the unsuccessful of the two lowest bidders will be returned within 10 days following the award of Contract, and that of the successful bidder will be returned after a satisfactory bond has been furnished and the Contract has been executed.

103.5-REQUIREMENT OF CONTRACT BOND:

At the time of the execution of the Contract, the successful bidder shall execute and deliver to the Division a good and sufficient surety or collateral bond payable to the State of West Virginia in the amount of 100 percent of the contract price.

As an alternate, the successful bidder may deposit with the State Treasurer cash bond, United States treasury bonds, United States treasury notes, United States Treasury certificates of Indebtedness, United States treasury bills or West Virginia Road Bonds in the amount of 100 percent of the contract amount. A safe keeping receipt from a bank located in the State of West Virginia may be deposited with the State Treasurer in lieu of any of the definitive securities.

The State Treasurer shall, on a regular basis, collect all interest or income on the obligations so deposited and shall pay same, when and if collected, to the Contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the State Treasurer shall deliver each coupon as it matures to the Contractor.

103.6-INSURANCE REQUIREMENTS:

The Contractor shall be required, in addition to any other form of insurance or bonds required under the terms of the Contract and Specifications, to procure and maintain during the life of the Contract the following types of insurance in the amounts set forth:

All such policies of insurance shall be occurrence policies and the Certificate of Insurance provided to the Division shall so specify. The policies must provide coverage for all damages arising out of injury to

persons or property which allegedly occurred during the life of the contract regardless of when the claim is filed subject to statute of limitations.

103.6.1-Contractor's Public Liability and Property Damage Liability Insurance: The Contractor shall furnish an ACORD Form 25-S or its equivalent as evidence of insurance with a 30-day notice of cancellation provision that the contractor has in place, an Insurance Devices Office (CGL) Commercial General Liability Insurance Form CG0001, 01-96 issue date or later. The limits of insurance required by the Division for contractor are as follows:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$50,000
Medical Expense Limit	\$5,000

The CGL policy issued on behalf of the Contractor shall not include exclusions for blasting, collapse, or underground liability. The CGL policy issued for the Contractor shall include endorsements that extend the aggregate limits of insurance to each construction project separately.

103.6.2-Contractor's Protective Public Liability and Property Damage Liability Insurance: The Contractor shall furnish evidence to the State that, with respect to the operations performed for them by subcontractors, the Contractor carries in their own behalf (1) regular Contractor's Protective Public Liability Insurance providing for a limit of not less than \$250,000 for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of \$500,000 for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and (2) regular Contractor's Protective Property Damage Liability Insurance providing for a limit of not less than \$100,000 for all damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident, a total (or aggregate) limit of \$500,000 for all damages arising out of injury to or destruction of property during the life of the Contract. The policy shall be written or endorsed to cover the hazards of blasting, operation of mechanical equipment on streets and highways, and collapse.

The contractor shall also give evidence of insurance for Employer's Liability Insurance, with a 30-day notice of cancellation. The Employer's Liability policy must include coverage to protect the contractor for claims

brought under Section 23-4-2 of West Virginia Code. The limits of insurance under this section shall be as follows:

Each accident	\$500,000
Each disease	\$500,000
Each disease/employee	\$500,000

Evidence of this coverage can be set forth on the ACORD 24-S specified in Subsection 103.6.1.

103.6.3-Automobile Insurance: The Contractor shall furnish evidence, with a 30-day notice of cancellation, to the state that it maintains an Insurance Services Office Commercial Automobile Liability insurance policy Form CA0001 or its equivalent. The policy shall include coverage for owned, non-owned, and hired vehicles.

The limits for liability insurance must be at least \$1,000,000 combined single limit. Evidence for the coverage shall be set forth on an ACORD Form 25-S Certificate of Liability Insurance.

103.6.4-Steam Boiler Insurance: In event steam boilers are used on the work, the Contractor shall furnish evidence that the Contractor carries in their own behalf standard Steam Boiler Insurance having an aggregate limit of not less than \$250,000.

The insurance specified shall be carried until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance of the State.

103.6.5-Countersignature of Resident West Virginia Agent: The policy or policies of Insurance required must be countersigned by a Resident Agent of the State of West Virginia, in accordance with the applicable statute of the State of West Virginia.

All certificates of insurance used to verify the policies issued must be endorsed by a West Virginia Licensed Resident Agent. Such endorsement must include the printed name, street address, city and zip code of the Resident Agent.

103.7-SPECIAL BONDS AND INSURANCE:

When the work is of such nature that special bond or insurance is required, the special requirements will be detailed and included in the Proposal for the project. This coverage could include, but not be limited to, builder's risk, installation floater, maritime exposures, environmental exposures, and professional liability.

103.8-EXECUTION OF CONTRACT:

The Contract shall be executed by the bidder to whom the Contract has been awarded, the bond executed by the principal and the sureties, and the Contract and bond returned to the Division within 20 days after the date of the notice of the award.

103.9-FAILURE TO EXECUTE CONTRACT:

Failure by the bidder to execute the Contract and file acceptable bond within 20 days after notice of award shall be just cause for the annulment of the award; and it is understood by the bidder, in the event of such an annulment of award or the Contract, that the amount of the guaranty deposited with the Proposal will be retained by the Division and deposited in the Division of Highways Fund, not as a penalty, but as liquidated damages. Award may then be made to the next lowest responsible bidder, or the work may be readvertised and constructed under contract or otherwise, as the Division may decide.

103.10-PRECONSTRUCTION CONFERENCE:

As soon as possible after the award of each Contract a preconstruction conference will be arranged by the Division. The Contractor, their superintendent, or an authorized agent shall be present at the conference and shall present the proposed schedule of work, list of proposed subcontractors, if any, and a list of suppliers from whom materials are anticipated to be purchased. The information so presented shall be on forms submitted to the Contractor with the letter of contract award. The Division will make arrangements for utility representatives to be present.

Part 5-Construction Manual

Section 103 AWARD AND EXECUTION OF CONTRACT

103.1 GENERAL

Upon receiving bids, DOH must follow certain procedures to evaluate bids and award and execute the Contract. Figure 103A illustrates the general process. See Section 103 of the **Standard Specifications** and the **Contract Award Manual** for additional information.

103.2 LETTING, AWARD, AND EXECUTION

103.2.1 Bid Opening

At the bid opening, representatives from the Contract Unit of the Contract Administration Division will open all bids on contracts in the order they are listed on the Notice to Contractors and read publicly each Contractor's name and total bid amount. Subsequently, the Contract Unit will:

1. review the bids for proper execution and compliance with DOH bidding requirements;
2. request submission of a DBE usage plan for review;
3. check bid quantities, unit prices, and extensions;
4. calculate the percentage each bid is above or below the Engineer's Estimate; and
5. prepare a tabulation of the three lowest bids.

If discrepancies are found in extensions, unit bid prices will govern. DOH will reject the bid if the bidder submits more than one bid for the same work under either the same or different name representing the same individual, firm, or corporation. Participants in collusion also will be disqualified from future bidding for a period as determined by DOH. The Contract Unit will make immediately available to the public the results of bid evaluations and comparisons. The DOH Business Manager will retain the Proposal Guaranty of all bidders until the award to the successful bidder and its submission of a Performance Bond, where upon they are returned.

103.2.2 Award Meeting

After the bid opening, the Contract Unit will schedule an award meeting to further evaluate all bids. Representatives of the State Highway Engineer, affected DOH Divisions, and the FHWA, if applicable, will attend the meeting to discuss any outstanding issues and evaluate the bids in accordance with

23 CFR 635.114; Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, January 4, 2004. The award meeting will conclude with a recommendation to reject all bids, hold the bids for further study, or award the Contract. DOH must award the Contract within 30 days of the bid opening; however, the Commissioner may withhold, with the written agreement of the successful bidder, the award if this is in the best interest of the State. DOH reserves the right to reject any or all bids and to cancel the award without liability to the State. Within 10 days following an award of the Contract, the Business Manager will return the Proposal Guaranty of the second lowest bidder.

103.2.3 Notice of Award

After the award meeting, assuming a recommendation is made to award the Contract, the Contract Unit will use BAMS to generate the Bid Acceptance Letter and Notice of Award. The Contract Unit will forward to the successful bidder the Bid Acceptance Letter and the forms necessary for proper execution of the Contract and Contract Bond. The Bid Acceptance Letter is the official notification of DOH acceptance of the bid. The Contract Unit, through the Director of the Contract Administration Division, will forward the Notice of Award to the District Engineer. The Notice of Award provides the District with advance notice to begin staffing the project (e.g., Project Engineer/Supervisor, Project Inspectors), initializing PRS for project administration, and preparing for the Pre-Construction Conference (see Section 103.3.2).

103.2.4 Execution by Contractor

Within 20 days from receipt of the Bid Acceptance Letter and forms for executing the Contract and Contract Bond, the successful bidder will return the following to the Contract Administration Division:

1. **Contract.** The company principals will properly execute and return all Contract documents to the Contract Administration Division for execution.
2. **Contract Bond.** The successful bidder's principal and surety company together with its West Virginia resident agent will properly execute a Contract Bond payable to the DOH for 100% of the Contract price. DOH will accept alternative forms of a performance guaranty in accordance with the **Standard Specifications**. Upon receipt of a properly executed Contract Bond, the Business Manager will return the Proposal Guaranty of the successful bidder.

3. Evidence of Insurance. The successful bidder will procure and maintain during the life of the Contract all insurance policies required in the Proposal Form (e.g., liability and property damage, automobile, steam boiler). As evidence, the successful bidder will return to the Contract Administration Division the respective Certificates of Insurance. See Section 103.4 for insurance requirements.

Failure of the successful bidder to properly execute the Contract and Contract Bond within the 20-day period will be cause for annulment of the award and forfeiture of the Proposal Guaranty to DOH as liquidated damages. DOH may then award to the next lowest bidder or re-advertise.

103.2.5 Execution by DOH

Upon receipt of a properly executed Contract from the successful bidder, the Contract Unit will forward to the District Engineer a Notification of Contract and Contract Bond Execution. The Contract Unit will forward all Contract documents through the Legal Division for execution by the Commissioner. Upon Contract execution, a Contract Award Authorization will be generated. The Authorization is the official document authorizing construction of the project. The Contract Unit will forward one copy of the Contract Award Authorization to the District Engineer, who will forward the Authorization to the Project Engineer/Supervisor, through the District Construction Engineer, to initialize PRS for contract administration. The total dollar amount of the Contract Award Authorization is the bid price of the Contract plus engineering costs and contingencies, which will cover variations in construction quantities permitted by contract specifications that could cause payments to exceed the specified bid price.

103.2.6 Distribution of Executed Contract

The executed Contract will accompany all original project documents and certificates. The DOH Central Office will process the executed Contract and forward the original to the District Office.

The executed Contract and Award Authorization are the Project Engineer/Supervisor's primary source of information for initializing PRS to administer the Contract. The Contractor cannot begin work until the Project Engineer/Supervisor has initialized PRS to generate the Notice to Proceed.

103.3 PRE-CONSTRUCTION ACTIVITIES

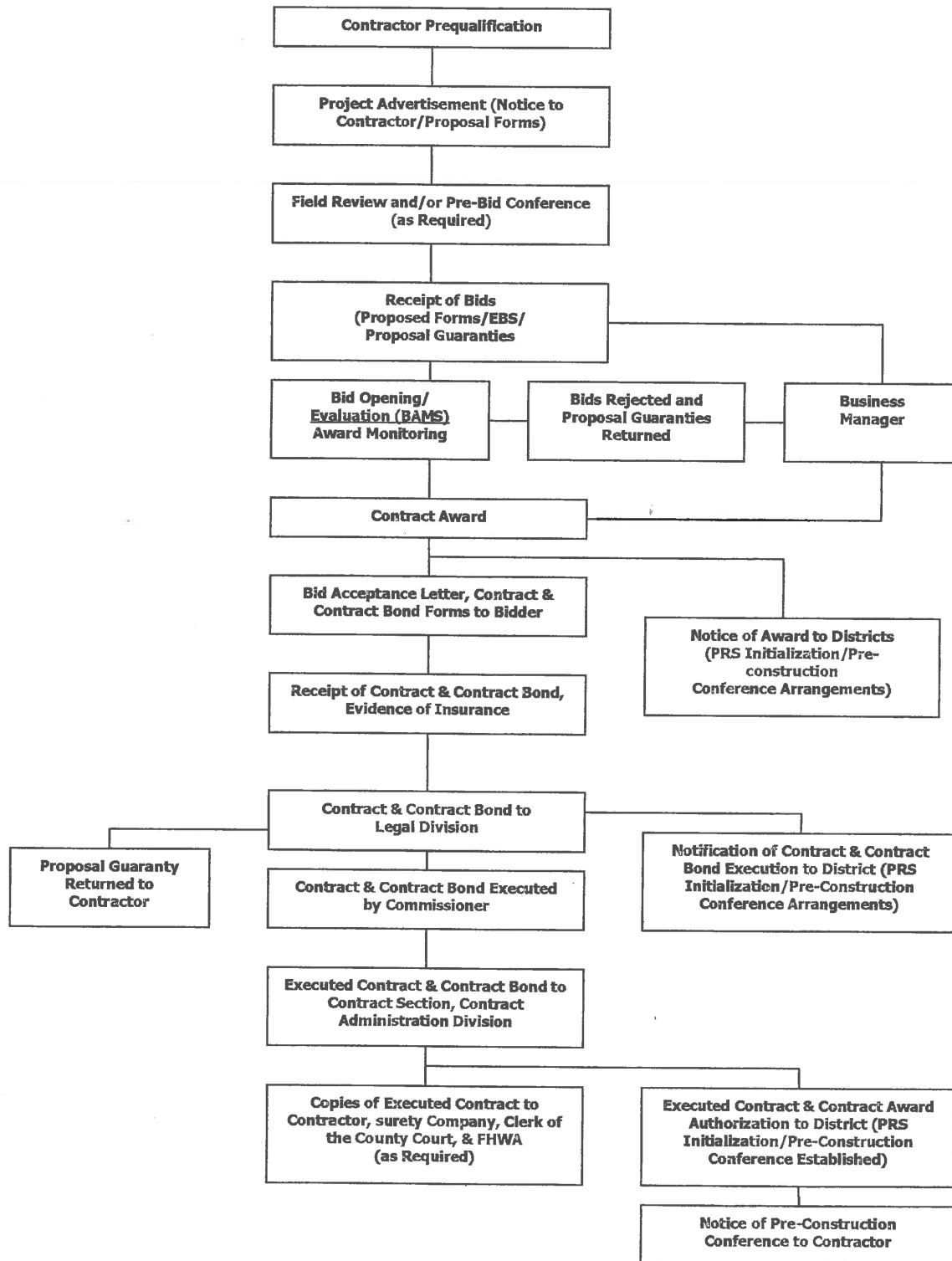
103.3.1 Distribution of Plans and Plan Revisions

Following the bid opening, DOH generally will have sent several sets of Plans (as documented in the Notice of Award) to the successful bidder for use by the Contractor, Subcontractors, and material suppliers. The following guidelines discern the responsibilities for distributing additional Plan sets to the Contractor:

1. Before Notice to Proceed. If the Contractor needs additional Plans after the Contract is awarded but before construction begins, the Contractor must forward a written request to DOH. These requests will be forwarded to the Contract Unit for action. The Unit will fulfill the Contractor's request and send the Project Engineer/Supervisor, through the District Construction Engineer, a copy of the Contractor's letter with notification of what action was taken. If Plan revisions occur before the Project Engineer/ Supervisor issues the Contractor a Notice to Proceed, the Contract Unit sends the Contractor the proper number of revised sheets and notifies the District.
2. After Notice to Proceed. During construction, Plan revisions may occur, and it is essential to update each official Plan set issued to the Contractor. After the Construction Engineer issues the Contractor a Notice to Proceed, the District Construction Engineer is responsible for ensuring that the Contractor receives the proper number of reduced and full-size revised Plan sheets. The District Construction Engineer will contact the Regional Construction Engineer in the Central Office to obtain the revised Plan sheets and forward them to the Contractor.

103.3.2 Pre-Construction Conference

The DOH requires that a Pre-Construction Conference be held for all State and Federal-aid projects. However, the Contract Administration Division may waive this requirement for those routine improvement projects that can be initiated with a meeting smaller in scope.



The Pre-Construction Conference is called by DOH to discuss any real or anticipated construction issues and to assure that the affected parties are fully informed of key aspects of the project. The Conference will be held after Contract award and prior to construction. Attendees will include representatives from DOH, the Contractor, and other affected parties. DOH will provide a complete set of Plans (i.e., right-of-way, construction, detours and maintenance of traffic). The District Office will provide any additional information for the Conference.

103.3.2.1 Purpose

The Pre-Construction Conference will:

1. plan for the DOH administration and inspection of contract items;
2. discuss the scope and resolution of any real or anticipated construction problems;
3. clarify the Contractor's understanding of project features and details;
4. discuss the nature and status of agreements (e.g., utilities, property owners) and how they affect construction operations;
5. schedule an effective sequence of operations for construction;
6. coordinate the activity schedules of other agencies involved in the project; and
7. Introduce DOH personnel (e.g., Project Engineer/Supervisor, Project Inspectors) assigned to the project.

103.3.2.2 Arrangement and Scheduling

After receiving the Notice of Award from the Contract Administration Division, the District Construction Engineer will coordinate with the Project Engineer/Supervisor, Contract Administration Division, and the Contractor to arrange a suitable date for the Pre-Construction Conference. If utility coordination is significant, a preliminary meeting to resolve the major utility issues should be held before the Conference. As needed, the District Construction Engineer will schedule such a meeting with the affected utility companies, District Construction Engineer, District Utilities Supervisor, Project Engineer/Supervisor, Railroad/Utilities Unit of the Engineering Division, and the Contract Administration Division. See Section 105.2 for additional information on utilities. The District Construction Engineer will initialize PRS to generate the Notice of Pre-Construction Conference (see Section 105.6.4) and forward the Notice to the Contractor. All attendees should be notified as far in advance of the scheduled Conference date as practical. The Project Engineer/Supervisor will transmit a letter containing

the date, time, and location of the Conference to the Contract Administration Division and forward copies of the letter to:

1. District Engineer;
2. District Construction Engineer;
3. Director, Contract Administration Division;
4. Director, Materials Control, Soil and Testing Division;
5. Director, Traffic Engineering Division;
6. Director, Engineering Division;
7. Director, Right-of-Way Division;
8. appropriate FHWA representatives; and
9. as needed, key representatives of other Federal, State, and local agencies and private concerns.

103.3.2.3 Attendees

In general, key representatives of the parties directly involved in any construction phase should attend the Pre-Construction Conference. The District Construction Engineer will approve the final list of attendees, which may include:

1. DOH personnel from the Central Office including:
 - a. Regional Construction Engineer, Contract Administration Division;
 - b. Division Representative, Materials Control, Soils, and Testing Division;
 - c. Traffic Engineer, Traffic Engineering Division;
 - d. Project Design Engineer, Engineering Division;
 - e. Environmental Engineer, Engineering Division;
 - f. Utilities Supervisor, Engineering Division;
 - g. State Specifications Engineer, Engineering Division;
 - h. Project Right-of-Way Agent, Right-of-Way Division; and
 - i. Safety Officer, Enforcement Division;
2. DOH personnel from the District Office including:
 - a. Construction Engineer;
 - b. Right-of-Way Agent;
 - c. Encroachment/Hauling Permits Supervisor;
 - d. Design Engineer;
 - e. Bridge Engineer;
 - f. Traffic Engineer;
 - g. Materials Supervisor;
 - h. Construction Office Manager
 - i. Safety Officer;
 - j. Utility Supervisor;

- k. Area Engineer/Supervisor;
 - l. Project Engineer/Supervisor
 - m. Project Inspectors; and
 - n. secretary to record minutes.
3. Contractor's management representative (e.g., Owner, Vice President);
 4. Contractor's Project Superintendent;
 5. appropriate FHWA representatives;
 6. representatives from affected utility and railroad companies;
 7. representatives from the consulting engineer firm; and
 8. representatives from other concerned Federal, State, and local agencies including:
 - a. US Coast Guard;
 - b. US Army Corps of Engineers;
 - c. US Forest Service;
 - d. WV Department of Natural Resources;
 - e. WV Department of Environmental Protection;
 - f. Public Lands Corporation; and
 - g. Municipalities.

103.3.2.4 Facilitation

The District Construction Engineer will Chair the Conference and ensure that the minutes are accurately recorded. The Chair will announce the meeting agenda and ask each attendee to state their name and organization. Each attendee will sign the Conference Attendance Sheet. Name cards will facilitate communication and will be an asset when recording minutes. When facilitating the Conference, consider the following key topics, roles, and responsibilities:

1. Right-of-Way. The District Right-of-Way Agent will discuss the status of the project right-of-way.
2. Railroads/Utilities. The District Utilities Supervisor will discuss how the project will affect railroad and/or utility facilities. Representatives from affected companies should be queried as to how needed relocations and adjustments will affect construction progress.
3. EEO/Labor Compliance. Before the Conference, the External Contract Compliance Section will forward to the District Construction Engineer an informational packet outlining EEO and labor compliance regulations for Federal-aid projects. The District Construction Engineer will discuss the Contractor's responsibilities for compliance (e.g., notices to be posted, subcontracting requirements). Ensure that the Contractor has the **Labor**

- Compliance Guidelines**, and instruct the Contractor to thoroughly examine and comply with these regulations.
4. **On-the-Job Training.** If OJT is specified in the Contract, DOH requires the Contractor to submit a Training Proposal designating the number of trainees and a Training Program for each selected work classification. The Regional Construction Engineer may verbally approve the Training Proposal at the Conference if the Contractor uses Training Programs already approved by the Secretary of Labor. After the Conference, the Contract Administration Division will send the Contractor, and copy the District Construction Engineer, a letter corroborating such an approval. However, if the Contractor proposes to develop its own Training Programs, the DOH and FHWA must first approve the Training Programs before they are used on the project. The Regional Construction Engineer will emphasize that it is the Contractor's responsibility to identify work classifications of trainees on payrolls submitted to the Project Engineer/Supervisor. See Section 107.3.2 for additional information.
 5. **Materials Control.** Desirably, the Contractor will submit the Proposed Source of Materials (Form 454) to the District Materials Supervisor before the Pre-Construction Conference; otherwise, the Contractor must submit it at the Conference. See Section 702.2 for additional information. The District Materials Supervisor will discuss materials control issues and answer related questions posed by attendees. During the Conference, emphasize to the Contractor the need to have all material approved by the DOH prior to use.
 6. **Project Safety.** The District Safety Supervisor will discuss the safety policies and procedures in the Contract and emphasize the importance of project safety.
 7. **Project Construction.** The Project Engineer/Supervisor is responsible for thoroughly examining the details of the Contract, Plans, **Standard Specifications**, Special Provisions, Agreements, and the Project Site before the Conference. The Project Engineer/Supervisor will discuss the specific phases of project construction, indicate acceptable locations for a Project Field Office (e.g., trailer), and emphasize to the Contractor's Project Superintendent the importance of promptly notifying Project Inspectors of arrival and departure times of all project labor, materials, and equipment. Other issues should be presented and discussed as needed.
 8. **Control of Work.** The District Construction Engineer will discuss topics regarding the control of work including: inspection procedures and requirements for materials and construction quality assurance; quantity measurements and documentation; laboratory numbers; Supervisor's and Inspector's Daily Reports; preparation of estimates for payment; and progress.

9. Other Issues. As needed, other Central Office and/or District Office personnel will discuss topics in their fields of expertise (e.g., drainage, foundations, soils, aggregates, paving, structures, maintenance of traffic).
10. Contractor Submitted Documents. The Contractor will present the following at the Pre-Construction Conference:
- a. three copies of an executed Proposed Source of Materials (Form 454);
 - b. any executed Subcontracting Requests (Form 403);
 - c. a letter to the District Construction Engineer requesting approval of the following key Contractor personnel:
 - i. Professional Engineer/ Professional Surveyor who will supervise the pay item—Construction Layout Stakes, including West Virginia PE/PS Registration Number, professional registration status in other States, and resume;
 - ii. Project Superintendent, including resume;
 - iii. names of the representative (s) authorized to sign project documents;
 - iv. name and authority of the EEO Officer; and
 - v. name of the DBE Liaison Officer designated to administer DBE matters;
 - d. three copies of the Certificate(s) of Insurance, if processed, or a letter from the insurance agent certifying that the required insurance policies are in effect;
 - e. method and schedule proposed for mitigating erosion and sedimentation;
 - f. erosion control plan;
 - g. On-the-Job Training Proposal and Training Programs;
 - h. Quality Control Plan detailing the type and frequency of material sampling and testing as governed by the contract specifications; and
 - i. three copies of the project schedule prepared in accordance with the contract specifications (Unless otherwise requested by the District Construction Engineer, a project schedule will not be required for projects of short duration. Otherwise, the Contractor will provide an ASC schedule or CPM diagram showing how the proposed work will be completed within the time or by the date specified in the Contract. The Contractor will prepare the project schedule in accordance with the requirements of Section 108 of the **Standard Specifications**. See Section 105 for additional information).
11. Minutes of Conference. The District Construction Engineer will ensure that accurate minutes of the Conference are recorded. As early as practical after the Conference, the District Construction Engineer will proofread the

typed minutes and prepare the Pre-Construction Conference Report. The Report is critical, because it may become evidentiary evidence in resolving future claims or disputes. The Report will include a transcript of the minutes and a summary of the agreements, decisions, commitments, and actions required on outstanding issues. The District Construction Engineer will distribute one copy of the Report to the:

- a. Contractor;
- b. District Engineer;
- c. Project Engineer/Supervisor
- d. Director of the Contract Administration Division;
- e. Director of the Materials Control, Soils and Testing Division; and
- f. as necessary, the representatives of other organizations that attended the Conference.

103.3.3 Pre-Survey of Work Zone

The safe and efficient movement of traffic through a construction area is achieved through careful planning. The District Construction Engineer and the Project Engineer/Supervisor should carefully examine the Contract Plans and Specifications for Maintenance of Traffic (MOT) provisions. On large and complex projects, the MOT Plan typically will show the type and location of all traffic control devices for the various stages of construction including any needed crossovers and detours. If an MOT Plan is not included in the Contract Plans (i.e., for smaller, less complex projects), traffic control will be implemented in accordance with the DOH **Traffic Control for Street and Highway Construction and Maintenance Operations**. As part of this planning process, the District will conduct a preliminary survey of the work zone for all projects on high-speed, high-volume facilities including all Interstates, APD corridor highways, fully controlled access highways, and expressways having a speed limit of 45 mph (70 km/h) or greater. After Contract award but before the Notice to Proceed is sent to the Contractor, the District Construction Engineer will select a team of District personnel and schedule the field review. The review team may:

1. evaluate the overall MOT Plan relative to accommodation and control of traffic during construction;
2. evaluate the structural strength of the existing pavement relative to its ability to carry additional traffic loads;
3. evaluate the conditions of drainage structures within the work zone; and
4. check for any evidence of bridge deterioration.

Based on the findings of the field review, the review team will forward recommendations to the Traffic Engineering Division and Contract Administration Division regarding any desired adjustments to the proposed construction sequence or revisions to the MOT Plan.

103.4 PROJECT INSURANCE

103.4.1 Insurance Requirements

The Contractor is required to have public liability and property damage insurance. Other types of insurance may be necessary for special circumstances or conditions. If a Project Field Office is provided, the Contractor must maintain an insurance policy to protect its contents. Protective Liability Insurance is required on all projects that encroach Turnpike and/or railroad right-of-way. Before the Commissioner executes the Contract and Contract Bond, the Contract Unit will verify that the insurance requirements of the Contract are met (e.g., types, monetary limits) and that a West Virginia Resident Agent has countersigned the appropriate documents (e.g., Certificate(s) of Insurance). At the Pre-Construction Conference, the Contractor will provide the DOH with three copies of the Certificate(s) of Insurance, if processed, or a letter from the Insurance Agent certifying that the required insurance is in effect. The Contract Administration Division will retain one copy in the Central Office Files. The District will retain one copy in the District Office Files, and the Project Engineer/Supervisor will retain one copy in the Project Files. See Section 103 of the **Standard Specifications** for additional information.

103.4.2 Monitoring Insurance Requirements

Typically, an insurance company will issue a policy for a one-year period with a provision for renewal. The Project Engineer/Supervisor will ensure that the Contractor renews all required policies throughout the life of the project. Use the Insurance Monitoring Form (Form 480) to perform this task. These Forms typically are maintained in a notebook in the Insurance Monitoring File within the District Construction Office. For each new project, enter each required insurance policy on one line of the Insurance Monitoring Form. As appropriate, leave blank lines to accommodate renewal entries. Check the Form monthly to ensure that renewal Certificates are received two weeks prior to their date of expiration. If a renewal Certificate is not received in this timeframe, contact the Contractor by phone and document the telephone contact in a letter to the Contractor. Place one copy of the letter in the Insurance Monitoring File and one copy in the Project File.

Part 6-Federal Regulations and Directives



U.S. Department of Transportation
Federal Highway Administration
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23 CFR 633A

OPI: HNG-22

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 633 - REQUIRED CONTRACT PROVISIONS

Subpart A - Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

- 633.101 Purpose.
- 633.102 Applicability.
- 633.103 Regulatory authority.
- 633.104 Availability.

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Source: 52 FR 36920, Oct. 2, 1987, unless otherwise noted.

Sec. 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

Sec. 633.102 Applicability.

- (a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see Sec. 633.104 for availability of form).

(c) For contracts authorized under certification acceptance procedures, an alternate format for inclusion of required contract provisions may be used pursuant to 23 CFR Part 640.

(d) The required contract provisions contained in Form FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273 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 the requirements contained in the provisions of Form FHWA-1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR Part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA-1273, the SHA may include Form FHWA-1273 in its entirety to meet this requirement.

Sec. 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA-1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA-1273.

Sec. 633.104 Availability.

(a) Form FHWA-1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA-1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.



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23 CFR 633B

OPI: HEP-12

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 633 - REQUIRED CONTRACT PROVISIONS

Subpart B - Federal-Aid Contracts (Appalachian Contracts)

Sec.

633.201 Purpose.

633.202 Definitions.

633.203 Applicability of existing laws, regulations, and directives.

633.204 Fiscal allocation and obligations.

633.205 Prefinancing.

633.206 Project agreements.

633.207 Construction labor and materials.

633.208 Maintenance.

633.209 Notices to prospective Federal-aid construction contractors.

633.210 Termination of contract.

633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Appendix A - TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

Appendix B - REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROAD CONSTRUCTION CONTRACTS

Appendix C - ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

Appendix D - FEDERAL-AID PROPOSAL NOTICES

Authority: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

Source: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

Sec. 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

Sec. 633.202 Definitions.

(a) The word "Commission" means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

(b) The term "division administrator" means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

Sec. 633.203 Applicability of existing laws, regulations, and directives.

The provisions of Title 23, United States Code, that are applicable to the construction and maintenance of Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the Administration of Federal-aid for Highways (Title 23, Code of Federal Regulations) and directives implementing applicable provisions of Title 23,

United States Code, where not inconsistent with the Act, shall be applicable to such projects.

Sec. 633.204 Fiscal allocation and obligations.

(a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

Sec. 633.205 Prefinancing.

(a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programmed and advanced with interim State financing.

(b) Program approvals, plans, specifications, and estimates (PS&E) approval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

Sec. 633.206 Project agreements.

(a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:

(1) For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued there under, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of Title 49, Code of Federal Regulations, Part 21, Sec. 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of

Appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program."

(2) "For projects constructed on a section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."

(b) For prefinanced projects, the following additional provision shall be incorporated into the project agreement: "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission subsequent to the date of this agreement may be used to reimburse the State for the Federal share of the cost of work done on the project."

Sec. 633.207 Construction labor and materials.

(a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.

(b) The provisions of 23 U.S.C. 324 and of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C.2000d-2000d-4) and the implementing regulations in 49 CFR Part 21, including the provisions of Sec. 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of Appendix C thereof relative to employment practices, shall be applicable to all types of contracts listed in Appendix A.

(c) The "Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts," Form PR-1316 (Appendix B), shall be included in all construction contracts awarded under the Act.

(d) The required contract provisions set forth in Form PR-1317 (Appendix C) shall be included in all types of contracts described in Appendix A, other than construction contracts.

(e) In the design and construction of highways and roads under the Act, the State may give special preference to the use of mineral resource materials native to the Appalachian region. The provisions of Sec. 635.409 of this chapter shall not apply to projects under the Act to the extent such provisions are inconsistent with Sections 201(d) and (e) of the Act.

[39 FR 35146, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 36204, Aug. 27, 1976]

Sec. 633.208 Maintenance.

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

Sec. 633.209 Notices to prospective Federal-aid construction contractors.

The State highway department shall include the notices set forth in Appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

Sec. 633.210 Termination of contract.

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Sec. 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Pursuant to regulations of the Environmental Protection Agency (40 CFR Part 15) implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in Appendix B to this part.

[40 FR 49084, Oct. 21, 1975]

Appendix A - Types of Contracts to Which the Civil Rights Act of 1964 is Applicable

Section 324 of Title 23, U.S.C., the Civil Rights Act of 1964, and the implementing regulations of the Department of Transportation (49 CFR Part 21), including the provisions of subparagraphs (2)(iii) and (2)(v) of Appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

1. Construction.
2. Planning.
3. Research.
4. Highway Safety.
5. Engineering.
6. Property Management.
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:
 - a. Advertising contracts.
 - b. Agreements for economic studies.
 - c. Contracts for surveys and plats.
 - d. Contracts for abstracts of title certificates and title insurance.
 - e. Contracts for appraisal services and expert witness fees.
 - f. Contracts to negotiate for the acquisition of right-of-way.
 - g. Contracts for disposal of improvements and property management services.
 - h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
 - I. Contracts for escrow and closing services. [40 FR 49084, Oct. 21, 1975]

Appendix B-Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts

- I. Application.
- II. Employment Preference.
- III. Equal Opportunity: Employment Practices.
- IV. Equal Opportunity: Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment.
- V. Nonsegregated Facilities.
- VI. Payment of Predetermined Minimum Wages.
- VII. Statements and Payrolls.
- VIII. Record of Materials, Supplies and Labor.
- IX. Subletting or Assigning the Contract.
- X. Safety: Accident Prevention.
- XI. False Statements Concerning Highway Projects.
- XII. Implementation of Clean Air Act and Federal Water Pollution Control Act.

I. Application.

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.
4. A breach of the following clauses may also be grounds for debarment as provided in 29 CAR 5.6(b):

Section 1, paragraph 2.

Section VI, paragraphs 1, 2, 3, 5 and a.

Section VII, paragraphs 1, a, b and d.

II. Employment preference.

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 United States Department of Labor 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 c 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 laborers, mechanics and other employees he anticipates will be required to perform the contract work, (b) the number of employees required in a classification, (c) the date on which the 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 one 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 the positions covered by the certificate, notwithstanding the provisions of subparagraph c above.
5. The contractor shall include the provisions of Section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. Equal opportunity: employment practices. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or

other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of this Section III in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request

the United States to enter into such litigation to protect the interests of the United States.

IV. Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment. during the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. Compliance with regulations. The contractor shall comply with the provisions of 23 U.S.C. 324 and with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
3. Solicitations for subcontracts including procurement of materials and equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. Information and reports. The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations,

orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of provisions. The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement, as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

V. Nonsegregated facilities. (Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction

contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that(except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. Payment of predetermined minimum wages

1. General. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act(29 CAR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs

reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. Classifications -

- a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.
- b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. Payment of fringe benefits -

- a. The State highway department contracting officer shall require, 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 wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent there of to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

- b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: Provided, however, 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. Payment of excess wages. While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.
5. Apprentices and trainees (Programs of Department of Labor)
 - a. apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CAR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the

wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- b. Trainees, except as provided in 29 CAR 5.15, 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 U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor 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. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CAR Part 30.
6. Apprentices and trainees (Programs of Department of Transportation). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of Section, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.
7. Withholding for unpaid wages. The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department 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.
8. Overtime requirements.
 - a. 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 and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty 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 basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

- b. In the event of any violation of paragraph a, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph a, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph a.
- c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. Statements and payrolls

- 1. Compliance with Copeland Regulations (29 CAR Part 3). The contractor shall comply with the Copeland Regulations(29 CAR Part 3) of the Secretary of Labor which are herein incorporated by reference.
- 2. Weekly statement. Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the

payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. Final labor summary. The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in Section VIII, hereof, relative to materials and supplies.

4. Final certificate. Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * * *

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title

* * * * *

5. Payrolls and payroll records

- a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen 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 correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to Section VI, paragraph 3.b., 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 I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- c. The payrolls shall contain the following information:
 1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.
 3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.
 4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked(not adjusted).
 5. The itemized deductions made and
 6. The net wages paid.
- d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by Section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CAR Part 3)and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to Section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

- e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.
- f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.
- g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.
- h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.
- i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.
- j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. Record of materials, supplies and labor

- 1. The contractor shall 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 PR-47 and in the units shown. Upon completion of the contract, this record, together with the final

labor summary required in Section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.
3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.
4. Subletting or assigning the contract.
 1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.
 - a. "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.
 - b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.
3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
4. Any items that have been selected as "Specialty Items" for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.
5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.
5. Safety: Accident prevention. In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, 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. It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

6. 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 in one or more places where it is readily available to all personnel concerned with the project:

* * * * *

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18, United States Code, Section 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 costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of 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 a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road 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 five years, or both."

7. Implementation of Clean Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed \$100,000)-

1. The contractor stipulates that any facility to 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 CAR Part 15), is listed not on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CAR 15.20.
2. The contractor agrees to comply 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 there under.
3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every subcontract which exceeds \$100,000, and further agrees to take such action as Government may direct as a means of enforcing such requirements.

[40 FR 49084, Oct. 21, 1975]

Appendix C - Additional Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Contracts Other Than Construction Contracts

Equal Opportunity: Employment Practices and Selection of Subcontractors, Suppliers of Materials, and Lessors of Equipment

During the performance of this contract, the contractor agrees as follows:

1. Compliance with regulations. The contractor will comply with the provisions of 23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.
2. Employment practices -
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.
 - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all

qualified applicants will receive consideration for employment without regard to race, color, sex, or national origin.

- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representative of the contractor's commitments under the employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. Selection of subcontractors, procurement of materials and leasing of equipment -
 - a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
 - b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
 4. Information and reports. The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Incorporation of provisions. The contractor will include these additional required contract provisions in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lesser as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
6. Sanctions for noncompliance. In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

Appendix D - Federal-aid Proposal Notices

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

I. Certification of nonsegregated facilities.

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the

"Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply

agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. Implementation of Clean Air Act. (a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to 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 by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CAR, Part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CAR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.



U.S. Department of Transportation
Federal Highway Administration
FEDERAL-AID POLICY GUIDE
December 9, 1991, Transmittal 1

23 CFR 633B

NON-REGULATORY SUPPLEMENT

OPI: HEP-12

1. AUTHORITY. The Appalachian Region Development Act of 1965, and subsequent amendments thereto, hereinafter referred to as the Act (40 United States Code (U.S.C.) App.). Selected sections of the Act are attached as Attachment 1 (Selected Sections of the Appalachian Regional Development Act of 1965, as amended) for reference purposes.
2. FISCAL ALLOCATIONS AND OBLIGATIONS (23 CFR 633.204)
 - a. The Act provides contract authority for financing the program in a manner similar to the regular Federal-aid highway program. The provisions of 23 U.S.C. 106(a) and 118 relating to the obligation, period of availability, and expenditure of Federal-aid highway funds, apply to the Development Highway System and the local access roads. Contract authority and funds appropriated by Congress are transferred

to the Secretary by the Federal Co-chairman of the Appalachian Regional Commission (ARC). Obligational ceilings, within State allocations established by the ARC are transmitted, from time to time, from the ARC to the FHWA.

- b. The administration of Appalachian funds within obligational ceilings established by the ARC rests with the FHWA. Requests for increases over such ceilings should be referred by the State highway department through the appropriate ARC State representative to the ARC for approval. Except as provided in paragraph 4 of this directive, the division Administrator should not authorize the State to proceed with the work on any project unless there is sufficient unobligated balance of funds in the State's ceiling to cover the cost to be financed with Appalachian highway funds.
- c. Overruns on Appalachian development highway projects may be approved at the same percentage of Appalachian funds as the initial work authorized, within established obligational ceilings, by the Division Administrator. Overruns on local access road projects can be approved by the Division Administrator only after such overrun has been approved by the ARC. The State highway department should refer the overrun request through its ARC State representative to the ARC for approval.
- d. Development Highway System and local access road projects may be administered under the provisions of 23 U.S.C. 117. If a State wishes to adopt certification procedures, the procedures should be modified to explicitly include those projects using Appalachian funds.

3. APPROVAL PROCEDURES (No CFR paragraph reference)

a. Authorization

(1) Division Administrators may authorize work to proceed relating to the Development Highway System that are in accordance with the established order of priorities approved by the ARC. The establishment of priorities and changes thereof are governed by Section 201A-3 of the ARC Code. Work relating to local access roads should not be authorized unless the project has the approval of the ARC and at a cost not to exceed the cost estimate approved by the ARC. Projects financed with Appalachian funds need not appear in an annual program of projects. In the case of development highways, the programming of projects is accomplished by the ARC priority system

and, in the case of local access roads, by the ARC approval of individual projects.

(2) The Division Administrator may authorize work to proceed for route planning, location studies to develop detailed locations, and cost estimates on all sections of the Appalachian Development Highway Systems.

(3) The Division Administrator may authorize work to proceed for design engineering and preparation of construction plans when:

(a) such preliminary engineering work has been included in Classification A of the priority system developed under Section 201-3 of the ARC code,

(b) the ARC has concurred in the detailed location (centerline), and

(c) the State agrees to obligate State funds or any Federal funds for right-of-way acquisition or physical construction for the section within 5 years from the end of the fiscal year in which the project agreement for such engineering work is executed.

(4) The Division Administrator may authorize the acquisition of rights-of-way to proceed when:

(a) such right-of-way acquisition has been included in Classification A of the priority system developed under Section 201-3 of the ARC code,

(b) the ARC has concurred in the detailed location (centerline), and

(c) the State agrees to obligate State funds or any Federal funds for physical construction within 10 years from the end of the fiscal year in which the project agreement for such acquisition is executed.

(5) The Division Administrator may authorize physical construction to proceed when:

(a) such construction has been included in Classification A or the priority system developed under Section 201-3 of the ARC code

(b) the ARC has concurred in the detailed location (centerline), and

(c) the State has requested and received specific approval from the ARC Executive Committee to obligate or prefinance the construction activity. The State need not request such specific approval if the particular activity is in accordance with Section 201-3.5 of the ARC code as approved for construction as of June 30, 1973.

(6) Insufficient Funds

(a) Whenever insufficient funds are available for obligation within the State's allocation to finance the Federal share of estimated project costs, the following procedures apply:

(1) Allow one Appalachian development highway project in each Appalachian State to be funded as part Federal participating (APD) and part Advanced Construction (ACAPD) in any fiscal year. The maximum Federal share for such a combination project shall be limited to the lesser of the maximum Federal participation percentage for either APD or ACAPD projects. At the present time, this would limit the final Federal share to 70 percent of the total eligible costs.

(2) Allow one project which has been authorized under Advance Construction procedures or as a combination APD-ACAPD project to have a portion of the Advanced Construction converted to Federal funding. Any combination project must be converted to full Federal funding before permitting the partial conversion of any other advanced construction project to Federal funding.

(b) The procedure outlined above will allow the Appalachian States the flexibility to fully implement ARC's allocation policy. It would also retain the necessary administrative control by FHWA of this program.

b. Project Identification

(1) All projects located on the Appalachian Development Highway System to be financed with funds authorized under the Act should

be identified by the prefix letters "APD" followed by the Federal-aid primary project number for that section of highway route, or if not on the primary system, that project number which will be assigned to that section of highway upon its inclusion in the primary system. The agreement number in parentheses should be the next available consecutive number in the series for that project number. Subsequent processing of documents should be the same as for a regular Federal-aid project on the primary system.

(2) All projects financed with funds authorized under the Act for the construction of local access roads should be identified by the prefix letters "APL" followed by a four digit number. If the project is located on a Federal-aid system, the number should be the project number assigned to that section of highway route. If the project is not located on a Federal-aid system, the number should be a four digit number which has not been and will not be assigned to any project on the Federal-aid secondary system in that State, whether or not it is presently contemplated that the section of route including the project will ever be added to the Federal-aid secondary system. The project agreement number should be a three digit number consecutive in the current series. Subsequent processing of documents should be the same as for a regular Federal-aid project on the secondary system.

(3) Projects located on the Appalachian Development Highway System to be prefinanced by a State and with the intent of later financing in accordance with paragraph 4 below should be identified by the prefix letters "ACAPD" followed by the Federal aid primary project number for that section of highway route, or, if not on the primary system, that project number which would be assigned to that section of highway upon its inclusion in the primary system. The agreement number in parentheses should be the next available consecutive number in the series for that project number. Subsequent processing of documents for ACAPD projects should be in accordance with paragraph 4 below. Upon conversion of the project to financing with funds authorized under the Act, the prefix should be changed to "APD" and the remainder of the project number should remain unchanged.

- c. There should be no transfer of financing for work, on which Federal funds have been obligated, between regular Federal-aid programs and the Appalachian program.

- d. If, in the construction or improvement of the development highways or local access roads, a State elects to eliminate the hazards of a railway-highway grade crossing under 23 U.S.C. 130, the Federal share of the cost of right-of-way and property damage cost necessary thereto cannot exceed 75 per centum, pursuant to 23 U.S.C. 120(c), regardless of whether the project is financed and such right-of-way is acquired under Federal-aid highway programs or the Appalachian program or combination thereof.
 - e. The State highway department should be encouraged to propose immediate Federal-aid primary designation for any segment of an approved Appalachian development highway not already on the Federal-aid primary system at the time of the ARC's approval of the corridor.
4. PREFINANCING (23 CFR 633.205). Prefinancing of Appalachian Development Highway projects shall be in accordance with the procedures set forth in paragraph 3b(3) and as provided below:
- a. Advance construction Appalachian development projects may be programmed and advanced when all of the following four conditions are met:
 - (1) The Project meets all requirements for the authorization of Appalachian development projects as set forth in paragraphs 3a(3), (4), and (5).
 - (2) There are insufficient funds available for obligation within the State's allocation to finance the Federal share of estimated project costs after considering the need for adjustments in the financing of previously programmed projects.
 - (3) The Federal share of the project costs when considered together with all previous obligations of funds made available for development highways under the Act and the Federal share of other projects programmed under this section will not exceed the State's allocation of funds authorized for development highways under the Act as set forth in the ARC code, Section 201-8.1, or amendments thereto.
 - b. The Federal share of project costs should be shown on the Form FHWA-37 and all succeeding project papers. In addition to the prefix "ACAPD" the project should be identified by Appropriation Code 640.

- c. The State may elect to convert an advance construction project to the Appalachian Development Highway Program at any time sufficient funds are available within the State's obligation ceiling. However, it may be advantageous to utilize such available funds for additional construction projects and defer the conversion of advance construction projects to the later years of the program. Approval of a State's written request for conversion of an advance construction project should be subject only to the availability of funds for the Federal share of project costs.
- d. At such time as an advance construction project is converted to the Appalachian Development Highway Program, the Form FHWA-37 should be revised to document the conversion action. The project prefix "AC" should be dropped from each converted project and the appropriation code should be changed. The Federal funds amounts should then be posted to the appropriate fiscal records. The forms should contain added language as follows: "Conversion to Appalachian Development Highway Program." Duplicate copies of action papers are to be submitted by the Division Administrator.
- e. Progress vouchers should not be accepted for advance construction projects. Final vouchers may be submitted upon completion of construction and reviewed, but no payment should be made until the project is converted.

5. DESIGN AND LOCATION (No CFR paragraph reference)

- a. Unless otherwise directed, the design of highways on the Appalachian Development Highway System should be in accordance with standards, specifications, policies, and guides applicable to the design of comparable traffic volume highways, bridges, and appurtenances as enumerated in 23 CFR Part 625, Design Standards for Highway. The design of highways on the Appalachian Development Highway System should also meet the criteria approved by the ARC. (See Attachment 2.) (Approved criteria for Appalachian Development Highway System).
- b. Design of local access roads should be in accordance with the State's procedures for projects on the secondary system. In order to expedite Commission action on State requests for approval of local access road projects, Division Administrators are authorized to review the design criteria and, where applicable, to concur with the State certification that the criteria meet the design criteria applicable to secondary projects or that exceptions thereto are acceptable. Such certification and concurrence are expected to be attached to the submission by the

State representative to the ARC. There may be instances in which a local access road approved by the ARC is included as a segment of the Federal-aid primary system. If this occurs, regular Federal-aid procedures will govern and the design criteria should be in accordance with AASHTO design standards.

- c. Location of all development highway projects should be coordinated with the ARC as set forth in Attachment 3. (Coordination with Appalachian Regional Commission).
- d. Public hearings on the economic and social effects of the location of proposed projects to be financed under the Act are subject to the provisions of 23 U.S.C. 128 as related to highway projects other than Interstate.

6. CONSTRUCTION, LABOR, AND MATERIALS (23 CFR 633.207)

- a. Form PR-1316 (Attachment 4)(Federal-Aid proposal Notices and required contracts. Provision Appalachian Development Highway System and Local Access Road Construction Contracts)and FHWA Notice N 5080.105 (Attachment 4A)(Interim Revisions to Federal Highway Administration (FHWA)Form PR-1316, Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts)Interim Revisions to Form PR-1316, shall be included in all Appalachian Development Highway System, Development Access Road, and Local Access Road Construction Contracts for projects awarded on or after January 1, 1986. Procedures established in the FHWA Labor Compliance Manual for the enforcement of the contract labor standards requirements on Federal-aid projects should be followed on such construction projects except as noted in paragraphs 6b and 6f below.
- b. Enforcement and reporting procedures established by the Office of Civil Rights should be followed to assure compliance with the provision set forth in Form PR-1317 (Attachment 5) (Additional Required Contract Provisions Appalachian Development Highway System and Local Access Roads Contracts other than Construction Contracts) and Section III and IV of Form PR-1316.
- c. Copies of Forms PR-1316 and PR-1317 will be furnished to the States upon request to the FHWA division offices.

- d. Executive Order No. 11246 of September 27, 1965, is applicable to contractors and subcontractors engaged in the construction of projects under the Appalachian program.
 - e. The maximum feasible employment of local labor should be made in the construction of projects under the Act. Accordingly, within one week following the contract award for a project under the Appalachian Development Highway System (including local access roads), the State highway department should advise the State Employment Service of the name and address of the contractor or to whom the award is made and, in addition, should forward to the State Employment Service a copy of the applicable wage determination. The State Employment Service should advise the contractor of the location of the appropriate local employment service office with which the contractor shall place the job order required by the contract.
 - f. All questions and disputes involving the employment of local labor and the applicability of the Title VI employment practices provisions to State highway departments, contractors, subcontractors, materialmen, and lessors of equipment should be referred to the Washington Headquarters for resolution.
7. PROGRESS REPORTS (No CFR paragraph reference). The Federal Highway Administration will provide periodic reports required by the Appalachian Regional Commission concerning the process of the development highway and local access road programs, and the status of projects. The frequency and specific contents of reports will be determined in discussions between the Commission and the Federal Highway Administration (Attachment 6).
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Selected Sections of the Appalachian Regional Development Act of 1965, as Amended.

Section 201

(a) In order to provide a highway system which, in conjunction with the Interstate System and other Federal-aid highways in the Appalachian region, will open up an area or areas with a developmental potential where commerce and communication have been inhibited by lack of adequate access, the Secretary of Transportation (hereinafter in this section referred to as the "Secretary") is authorized to assist in the construction of an Appalachian development highway system and local access roads serving the Appalachian region. The provisions of section 106(a) and 118 of title 23, United States Code, relating to the obligation, period of availability, and expenditure of Federal-aid highway funds, shall apply to the development highway system and the local access roads, and all other provisions of such title 23 that are applicable to the construction and maintenance of Federal-aid primary and secondary highways and which the Secretary determines are not inconsistent with this Act shall apply, respectively, to such system and roads. Construction on the development highway system shall not exceed two thousand seven hundred miles. Construction of local access roads shall not exceed one thousand four hundred miles that will serve specific recreational, residential, educational, commercial, industrial, or other like facilities or will facilitate a school consolidation program.

(b) The Commission shall transmit to the Secretary its designations of:

- (1) The general corridor location and termini of the development highways.
- (2) Local access roads to be constructed,
- (3) Priorities for the construction of segments of the development highways, and
- (4) Other criteria for the program authorized by this section.

Before any State member participates in or votes on such designations, he shall have obtained the recommendations of the State highway department of the State which he represents.

(c) In no event shall the Secretary assist in any construction (including right-of-way acquisition) which would require for its completion the expenditure of Federal funds (other than funds available under title 23,

United States Code) in excess of the appropriations authorization in subsection (g). On its completion each development highway not already on the Federal-aid primary system shall be added to such system and each development highway and local access road shall be required to be maintained by the State as provided for Federal-aid highways in title 23, United States Code.

(d) In the construction of highways and roads authorized under this section, the States may give special preference to the use of materials and products indigenous to the Appalachian region.

(e) For the purposes of research and development in the use of coal and coal products in highway construction and maintenance, the Secretary is authorized to require each participating State, to the maximum extent possible, to use coal derivatives in the construction of not to exceed 10 per centum of the roads authorized under this Act.

(f) Federal assistance to any construction project under this section shall not exceed 80 per centum of the costs of such project.

(h) (1) When a participating State proceeds to construct a segment of a development highway without the aid of Federal funds, in accordance with all procedures and requirements applicable to the construction of segments of Appalachian development highways with such funds, except insofar as such procedures and requirements limit a State to the construction of projects for which Federal funds have previously been appropriated, the Secretary, upon application by the State and with the approval of the Commission, is authorized to pay to the State the Federal share not to exceed 70 per centum of the costs of the construction of such segment, from any sums appropriated and allocated to such State to carry out this section.

(2) This subsection shall not be construed as a commitment or obligation on the part of the United States to provide funds for segments of development highways constructed under this subsection, and shall not increase the limitation on construction in subsection (c).

Section 221

No State and no political subdivision of such State shall be eligible to receive benefits under this Act unless the aggregate expenditures of State funds, exclusive of expenditures for participation in the National System of Interstate and Defense Highways, and exclusive of local funds and Federal funds, for the benefit of the area within the State located in the region are

maintained at a level which does not fall below the average level of such expenditures for its last two full fiscal years preceding the date of enactment of this Act. In computing the average level of expenditure for its last two fiscal years, a State's past expenditure for participation in the National System of Interstate and Defense Highways and expenditures of local funds and Federal funds shall not be included. The Commission shall recommend to the President or such Federal officer or officers as the President may designate, a lesser requirement when it finds that a substantial population decrease in that portion of a State which lies within the region would not justify a State expenditure equal to the average level of the last two years or when it finds that a State's average level of expenditure, within an individual program, has been disproportionate to the present need for that portion of the State which lies within the region.

Section 223

No program or project authorized under any section of this title shall be implemented until:

(1) Applications and plans relating to the program or project have been determined by the responsible Federal official to be compatible with the provisions and objectives of Federal laws which he administers that are not inconsistent with this Act, and

(2) The Commission has approved such program or project and has determined that it meets the applicable criteria under Section 224 and will contribute to the development of the region, which determination shall be controlling.

Section 303

An application for a grant or for any other assistance for a program or project under this Act shall be made through the State member of the Commission representing such applicant, and such State member shall evaluate the application for approval. Only applications for programs and projects which are approved by a State member as meeting the requirements for assistance under the Act shall be approved for assistance. No project shall be approved by the Commission unless the Commission is satisfied that the project will be properly administered, operated, and maintained.

Section 402

All laborers and mechanics employed by contractors or sub contractors in the construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are financially assisted through the Federal funds authorized under this act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C., 276a-276a-5). The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C.133-133z-15), and section 2 of the Act of June 13,1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).



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OPI: HEP-12

APPROVED CRITERIA FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

1. The Appalachian Development Highway System shall provide a safe, economical transport network adequate for the predicated type and volume of traffic to be served by the respective segments.
2. The system shall be built to provide the maximum number of miles of highways that can be constructed, considering the available Federal funds. The system shall be designed, insofar as practicable, to standards which, as applied to each actual construction project, may be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the 20-year period commencing on the date of approval, under usual Federal-aid highway procedures, of the plans, specifications and estimate for actual construction of such project. Provided, however, that nothing herein shall prohibit staged construction where, in the discretion of the State, its finances so require. The right-of-way width on the system shall be adequate to permit construction of projects on the system to these standards.

3. The Appalachian Development Highway System shall be designed in accordance with prevailing Federal-aid highway standards, specifications, policies and guides applicable to the projected type and volume of traffic.
 4. The design and construction shall be coordinated so as to achieve continuity and reasonable uniformity throughout the System, and provide for an average travel speed of approximately 50 miles per hour between major termini of the System, commensurate with terrain. This shall be considered the prime objective. Elements of design, such as number of lanes, grade, alignment, and degree of access control may be varied to achieve this objective.
 5. The projected type and volume of traffic shall be considered in the determination of access control. Provision should be made for partial or full control of access where justified in order to preserve safety and capacity for traffic.
 6. The scenic beauty of the region shall be preserved and enhanced to the extent practicable by incorporating landscaping and beautification into the design of the Appalachian Development Highway System.
 7. Provision shall be made for maximum use of local labor in constructing the System.
 8. The use of indigenous and locally produced materials should be encouraged.
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COORDINATION WITH APPALACHIAN REGIONAL COMMISSION

A. General Principles

Adequate access to and within the Appalachian region is a prerequisite to achievement of the comprehensive economic and social growth contemplated by the Appalachian Regional Development Act of 1965, as amended. It is, therefore, essential that construction of the Appalachian Development Highway System and the local access roads authorized by the Act be scheduled for completion at the earliest practicable time, and that work proceed as rapidly as funds are made available by the Congress.

Efficient execution of the highway program requires continuing coordination at all administrative levels of the Appalachian Regional Commission, the Department of Transportation, the Federal Highway Administration, and the State highway departments.

It is essential that the State representatives of the Commission and other interested agencies inform the State highway departments of the anticipated impact upon highways of nonhighway Appalachian development programs, as they evolve. It is equally vital that State highway departments, as they make location studies and plans for highways in the Appalachian region, make certain that they have up-to-date information on nonhighway Appalachian development programs that may have an impact upon their efforts.

The Commission shall transmit to the Secretary its designations of:

- (1) The general corridor location and termini of the development highways;
- (2) Local access roads to be constructed;
- (3) Priorities for the construction of segments of the development highways; and
- (4) Other criteria for the Appalachian highways program.

Before any State member participates in or votes on such designations, he shall have obtained the recommendations of the State highway department of the State which he represents.

The Commission also is responsible for initiating and approving comprehensive program and project plans for the development of the region, and for assuring that highway projects are coordinated with other

Appalachian development programs. This makes it desirable for the Commission to have information concerning the location of each development highway within the approved corridors and of each local access road, and to concur in the determination of the centerline of each section of development highway. It likewise is desirable for the Commission to have available to it continuing information on the progress of the highway program and the status of projects.

It is expected that State highway departments, through close and continuing liaison and regular communication with the State representatives of the Commission, will be able to advise the Division Administrator that the detailed location, including the centerline, of each development highway and local access road has been coordinated with and found satisfactory by the State representative of the Commission. This will facilitate prompt action on highway locations at Commission headquarters.

B. Procedures for Obtaining Federal Highway Administration Approval and Commission Concurrence in Location of Highways on the Appalachian Development Highway System

Following completion of location studies and the holding of public hearings where necessary, and upon submission of the detailed location of a highway for the approval of the Division Administrator, the State highway department shall forward to the State representative of the Commission one copy of a map and to Commission headquarters two copies of a map indicating approval by the appropriate State highway official and showing the detailed location of each development highway or appropriate segment thereof, together with relevant supporting information. The State highway department shall forward four copies of the map and one copy of the supporting data to the Division Administrator for approval, and shall advise:

- (1) That copies are being sent concurrently to the State representative of the Commission and to Commission headquarters, and
- (2) That the location has been coordinated with and found satisfactory by the State representative of the Commission.

The map shall be portions of U.S. Geological Survey topographic quadrangle sheets (7 1/2', or 15' where 7 1/2' are not available), or copies thereof. Where quadrangle sheets are not available, portions of county maps, preferably at a scale of 1" = 1 mile, may be substituted. The map shall show the detailed location and project number. To provide a comparison with the corridor location, the map shall also show the

alignment of the corridor axis with the limits of the pertinent sections identified by the section numbers as contained in the Appalachian Highway Planning Report submitted by E. S. Preston and Associates in July 1965. If preferred, the State may omit showing the corridor axis on the map, but attach a copy of the related corridor map from the Preston report with the detailed project location marked thereon. Where detailed locations depart substantially from the corridor axis as shown in the Preston report, or where the location is in an urban area, the maps should be accompanied by relevant supporting information. Location studies themselves should ordinarily suffice. In certain urban situations it may be appropriate to submit supplemental small scale maps that better reflect the impact of particular routings.

Should the Commission be unwilling to concur in a location, the Division Administrator and the State highway department will be notified. If the Division Administrator is not so notified within 10 working days of receipt by the Commission of the maps from the State highway department, he shall assume concurrence by the Commission, and if he finds the location to be acceptable, shall signify his approval on the maps, and send one copy to the State highway department, and single copies to the Regional and Washington offices of the Federal Highway Administration.

Where the Commission does not concur in a location, the State highway department and the State representative of the Commission will attempt to resolve areas of difference, following which the State highway department shall resubmit maps for Commission concurrence and Division Administrator approval, as above.

Upon the determination of the construction centerline of each development highway, or appropriate segment thereof, the State highway department shall, if the centerline differs from the line shown on the detailed location map in any significant respect, submit revised detailed location maps and relevant supporting information as provided above.

Should there be differences concerning the centerline that cannot be resolved locally, the State representatives of the Commission shall bring the issue to the attention of Commission headquarters, and the State highway department shall advise the Division Administrator, who will report it, through the Regional Federal Highway Administrator, to the Federal Highway Administrator.

C. Additional Information to the Commission

In order to keep the Appalachian Regional Commission informed, the State highway department shall furnish the State representative and the Commission information copies of each development highway and local access road program form request to the Federal Highway Administration (without enclosures) and the Division Administrator's action on each request, including all authorizations.

D. Progress Reports

The Federal Highway Administration will provide periodic reports required by the Appalachian Regional Commission concerning the progress of the development highway and local access road programs, and the status of projects. The frequency and specific contents of reports will be determined in discussions between the Commission and the Federal Highway Administration.



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Additional Information Relative to 23 CFR 633.B Appendix B

OPI: HEP-12

1. PURPOSE. To implement revisions to the Federal Highway Administration (FHWA) Form PR 1316, Required Contract Provisions Appalachian Development Highway System and Local Access Roads Construction Contracts, required as a result of changes in the Contract Work Hours and Safety Standards Act. These changes were signed into law on November 8, 1985, as a part of the FY 86 Defense Authorization Act.
2. COMMENTS

- a. Implementation of the changes will require revision of the PR 1316. The attached addendum is being issued on an emergency basis in order to adopt those changes which required immediate implementation.
 - b. The Attachment shall remain in effect until a revised FHWA Form PR 1316 is issued, incorporating all DOL changes and other changes which have occurred since the last revision of the PR 1316.
3. ACTION. Contracting agencies shall implement the revisions to the existing FHWA contract provisions in FHWA Form PR 1316 by incorporating the attached addendum in all Appalachian Development Highway System and Local Access Roads Construction Contracts for projects awarded on or after January 1, 1986.

ADDENDUM TO FHWA FORM PR 1316, REQUIRED CONTRACT PROVISIONS APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

Under Section VI, replace paragraphs 8a and b with the following new paragraphs:

8. Overtime requirements.
 - a. 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 and trainees described in paragraphs 5 and 6 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 work week.
 - b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of \$10.00 for each calendar day on which such employee was required or

permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph 8a.



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ATTACHMENT

APPALACHIAN HIGHWAY PROGRESS REPORTS

OPI: HEP-12

1. PURPOSE

To outline a uniform policy and the procedures for reporting progress and current status of improvement of the Appalachian Highway System and the supplemental local access roads.

2. REPORTING FORMS

Reporting forms will consist of (1) a State map and maps of specific urban areas which show the geographic location of each Appalachian System Highway and local Access Road and the status of improvement of Participating Highways and local access roads only; (2) Form PR-512, Appalachian Highway System and Local Access Roads, Status of Development (Exhibit 1) which shows, in tabular form, the mileage of Participating and Nonparticipating Appalachian System Highways and local access roads only; and (3) supplementary reports to update the information on the status maps and the data reported on Form PR-512 between quarterly reports.

3. REPORTING PROCEDURES

- a. Triplicate sets of status maps, and one copy of Form PR-512 will be prepared quarterly and mailed as soon after the end of the quarter as possible so as to reach the Office of Planning, Highway Statistics Division, before the 10th of the month.

- b. Duplicate copies of supplementary reports will be prepared all changes in status, additions or deletions of mileage, and all corrections. They will be forwarded to the Washington office as soon as a status change occurs or when an error is corrected. Report all mileage to the nearest 0.1 of a mile.

4. DEFINITIONS

- a. For preparing Form PR-512 and the status maps, the following definitions apply:

(1) Participating Highways of the Appalachian Development System. Any of the 2,350 miles of highways authorized by Title II, Part A, Section 201(a) of the Appalachian Regional Development Act of 1965.

(2) Nonparticipating Highways. Integral parts of the Appalachian corridors that are not to be improved with Appalachian funds.

(3) Appalachian System. The term includes the total mileage of all approved corridors of the Appalachian Development System, including both participating and nonparticipating highways. It does not include local access roads.

(4) Local Access Roads. Any of the 1,000 miles of local access roads authorized by Title II, Part A, Section 201(a) of the Appalachian Regional Development Act of 1965.

(5) Segment. Any continuous length of a route (without regard to project termini), the mileage of which is reported in any of the columns 5 through 14 on PR-512.

(6) Under Construction. A segment is considered to be under construction when actual physical placement of materials or other construction activities are or have been underway. When construction work begins on a contract, the entire segment covered by the contract is considered to be under construction. It is conceivable that an existing highway being improved will remain open on a limited basis during the construction status, but it will not advance to status 1 until it is at least 95 percent completed to final AASHTO standards, open to and serving unrestricted traffic.

5. REPORTING INSTRUCTIONS

- a. Form PR-512

(1) Column 1 (Route Identification). Show the route number or letter which identifies the route.

(2) Column 2 (Road Classification). Select the code number from the following group that identifies the class of road and insert it in column 2:

CODE ROAD CLASSIFICATION

1. Participating highways of the Appalachian Development System
2. Local access road.
3. Nonparticipating highways that are integral parts of the Appalachian corridors that are not be improved with Appalachian funds.

Groups all routes of each class together--that is, all class 1 together, all class 2, etc.

(3) Column 3 (Rural or Urban). Insert the appropriate code to identify the route location:

CODE 1 - In rural area.

CODE 2 - In Federal-aid urban area.

(4) Column 4 (Number of Lanes)

Show the total number of lanes that are, or will be, available to through traffic following completion of the project, including lanes previously constructed which are to remain in use. Do not include speed change lanes, frontage roads, climbing lanes, ramps, and other supplementary lanes.

(5) Columns 5 through 14 are for reporting the status of each participation route segment and local access road and the total mileage. Do not report the status of nonparticipating routes. Complete columns 1, 2, 3, 4, and 14 only for nonparticipating routes. The status groups have been numbered to conform as nearly as possible to those on the diagrammatic Interstate System Status of Development Report (Form PR-511). Each status and its symbol is listed and discussed below.

"1. Mileage Improved to AASHTO Standards and Serving Traffic"

Show the mileage of each route that is completed to final standards, open to and serving traffic. Report centerline mileage only.

"3. Under Construction"

"3a(2) (Final Construction)"

Include all segments for which present construction contracts will provide for improvement to AASHTO standards. When completed, segment will be opened to traffic and advanced to status I.

"3a(3) (Stage Construction)"

Include in this category all segments under construction that will require at least one more contract to improve them to AASHTO standards.

"4. PS&E Preparation and/or ROW Acquisition Underway or Completed"

Included in this status group will be those mileages where actual construction has not been started, but the State highway department is actually preparing plans and estimates, acquiring right-of-way, or both, under either a Stage 1 or Stage 2 program.

"4a(1) (Concurrent Preparation of PS&E and ROW acquisition)"
are concurrently underway or completed.

"4a(2) (ROW Acquisition Only)"

ROW acquisition is underway or completed on a selected construction location.

"4a(3) (Preparation of PS&E Only)"

Preparation of designs and other plans, specifications and estimate covering the construction upon a proper location are underway or completed.

"5. Designated Mileage"

"5(1) (Centerline Location Approved)"

Include segments for which the Appalachian Development Commission has concurred in the location and the Bureau of Public Roads has approved the construction centerline location of each development highway and local access road to be improved. Even though subsequent adjustments in centerline location might be necessary at the PS&E stage, a segment or route will be put in status 5a(1) when the initial Commission concurrence and Bureau approval is obtained.

"5a(2) (Route Location Studies Underway or Completed)"

Include the mileage for which comprehensive studies have been started to determine the route location.

"5a(3) (Route Location Work Not Started)"

Include in this category the mileage of segments for which the general corridor location has been established, but route location work has not been started.

b. Status Maps

(1) Reproducible plastic master copies of the State and urban maps similar to those used for the Interstate System will be supplied to each division office. Length and status will be recorded as follows:

(a) Appalachian system highways will be shown on the map as 1/8-inch wide bands. A participating segment will be identified by inserting the appropriate status symbol and mileage within the 1/8-inch band between termini of the segment. The mileage will be shown in parentheses. For example, 3a (3) (1.5) would identify a participating segment in stage construction 1.5 miles in length. A nonparticipating segment will be identified by inserting the letter NP within the band followed by the mileage in parentheses. For example, NP (2.) would identify a nonparticipating segment 2.0 miles in length. Status will not be reported for nonparticipating segments.

(b) Termini of segments will be indicated by pencil lines across the band normal to the centerline of the route. Very short segments, for which the scale of the map will not permit showing the termini as two lines, will be shown by a single line across the band. The appropriate symbol and mileage will be placed adjacent to the band and connected by a line to the termini marker. If the termini are too close together,

the symbol and mileage will be placed adjacent to the band and connected to the midpoint of the segment by a line.

(c) On both State and urban area maps, indicate by a red checkmark on the contact print those segments that have undergone a change in status since the previous quarter. If there have been no changes, mark the point "No change from previous quarter.

(d) The following example illustrates the method to be used for reporting contiguous segments of a route or routes on the State and urban area maps:

1(4.5)	3a(2) (1.5)	4a(1) (1.8)	4a(3) (0.8)	1. (0.1) 5(1) (1.2)	NP(1.0)
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(e) The location of local access roads will be identified on the State and urban area status maps by index numbers enclosed in small circles, as illustrated on the sample status map (Exhibit 2). The status of local access roads will not be shown within the body of the maps, but will be shown by a series of bars in the margin. These bars will be preprinted on the plastic master copies. Each bar will represent 100 percent of the mileage of an access road, and the status for each contiguous segment will be inserted in the bar as illustrated below. Where an access road is in more than one county, show the name of each county.

Access Road No. 1	1 (1.5)	3a(2) (2.0)	5(1) (0.6)
	0		4.1 miles Alpha Co. Omega Co.

For many local access roads their entire length will be in only one status due to their short length, but a bar will be shown in the margin of the map for each access route in the State in numerical order, according to its index number.

- c. **Supplementary Reports.** Changes that occur during the period between quarterly reports should be covered by supplementary reports, so that current information will be available in the Washington office. These supplementary reports should be sent promptly to the Washington office in the following instances:

(1) To report changes in status of participating highway segments and local access roads that take place within a status group or between status groups.

(2) When corrections of errors or there adjustments have been made that affect the length or status of Appalachian System highways or local access roads.

(3) To report additions or deletions of mileage of Appalachian System highways or local access roads.

Duplicate copies of all supplementary reports will be airmailed promptly to the Office of Environment and Planning, Highway Statistics Division using the format shown below.

Route Identification	Mileage		Status		Effective
	Rural	Urban	From	To	Date of Action



U.S. Department of Transportation
Federal Highway Administration
FEDERAL-AID POLICY GUIDE
May 25, 2000, Transmittal 29

23 CFR 635A

OPI: HIBT

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 635 - CONSTRUCTION AND MAINTENANCE

SUBPART A - CONTRACT PROCEDURES

Sec.

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- 635.125 Termination of contract.
- 635.126 Record of materials, supplies, and labor.
- 635.127 Agreement provisions regarding overruns in contract time.

Authority: 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 et seq.; sec. 1041 (a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

Source: 56 FR 37004, August. 2, 1991, and 64 FR 71284, December 21, 1999, unless otherwise noted.

Sec. 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

Sec. 635.102 Definitions.

As used in this subpart:

Administrator means the Federal Highway Administrator.

Calendar day means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

Certification Acceptance means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

Contract time means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

Force account means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

Formal approval means approval in writing or the electronic transmission of such approval.

Incentive/disincentive for early completion as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

Liquidated damages means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

Local public agency means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

Major change or major extra work means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

Materially unbalanced bid means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

Mathematically unbalanced bid means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Public agency means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

Publicly owned equipment means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

Specialty items means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of

contracting organizations qualified and expected to bid on the contract in general, these items are to be limited to minor components of the overall contract.

State highway agency (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

Workday means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State- recognized legal holidays.

Sec. 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects except for those title 23 requirements specifically discharged in an approved certification acceptance plan in accordance with 23 U.S.C. 117.

Sec. 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in Sec. 635.104(b), the SHA demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The SHA shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in Sec. 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the SHA shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

Sec. 635.105 Supervising agency.

(a) The SHA has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The SHA shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the SHA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the

SHA shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the SHA does not have legal jurisdiction, or when special conditions warrant, the SHA, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

Sec. 635.106 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any SHA for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications, and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment necessary for the performance of the contract work.

(c) In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

(d) Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(e) When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the SHA shall submit to the Division Administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

Sec. 635.107 Small and disadvantaged business participation.

The SHA shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 23, the SHA shall affirmatively encourage disadvantaged business enterprise participation in the highway construction program.

Sec. 635.108 Health and safety.

Contracts for projects shall include provisions designed:

(a) To insure full compliance with all applicable Federal, State, and local laws governing safety, health and sanitation; and

(b) To require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

Sec. 635.109 Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHA's at their option.)

(2) Suspensions of work ordered by the engineer.

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to

resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant changes in the character of the work.

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the

contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed cause or

clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

Sec. 635.110 Licensing and qualification of contractors.

(a) The procedures and requirements a SHA proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

Sec. 635.111 Tied bids.

(a) The SHA may tie or permit the tying of Federal-aid highway projects or Federal-aid and State-financed highway projects for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) When Federal-aid and State-financed highway projects are tied or permitted to be tied together for bidding purposes, the bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work shall be on the basis of the lowest overall responsive bid proposal unless the analysis of bids reveals that mathematical unbalancing has caused an unsupported shift of cost liability to the Federal-aid work. If such a finding is made, Federal participation shall be based on the unit prices represented in the proposal by the individual contractor who would be the lowest responsive and responsible bidder if only the Federal-aid project were considered.

(c) Federal-aid highway projects and State-financed highway projects may be combined in one contract if the conditions of the projects are so similar that the unit costs on the Federal-aid projects should not be increased by such combinations of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

Sec. 635.112 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator.

(b) The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the Division Administrator in special cases when justified.

(c) The SHA shall obtain the approval of the Division Administrator prior to issuing any addenda which contain a major change to the approved plans or specifications during the advertising period. Minor addenda need not receive

prior approval but should be identified by the SHA at the time of or prior to requesting FHWA concurrence in award. The SHA shall provide assurance that all bidders have received all issued addenda.

(d) Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries and without regard to race, color, religion, sex, national origin, age or handicap. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible bidder appropriately qualified in accordance with Sec. 635.110, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(e) No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

(f) The SHA shall include a noncollusion provision substantially as follows in the bidding documents:

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

(1) The required form for the statement will be provided by the State to each prospective bidder.

(2) The statement shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(g) The SHA shall include the lobbying certification requirement pursuant to 49 CFR part 20 and the requirements of 49 CFR part 29 regarding suspension and debarment certification in the bidding documents.

(h) The SHA shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. Failure to comply with these identified bidding requirements shall make the bid nonresponsive and not eligible for award consideration.

Sec. 635.113 Bid opening and bid tabulations.

(a) All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

(b) The SHA shall prepare and forward tabulations of bids to the Division Administrator. These tabulations shall be certified by a responsible SHA official and shall show:

(1) Bid item details for at least the low three acceptable bids and

(2) The total amounts of all other acceptable bids.

Sec. 635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the SHA in accordance with Sec. 635.110. Award shall be within the time established by the SHA and subject to the prior concurrence of the Division Administrator.

(b) The SHA shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the SHA shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's

estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the SHA's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a SHA decision not to award the contract. If, however, the SHA decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the SHA determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the SHA rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the SHA to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the SHA for contract award forfeits the bid guarantee, the SHA may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the SHA and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

Sec. 635.115 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the SHA and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the SHA for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the SHA and the Division Administrator, whether the work is to be done by the SHA or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

Sec. 635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured projects which are to be purchased or produced by the contractor under the contract provisions.

(b) The SHA shall not permit any of the contract work to be preformed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. The Division Administrator may permit the SHA to satisfy the subcontract assurance requirements by concurrence in a SHA process which requires the contractor to certify that each subcontract arrangement will be in the form of a written

agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the SHA must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) 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 ;

(2) Such other of its own organizational resources (supervision, management, and engineering services) as the SHA contacting officer determines are necessary to assure the performance of the contract.

Sec. 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the SHA unless it is labor performed by convicts who are on parole, supervised release, or probation.

(b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended.

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for SHA's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder,. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

Sec. 635.118 Payroll and weekly statements.

For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the time period pursuant to 49 CFR part 18 for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies.

Sec. 635.119 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

Notice to All Personnel Engaged on Federal-Aid Highway Projects

United States Code, title 18, section 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 costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of 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 a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

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

Sec. 635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The SHA should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The SHA shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and

degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

Sec. 635.121 Contract time and contract time extensions.

(a) The SHA should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a SHA shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

Sec. 635.122 Participation in progress payments.

(a) Federal funds will participate in the costs to the SHA of construction accomplished as the work progresses, based on a request for reimbursement submitted by State highway agencies. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the SHA; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the SHA determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

Sec. 635.123 Determination and documentation of pay quantities.

(a) The SHA shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.

Sec. 635.124 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a state to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that SHA's will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on projects handled on Certification Acceptance projects or on exempt non-NHS projects should be processed in accordance with the State's approved Certification Acceptance Plan or Stewardship Plan, as appropriate.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where

difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submission a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than the SHA was able to support prior to the decision or settles a claim in an amount more than the SHA can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

- (1) The FHWA was consulted and concurred in the proposed course of action;
- (2) All appropriate courses of action had been considered; and
- (3) The SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate:

- (1) If it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which give rise to the claim;
- (2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and
- (3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

(g) In cases where SHA's affirmatively recover compensatory damages through contract claims, cross-claims, or counter-claims from contractors,

subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

Sec. 635.125 Termination of contract.

(a) All contracts exceeding \$10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The SHA prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a SHA awards the contract for completion of a terminated Federal-aid contract.

(d) When a SHA awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract

awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would be been if the construction had been completed as contemplated by the plans and specifications under the original contract.

Sec. 635.126 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid construction contracts of \$1 million or more for projects on the National Highway System, the SHA shall require the contractor:

(1) To become familiar with the list of specific materials and supplies including labor-hour and gross earning items contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To 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; and

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA-47 both the data required in paragraph (b)(2) of this section relative to materials and supplies and a final labor summary for all contract work indicating the total hours worked and the gross earnings.

(c) Upon receipt from the contractor, the SHA shall review the Form FHWA-47 for reasonableness and promptly transmit the form to the Division Administrator in accordance with the instructions printed in the form.

Sec. 635.127 Agreement provisions regarding overruns in contract time.

(a) Each State highway agency (SHA) shall establish specific liquidated damages rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs and/or project types. These rates shall, as a

minimum, be established to cover the estimated average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts shall be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established shall be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the SHA shall periodically review its cost data to ascertain if the rate table/schedule closely approximates, at a minimum, the actual average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the SHA specifications or standard special provisions, verification by the SHA that the amounts are adequate shall be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the SHA shall review the rates at least every 2 years and provide updated rates, when necessary, for FHWA approval. If updated rates are not warranted, justification of this fact is to be sent to the FHWA for review and acceptance.

(c) The SHA may, with FHWA concurrence, include additional amounts as liquidated damages in each contract to cover other anticipated costs of project related delays or inconveniences to the SHA or the public. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs as well as road user delay costs may be included.

(d) In addition to the liquidated damages provisions, the SHA may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(e) When there has been an overrun in contract time, the following principles shall apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

(1) A proportional share, as used in this section, is the ratio of the final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(2) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project shall be reduced by the

assessed liquidated damages amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess shall be deducted from the federally participating contract construction cost before determining the final Federal share.

(3) Where the SHA is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

(4) Where liquidated damages include extra anticipated non-CE costs due to contractor caused delays, the amount assessed shall be used to pay for the actual non-CE expenses incurred by the SHA, and, if a Federal participating item(s) is involved, to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the SHA, a proportional share of the excess shall be deducted from the federally participating contract construction cost of the project before the Federal share is figured.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.



U.S. Department of Transportation
Federal Highway Administration
FEDERAL-AID POLICY GUIDE
October 9, 1996, Transmittal 16

NS 23 CFR 635A

OPI: HNG-22

NON-REGULATORY SUPPLEMENT

1. SUPERVISING AGENCY (23 CFR 635.105). To the maximum extent practicable, State highway agency general provisions, specifications,

regulations, qualification requirements, contract forms and inspection procedures should be used. Other documents and procedures may be used when conditions warrant, provided they are first approved by the State highway agency and the Division Administrator.

2. DIFFERING SITE CONDITIONS (23 CFR 635.109)

- a. The Title 23 Code of Federal Regulations (CFR 635.109) contains policies, requirements, and procedures for standardized "changed conditions" clauses for Federal aid highway projects. In summary, unless prohibited by State law, part 635 requires that a "differing site condition" clause shall be made part of and incorporated into each highway project approved under Title 23.
- b. Geotechnical Engineering Guideline #15 provides information on geotechnical aspects of differing site conditions, adequate site investigation, disclosure and presentation of subsurface information by highway agencies, and the use of such information in mitigating or resolving contractor claims of differing site conditions. Recommendations are provided for disclosure of factual, qualified and interpretive geotechnical information. The uses of geotechnical design summary reports are described and a typical report outline is provided in the appendices. This guideline is available from the Office of Engineering (HNG-31).

3. LICENSING AND QUALIFICATION OF CONTRACTORS (23 CFR 635.110)

- a. Contractors may be prequalified for an annual or other period of time. When this is done, the status of each contractor so qualified should be reviewed, to whatever extent is necessary to ascertain whether conditions since the prequalification date have changed, including volume of work, which may have affected his/her current qualifications to undertake additional work.
- b. The Division Administrator shall maintain a current record and summary of any laws, regulations, and specifications regarding the State's requirements, practices and procedures with respect to advertising for bids, qualifying and licensing contractors and awarding of contracts. Any revisions thereof are to be transmitted promptly and directly to the regional office and Washington Headquarters.

4. ADVERTISING FOR BIDS (23 CFR 635.112)

- a. Advertising periods longer than 3 weeks are desirable for large, complicated projects that will require considerable time for study and developing of cost data before realistic bids can be prepared.
- b. For the noncollusion statement, the lobbying certification and the suspension and debarment certification, the State highway agency may require a separate signature for each or establish a

format whereby the bidder certifies compliance by submission of the signed bid. All statements/certifications furnished by the bidder shall be retained by the State highway agency with the project records pursuant to 49 CFR Part 18.

5. CHANGES AND EXTRA WORK (23 CFR 635.120)

- a. The Division Administrator is responsible for final approval of all requests for changes or extra work. If the change or extra work involves an amount that might result in the final cost of the project exceeding the project agreement amount, the Division Administrator may approve the change or extra work order as to the work involved. The Division Administrator shall concurrently advise the State that Federal participation in any such work, the cost of which cannot be met from Federal-aid funds provided under the then effective project agreement, will be contingent upon additional Federal-aid funds being made available for the project by a modified project agreement. The modified agreement will be executed prior to or at the final voucher stage. In any case involving questionable or unusual features, the advice and concurrence of the regional administrator, and in the more important cases, the Washington Headquarters, should be obtained before the change or extra work is approved.

6. EQUIPMENT RENTAL RATES (23 CFR 635.120)

- a. Actual costs, rate guides, and rate schedules. Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, the FHWA permits SHA's to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rate schedules developed by SHA's which are in conformance with the Federal cost principles and the FHWA's policy contained herein. The Federal cost principles applicable to rental rates for contractor furnished equipment are contained in 48 CFR, Part 31. The provisions in OMB Circular A-87 apply when State-owned equipment is used.
- b. Rental Rate Guides. A State may, subject to the FHWA's concurrence, adopt the Dataquest Rental Rate Blue Book (Blue Book) or another industry rate guide, or it may develop its own guide. The State must make the determination that the equipment rental rates developed or adopted fairly estimate a contractor's actual cost to own and operate the equipment. It is the FHWA's responsibility to review each State's rates for compliance with the policy.
- c. Adjustment Factors. Equipment is not expected to operate for 12 consecutive months. Maps at the beginning of each Blue Book equipment section indicate adjustment factors based on climate

and regional costs. Rate adjustment tables indicate adjustment factors based on equipment age. The adjustment factors in the maps and tables are to be applied when determining the eligible rate.

- d. Maximum Rate. The Blue Book adjusted rates cover all eligible equipment related costs. Therefore, they are considered to be the maximum eligible rates for Federal-aid participation purposes.
- e. Hourly Rates. The developer of the Blue Book accumulates all contractor costs for owning a piece of equipment on an hourly basis. The monthly rate displayed in the rental guide is determined by multiplying the hourly accumulated costs by the monthly standard of 176 hours. Therefore, for periods of equipment use less than the standard 176 hours per month, Federal-aid participation shall be limited to the hourly rate obtained by dividing the monthly rate by 176. Premium rates contained in the rate guides shall not be used.
- f. Standby Equipment Rates. The contractor continues to incur certain ownership costs when equipment is required to be on standby. The use of a standby rate is appropriate when equipment has been ordered to be available for force account work but is idle for reasons which are not the fault of the contractor. While an industry standard does not exist for standby rates, it has been the normal practice of the courts to reduce published ownership rental guide rates by 50 percent for standby rate usage. Therefore, the FHWA will accept use of 50 percent of the ownership rental rates of an approved guide as the standby rate in lieu of a contractor's actual standby costs. There should be no operating costs included in the rate used and standby time should not exceed 8 hours per day, 40 hours per week, or the annual usage hours as established by the rate guide.
- g. Mobilization. The costs required to mobilize and demobilize equipment not available on the project is eligible for reimbursement. Standby rates should be used for equipment while being hauled to and from the project. This will be in addition to applicable rates for the hauling equipment. All costs associated with the assembly and disassembly of the equipment for transport should also be considered in the mobilization costs.
- h. Overhead. Equipment overhead includes such items as insurance, property taxes, storage, licenses and recordkeeping. The Blue Book rates include all equipment overhead costs. Therefore, if a project or home office overhead rate is proposed to be applied to a Blue Book rate, the State must ensure that it contains no equipment overhead cost factors. The

reasonableness of such a rate shall be determined by the Division Administrator.

- i. Profit. Profit on equipment rental is not provided for in the approved rate guides. There is no Federal regulation which prevents the addition of an amount for profit. If a State has a policy for the payment of profit, it should be followed on Federal-aid contracts. If a profit amount is to be used, the reasonableness must be determined by the Division Administrator based on experience.
- j. Contractor Leased Equipment. When a contractor obtains equipment through a third party rental agreement for use in a force account situation, the cost will normally be the invoice cost. The Associated Equipment Distributors (AED) Rental Rate and Specifications may be used to evaluate the costs for such equipment rental. [The AED Book is not acceptable as a rate guide for contractor owned equipment. The AED rates are based on national averages of rates charged by equipment distributors and do not reflect the contractor's cost of owning and operating the equipment.] Since rental agreements vary, the specific operating costs included in the rental agreement may need to be determined. There may be additional eligible operating costs not covered by the agreement which the contractor incurs and should be reimbursed (i.e., fuel, lubrication, field repairs, etc.).

7. CONTRACT TIME AND CONTRACT TIME EXTENSIONS (23 CFR 635.121)

- a. Contract time should be based on a full evaluation of all factors involved. In computing the length of time that would be required to complete the work with the typical contractor organization likely to bid on the work, appropriate consideration should be given to the local field and weather conditions, complexity of the work, sequence of construction, and method of handling traffic. The urgency of completion of the facility is an added consideration that may affect the final contract time assigned to a contract.
- b. The Division Administrator should, throughout the progress of construction of a Federal-aid project, keep currently informed regarding the time consumed in relation to the work accomplished and regarding the working conditions encountered that are beyond the contractor's control and that detrimentally affect the progress of the work. At the time such conditions occur, or as soon thereafter as it is practicable to make a determination, agreement should be reached between the Division Administrator and the SHA as to any adjustments in

contract time that may be appropriate on account thereof. The SHA should have adequate written procedures to assure uniform treatment of time extensions.

- c. Approval of time extensions due to delays in delivery of materials is generally inconsistent with FHWA policy, unless some unusual market condition such as an industry-wide strike, natural disaster or area wide shortage arises after bids are taken and prevents procurement of materials within the allowable time limitation.
- d. The pertinent requirements of 23 CFR 635.307 are intended to preclude almost without exception FHWA approval of time extensions related to utility, railroad, and right-of-way clearance delays. However, it is recognized that occasionally very unusual circumstances may justify granting an exception to this rule. As a minimum, exceptions to the above-stated rule should not be granted unless it can be shown that:

- (1) the construction work was actually delayed by the right-of-way, railroad, or utility difficulty,

- (2) the contractor did everything required of him/her by the contract to minimize the delay, and

- (3) the State was unable to exercise effective control of the situation despite its best efforts.

8. DETERMINATION AND DOCUMENTATION OF PAY QUANTITIES (23 CFR 635.123)

- a. Source documents such as handwritten haul tickets should be validated both at the point of loading and at the point of delivery by State highway agency representatives unless pay quantities are documented by some alternative procedure approved by the Division Administrator. When automatic digital printout haul tickets are used in lieu of handwritten haul tickets an alternative procedure for validating these haul tickets at the point of loading may also be approved by the Division Administrator.
- b. The State highway agency may establish a procedure subject to approval of the Division Administrator wherein a lesser amount of documentation may be permitted for miscellaneous material items and small quantities. Such a procedure would have particular application to small quantities of intermittently delivered material on large projects and for contracts covering safety, control of junk yards, and other small projects.

c. The Division Administrator may approve a procedure under which small quantities of material may be accepted by the project engineer on the basis of weights determined and placed on the delivery ticket by the contractor or supplier. Such a procedure should provide that the State highway agency representative who observes receipt of the material and obtains the delivery ticket inspect the load and indicate on the ticket, that the quantity of material delivered appears reasonably in accord with the weight shown on the ticket before accepting the material for incorporation in the work.

d. The following examples suggest approximate maximum quantities of material which may be accepted on the basis of weights supplied by the contractor or supplier and which should be sufficient to cover the quantities required by most small contracts:

(1) Aggregates - Not to exceed approximately 100 tons per day nor more than approximately 500 tons per project.

(2) Bituminous Mixtures - Not to exceed approximately 50 tons per day nor more than approximately 250 tons per project.

e. In cases where records pertaining to the determination of pay quantities are destroyed by an act of God or by other causes not involving negligence or acts of commission on the part of the State, the Federal Highway Administration under the authority granted in 23 CFR 1.9 may allow Federal-aid participation in the claimed quantities, provided the remaining project records and measured data indicates the reasonableness of these quantities which can be verified, thus providing a basis for accepting the claimed quantities.

9. PARTICIPATION IN CONTRACT CLAIM AWARDS AND SETTLEMENTS
(23 CFR 635.124)

a. The Division Administrator may approve SHA requests for participation in settlement of claims. Explanations will be provided to the SHA in those cases where claims have been rejected.

b. Specific implementation procedures for handling of claims whether under C.A. or not, should be jointly developed by each SHA and FHWA division that will respond to the circumstances in the particular State. However, negotiated settlements, such as between a contractor and a resident engineer or a district construction engineer, or any other less formalized methods,

that fall short of arbitration, court judgment, or administrative board review, should be handled under regular change order procedures for Federal-aid projects.

- c. A decision to waive the audit requirement will be made by the Division Administrator on a case-by-case basis.
- d. To reduce the incidence of contract claims, attention should be given to the elimination of ambiguities in contract language. The American Association of State Highway and Transportation Officials Guide Specifications for Construction contains suggested contract language that can be adopted or used as an example.



U.S. Department
of Transportation
**Federal
Highway
Administration**

Order

Subject
FHWA NONPROCUREMENT SUSPENSION AND DEBARMENT
PROCESS
(FEDERAL-AID PROGRAM)

Classification Code	Date	Office of Primary Interest
2000.2A	June 19, 2000	HIPA-30

Par.

1. Purpose
2. Cancellation
3. Authority
4. Definitions
5. Background
6. Scope
7. Policy
8. Causes for Debarment
9. Suspension
10. Field Processing
11. Headquarters Processing
12. Implementation of Suspension and Debarment Actions

1. **PURPOSE.** To prescribe policy and guidelines for processing suspension and debarment (S/D) actions against participants who have an unsatisfactory record of integrity and business ethics in Federal Highway Administration (FHWA) financial assistance (Federal-aid) programs.

2. **CANCELLATION.** FHWA Order 2000.2, FHWA Nonprocurement Suspension and Debarment Process (Federal-Aid Program), dated November 19, 1993, is canceled.
3. **AUTHORITY.** 49 CFR Part 29 - Governmentwide Debarment and Suspension (Nonprocurement).
4. **DEFINITIONS.** Pertinent definitions are set forth in 49 CFR § 29.105.
5. **BACKGROUND.** S/D actions are discretionary administrative actions taken to protect the Federal Government by excluding certain firms and persons from participation in Federal programs. The S/D action ensures that the Federal Government does not conduct business with a person or firm that has an unsatisfactory record of integrity and business ethics. The S/D actions are administered governmentwide; consequently, a person or firm excluded by one Federal agency is excluded from doing business with all Federal agencies.
6. **SCOPE.** This Order applies to the FHWA Headquarters and field offices, except the Federal Lands Highway Divisions, for 48 CFR applies to the Federal Lands Highway Divisions. This Order covers all S/D actions within the meaning of 49 CFR § 29.110(a):
 - a. These regulations apply to all persons and firms that have participated, are currently participating, or may reasonably be expected to participate in transactions under Federal nonprocurement programs.
 - b. Covered transactions include all primary transactions (i.e., any transaction between FHWA and a financial assistance recipient, regardless of size, and lower-tier transactions (i.e., prime contracts between State DOTs and contractors or consultants, subcontracts, and contracts for material supply or vendor contracts, etc.) equal to or exceeding the small-purchase threshold (currently \$100,000). Lower-tier transactions, regardless of size, under which a person has critical influence or substantive control over a prime contract (auditing services, construction inspection, and quality assurance services that might influence a contract) are also covered.
7. **POLICY.** It is FHWA policy to consider action against a person or firm whenever a cause within the meaning of 49 CFR Part 29 has occurred.
8. **CAUSES FOR DEBARMENT.** Causes for debarment action include (49 CFR § 29.305):

a. Conviction of or civil judgment for:

(1) commission of fraud or a criminal offense in connection with the obtainment, attempt to obtain, or performance of a public or private agreement or transaction,

(2) violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging,

(3) commission of embezzlement, theft, forgery, or bribery; falsification or destruction of records; falsification of statements or claims; receipt of stolen property; obstruction of justice, or

(4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

b. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) a willful failure to perform in accordance with the terms of one or more public agreements or transactions,

(2) a history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions, or

(3) a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

c. Any of the following causes:

(1) a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4,

(2) knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in any connection with a covered transaction, except as permitted in 49 CFR § 29.215 or § 29.220,

(3) failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality,

provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted,

(4) violation of a material provision of a voluntary exclusion agreement entered into under 49 CFR § 29.315 or of any settlement of a debarment or suspension action, or

(5) violation of any requirement of 49 CFR 29 Subpart F, relating to providing a drug-free workplace, as set forth in 49 CFR § 29.615.

d. Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

9. SUSPENSION. When circumstances warrant, suspension action will be taken to protect the Federal Government by excluding persons and firms proposed for debarment from participation in the Federal assistance programs while the debarment action is processed.

a. Causes for suspension action (49 CFR § 29.405) include adequate evidence:

(1) that a cause for debarment under paragraph 8 may exist, or

(2) to suspect the commission of an offense listed in paragraph 8a.

b. An indictment shall constitute adequate evidence for purposes of suspension actions.

10. FIELD PROCESSING. The Division Administrator will ensure that the following steps are taken with regard to S/D actions:

a. Information concerning the existence of a cause for debarment from any source will be promptly investigated and reported. Sources of information regarding potential S/D actions include:

(1) Office of the Inspector General investigative reports,

(2) Department of Justice/U.S. Attorney investigations,

(3) civil and/or criminal court actions, and

(4) media reports (newspaper, magazine, newsletter, etc.).

Note: It is important to document any State-level S/D actions that have taken place. If information is available, the Division Administrator should document the status and terms of the State's S/D action and comment on the terms of any State recommendation.

- b. The Division Administrator will compile and submit information on all actions that are cause for debarment. The information should be obtained in a timely manner. Every effort will be made to initiate S/D action within 6 months of the field's knowledge of existence of a cause.
- c. The Division Administrator will coordinate with the appropriate Resource Center Assistant Chief Counsel to identify causes warranting S/D action and provide any information and documentation requested by Headquarters. Sufficient documentation should be included from which a determination can be made of the effect of the S/D actions on the Federal-aid program. The information should include a determination of the subject person's or firm's participation in Federal and non-Federal highway construction-related activities, an evaluation of the effect of the actions on Federal-aid projects, and consideration of the likelihood of the actions causing future effects on the Federal-aid program.
- d. If it is determined that the cause involves another Federal agency, the Resource Center Assistant Chief Counsel will coordinate with that agency. That counsel will consult with the Program Legal Services Division in the Chief Counsel Service Business Unit (HCC-30), before reaching a decision with the other agency as to which agency will take the lead on the S/D action. Likewise, if another Federal agency contacts an FHWA field office regarding an S/D action of FHWA interest, the response will be coordinated with the Program Legal Services Division (HCC-30) and the Infrastructure Core Business Unit (CBU), Office of Program Administration, Contract Administration Group (HIPA-30).
- e. The Division Administrator will submit a complete S/D information package documenting the cause or causes for imposing the S/D action to the Debarring Official. The Program Manager of the Infrastructure CBU is the Debarring Official for FHWA. The Debarring Official provides a courtesy copy of the information package to the Program Legal Services Division. The Division Administrator must make an S/D recommendation, based on sufficient evidence in the package, including the length of the debarment period, if any. The circumstances warranting any recommended debarment period

longer than 3 years should be explained. In addition, the addresses of the subject or subjects of the S/D action must be included in the package.

11. HEADQUARTERS PROCESSING

- a. The Program Legal Services Division will assess the submitted package, prepare a memorandum of review, and forward the S/D package, with recommended action, to the Contract Administration Group.
- b. The Contract Administration Group will review the package to determine the impact of the proposed S/D action on the Federal-aid program. The S/D package, along with a recommended action, will be forwarded to the FHWA Debarment Official.
- c. The FHWA will notify the person or firm of the S/D action by certified mail. The notice will be accompanied by a formal letter setting forth the basis for the S/D action and the person's or firm's rights under 49 CFR Part 29. Suspensions are effective upon signature of the FHWA Notice and letter or letters by the FHWA Debarment Official. Depending on the circumstances, one of the following notices of S/D action will be issued:
 - (1) Notice of Suspension and Proposed Debarment will be issued when a conviction or civil judgment listed in paragraph 8a is the cause for the debarment action.
 - (2) Notice of Suspension will be issued when immediate exclusion is warranted, based on adequate evidence of a debarment cause listed in paragraph 8a (e.g., the alleged acts indicate a reckless disregard for the structural integrity of a highway, bridge, appurtenance, etc.).
 - (3) Notice of Proposed Debarment will be issued when a debarment cause listed in paragraph 8a, or adequate evidence thereof, is not the cause for the debarment action.
- d. The respondent (the subject of the S/D action) will be given 30 calendar days from receipt of the certified letter to contest the action. The respondent may appeal the action in person, in writing, or through legal counsel to the Debarment Official. Requests to extend the 30-calendar-day period will be reviewed on a case-by-case basis.

e. The respondent may appeal the substance of the action, the length of the proposed debarment, or both. The FHWA Debarring Official may reverse the S/D decision or reduce the debarment period, based on the existence of any of the conditions set forth in 49 CFR § 29.320.

(1) If the action is not based on a conviction or civil judgment, and the respondent's appeal raises a genuine dispute over facts, the respondent will be given the opportunity to appear with counsel to present witnesses, submit evidence, and confront any agency witnesses. (However, the FHWA customarily gives respondents the opportunity to meet informally with the FHWA Debarring Official, even when the action was predicated on conviction or civil judgment).

(2) The FHWA Debarring Official will issue a final decision on the S/D action within 45 calendar days after completion of the respondent's appeal and the resolution of any disputed facts. The respondent will be sent a letter, via certified mail, stating the action taken. Either a Notice of Debarment or a Notice of Reinstatement will be issued to document the final action.

(3) The FHWA Debarring Official may refer controversial proceedings, for which a settlement on an S/D action cannot be amicably reached, to the Secretary of Transportation's Board of Contract Appeals (S-20).

f. If the respondent does not contest a proposed debarment within the 30-calendar-day period, the FHWA will issue a Notice of Debarment for the period proposed in the Notice.

g. Length of S/D actions:

(1) **Suspension:** Suspension actions are taken for a temporary period, pending the completion of the debarment process. Generally, suspensions will not exceed 12 months. If a legal or administrative proceeding is not initiated within 12 months of the effective date of the suspension, then the suspension will be terminated, unless an Assistant Attorney General or a United States Attorney requests an extension in writing, in which case it may be extended for an additional 6 months. In no event will a suspension be extended beyond 18 months, unless a legal proceeding is initiated, which precludes lifting the suspension.

(2) **Debarment:** Generally, debarment periods are limited to 3 years; however, if circumstances warrant, a longer debarment period may be imposed. The proposed debarment period, typically 3 years, may be reduced by the FHWA Debarring Official commensurate with the seriousness of the cause and any mitigating evidence presented. If preceded by suspension, the debarment period will begin retroactively from the effective date of the suspension.

12. IMPLEMENTATION OF SUSPENSION AND DEBARMENT ACTIONS

a. The General Services Administration (GSA) is required to compile, maintain, and distribute a governmentwide list of excluded parties. This publication is entitled "**Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs**" (**GSA LIST**) . Input to the GSA LIST is received from all Federal Government departments and agencies.

(1) The GSA LIST is published monthly. Copies are distributed to all FHWA division offices. Due to printing and mailing time, the information in the GSA LIST is approximately 6 weeks old by the time that it is distributed. GSA also maintains an electronic data base of excluded parties at the following Internet address: <http://epls.arnet.gov>.

(2) To ensure that FHWA S/D actions are administered in a timely manner, the field offices will be notified of FHWA S/D actions, via e-mail, within a few working days of their occurrence. In addition, the Contract Administration Group (HIPA-30) maintains a list of persons and firms suspended, debarred, and reinstated by the FHWA. This list of FHWA S/D actions will be e-mailed to the field offices during the first week of each month. It is emphasized that the FHWA list only includes actions taken by the FHWA and is not intended to be used in lieu of the GSA LIST.

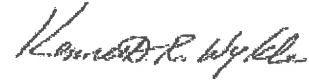
b. **Participant Certification.** All participants in the Federal-aid program are required to certify their current status regarding S/D actions, ineligibility, voluntary exclusion, and convictions and/or civil judgments (49 CFR § 29.510).

(1) The State DOTs are required to annually certify as to the current eligibility status of their principals. By signing the Federal-aid project agreement form, the State provides the

certification for its principals as required in 23 CFR 630.307(c)(4).

(2) Prime contract bidders and consultants are required to certify as to their own current eligibility status, as well as that of their principals, as a part of each Federal-aid highway contract bid proposal and consultant agreement.

(3) All lower-tier participants are also required to certify as to the current eligibility status of the company and its principals.



Kenneth R. Wykle
Federal Highway Administrator



U.S. Department of Transportation
Federal Highway Administration

SEE:

"PART 8-BID EVALUATION & DEBARMENT", Page 138 of this manual, "Guidelines on Preparing Engineer's Estimate, Bid Reviews And Evaluation, January 20, 2004"; and other documents regarding "DEBARMENT"

SEE:

"PART 3-WEST VIRGINIA STATE CODE", Page 6 of this manual,
Chapter 5. General Powers and Authority of The Governor, Secretary of
State and Attorney General; Board of Public Works; Miscellaneous
Agencies, Commissions, Offices, programs, ETC.

Chapter 5A. Department of Administration
Article 3. Purchasing Division

Chapter 17. Roads and Highways.
Article 2. State Road Commission
Article 2A. West Virginia Commissioner of Highways
Article 4. State Road System

Part 7-Summary Of Award Process

Summary of Award Process

1. Receipt of bids (See Part 7, Page 136.)
 - 1.1 Bids publicly opened and read
 - 1.2 Cursory review and compliance with all bidding regulations or requirements
 - 1.2.1 Bid Bond retained by Business Manager
 - 1.2.2 Check for proper execution
 - 1.2.3 Observe contractors DBE goal
2. Extensive review by Contract Section
 - 2.1 Prepare tabulation sheet for the thee (3) lowest bids
 - 2.2 Check extension of unit prices
 - 2.3 Comparison of bid with Engineer's Estimate-Percentage each individual bid with Engineer's Estimate-Percentage each individual bid is above or below. When required, check contractors DBE percentage calculation ad compare with goal specified in the contract.
3. Award Meeting
 - 3.1 Review all bids received on a project
 - 3.1.1 Receive comments from appropriate Sections on recommendation of award;
 - 3.1.2 Evaluate bids in accordance with 23 CFR 635.114; Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation, January 20, 2004. (SEE Part 8, Page 138 of this Manual)
 - 3.1.3 Receive comments from FHWA on non-exempt or concurrence Federal-aid projects.
 - 3.2 Consider the results from Section 3.1 above, the contract is awarded, rejected, or placed on hold for further evaluation after which it is awarded or rejected.
4. Prior to the award of any Federal-Aid Contract, it will be reviewed to see if unbalanced bidding is evident. If mathematically unbalanced bidding is apparent, we will do a further review to see if the unbalancing could be to the detriment of the Division of Highways. We will also evaluate the bid to see if it is materially unbalanced.

The results of these reviews will be documented in the "Concurrence to Award" letter sent to the Federal Highways Administration on non-exempt or concurrence projects and documented by a memorandum to the project file on "exempt" projects.

RECEIPT OF BIDS

Sealed bids received by U.S. Mail, Courier, Federal Express, United Parcel or other mail services are deposited in the Bid Box in Room A-148 by Division of Highways personnel in that office.

Sealed bids delivered by individuals in behalf of a company are placed in the Bid Box in Room A-148 or the Bid Box at the corner of California Avenue and Piedmont Road by these individuals.

The Bid Box at the corner of California Avenue and Piedmont Road is accompanied by a representative of the Contract Administration and is placed there for one hour prior to the letting. Thus, since lettings are usually held at 10:00 A.M., the box is at that location from 9:00 A.M. to 10:00 A.M. on the day of the letting. In some cases, for small lettings, a bid box is not placed at this location.

Both Bid Boxes are taken to the letting site by representatives of the Construction Division immediately after the cut-off time for receipt of bids.

The bids are removed at the letting site by Contract Administration personnel. Each Bid Box has two (2) locks. A key to one lock is retained by the Business Manager and a key to the second lock is retained by the Contract Administration Division.

WVDOH Electronic Bidding System (EBS 4.3b)

All prospective bidders must **request permission** to submit electronic bids. This request must include the **bidder's company name, FEI number, mailing address, E-mail address, phone number,** and the **names and signatures** of the company representative authorized to sign the computerized bid. For each bid submitted, no contractor may use any part or portion of the Electronic Bidding System, including without limitation the Schedule of Bid Items, without prior consent of the Division of Highways.

Separate requests must be submitted for joint bids, joint ventures, or in the event that a bidder's company name changes or a bidder chooses to bid under a different company name.

EBS 4.3b System Specifications

The Windows version of Trns•port Expedite runs on an Intel Pentium PC using Microsoft Windows 9x, or a Windows NT (Workstation or Server) 4.0 or later operating system.

Expedite requires additional specifications as shown. Citizenship or permanent residence in the United States or Canada is required for use of the optional digital signatures and encryption technology.

Memory: 16 MB RAM
for Windows 9x; 32
MB for Windows NT

Disk Space: 20 MB

Programs and Downloads are available on Department of Transportation, Division of Highways, Contract Administration Division Website:

http://www.wvdot.com/10_contractors/10e1_downloads.htm

2024-2025

Part 8-Bid Evaluation & Debarment

2024-2025



Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation

January 20, 2004

Par.

1. Purpose
2. Background
3. Pre-Bid Considerations
4. Preparing Engineer's Estimates
5. Bid Analysis and Contract Award
6. Post-Award Reviews
7. Removal from the Bidders List (Debarment)

1. Purpose

- a. To outline recommended procedures for preparing engineer's estimates and for reviewing bids prior to concurrence in award.
- b. To provide guidance for improving pre-bid, bid review and evaluation policies and procedures.
- c. To improve competitive bidding procedures.

2. Background

A State Transportation Agency's (STA's) procedures for soliciting and awarding construction contracts are an important part of the competitive bidding process. To ensure a competitive contracting environment, STAs should develop effective prequalification programs and other procedures to ensure fairness in the pre-bid solicitation process and post award review of construction bids. In addition, the STA's procedures for developing a reliable engineer's estimate are critical to the success of such programs. The engineer's estimate should reflect a fair and reasonable cost of the project in sufficient detail to provide an accurate estimate of the financial obligations to be

incurred by the State and FHWA and permit an effective review and comparison of the bids received.

This guideline replaces Technical Advisory "T5080.4 - Preparing Engineer's Estimate and Reviewing Bids", dated December 29, 1980 and Technical Advisory "T5080.6; Guidelines on Contract Procedures with Emphasis on Bid Reviews and Evaluation", dated December 17, 1982.

3. Pre-Bid Considerations

- a. Contractor Prequalification** In general, contractor prequalification is used to help determine the quantity and type of work a firm is capable of undertaking. Normally the firm's resources, its financial assets, work experience, and its staffing capability must all be identified for it to become prequalified. Some States that do not require prequalification find it necessary to collect some information via a financial statement or some other abbreviated process. These States do not specify the type of work or limit the size of project a firm may bid upon because they feel prequalification may restrict competition unduly. Other States do not prequalify but instead rely on the contractor's ability to provide a performance bond. The FHWA does not require prequalification, but if a STA elects to prequalify contractors, such procedures must not restrict competition.

Prequalification has been identified by some of the States as a useful tool for gathering pertinent information on the intricate management details of a contractor's firm. In the event of a conviction of a crime such as bid rigging, such information proves useful as an aid in determining the appropriate sanctions for the firm and/or the individuals involved. Another possible use would be to determine the relationship of firms bidding on any one project.

Specific information that should be collected from a firm includes the following: financial resources, principal individuals in the firm (anyone having a 10 percent or more interest in the firm), all affiliates or subsidiary companies including material sources, available equipment, work experience, individuals and organizations that have control or influence over the firm's bidding procedures, and whether the firm has ever been suspended or debarred from bidding and the related circumstances.

The instructions for completing the work experience section (of the pre-qualification form) should require that the firm identify all projects for which it was the prime contractor and those on which it worked as a subcontractor during at least the past two years as well as the contracting agency for those projects. Also, the contracting agency should describe the penalties for making false statements in the pre-qualification process.

- b. Anti-collusion Statement** A sworn anti-collusion statement should be included as part of the bid proposal package. Under the 23 CFR 635.112(f), the STAs are required to include provisions in the bidding proposals that require all bidders to include a non-collusion statement with their bids. The FHWA in consultation with the DOJ has concluded that non-collusion statement may be either an un-sworn declaration made under penalty of perjury under the laws of the U.S., or a sworn affidavit executed and sworn before a person who is authorized to administer oaths by laws of the State. All non-collusion certifications shall be retained by the STA in accordance with the retention policy of 49 CFR 18.42. These certifications could serve as important evidence in the event that collusion or bid rigging is discovered at a later date. If any bidder submits a false statement, sanctions could then be taken against the firm.
- c. Standard Specifications** All States should have standard specifications that address the issue of evidence of collusion among bidders. Those State specifications that currently address this item generally specify that the STA may determine that the bidder is not responsible and reject his/her proposal based on evidence of collusion. In addition to rejection of a firm's proposal, the specification should advise that collusive bidding is a violation of the law and could result in criminal prosecution, civil damage actions, and State and Federal administrative sanctions.
- d. Bidders List** Confidentiality of the bidders' list (those firms that have taken out plans and a bid proposal document) has both advantages and possible disadvantages.

 - 1. With the availability of bid tabulation information and bidders lists on the Internet, the potential for bid collusion is higher than in previous years when such information was not readily available. In an effort to create the most competitive environment for potential bidders, a firm should not be aware

of the identity of the other potential bidders. An advantage of keeping the bidders' list confidential is that bidders will submit what is believed to be a realistic competitive bid based upon the company's own individual circumstances. This is especially important for projects where there would be limited competition.

2. A possible disadvantage of keeping the bidders' list confidential would be that potential material suppliers and subcontractors would not be informed of what firms to contact for upcoming projects. Therefore, a material supplier may fail to inform a potential bidder of its current prices. However, by the very nature of competitive bidding and the last-minute quotes traditionally provided contractors, it is felt both contractors and suppliers will continue to have adequate communication. Further, since the bidder must perform the contract work with his/her own firm and/or subcontract it, the burden actually lies with the bidder to determine what other firm he/she wants to work with on a project. Unless the project has new or unusual material or construction requirements, it is believed most contractors are aware of the available subcontractors and potential material suppliers. Therefore, it is believed the bidder is generally the one seeking potential subcontractors, especially if Disadvantaged Business Enterprise goals are included in the proposal. During court testimony, defendants have stated the bidders' list was used to identify other potential prime contractors to be contacted to rig the project bids. Although there are other ways to find out who plans on bidding, i.e., from material suppliers, bonding companies, etc., at least the contracting agency is not providing this information when it keeps the bidders list confidential. It is recognized that State freedom of information or similar statutes may, however, preclude keeping the bidders' list confidential.

e. Competition Competition for projects by bidders is an integral part of a successful construction program. An effort should be made by the contracting agency to maximize the competition by a number of methods.

1. Advertisement should be widespread enough to advise those potential bidders interested in the type of work and size of project involved. Based on the complexity of the project, extended advertisement periods are encouraged.

2. Consideration should be given to the project's estimated cost/size to maximize the number of bidders. The size normally varies in each State depending on the makeup of the construction industry. In some situations, it may be desirable to divide the project into several smaller contracts to foster competition.
3. Jobs should be allowed to be bid individually or in combination.

f. Multiple Bid Requirements If a State law or regulation exists which requires that more than one bid be submitted before award can be made, efforts should be made to revise or repeal it. There is evidence that in those cases where only one contractor was interested in a project and the multiple bid requirements existed, the firm actually contacted other contractors to submit a complementary bid so award could be made. If only one bid is submitted and it far exceeds the estimate, it should be rejected; but if it is at or below the estimate, it should be considered for award.

g. Escrow of Bid Documents The STAs should consider escrowing bid documents where it is administratively feasible to do so. Section 103.08 - "Escrow of Bid Documentation" of the AASHTO Guide Specifications for Highway Construction provides a sample specification for this requirement.

4. Preparing Engineer's Estimate

The critical review of any bid depends on the reliability of the estimate it is being compared to. Therefore, State Transportation Agencies (STAs) are strongly urged to devote sufficient attention to preparation of estimates using the same level of detail as the contracting industry. The engineer's estimate should reflect the amount that the contracting agency considers fair and reasonable and is willing to pay for performance of the contemplated work. Under-estimating causes project delay while additional funding has to be arranged to meet the contract costs. On the other hand, over-estimating causes inefficient use of funds that could be used for other projects. In addition, the engineer's estimate serves as the benchmark for analyzing bids and is an essential element in the project approval process. There are three basic approaches to estimating: actual cost, historic data, and a combination of historic data and actual cost. One of the most

important factors in obtaining a good engineer's estimate is the experience of the estimator. While documented estimating procedures are helpful, contracting agencies are encouraged to provide sufficient training opportunities for their staff.

a. Estimating Methods

- 1. Actual Cost Approach** The actual cost approach takes into consideration factors related to actual performance of the work (i.e. the current cost of labor, equipment, and materials; sequence of operations; production rates; and a reasonable value of overhead and profit). This approach requires the estimator to have a good working knowledge of construction methods and equipment. Also the estimator should have resources available for determining production rates from actual work performed by the contracting industry on similar type projects as well as resources for determining current construction methods and equipment. While adjustments for current market conditions may be required, this approach typically produces an accurate estimate and is useful in the bid review process in aiding the decision to award or reject the project. However, this method may be more time consuming and may not be practical for all projects.

- 2. Historic Data Approach** The use of historic data from recently awarded contracts is a cost-effective method to develop the engineer's estimate, however, solely relying on historic data may not be appropriate when the data is based on a non-competitive bidding environment. A file of previous unit bid prices should be maintained according to type, size, and location of project. Upcoming projects should be matched to the most recent projects to develop base prices for estimating the value of the unit prices. Under this approach, bid data are summarized and adjusted for project conditions (i.e., project location, size, quantities, etc.) and the general market conditions.

This approach requires the least amount of time and personnel to develop and produces an adequate estimate for use in budgeting/programming, as long as competitive bid prices are used to build the estimate. Non-competitive bidding and unbalanced practices are the least recognizable using the historic data approach to estimating. Further

adjustment of the base prices should be considered based upon the ages of the similar projects, but past inflation rates should not be projected into the future unless based on circumstances which can be reasonably expected to occur, such as labor rate increases through labor negotiations and known material price increases. Where the magnitude and timing of future increases are uncertain and would have a major effect on critical unit prices, price adjustment clauses may be a better alternative.

- 3. Combination Approach** This approach combines the use historic bid data with actual cost data. Most projects contain a small number of items that together comprise a significant portion (e.g. 75 percent) of the total cost. These major contract items may include Portland cement concrete pavement, structural concrete, structural steel, asphalt concrete pavement, embankment, or other major items of work within the contract. To the extent practical, STAs should collect information on local market prices of materials, equipment manufacturers, dealers, and rental companies, and material suppliers to obtain current cost information on a regular basis. Davis-Bacon prevailing wage rates on Federal-aid contracts could be easily incorporated to provide labor costs as determined by Department of Labor. Current material costs are obtained from local approved sources. Equipment costs can be obtained through rental companies or equipment dealers based on a reasonable depreciation schedule. The remaining items are estimated based on historical prices and adjusted as appropriate for the specific project:

b. Confidentiality of the Engineer's Estimate

Procedures and policies concerning confidentiality range from including the total estimated construction cost in the bid proposal to keeping the estimate confidential from the public even after the project has been constructed and opened to traffic. Benefits of making the total estimate public include eliminating the possibility of only one or some of the bidders knowing what the State believes the project is worth plus removing any pressure from State employees to release the estimated cost secretly. One disadvantage of making the estimated cost public is that firms desiring to rig bids can use the engineer's estimate as a basis for determining the low-bid

amount to be submitted. This is especially important in cases where the contracting agency anticipates minimal competition and/or a single bid for construction.

While confidentiality of the estimate obviously will not by itself successfully deter a firm from conspiring with other bidders, it does prevent bidders from knowing what approximate amount the contracting agency is willing to accept. For those agencies that believe total secrecy from the public is not realistic in their State, as a minimum attempt of confidentiality, a range for the estimated project cost could be provided and included in the bid proposal document. For example, a range could be established as follows:

Project Classification	Project Cost
A	\$0 - \$100,000
B	\$100,000 - \$250,000
C	\$250,000 - \$500,000
D	\$500,000 - \$1,000,000
E	\$1,000,000 - \$2,500,000
F	\$2,500,000 - \$5,000,000
G	\$5,000,000 - \$10,000,000
H	\$10,000,000 - \$15,000,000
I	\$15,000,000 - \$25,000,000
J	\$25,000,000 or greater

A policy of providing a specified dollar amount for a bid bond could indicate the amount of the estimate. This procedure should be revised to specify a percentage of the bid submitted, thus maintaining the confidentiality of the estimate.

c. Accuracy of Engineer's Estimate

The estimate must have credibility if the bid review process is to be effective. Estimate accuracy should be judged by comparing the estimate against the low bid (%). Estimate accuracy relies on the estimator using all the available resources to create a fair and reasonable value for the work given all particular job conditions and evaluating these conditions accurately to establish a credible estimate. It is realized that estimate preparation is not an exact science; however, it is felt the engineer's estimate should be within ± 10 percent of the low bid for at least 50 percent of the projects. If this degree of accuracy

is not being achieved over a period of time, such as one year, confidence in the engineer's estimates may decline. Further, if estimated total costs are made available to the public, even after the letting, and are consistently running well above the low bid (say 15-20 percent) when a sufficient workload is available, bidders may be cognizant of the higher estimates and may submit higher bids accordingly.

Where confidence in the estimate has been established by the contracting agency, it follows that to be an effective tool, the agency must show that confidence by rejecting those low bids that are not within a reasonable percentage above the estimate. Adjustments to the estimate for projects to be re-advertised should not be made to correspond to the previous bids submitted without adequate justification.

Attachment A provides a review guide for assessing a contracting agency's procedures for developing the engineer's estimate.

5. Bid Analysis and Contract Award

In 1983, the Office of the Inspector General (OIG) performed a review of the STA's preparation of the engineer's estimate. They found that: 1). Estimates were overstated and unreliable for bid evaluation, and 2) The FHWA had not adequately reviewed the STA's estimating procedures to assure that contracts were awarded at the lowest reasonable rates. In response to the OIG's findings and recommendations, the FHWA established criteria to support and assist the STAs to improve their estimating procedures. In addition, the FHWA Division Offices were advised to review their STA's procedures.

The engineer's estimate should be a fair and reasonable value for the work to be performed. It should be within plus or minus 10% of the low bid for at least 50% of the projects awarded. Specialized highway construction work should be evaluated on a case-by-case basis. The following guideline discusses circumstances where an apparently excessive bid may be justified as a basis for award:

- 1. Assessing Competition** Competition should be considered excellent when there are six or more bids within 20 percent of the low bid, including the low bid. Fewer competitive bids should require evaluation to determine whether competition was adequate, and whether additional competition or better prices could be obtained. As a guideline

to this determination, the following is offered as a suggestion for determining whether adequate competition was obtained:

Number of competitive bids * (*Range = low bid + 20 percent)	Competition May be considered adequate when low bid does not exceed **
5	120 percent of engineer's estimate
4	115 percent of engineer's estimate
3	110 percent of engineer's estimate
2	105 percent of engineer's estimate
1	The engineer's estimate

** (Exceptional types of projects should be identified where competition has been historically poor, and when the prospects of increased competition are not apparent. Such projects should be reviewed independently of this or any alternative guideline.)

2. **Considering Re-Advertisement** Few projects are considered so essential that deferral (even for 60 days to solicit re-advertised bids) would not be in the public interest. However, projects that are considered essential are of the following:

1. Safety projects which are to correct extremely hazardous conditions where the traveling public may be in danger.
2. Emergency repair or replacement of damaged facilities.
3. Projects to close gaps in otherwise completed facilities to allow opening to traffic.
4. Projects that are critical elements in a staged or phased construction schedule, where a delay would mean substantial impact on the completion date of the facility.

It is difficult to justify that re-advertising would likely result in higher cost without concluding that all practical anti-inflation measures have been employed to the maximum extent possible.

Estimating errors should not be considered unless the magnitude of the error is significant and procedures are modified to attempt

to prevent the occurrence of similar errors. Some errors are merely mistakes that can be corrected easily once discovered, while others are "errors of judgment" which cannot be as easily explained.

States are encouraged to track projects that are re-let and tabulate either savings or higher cost for each calendar year. If higher costs are found in the re-let projects, a thorough review of the current estimates and procedures should be performed. Also, current bid collusion detection techniques should be employed to identify potential bid rigging/collusion.

The analysis and award process for a project should be thorough even when the low bid is below or at a reasonable percentage above the engineer's estimate. It is reasonable, however, to expect that larger projects will receive a more thorough review than very small projects. The STA should have written procedures for justifying the award of contract, or rejection of the bids, when the low bid appears excessive or rejection is being considered for other reasons.

3. Bid Review Factors

1. Factors that should be considered in reviewing the bids received for a project include the following:
 1. Comparison of the bids against the engineer's estimate;
 2. Number of bids submitted;
 3. Distribution or range of bids received;
 4. Identity and geographic location of the bidders;
 5. Potential for savings if the project is re-advertised;
 6. Bid prices for the project under review versus bid prices for similar projects in the same letting;
 7. Urgency of the project;

8. Current market conditions/workload;
9. Any unbalancing of bids;
10. Which unit bid prices differ significantly from the estimate, and from other bids?
11. If there is a justification for the difference; and
12. Any other factors the contracting agency has determined to be important.

2. The influence of any one of the above factors may not be too meaningful. However, when considered in combination, the results could be significant. Although the number of bids received is a measure of bidder interest, by itself the number does not indicate the degree of competition. For example, one would not normally expect a firm that is located near a project to be underbid by a firm located a distance from the project and having extensive mobilization and materials transportation costs if both firms are bidding truly competitively. A number of other factors enter into a particular firm's bid such as workload or the size of project, but a bidder's geographic location is a significant factor

13. **Comparison of Bid Prices** A comparison of project unit bid prices should be made at each letting to determine if the contractors are submitting consistent prices on the different projects they bid. In general, there will be an adequate number of projects in each letting to make a comparison except for the large or very specialized jobs. Although the projects being compared may not be in the same geographic area, the reviewers should be aware of any geographic price differences, which normally remain constant between areas even when the overall market conditions change.

14. **Unbalancing of Unit Bid Prices** The unbalancing of unit bid prices by a contractor is difficult to assess in that it is quite normal for different contractors to place their costs such as overhead or their expected profit for the project in the unit cost of different items. Normally these costs will be in those items, which the individual contractor has determined will not be eliminated or significantly under run. The main

concern of the contracting agency should be to assure itself that the bids have not been materially unbalanced in order to take advantage of errors in the plans or specifications. Unbalancing of bids may also occur on those lump-sum items that can be performed in the early stages of the project.

The distinction between a mathematically unbalanced bid and a materially unbalanced bid is often difficult. The State of Wisconsin utilizes a bid analysis procedure that was developed with the assistance of the contracting industry to identify materially unbalanced bids. The State examines significant items that are mathematically unbalanced (as identified by a certain percentage over or under the engineer's estimated unit price for that item). If it appears that a quantity error may have caused a contractor to unbalance, the State will examine all significant bid items for quantity errors. If quantity errors are found, the State will examine the impact on the bidder ranking if corrected quantities had been used. A change in the ranking is an indicator of a materially unbalanced bid. See Attachment B.

15. **Review Committee** A multi-disciplined review committee should be used to analyze the bids received so that the various perspectives within the contracting agency are represented and are provided with technical and managerial input. This approach can also be used to readily identify the effects of awarding the contract or rejecting the bids. If a review committee is not utilized for analyzing bids, as a minimum, the estimating section should be involved. The estimating section is normally familiar with the project. Any major differences in the unit bid prices and the estimate will be readily identifiable and evaluated. Also, it keeps the estimating section apprised of any trends in the market conditions so the engineer's estimates can be kept current.
16. **General Guidelines** It may be beneficial for a contracting agency to develop general guidelines to be used in determining whether to award the contract or to reject all bids. However, each project should be considered on its own merits, as some will normally have a higher priority to begin construction than others. If guidelines are developed, consideration should be given to the use of a "sliding scale" approach for low bids over the estimate. A low bid 15 percent above the engineer's estimate of \$50,000 should not necessarily be treated the same way as a low bid 15 percent above an engineer's estimate of \$5,000,000. Also, if guidelines are used, it is recommended that the

specifics be kept confidential from the general public so as not to influence contractors who are preparing bids.

17. **Submission of Bids** If a significant number of firms take out a set of plans and a bidding proposal but only a small percentage, less than 30 percent, actually submit a bid, an effort should be made to determine the reasons for the lack of interest. If the cause for lack of interest can be identified, appropriate steps should be taken to improve the situation.

6. Post-Award Reviews

- a. **Evaluation Period** A conscientious effort should be made to determine if bid rigging is currently ongoing or has occurred in the recent past. To make this determination, an adequate number of projects awarded over a sufficient time period must be evaluated. A time period of approximately 5 years should be selected for the initial evaluation to determine if any abnormal competitive bid patterns exist.
- b. **Review Considerations** The following information should be considered in a post-award review for abnormal bid patterns: (1) number of contract awards to a specific firm; (2) project bid tabulations; (3) firms that submitted a bid and later became a subcontractor on that project; (4) rotation of firms being the low bidder; (5) a consistent percentage differential between the various firms' bids; (6) a specific percentage of the available work in a geographic area to one firm or to several firms over a period of time; (7) a consistent percentage differential between the low bid and the engineer's estimate; (8) location of the low bidder's plant versus location of the second and third low bidders' plants; (9) variations in unit bid prices submitted by a bidder on different projects in the same letting; (10) type of work involved; (11) number of firms that took out a set of plans and a proposal versus the number actually submitting a bid; and, (12) any other items discovered in the review that may indicate noncompetitive bidding. Re-advertised projects should be checked to determine if the eventual low bidder was also low in the first letting.
- c. **Analysis** To consider or to analyze the above information to determine if unusual bid patterns exist. The information for project award must be in a readily accessible form, preferably on a computer. Further, although the analysis can be done

manually, the use of a computer to analyze the data and to monitor bidding activity has become very prevalent. While many STAs have their own bid analysis system, the majority of the STAs are using the Bid Analysis and Management System / Decision Support System, (BAMS/DSS), a module within the AASHTO Trns-port® software package. The BAMS is a comprehensive system comprising five modules, which includes the Decision Support System containing the collusion detection capabilities. The use of a computer program is intended only to provide information to indicate whether further investigation is warranted. If for any reason, a person feels that bid rigging or fraud has occurred, they should contact the nearest USDOT/OIG Regional Office <http://www.oig.dot.gov/offices.php>. This may be based on a suspicion or actual evidence of fraud, waste, and abuse in any project funded by FHWA.

- d. **In-depth Post-Award Review** The extent to which an in-depth post-award review should be carried out by FHWA or an SHA will depend upon the circumstances surrounding each particular review. If an FHWA field office believes that irregular bid patterns may exist and further investigation is warranted, any evidence should be furnished to the appropriate Department of Transportation (DOT), Office of the Inspector General (OIG) office and the State. Further, most SHA's should provide any evidence of wrongdoing to its State Attorney General's Office, FHWA, and other appropriate officials. The frequency of the in-depth reviews should be adequate to indicate to the contracting agency that illegal activities are not ongoing or have not occurred in the recent past.

7. Removal from the Bidders List (Debarment)

Suspensions and debarments are discretionary administrative actions taken to protect contracting agencies by preventing persons and / or companies from receiving additional contracts and / or subcontracts. At the Federal Government level, a notice of suspension or debarment ensures that the Federal Government does not conduct business with a person or a company who has an unsatisfactory record of integrity and business ethics. Suspension and debarment actions are administered government wide; consequently, a person excluded by one Federal agency is excluded from doing business with any Federal agency. The FHWA's suspension and debarment policies are in 49 CFR Part 29 and the General Services Administration's Excluded Parties Listing System

(<http://epls.arnet.gov/>) is a web based list that is updated daily for individuals and firms that are currently suspended or debarred. Contracting agencies may rely on this list to confirm eligibility prior to awarding any Federally assisted contract or subcontract.

It is desirable that each contracting agency has a written policy addressing what action will be taken in instances of contractor irregularities, such as bid rigging. A written policy serves as a deterrent to the contracting industry by advising them, in general terms, what activities the agency considers to be illegal or irresponsible and how it intends to deal with those involved should any wrongdoing be detected. Further, the policy provides a basis for any action(s) that may be taken against the individual or firm involved in the illegal wrongdoing by those responsible for enforcing the policy.

Many States have their own procedures for suspension, debarment or procedures for limiting future business dealings with non-responsible firms (see: <http://www.fhwa.dot.gov/programadmin/contracts/sdlinks.htm>).

Attachment A -

Review of Engineer's Estimate Preparation

1. Are any State laws or regulation in effect regarding release or protection of the engineer's estimate?
2. Are any State laws or administrative regulations in effect for determination of whether a contract award is proper, based on estimate overrun, competition, or other factors?
3. Review and attach any copies of any procedures or instructions the State may have pertaining to preparation, revision, checking, and use of the engineer's estimate?
4. Briefly describe the intended process for preparation of estimates. Verify the actual method used in comparison with intended process and note any differences?
5. Does the State have an estimating section? Which other portions of the agency become involved in preparing, checking, or approving the estimate?

6. Briefly describe the personnel resources available for preparing, etc., estimates and note any workload changes vs. personnel available over the past 3 years.
7. What is the primary basis for establishing estimated unit prices?
8. What methods are used to identify and incorporate anticipated changes in cost of labor, equipment, and material?
9. Are upcoming labor negotiations considered in the process?
10. Are material suppliers contacted for anticipated material costs?
11. Are adjustments made for individual project conditions? In what way?
12. What other factors are used to adjust the primary basis to determine the estimated prices for the project?
13. In typical cases, how far in advance of the letting date is the estimate prepared?
14. How often is the estimate revised during the advertising period? Discounting addenda and quantity changes, what are the usual reasons for revising estimated prices?
15. Is every estimate routinely evaluated by anyone other than preparer? If so, when?
16. If possible, determine how often further study and/or revision is believed desirable but not accomplished due to workload restriction.
17. Is any information released publicly, which may indicate the actual or approximate value of the estimate prior to opening bids? Is the estimate released after opening bids?
 - a. When?
 - b. Is it published and where?
 - c. Who receives copies, if published?
 - d. In detail or only giving total cost?

18. Is any other information regarding the estimate available to contractor on request?
19. Review the State's experience during the past calendar year for Federal-aid contract for up to 100 randomly selected projects if the contract volume exceeds 100 projects.
 - a. Determine the percentage of projects sampled where the low bid fell within ± 10 percent of the estimate, and plot the distribution of low bids above and below the estimate.
 - b. Determine the percentage of projects with zero, one, two, three, four, etc., bids. Are there any project size trends noted?
 - c. Prepare graphs with percent above or below estimate for each project vs. cumulative percent of number of low bids for three separate groups of projects, single bids, two or three, and four or more bids. (Each group should be arranged in ascending order to facilitate preparing these graphs.) Are any trends noted?
20. Review the Contracting agency's procedure for evaluating bids received prior to recommending award or rejection.
 - a. Is there an established policy on, or apparent pattern of, awards or rejections of bids at a set level above the engineer's estimate?
 - b. In the case of poor competition or excessive difference between the estimate and the low bid, does the Contracting agency contact the bidders and non-bidders who checked out proposal forms?
 - c. Are there any "ground rules" for adjusting estimates after receipt of bids? Is such action taken on its own merits or may it be prompted by pressure to award an apparently excessive bid?

Attachment B

Wisconsin DOT Unbalanced Bid Analysis

(Excerpt from the Wisconsin DOT Construction and Materials Manual, Section 2.1.2.1.1, revised 10/98)

1. A unbalanced bid analysis will be performed under two circumstances:

- If the Department becomes aware of an error in a quantity of an item shown in the bidding documents.
 - If an item is found to be both significant to the contract and significantly unbalanced.
2. An individual item will be considered significant to the contract if a bidder has an item included in the proposal where the difference between the total cost of the item and the estimate, expressed as a percent of the estimated total contract cost, is greater than or less than 0.50% for contracts less than \$2,000,000 and greater than or less than 0.25% for contracts \$2,000,000 and larger.
 3. An item will be considered significantly unbalanced if the difference between the low bidder's unit price and the estimate, expressed as a percent of the estimate, is greater than +50% or is less than -75%.
 4. The Unbalanced Bid Analysis shall consist of the following steps:
 - A. The estimated unit price for all items identified as being significantly unbalanced will be reviewed for correctness. Corrections will be made as needed and the low bidder's unit price will be reevaluated to determine if the item remains significantly unbalanced (see item #3).
 - B. Quantities for all items found to be significant to the contract will be checked and verified. Quantities will be determined based upon the bidding documents and the construction methodologies depicted in the plan. These quantities will be used only for the purpose of performing the Unbalanced Bid Analysis.
 - C. Corrected quantities for items known to be in error (see item #3) plus corrected quantities for all items significant to the contract will then be multiplied times the unit price bid for each contractor and a gross sum for the contract for each bidder will be calculated.
 - D. A comparison of the calculated gross sum totals will be made. If the calculated gross sum for the contract low bid is found to be higher than the calculated gross sum of another bidder, the low contract bid proposal shall be determined to be materially unbalanced. If the calculated gross sum of the contract low bid proposal is found to be less than the calculated gross sum of all

other bidders, that bid shall be determined to be not materially unbalanced.

- E. Step D will be repeated as necessary using the next low contract bid proposal until a contract bid is found to be not materially unbalanced.
5. If the initial contract low bid proposal is found to be not materially unbalanced, the contract will be considered for award at the bid contract amount in accordance to the Standard Specifications. The contract will be based upon the bid amount and the quantities shown in the bidding documents.
 6. If the initial low bid contract proposal is found to be materially unbalanced it will be considered irregular and will be rejected as nonresponsive as reasonable doubt exists that the bid does not represent the lowest cost to the Department.
 7. If the initial low bid contract proposal is found to be materially unbalanced and rejected, the Department may award to the next low bid contract proposal at the bid contract amount or may elect to reject all bids and relet. Decisions will be made in the public interest and will consider consequences of reletting the project.
-

Part 9-Forms

NOTICE

PLEASE READ AND COMPLETE SECTIONS A THROUGH J, PAGE 4 MUST BE EXECUTED BY CONTRACTOR FOR ACCEPTANCE OF THIS PROPOSAL, SIGNATURE ON PAGE 4 REPRESENTS CONTRACTOR'S UNDERSTANDING AND INTENTION TO COMPLY WITH ALL DOCUMENTS CONTAINED IN THIS PROPOSAL.

STATE OF _____,

COUNTY OF _____, To-Wit:

I, _____,
(Name of Company)

the contractor _____, subcontractor _____, supplier _____,

on Project No(s). _____,

in _____ County(s), West Virginia,

by _____ Title: _____,
(Name of Authorized Representative)

being duly sworn do depose, say and certify that:

Section A: FREE COMPETITIVE BIDDING AFFIDAVIT

That said person, firm, Association or Corporation, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid or contract.

Section B: CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS (FEDERAL AID ONLY)

That said person, firm, Association or Corporation has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that said person, firm, Association or Corporation has _____, has not _____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

NOTE: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION AFFIRMATIVE ACTION CERTIFICATE**

Section C:

It is the intention of this organization to affirmatively seek out and consider disadvantaged business enterprises to participate in this contract as subcontractor and/or Suppliers of materials and services.

CONTRACTOR'S PLAN FOR DBE PARTICIPATION

DBE ¹ Sub-Contractor	LINE	ITEM #	DESCRIPTION	QUANTITY	UNIT	PER UNIT	AMOUNT ²

CONTRACTOR'S DBE GOAL³: PERCENT % OF BID AMOUNT \$ _____

1. ¹DBE for the purpose of the certificate means a disadvantage business as defined by Special Provisions in the Proposal.
2. ²If material is to be supplied the figure in this column shall not exceed 60% of the actual cost unless the material is manufactured by a DBE in which case 100% of the cost can be recorded.
3. ³The total DBE GOAL participation as a percentage of the total contract bid amount.
4. If the material is not supplied by a regular dealer as defined in 49 CFR 26.55(e)(2)(ii), the figure in this column² shall include only a reasonable and customary fee or commission for providing a bonafide service.
5. The Contractor shall submit written and signed documentation of commitment to use a DBE subcontractor whose participation the contractor submits to meet a contract goal.
6. The Contractor shall submit written and signed confirmation from the DBE that is participating in the contract as provided in the prime contractor's commitment.

Section D: ASSURANCE REQUIREMENT REGARDING EQUAL EMPLOYMENT OPPORTUNITY FOR VENDORS, SUPPLIERS AND CONTRACTORS ENGAGED IN COMMERCIAL TRANSACTIONS WITH THE WEST VIRGINIA DEPARTMENT OF HIGHWAYS (NO FEDERAL AID)

Pursuant to the requirements of the State of West Virginia, Executive Order 4-65 dated December 16, 1965, said firm desiring to avail itself of the benefits of engaging in commercial transactions with the Department of Transportation, Division of Highways hereby agrees to:

- (1) give assurances that all employment and personnel practices will be conducted without regard to race, color, sex, creed or national origin.
- (2) include in all recruitment advertisement the following wording: "An Equal Opportunity Employer".
- (3) furnish, periodically to the State Highway Engineer information which will enable him to judge compliance with the requirements of Executive Order 4-65.

Section E: COMPLETION DATE

Construction under the above proposal and calculation of working time will begin no later than ___ calendar days after notice to proceed, and will be completed by date of _____.

It is agreed that time is of the essence for this contract, and that I(we) will, in the event of my(our) failure to complete the contract within the time limited named, reimburse the Department of Transportation, Division of Highways an amount to be determined by the said Department as sufficient to cover fully any additional demonstrable costs incurred by the Department because of such failure, including extra engineering costs, unless covered by a Liquidated Damage Clause for this project.

Section F: CERTIFICATE OF COMPLIANCE INVOLVING THE SUPPLYING OF ALUMINUM, GLASS, STEEL OR IRON PRODUCTS

We have complied and shall continue to comply with the provisions of Chapter 5. Article 19, of the Official West Virginia code, 1931, as amended, which statute is incorporated herein by reference and the applicable specifications, involving Domestic Aluminum, Glass, and Iron in Public Works Projects. We have also complied and shall continue to comply with the provisions of Chapter 5A, Article 3, Section 56 of the West Virginia code, 1931, as amended, which statute is incorporated herein by reference and the applicable specifications, involving *Domestic Steel Products in State Supported Projects*.

Section G: BLANK

**Section H: WEST VIRGINIA CONTRACTOR LICENSING ACT CHAPTER 21 ARTICLE 11
CODE OF WEST VIRGINIA¹ LICENSE NUMBER _____**

¹ Refer to Specification 102.6

Section I: ADDENDA

I hereby acknowledge receipt of the following checked addendum(s) and have made the necessary revisions to the contractor's proposal, plans and/or specifications, or other applicable documents and have considered the addendum(s) in the calculation of my bid.

ADDENDUM NUMBERS: 1 ___ 2 ___ 3 ___ 4 ___ 5 ___. I further acknowledge that failure to confirm receipt of the addendum(s) will cause my proposal to be rejected.

Section J: IF AN INDIVIDUAL, SIGN BELOW:

(Name) (Street and Post Office Address)

IF AN INDIVIDUAL DOING BUSINESS UNDER A TRADE NAME SIGN BELOW:

(Trade Name) (Street and Post Office Address)

Sole Owner By _____

IF A PARTNERSHIP, SIGN BELOW:

(Name of Partnership) (Street and Post Office Address)

By _____
(Authorized Partner) (Street and Post Office Address)

IF A JOINT BID, SIGN BELOW:

(Name of Corporation) (Name of Corporation)

Incorporated under the laws of the State of _____
Incorporated under the laws of the State of _____

By _____
(Title of Officer) (Title of Officer)

(Street and Post Office Address) (Street and Post Office Address)

IF A CORPORATION, SIGN BELOW:

(Name of Corporation)

Incorporated under the laws of the State of _____

By _____

(Street and Post Office Address) (Title of Officer Signing)

ACKNOWLEDGMENT, MUST BE NOTARIZED:

Taken, subscribed and sworn to before me this _____ day of _____, 20 _____

My Commission Expires _____

Notary Seal if not Executed in West Virginia

Notary Public

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA 25305

BID ACCEPTANCE

The commissioner, now taking up for consideration the bids for road construction work on project as shown hereon, as filed and legally opened and read on _____ and have considered and examined all of said bids or proposals, as so filed and read, does now ascertain and determine that the lowest responsible bidder upon the project for the amount hereinafter set forth, and doth hereby award the said project.

Project No.: Federal Project Number and (State Project Number)
Authorization No.: Authorization Number
County: County of Project
Description: Where project is located
Contract ID: Contractor's License Number
Date Awarded: Award Date of Contract
Awarded to: Contractor Name
Post Office Box Address
City, State, Zip Code FEIN: _____

Total Amount: \$ _____ as shown by itemized bid submitted the above type letting of the West Virginia Department of Transportation, Division of Highways, is a true record of the bid as of _____ .

Recommended:

Director, Contract
Administration Division

Deputy State Highway Engineer--
Project Development

Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
CAPITOL COMPLEX
CHARLESTON, WEST VIRGINIA 25305

NOTICE OF AWARD

Date

Name of District Engineer
District Engineer
Division of Highways
West Virginia Department of Transportation
District Address
City, West Virginia, Zip

Attention: District Construction Engineer

Project: Federal Project & State Project Number
County: County where project is located

Dear Sir:

The above project on which bids were received and read on Date
has been awarded as of Date to the successful bidder:

NAME OF CONTRACTOR
PO BOX ADDRESS
CITY, STATE, ZIP CODE FEIN:

You are requested to arrange a pre-construction conference to be held at the most convenient location and at the earliest suitable time. A date can be arranged by coordinating your plans with the contractor, the Right of Way Division, and the Contract Administration Division.

After a date has been mutually agreed on, please notify the contractor in writing. A written letter of notice shall be distributed to other interested parties as outlined in the 2002 Construction Manual (SECTION 103.6).

Very truly yours,

Darrell W. Allen, Director
Contract Administration Division

CC: DR, DC, DM, DCD

