REQUEST FOR QUALIFICATIONS-Phase 1

RFQ No. 7598876

Best Value Design-Build Procurement for Bridge Group 75T-5B (I): I-95 Viaduct Northbound, Providence, Rhode Island

July 5, 2019

RHODE ISLAND DEPARTMENT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE, RI

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Request for Qualifications (Phase 1)

Best Value Design-Build Services for Interstate Route 95 Viaduct Northbound Bridge Group 75T-5B (I)

Providence, Rhode Island

DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL: CONSTRUCTION 11% / DESIGN 11%

ON THE JOB TRAINING HOURS (OJT): 3,400 HRS

SECTION 1 - INTRODUCTION

STATEMENTS OF QUALIFICATION (SOQ) are hereby solicited by the State of Rhode Island Department of Administration (RIDOA)/Division of Purchases on behalf of the Rhode Island Department of Transportation (RIDOT) to procure **Best Value Design-Build (BVDB)** services for the Bridge Group 75T-5B (I): I-95 Viaduct Northbound project. The project scope includes replacement of the northbound Providence Viaduct and its associated ramps and structures with new structures to restore structural sufficiency and to alleviate chronic traffic congestion on Interstate 95 through downtown Providence. The Viaduct was constructed over 50 years ago to carry I-95 through Providence and is the third busiest interstate in New England. Although it was originally designed to handle 57,000 vehicles daily, the volume is now over 200,000 per day. There are six bridges within this project that are structurally deficient or functionally obsolete, requiring frequent and costly repairs in order to maintain functionality of that area of I-95. The proposed project will also yield significant safety improvements over the current configuration. The Base Technical Concept (BTC) that has been developed includes the reconstruction of the Providence Viaduct Northbound, which includes replacement of selected bridges, roadway reconstruction and other associated work. The bridges and retaining walls will be as required to support the proposed roadway layouts required for the final highway design.

The Best Value Design-Build Procurement services will be procured on a fixed price/ fixed term basis in accordance with 23 U.S.C. §112 and 220-RICR-30-00-8 Title 220, Chapter 30 §8.11 "Selection of Methods of Construction Contracting Management" of the State of Rhode Island Procurement Regulations. The State's selection of a BVDB procurement method seeks to foster a successful collaborative process between RIDOT and the successful Design-Build entity (hereafter referred to as the "successful Respondent"). It is RIDOT's intent that this process shall facilitate completion of the project within the established stipulated budget and schedule. The successful Respondent will be expected to seek out innovative solutions to maintain or accelerate the schedule while controlling cost and maintaining quality. Through the two-phase BVDB process, RIDOT will select the Proposal with the best value to the State. Only the most highly qualified Respondents from Phase 1 will be invited to submit competitive proposals in response to the Phase 2 Request for Technical Proposals. The purpose of Phase 1 (Statements of Qualifications) is to seek qualified proposals based upon recent Relevant Work Experience, Past Performance, Understanding of the Scope of Work, and Qualifications of and collaboration with Sub-Contractors and Sub-Consultants with a focus on an integrated project approach. Phase 2 involves the solicitation of separately sealed Technical Proposals and Cost Proposals from the shortlisted Respondents that were selected in Phase 1, to evaluate the Technical Proposals and proposed designs to determine the Best Value Design-Build Proposal.

The RIDOT estimated cost to complete design and construction of this Federal Aid Project is approximately $175 Million. In addition, the successful D/B team must achieve substantial completion by FALL of 2025. A concept plan of the project is included herein.

SECTION 2 - PROJECT GOALS

Completion of the project within the estimated contract term
Completion of the project within budget
Successful Temporary Traffic Maintenance during Construction
Successful application of Accelerated Bridge Construction (ABC)
Utilization of innovative technologies
Work Safety
Minimization of impacts on the transportation system, neighboring communities, and local businesses

SECTION 3 - PROJECT DEFINITIONS

Best Value Design-Build: The highest overall value to the State, considering qualifications, quality and cost.

Best Value Design-Build Procurement Process (BVDB): A two-phase selection process in which the first phase consists of submission of qualifications to create a shortlist of qualified Respondents. The second phase consists of the simultaneous submission of separately sealed Technical and Cost proposals in response to a Request for Proposal (RFP) to determine the Best Value.

Base Technical Concept (BTC): The requirements included in the RFP (plans, specifications, references codes and standards, etc.) for the design and construction of roadways, bridges, traffic management, drainage, utilities, and other work that defines the scope of the project. The BTC forms the basis of the minimum requirements that must be met by Technical Proposal submissions.

Conflict of Interest: A "conflict of interest" occurs when an individual's private interest interferes in any way with the interests of the State as a whole. There may be an appearance of a conflict of interest when an objective outside observer could reasonably believe that a conflict exists. It is impractical to conceive of and set forth rules that cover all situations in which a conflict of interest may arise. The basic factor in all conflict of interest situations is, however, the division of loyalty or the perception of a division of loyalty, between the State's best interests and the individual's interests.

Contract Value: The final cost of the project including design and construction.

Department: The State of Rhode Island Department of Transportation

Design/Build Evaluation Committee: A committee established by the State to review, evaluate and score the Statements of Qualification, Technical Proposals and Cost Proposals based upon the scoring criteria.

D/B Entity: The team identified in the Statement of Qualifications that collectively meet the requirements of the Request for Qualifications. The D/B Entity must consist of a LEAD Contractor and its key subcontractors, one of which is a LEAD Designer as defined herein. Proposed subcontractors to the LEAD Contractor and proposed subconsultants to the LEAD Designer shall be included as part of the SOQs.

Engineer of Record: The Rhode Island licensed professional engineer(s) responsible for signing and sealing the contract plans and related documents.

Federal Aid Project: This project will be utilizing Federal Aid Funds, requiring conformance with Title 23 of the Code of Federal Regulations (23 CFR).

Key Personnel: Any position or individuals that occupy roles important to the successful development and implementation of the project.

Lead Contractor: Lead Contractor shall be responsible for guaranteeing the delivery of the Project on schedule and on budget in accordance with the contract provisions.
Lead Designer: Lead Designer shall be responsible for 100% of the design engineering work of the PROJECT, including but not limited to: review, coordination, quality control, and approval of its self-performed and sub-consultant work product; coordination of all design disciplines for intermediate and completed project design; packaging and submission of all design work to the LEAD Contractor; attendance at all meetings concerning the PROJECT design; and all other related work.

Offeror: The Best Value Design Build entity awarded the Project**.** For purposes of this RFQ, the "Offeror" and "successful Respondent" shall be used interchangeably.

Pre-Proposal Meeting: A formal public meeting held by the State open to all potential Respondents to communicate the scope and requirements for the PROJECT and the selection process. The Pre-Proposal meeting will not include a site walk.

Cost Proposal: A set of documents requested by the State in the RFP that delineates the D/B TEAM's proposed cost of the project. This shall be separately sealed but submitted simultaneously with the Technical Proposal.

Professional Engineer: The design engineer(s) who is (are) responsible for signing and sealing (certifying) the portion of the contract plans and related documents for which they are responsible as a Professional Engineer. The Professional Engineer for each portion of the work must be a Professional Engineer licensed to practice engineering in the State of Rhode Island *at the time* the Statement of Qualifications is submitted.

Project: The scope of services to be designed and constructed as described in the solicitation.

Proposer: The Design/Build entity responding to this solicitation by submitting a Statement of Qualifications (Phase 1) for this procurement. For purposes of this RFQ, "Proposer" and "Respondent" shall be used interchangeably.

Q & A Portal: All questions and inquiries regarding the RFQ/RFP must be submitted electronically through the RIDOT website @ http://www.dot.ri.gov/contracting/bids/index.php through steps defined herein. There will be no point of contact at RIDOT who will directly answer questions either in person, through email, or by telephone.

Request for Proposal (RFP): An invitation issued by RIDOA to qualified shortlisted D/B Teams only to proceed to Phase 2 of the selection process whereby separately sealed TECHNICAL and COST Proposals are submitted for evaluation and determination of the Apparent Best Value Respondent. The RFP will provide design specifics and informational materials for use by D/B Teams to prepare their submissions as well as include the basis of the contract to be used in execution of the final award.

Request for Qualifications (RFQ): The document issued by the State Division of Purchases on behalf of RIDOT for the purpose of creating a shortlist of qualified Design/Build entities to respond to an RFP.

Respondent: The Design/Build entity responding to this solicitation by submitting a Statement of Qualifications (Phase 1) for this procurement. For purposes of this RFQ, "Proposer" and "Respondent" shall be used interchangeably.

RIDOT: The State of Rhode Island Department of Transportation

RIDOA: The State of Rhode Island Department of Administration

Scoping Meeting: Mandatory meeting at which each shortlisted Respondent will be issued the RFP by the State.

Selection Criteria: A group of quantitative measures that RIDOT will utilize to evaluate, score and rank the submitted SOQs from Respondents in order to shortlist a maximum of three qualified D/B Teams to submit Technical and Cost Proposals.

Shortlist: A maximum of three of the most qualified (highest scoring) Respondents, with a minimum final score of 80 points as determined by evaluation and scoring of the Statements of Qualification. Only the shortlisted Respondents will be invited to advance to Phase 2 and be requested to submit Technical and Cost proposals. ***The State reserves the right to increase or decrease the number of shortlisted Respondents if deemed in its best interest to do so.***

State: The State of Rhode Island and Providence Plantations including all agencies and departments.

Statement of Qualifications (SOQ): A group of documents described herein that provides information regarding the professional qualifications, experience, expertise, and credentials of the Respondent.

Stipend: Compensation, as determined by RIDOT, that may be offered to unsuccessful shortlisted Respondents to defray expenses associated with the development of a Technical Proposal and a Cost Proposal (Phase 2). Stipends will not be provided to Respondents submitting SOQs (Phase 1).

Successful Respondent: The Best Value Design Build entity awarded the project. For purposes of this RFQ, the Offeror and Successful Respondent shall be used interchangeably.

Technical Proposal: A group of documents submitted by the shortlisted firms for the purpose of evaluating the capability of the DB Entity to provide the scope of services and to determine the Best Value Design Build entity.

Two-Phase Selection Process: A procurement process in which the first phase consists of creating a shortlist of qualified Design Build entities as determined by evaluation of the responses to an RFQ. The second phase consists of the submission of Technical and Cost proposals in response to an RFP by the qualified shortlisted design build entities.

SECTION 4 - PROJECT SCOPE

It is anticipated that the scope of work under this PROJECT will include the elements defined below. However, these elements are subject to change upon prior to the issuance of the RFP. Major project elements may include but may not be limited to the following:

a. Survey
b. Geotechnical investigation, analysis and design
c. Subsurface Utility Engineering, coordination, relocation and/or temporary support and protection in place
d. Bridge and wall (including temporary and/or retaining) analysis and design
e. Highway design and construction
f. Temporary traffic design and management as required to support staged construction
g. Traffic engineering and/or Traffic Data Collection
h. Design and Construction Quality Assurance/Quality Control
i. Environmental (permitting, hydraulic studies and reports, Hazardous Materials including handling and disposal, soil management, SWPPP, landscaping, etc.)
j. Historical/Cultural (e.g., Section 4(f), Section 6 (f), Section 106)
k. Final Design and Construction of all elements
l. Employment of Accelerated Bridge Construction (ABC) techniques

m. A combination of replacement, rehabilitation, preservation and new construction activities to approximately fourteen (14) bridge structures to support the BTC design (see below table for included bridges)
n. Construction of roadway embankments
o. Construction of temporary bridge structures required to maintain traffic throughout staged construction
p. Drainage system construction and improvements
q. Maintenance of access to local businesses throughout construction
r. Landscaping and restoration of disturbed areas within the Project limits
s. Design of Temporary Support of Excavation for deep excavations, including those adjacent to AMTRAK right of way and existing railroad facilities, as required to support the DB entity's means and methods
t. Coordination during design and construction with stakeholders, State/Town/City officials, AMTRAK, and local businesses in conjunction with RIDOT
u. Community outreach program in conjunction with RIDOT, including maintenance of a Project website to distribute current construction information, particularly as it relates to traffic impacts
v. Compliance with applicable Project permits issued prior to Notice to Proceed
w. Preparation, submittal, and compliance with any/all additional permitting required to complete the project from applicable regulatory agencies including but not limited to – RIDEM, CRMC, ACOE, USCG, USFWS, etc.
x. Coordination with existing and proposed projects
y. Coordination with AMTRAK for construction on, above, adjacent to and/or below AMTRAK facilities and their right of way

BRIDGE STRUCTURES ANTICIPATED TO BE INCLUDED IN BTC (ID AND PROPOSED TREATMENT)

Current Bridge #	New Bridge #	Bridge Name	Treatment
575		Atwells Ave Bridge	Preservation
576	1379	Atwells Ave Ramp Bridge	Replacement
578		Providence Viaduct	Replacement
581		Ramp CB-1	Widen
582	1382	Ramp CB-2	Replacement
583	1383	Ramp DB-1	Replacement
701		Smith St Bridge	Replacement
704		Park St Bridge	Preservation
706		Chalkstone RR Bridge	Preservation
707		Ashburton St Bridge	Preservation
708		Charles St Bridge	Preservation
	1378	Exit 23 (C/D Road)	New
	1381	Ramp CB-3	New
	1384	Ramp DB-2	New

All design and construction under this PROJECT shall be in accordance with the latest editions of the following:
Rhode Island Standard Specifications for Road and Bridge Construction 2004 edition (amended March 2018), and latest compilations. http://www.dot.ri.gov/business/bluebook.php
Rhode Island Standard Details http://www.dot.ri.gov/documents/doingbusiness/RIDOT_Std_Details.pdf
Rhode Island Bridge Design Standard Details,
http://www.dot.ri.gov/documents/doingbusiness/RIDOT_Bridge_Standards.pdf
LRFR Bridge Load Rating Guidelines, LRFD Bridge Design Manual, Highway Design Manual, Traffic Design Manual, Manual on Uniform Traffic Control Device (MUTCD), AREMA Manual for Railway Engineering and all other applicable design standards, details, guides and specifications, and requirements to be included in the RFP (Phase 2) to be issued by RIDOT to the shortlisted Respondents.

SECTION 5 – PROCUREMENT SCHEDULE

RIDOT anticipates conducting this procurement in accordance with the following list of milestones. This schedule is subject to revision and the State reserves the right to modify this schedule as it deems necessary.

Pre-Proposal Meeting	July 23, 2019 at 9:00 am RI Department of Administration, One Capitol Hill, 2nd Floor, Conference Room "A", Providence, RI 02903
Deadline for Questions	August 28, 2019 at noon
SOQ Due Date	September 6, 2019 at 11:30 am
Shortlist Recommendations	Week of September 30, 2019
RFP Notification and Scoping Meeting	Week of October 15, 2019
RFP Due Date	Week of February 24, 2020
Apparent Best Value Determination	Week of April 20, 2020
Tentative Award	Week of June 1, 2020
Contract Award	Week of June 22, 2020
Notice to Proceed	Week of July 6, 2020
Construction Completion	Fall of 2025

SECTION 6 - SUBMISSION OF QUESTIONS

There will be no point of contact at RIDOT who will directly answer questions either in person, through email, or by telephone.

Questions regarding this solicitation shall be posted at RIDOT'S "Bidding Opportunities" web page accessible at: http://www.dot.ri.gov/contracting/bids/index.php. Select the question mark "?" next to the applicable project to submit questions. Responses to questions will also be posted at this site. Questions will not be accepted after **noon on August 28, 2019**. Upon the close of questions, all questions and answers will be posted as an addendum at the RIVIP website at https://www.ridop.ri.gov/ and will therefore be incorporated into the resulting contract.

SECTION 7 – ADMINISTRATIVE REQUIREMENTS AND NOTIFICATIONS

1. All Respondents are advised to review all sections of this RFQ thoroughly and to follow the instructions carefully. Failure to make a complete submission as described elsewhere herein may result in rejection of the proposal. SOQs submitted must be in accordance with guidelines as outlined in this request and the State's General Conditions of Purchase which may be accessed through the *Rhode Island Vendor Information Program* at: https://www.ridop.ri.gov/

2. This is a Request for a Statement of Qualifications and not an Invitation for Bid. Evaluation will be based on the merits of the qualifications submitted. There will be no public opening of responses received by the Division of Purchases pursuant to this solicitation other than to name those firms who have responded. Respondents shall be responsible for thoroughly examining the RFQ and addenda issued by the State in connection with it and for being cognizant of any conditions that may affect the Respondent's compilation of its SOQ or its performance of Contract obligations in the event it is awarded a contract. The State shall not be liable for any consequences of a Respondent's failure to fulfill these responsibilities. The State reserves the right to make an award or to reject any or all proposals based on what it considers to be in its best interest.

3. The State may investigate the qualifications of any Respondent for as long as the Proposal is under evaluation, may require confirmation of information submitted by the Respondent and may require the Respondent to submit additional documentation regarding its qualifications to perform the tasks required in the RFP. The State may at its sole discretion exercise any of the following rights:

    a. Reject any or all Proposals at any time prior to the execution of the Contract
    b. Consider any relevant information from any source in evaluating the proposal
    c. Amend, modify, cancel, withdraw or issue a new RFQ
    d. Modify the RFQ, including the right to extend submission deadlines as deemed appropriate. It will be the responsibility of the Respondent to consult https://www.ridop.ri.gov/ for date changes and addenda
    e. The RFQ does not commit the State to enter in to a Contract, even after Notice of Tentative Award, nor does it obligate the State to reimburse a Respondent for any costs incurred in preparation and submission of their SOQ or in anticipation of an award or execution of the Contract

4. Pursuant to Section 7-1.2-1401 of the Rhode Island General Laws, no Foreign Corporation shall transact business in this State until it has procured a Certificate of Authority from the Office of the Secretary of State. This office may be contacted at 401-222-2357 or http://sos.ri.gov/divisions/Business-Portal. If applicable, a copy of Respondent's Certificate of Authority must be provided prior to the award of the contract. However, Joint Venture firms are not required to register with the Secretary of State as a JV, nor are they required to submit a W-9 as a JV during the SOQ selection Phase 1. This will be a requirement of the successful Respondent only

5. All Respondents MUST register online at the RIVIP'S Internet website at: https://www.ridop.ri.gov/. A complete and signed ***RIVIP Bidder Certification Form must*** accompany each SOQ submitted. This document must be downloaded from the RIVIP website. Failure to make a complete submission inclusive of this document may result in disqualification. Assistance with registering and/or downloading documents may be obtained by calling 401-574-8100. Request the RIVIP Help Desk for technical assistance. Office Hours are 8:30 am – 4:00 pm.

6. The Rhode Island Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4 and 49 C.F.R. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, issued pursuant to such Act, hereby notifies all Respondents that it will affirmatively ensure that in any contract entered into pursuant to this solicitation, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, age, or disability in consideration for an award.

7. The successful Respondent shall carry out applicable requirements of ***49 C.F.R., Part 26, Participation of Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs***. The successful Respondent and their Sub-contractors and Sub-Consultants shall not discriminate based upon race, color, national origin, or sex in the performance of this Contract. Failure by the successful Respondent to carry out these requirements is a material breach of this Contract and may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

8. All costs associated with developing or submitting SOQ (Phase 1) documents in response to this solicitation and/or in providing oral or written clarification of its content shall be borne by the Respondent. The State assumes no responsibility for these costs.

9. Formation of Joint Ventures (JV) will be permitted for this project provided a Joint Venture Agreement is included in the SOQ. The Respondent must clearly identify in the SOQ which parts of the project scope each member of the JV will be responsible for and shall indicate the type of organization, i.e., Corporation,

LLC, General Partnership, Limited Partnership, etc. This disclosure will be deemed a binding commitment by the Respondent (JV) that if it is awarded the contract, the responsibilities of each entity of the JV will essentially remain the same. Minor adjustments may be permitted during the RFP (Phase 2) process based upon the Technical Proposal.

10. Submissions in response to this solicitation are irrevocable for a period of not less than one hundred twenty (120) days following the established due date and may not be withdrawn without the written permission of the State Purchasing Agent.

11. Responses misdirected to other State locations or which otherwise are not received by the State Division of Purchases by the established due date (for any cause) will be determined to be late and will not be considered. The official clock, for the purpose of registering the arrival of documents is in the reception area of the Department of Administration (DOA), Division of Purchases, One Capitol Hill, Providence, Rhode Island.

12. Respondents must possess a working familiarity with the guidelines outlined in the ***Rhode Island Standard Specifications for Road and Bridge Construction****, 2004 Edition,* amended March, 2018 and all compilations http://www.dot.ri.gov/business/bluebook.php as well as all applicable RIDOT Department Policy Memos (DPMS) and RIDOT Memorandums to All Consultants (TACS).

13. Per 430-RICR-00-00-1 Title 430 Board of Registration for Professional Engineers it is unlawful for any person to practice or to offer to practice engineering in Rhode Island unless that person has been duly registered or exempted under RIGL § 5-8-1. Any individual and/or firm who submits a response to a Request for Qualifications or Proposals or any other bidding method which requires the performance of engineering work or services shall be construed to be offering to practice engineering in this State. Accordingly, Respondents shall provide a copy of the current Rhode Island Certificate of Authorization for the Lead Designer firm and current Rhode Island registrations(s), for the individuals proposed to perform the specified engineering services (Engineer(s) of Record) as required herein. The State Board for Design Professionals may be contacted as follows:

    Department of Business Regulation
    Division of Design Professionals
    1511 Pontiac Avenue, Building (Bldg. 68-2)
    Cranston, RI 02920
    401-462-9530 or http://www.bdp.ri.gov/

14. All materials submitted in response to this solicitation shall be deemed to be a public record pursuant to the "Access to Public Records Act." RIGL §§38-2-1, *et seq.*

15. SOQs may be withdrawn at any time *prior* to the due date by submitting a written request signed by the authorized representative of the Respondent. Such written request shall be directed to the RI Department of Administration, Division of Purchases. The withdrawal of SOQs will not preclude a Respondent from submitting a new SOQ provided that it is received by the stipulated due date/time.

16. Identification of the key personnel by a Respondent will be deemed a binding commitment by the Respondent that if it is awarded the contract, the key personnel will, in fact, perform the principal roles in design and construction of the project. Respondents submitting a SOQ and designating key personnel for the selection process will be precluded from later substituting, replacing, or removing any of its key personnel without the written consent of RIDOT. If a Respondent is placed on the shortlist, it shall be deemed to have acknowledged by its identification of the key personnel, that the Department has relied upon the Respondent's identification of the key personnel in determining that the Respondent is qualified to be included on the shortlist.

17. If a shortlisted Respondent determines that a change to key personnel identified in its SOQ is warranted prior to submitting its Technical Proposal, the shortlisted Respondent shall so notify the Department in writing, providing details of the proposed change(s) and the reasons for them. Such consent shall not be unreasonably withheld. Proposed substitutions of key personnel shall have equal or better credentials than the personnel they are replacing.

SECTION 8 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND ON THE JOB TRAINING (OJT) STATEMENTS

The successful Respondent will be required to fulfill applicable requirements of *49 C.F.R., Part 26, Participation of Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Failure by the successful Respondent to fulfill these requirements shall be considered a material breach of the contract which may result in the termination of this Contract or such other remedy as the State deems appropriate.

Respondents must provide a written statement in the SOQ, signed by an authorized representative of the D/B entity, affirming their commitment to meeting or exceeding the ***eleven percent (11%)*** Disadvantaged Business Enterprise (DBE) participation goal for "construction qualifying work", and ***eleven percent (11%)*** DBE goal for the "consultant qualifying work." Hereafter, DBE refers to businesses owned or controlled by socially and economically disadvantaged person(s) as certified by the RIDOA Office of Diversity, Equity and Opportunity (ODEO). DBEs must be certified in RI at the time the SOQ is submitted.

The goal remains in effect throughout the life of the Contract. The successful respondent will be responsible for submitting data certifying their payments to subcontractors by utilizing RIDOT's Civil Rights software, currently PRISM, on a minimum of a monthly basis.

A list of current Rhode Island State certified DBE firms may be obtained through the State's Office of Diversity, Equity & Opportunity website @ http://odeo.ri.gov/offices/mbeco/dbe-program.php. Questions should be directed to:

RIDOT Office of Civil Rights
Room 110, Two Capitol Hill
Providence, RI 02903
(401) 563-3260

ON THE JOB TRAINING (OJT)

Respondents must provide a written statement in the SOQ submission, signed by an authorized representative of the D/B entity, affirming that it will develop and maintain a continuous On-the-Job-Training (OJT) program to fulfill the 3,400 OJT hour requirement. The successful Respondent agrees to implement a RIDOT approved OJT Program prior to award. The trainee hours for this Project are based on a 60-month schedule.

SECTION 9 -STIPEND

RIDOT will offer a stipend to each unsuccessful shortlisted Respondent that submits a responsive Technical and Cost Proposal that conform to the requirements of the RFP documents. The State will be the sole arbiter, subject to the terms and provisions of the Stipend Agreement. The value of the Stipend and the details of the Stipend Agreement will be specified in the RFP document.

There will <u>not</u> be a stipend provided for the RFQ (Phase 1) portion of this solicitation.

SECTION 10 PROJECT LABOR AGREEMENT

Respondents are hereby notified that services performed under this Project may be subject to a Project Labor Agreement (PLA) in accordance with FHWA guidance. Further PLA requirements will be made available by Addendum.

SECTION 11 - DAVIS BACON

Per the Davis Bacon Act of 1931 Federal law requires the payment of prevailing wage rates to all laborers and mechanics employed by contractors or sub-contractors performing on federally funded or assisted construction contracts greater than $2,000. The rates to be paid for labor for the various classifications shall be in accordance with the applicable Davis Bacon Wage Determination rate schedule of wages established by the U.S. Department of Labor. The prevailing wage rates to be applied are those that are effective as of the date of the awarding of the contract.

SECTION 12 - NARRAGANSETT INDIAN TRIBAL HISTORIC PRESERVATION

In compliance with RIDOT procedures, the Narragansett Indian Tribal Historic Preservation Office (NITHPO) may monitor/observe excavation throughout the duration of the project. Coordination procedures for notification of NITHPO will be provided by the RIDOT Cultural Resources Unit and will be defined in detail in the RFP. Respondent D/B TEAMs must include a qualified cultural resources Consultant with specialization in archaeological services to provide such services as needed. A current listing of cultural resources consultant firms is available through the Rhode Island Historic Preservation & Heritage Commission (RIHPHC) @ (401) 222-2678.

SECTION 13 - EXAMINATION AND INTERPRETATION OF RFQ DOCUMENTS

Respondents are responsible for reviewing the RFQ documents and addenda to be issued at the RIVIP website https://www.ridop.ri.gov/ and for requesting clarification or interpretation of any material discrepancy, deficiency, ambiguity, error, or omission contained therein. If RIDOT determines that such interpretation or clarification requires a change in the SOQ documents, RIDOT will electronically issue an addendum. RIDOT will not be bound by and Respondents shall not rely on any oral communication regarding the SOQ documents.

RIDOT reserves the right to revise the RFQ documents at any time before the RFQ due date. Such revisions, if any, will also be issued through an addendum. If an addendum significantly impacts the RFQ, RIDOT may revise the due date. Announcements of revised due dates will be communicated by addendum and posted to the Division of Purchases website at https://www.ridop.ri.gov/

SECTION 14 - REQUIRED FORMS

Respondents must create an account to download the required RIVIP Bidder Certifications form. https://www.purchasing.ri.gov/vendors/VendorLogin.aspx A completed and signed RIVIP Bidder Certification Sheet must be included in each SOQ. Failure to submit a complete proposal submission inclusive of this document may result in disqualification. Assistance in registering and/or downloading the document may be obtained by calling (401) 574-8100 and requesting the RIVIP help desk for technical assistance. Office Hours are 8:30 am – 4:00 pm, Monday through Friday.

The following **Forms** must be complete and submitted in the SOQ package by **EACH D/B TEAM ENTITY.** These forms will be reviewed for completeness and at the point of award will be made part of contract document.

REQUIRED FORMS			
Required Forms (attached)	Lead Contractor (D/B) Firm	Lead Engineering Firm	Sub-Consultant(s) Sub-Contractor(s)
RIVIP	✓		
Debarment Form	✓		✓
Lobbying Form	✓		✓
Conflicts Disclosure Form-for Board of Directors, key personnel or those with a potential conflict to disclose	✓		✓
Certification for Title VI Assurance	✓		✓
DBE Special Provision	✓		

SECTION 15 – PRE-PROPOSAL MEETING

Interested parties are encouraged to attend a ***non-mandatory*** Pre-Proposal meeting scheduled for **July 23, 2019 at 9:00 am** at the RI Department of Administration, One Capitol Hill, 2nd Floor, Conference Room A, Providence, RI 02903.

A summary of the Pre-Proposal Meeting including the sign-in sheets will be posted as an addendum at https://www.ridop.ri.gov/. It is the responsibility of all interested parties to download this information.

Persons requiring the services of an interpreter for the hearing impaired may obtain those services by calling (401) 222-5300 (Voice), (401) 222-5301 (TTY), (401) 222-5736 (Fax) or **interpreter@cdhh.ri.gov** (email) fourteen days in advance of the Meeting.

SECTION 16 - SOQ SUBMISSION REQUIREMENTS

Statements of Qualifications submitted in response to this solicitation must be received by the Division of Purchases on September 6, 2019 no later than 11:30 a.m. and shall be submitted as follows:

Submit **SIX** individually bound (GBC or spiral) printed paper copies. ***Do not submit three ring binders***. A CD-R shall be attached to the inside cover of each SOQ submission. The CD shall be clearly labeled with the Respondent name, solicitation number and project name. If file size requires more than one CD-R, multiple CD-Rs are acceptable. The electronic version shall be in searchable Adobe PDF format. USB drives or other electronic media shall not be accepted. Proposals may be submitted utilizing U.S. Mail, express delivery service, or hand delivery and shall be in a sealed package marked: **RFQ #7598876 – Design- Build Services for Interstate Route 95 Viaduct Northbound; Bridge Group 75T-5B (I)** to:

RI Department of Administration
Division of Purchases (2nd floor)
One Capitol Hill
Providence, RI 02908-5855

Proposals received after the above-referenced due date and time shall not be accepted. Proposals misdirected to other State locations or those not presented to the Division of Purchases by the scheduled due date and time shall be determined to be late and shall not be accepted. Proposals faxed or emailed to the Division of Purchases shall not be accepted. The official time clock is in the reception area of the Division of Purchases.

SECTION - 17 DESIGN/BUILD EVALUATION COMMITTEE (COMMITTEE)

An evaluation committee, (Committee) the majority of which must be currently employed by the State of Rhode Island will be convened by the State. The Committee will be comprised of a Chairperson, a RIDOA Representative and RIDOT technical personnel assigned to evaluate and score al SOQs. All members of the TEC will be required to execute a Conflicts Disclosure Statement prior to the Division of Purchases release of the SOQs. RIDOT reserves the right to utilize any appropriate technical resources to provide assistance in evaluating the SOQ. Technical resources will act in an advisory capacity only and will not review or score any documentation.

SECTION 18 - PROCUREMENT PROCESS

Only the shortlisted Respondents will receive the Request for Proposals and be invited to submit TECHNICAL/COST Proposals. The State will issue notifications to the shortlisted firms and schedule a mandatory **SCOPING MEETING** at which time each shortlisted firm will be issued the RFP.

The response to the RFP will require the simultaneous submission of *separately sealed* Technical and Cost Proposals from each shortlisted Respondent which will initiate the *second phase* of the selection process. The Committee will evaluate the Technical Proposals in conformance with selection criteria defined in the RFP. The Committee will provide a written final evaluation and recommendation naming the top-ranked D/B TEAM for award of a fixed price design-build contract.

At any point during the selection process, Respondents may be requested to give an oral presentation to the Committee or to otherwise provide clarifying information needed to properly evaluate qualifications. Respondents must clearly understand that RIDOT retains the option to determine which Respondents, if any, will be invited to make oral presentations or to provide additional information.

Respondents are on notice that the State may, in its sole discretion, negotiate and award a BVDB contract to a Respondent if, upon a written determination, the State determines that such Respondent is the only Respondent fully qualified to perform the proposed contract, or that such Respondent is clearly more highly qualified than the others under consideration.

SECTION 19 - STATEMENT OF QUALIFICATIONS SUBMISSION REQUIREMENTS:

a. Required forms listed in Section 14.

b. Current Rhode Island Certificate(s) of Authorization for the Lead Design Firm (Engineer of Record) and their engineering sub-consultants as well as current Rhode Island P.E. licenses for the individuals who would perform the specified engineering services as required herein. Per *430-RICR-00-00-1 Title 430 Board of Registration for Professional Engineers* it is unlawful for any person to practice or to offer to practice engineering in Rhode Island unless that person has been duly registered or exempted under RIGL § 5-8-1.

c. List the Lead Construction firm, Lead Design firm, proposed Sub-Contractors, Sub-Consultants (DBE and non-DBE) and company structure comprising the D/B Team and identify the proposed role of each entity included in the SOQ.

d. Identify the entity that who will assume **financial responsibility** for the Project and describe any liability limitations. If the D/B Entity is a Joint Venture, Limited Liability Company or partnership, describe the **bonding approach** that will be used and the members of such organizations who will have joint and several liability for the performance of the work required for the Project. <u>If the D/B Team is a limited liability company, Joint Venture or any form of partnership,</u> provide complete copies of the **organizational**

documents that allow, or would allow by the time of contract award, the Respondent to do business in the State of Rhode Island.

e. Names and addresses of all **affiliated and/or subsidiary companies**. If you are uncertain whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly. For the purposes of this RFQ an affiliate shall be considered as any business entity which is closely associated to another business entity such that one entity controls or has power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in Joint Ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving, are not considered to be affiliates. If a D/B Team has no affiliated and/or subsidiary companies other than the Respondent's legal business entity include a statement indicating so.

f. The **Lead Construction entity and Lead Design entity** shall list a maximum of 8 projects completed within the past five years that best illustrate each firm's qualifications most relevant to this project scope with a focus on the ability to deliver such projects on schedule and on budget. With respect to EACH project identified include the following: project description, contract number, owner's name, address, principal contact information (including phone number and e-mail address); design dates, construction dates, percentage of work self-performed, the initial contract price, the final contract price (including the number and value of contract modifications and claims) and an explanation regarding the causes (whether increases or decreases) of contract value adjustments.

g. Provide relevant and verifiable evidence of good performance in the form of letters of reference/recommendation from previous clients (preferably other State Departments of Transportation or municipalities) or lessons learned from previous projects and give demonstrable ways in which lessons learned or past successful performance will be used for the benefit of this Project.

h. Organizational chart(s) showing the flow of the "chain of command" with lines identifying participants who are responsible for major functions and their reporting relationships in managing, designing and constructing the Project. The chart(s) must show the functional structure of the organization down to the design discipline leader and construction superintendent level and must identify ***key personnel*** by name. Identify the critical support elements and relationships between Project Management and administration, Quality Control, Design Management and Quality Control/Assurance, Construction Management, Safety, Environmental compliance and subcontractor administration. For each organizational chart, provide a brief, written description of significant functional relationships among participants and how the proposed organization will function as an integrated Design-Build team.

i. Resumes for all key management staff proposed including the Project Director, Project Manager, Superintendent, Bridge, Highway, and Traffic Design Managers, QA/QC Administrator and individuals proposed to manage the following functions: construction, project controls, subcontracts and procurement, Quality Assurance/Quality Control for Construction and Design, Utilities Coordination, Utility and Subsurface Utility Engineering, Environmental compliance and mitigation, Safety, Labor Relations, Geotechnical investigation, and survey. In addition, include the **approximate percentage** of each employee's time to be expended on this project.

j. The Lead Design firm and their engineering sub-consultants shall complete Standard Federal Form 330. Architect-Engineer Qualifications. SF-330 is available at https://www.gsa.gov/reference/forms. It is not necessary to submit resumes and SF-330.

k. Provide three (3) references for the Project Manger, Superintendent, Design Manager and QA/QC Administrator. References shall be previous owners or clients with whom the key personnel have worked within the past five (5) years and should include the name, position, affiliation, and current contact information.

l. Provide at least one (1) reference for all other key personnel. References shall be previous owners or clients with whom the key personnel have worked within the past five (5) years and should include the name, position, affiliation, and current contact information.

m. Provide the *backlog* for the Lead Construction firm and the Lead Design firm and demonstrate the ability to achieve construction completion by **FALL 2025**.

n. The Respondent Team shall demonstrate that they have a proven Safety Program and that they are committed to ensuring the safety of workers of all stakeholders including the public.

o. With respect to each firm comprising the D/B Entity, list all arbitration and litigation proceedings, including claims against any Performance and Payment Bonds, **in excess of $250,000** related to performance and payment on capital projects in which any team member has been involved during the last **ten (10)** years. Include all claims and counterclaims by owners, material suppliers, labor and by court, caption and docket no(s). Indicate whether claims were resolved against the D/B Team Member(s) or its insured/ sureties or resulted in reductions in compensation to the participant. For each instance, identify an owner's representative with a current phone and fax number and e-mail address.

p. With respect to EACH firm comprising the D/B Entity, list projects that have resulted in **delays exceeding three (3) months** and/or have resulted in the assessment of **liquidated damages** during the past **TEN (10)** years and describe the causes of delays and amounts assessed.

q. With respect to EACH firm comprising the D/B Entity, list any outstanding damage claims by Owner(s) including the amounts currently being withheld by any owner pending claim resolution. For each instance, identify an owner's representative with a current phone and fax number and email address.

r. List contracts entered into each firm comprising the D/B Entity during the past **TEN (10)** years that have been terminated for cause or required completion by another party. Describe the reasons for the termination and the amounts involved.

s. Identify whether any D/B TEAM Member has been cited by OSHA or any owner for safety violations on any project during the last **TEN (10)** years. For each instance, provide a copy of the citation and a description of the resolution.

t. With respect to EACH D/B TEAM Member, indicate whether any member has ever filed for or been placed in bankruptcy or other type of receivership under similar State law and identify the caption, court and docket number.

u. Provide a written statement signed by an authorized representative of the D/B entity affirming that the team is committed to meeting or exceeding a total of eleven percent (11%) Disadvantaged Business Enterprise (DBE) participation goal for “construction qualifying work”, and eleven percent (11%) for “consultant qualifying work” with Rhode Island certified DBE firms.

v. Provide a written statement signed by an authorized representative of the D/B entity that the team is committed to providing an On-the-Job-Training (OJT) program and complying with the required OJT Training hours. If the Respondent is selected for the Project, they must possess a RIDOT approved OJT

Program prior to award. 3,400 OJT hours are based on a 60-month contract term. The RFP will provide further details.

Evidence of Surety and Insurance Requirements

a. Respondents must provide a commitment letter from a Surety company that the Lead Contractor is capable of securing Performance and Payment Bonds for a minimum of **$175 Million**. The Surety company must be licensed to do business in the State of Rhode Island and must be listed with the Department of the Federal Treasury, Fiscal Services, Circular 570 (latest revision). Failure to provide said commitment letter may be grounds for immediate disqualification. Letters indicating "unlimited" bonding capacity are ***not*** acceptable. The letter shall recognize the participant's backlog and work in progress in relation to its bonding capacity. The letter must be provided from the **DISTRICT OFFICE of the Surety** Company accompanied by a separate letter of transmittal by the **LOCAL AGENT** indicating their willingness to provide the required bonds. District Office correspondence shall state the legal name of surety and *address of its home office*.

b. If the Respondent is a Joint Venture, the Proposal Guaranty must be made out to the name of the Joint Venture and all parties of the Joint Venture must be named in the execution of the Proposal Guaranty made by the same therein. If there is more than one Surety to the Bid Bond, each surety shall be named and execution made by same therein.

c. The successful Respondent will be required to procure the required insurance as defined in the State General Conditions of Purchase, Addendum A – General Insurance Requirements – Schedule A2 – Professional Services and Schedule A5 Department of Transportation Projects. https://www.ridop.ri.gov/documents/general-conditions-addendum-a.pdf. However, for Professional Liability Insurance, the combined single limit per occurrence shall not be less than $5,000,000 and include an annual aggregate of not less than $5,000,000.00.

d. SOQ must include evidence that the Lead Contractor can provide Railroad Protective Liability Insurance at no direct cost to RIDOT in accordance with the current requirements and/or specifications with coverage and limits of liability as set forth by the applicable Railroad(s).

SECTION 20 – TECHNICAL EVALUATION SELECTION CRITERIA FOR THE SOQ:

SELECTION CRITERIA:

1.	**RELEVANT WORK EXPERIENCE** Demonstrate the experience of the Respondent team in working together in both the design and construction of complex projects and understanding of the Design-Build process. The Committee will evaluate qualifications in the following areas: a. Demonstrated history of past projects that involve the following: - Highway Design - Bridge Design for Limited Access Highways - Traffic engineering/management for complex projects - Design and Construction quality control and assurance - Geotechnical and foundation design - Utility and AMTRAK Coordination - Accelerated Bridge Construction b. Demonstrated ability to execute complex construction projects (preferable Design/Build), including organizational experience and the ability and history of D/B Team members to successfully collaborate c. Demonstrated history of avoiding claims and disputes	**0-30 POINTS**

d. Evidence of satisfaction (Letters of Reference/Recommendation) from previous owners regarding contract performance, cooperation to proactively address and overcome obstacles. The Department may also utilize documented past performance evaluations by the Department or other State Departments of Transportation or agencies. e. Current workload and evidence of bonding capacity	
2. **UNDERSTANDING OF THE SCOPE OF WORK** The Committee will evaluate the DB Team's approach to project execution based on the following factors: a. Familiarity with Department policies and procedures b. Approach to development of design and integration of design and construction of the Project c. Approach to development of schedule, maintenance of schedule and schedule recovery d. Approach to allocating risk between the D/B entity and the State e. Approach to avoiding claims and disputes f. Approach to development and execution of design and construction QA/QC requirements	**0-25 POINTS**
3. **EXPERIENCE AND AVAILABILITY OF KEY PERSONNEL:** The Committee will consider the qualifications of key management personnel proposed for the positions listed below which RIDOT has determined to be the most significant for the successful completion of the Project. The Committee will evaluate whether the level and authority of the key management personnel are commensurate with the scope and complexity of the Project. The Committee will also evaluate the proven track record of key management personnel in delivering complex projects on schedule/on budget and the extent to which they have successfully managed to solve major design and construction issues in collaboration with Owners. Key personnel's experience in the projects listed under relevant experience above shall be identified. a. Project Director b. Superintendent c. Design Manager d. Construction Manager e. Design Quality Control Manager f. Construction Quality Control Manager g. QA/QC Administrator	**0-25 POINTS**
4. **PERSONNEL BY DISCIPLINE:** The Committee will consider the qualifications of proposed D/B Team members (whether self-performed or performed by Sub-Contractors/Sub-Consultants) assigned to the following disciplines: a. Bridge and Highway design, particularly in design/build b. Traffic engineering and complex traffic management, particularly in design/build c. Complex construction, particularly in design/build d. Contract and project management e. Design quality control and assurance f. Construction quality control and assurance g. Geotechnical investigation and foundation design h. Subcontractor management i. Utility coordination j. Landscape design k. Labor relations l. Survey control m. Safety	**0-10 POINTS**
5. **GENERAL EVALUATION:** The Committee will consider whether the SOQ is minimally acceptable or whether it is more fully descriptive; whether it includes all the requested documents or whether it contains superfluous or extraneous information; whether the Team's approach demonstrates a logical	**0-10 POINTS**

interrelationship between activities; and whether the Team has identified major points of coordination between the design and construction phase. **MINIMUM SCORE TO QUALIFY FOR THE SHORTLIST = 80 POINTS**	**100 PT MAX**

SECTION 20 – RESERVATION OF RIGHTS

The State reserves to itself all rights (which rights shall be exercisable by the State in its sole discretion) available to it under applicable laws and/or regulations, including without limitation, the following, with or without cause and with or without notice:

a. The right to cancel, withdraw, postpone or extend this RFQ (in whole or in part) at any time prior to the execution by RIDOT of BVDB contract, without incurring any obligations or liabilities.
b. The right to issue a new RFQ.
c. The right to reject all submissions, responses and proposals received at any time.
d. The right to modify all established or projected dates in the RFQ.
e. The right to suspend and terminate the procurement process at any time.
f. The right to issue addenda, supplements, and modifications to this RFQ.
g. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFQ, including the right to seek clarifications from Respondents or speak to references provided.
h. The right to permit Respondents to add or delete firms and/or key personnel until such time as RIDOT declares in writing that a particular phase of its review has been completed and closed.
i. The right to appoint and change appointees of the Evaluation Committee
j. The right to waive deficiencies and/or irregularities in a SOQ, review and accept a non-conforming SOQ or seek clarifications or supplements to a SOQ.
k. The right to disqualify any Respondent that violates any Federal and/or State laws and/or regulations.
l. The right to formulate a shortlist from among the highest ranked Respondents and to issue an RFP to the shortlisted Respondents only. RIDOT ***anticipates*** shortlisting **the top THREE (3)** highest-ranked Respondents with a minimum final score of ***80 points*** based upon the evaluation criteria established in this RFQ. However, the State reserves the right to increase or decrease the number of shortlisted Respondents if deemed in the best interest of the State to do so.

SECTION 21 - ADDITIONAL REQUIREMENTS

The successful Respondent agrees to comply with the following:

a. Requirement to Keep Team Intact

The team proposed by the Respondent, including but not limited to the Lead Contractor, the Lead Designer, Key Personnel, and other individuals identified shall remain on the Respondent's team for the duration of the procurement process and, if the Respondent is awarded the Contract, the duration of the Design-Build Contract. If extraordinary circumstances require a change, it must be submitted in writing to the RIDOA. The Department will determine whether to authorize a change. Unauthorized changes to the Respondent's team at any time during the procurement process may result in the elimination of the Respondent from further consideration.

b. Internal Control Systems

All Respondents must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48 CFR 31, "Federal Acquisition Regulations,

Contract Cost Principles and Procedures," and 23 CFR 172, "Administration of Engineering and Design Related Service Contracts.

c. Energy Conservation

The successful Respondent agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

d. Program Fraud and False or Fraudulent Statements or Related Acts

The successful Respondent acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and US DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31 apply to its actions pertaining to the Project. Upon execution of the underlying contract, the successful Respondent affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the underlying contract or the FHWA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the successful Respondent further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Respondent to the extent the Federal Government deems appropriate.

The successful Respondent also acknowledges that if it makes, or cause to be made, a false, fictitious or fraudulent claim, statement, submission, or d certification to the Federal Government under a contract connected with a project that s financed in whole or in part with Federal assistance originally awarded by FHWA under the authority of 49 U. S. C. Chapter 53, the Government reserves the right to impose the penalties of 18 U S C § 1001 and 49 U. S. C. § 5323(I) on the Contractor, to the extent the Federal Government deems appropriate.

The successful Respondent agrees to include the above two clauses in each subcontract financed in whole or in part with Federal Assistance provided by FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

e. Clean Air and Federal Water Pollution Control Act

The successful Respondent agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating facilities"
3. It will report violations of use of prohibited facilities to FHWA
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollutant Control Act as amended (33 U.S.C. §§ 1251 -1387).

f. No Federal Government Obligation to Third Parties

The successful Respondent and RIDOT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or ward of the underlying Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the RIDOT, successful Respondent or any other party (whether or not a party to that Contract) pertaining to any matters resulting from the underlying Contract. The successful Respondent agrees to include the above clause in each subcontract financed in whole or in part

with Federal Assistance provided by FHWA, It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

g. ADA Access

In accordance with Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq*., the successful Respondent agrees that it will not discriminate against individuals on the basis of disability. In addition, the successful Respondent agrees to comply with any implementing requirements FHWA may issue.

h. "Anti-Kickback" Prohibitions

The successful Respondent agrees to comply with the Copeland Act's Anti-Kickback provision that prohibits contractors and subcontractors performing work on covered contracts from in any way inducing an employee to give up any part of the compensation to which he or she is entitled. The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis and in cash or a negotiable instrument payable on demand and to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period. Additionally, the Act's regulations at 29 CFR §§ 3.5 and 3.6 list payroll deductions that are permissible without the approval of DOL and those deductions that require consent of DOL and prohibit all other payroll deductions

1. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
2. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
3. U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Financed in Whole or in Part by Loans or Grants for the United States," 29 CFR Part 3.

i. Buy America

The successful Respondent agrees to comply with 23 CFR 635.410 which provides that Federal funds may not be obligated unless all steel, iron and manufactured products used in FHWA funded projects are produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver.

j. Federal Equal Employment Opportunity (EEO) Requirements

These include but are not limited to:

a. Nondiscrimination in Federal Public Transportation Programs:
41 CFR 60-4.3 prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b. Prohibition against Employment Discrimination: Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246 "Equal Employment Opportunity", September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex or national origin.

k. Termination for Cause and Convenience
http://www.dot.ri.gov/documents/doingbusiness/Bluebook.pdf#page=15

The Department may terminate the entire Contract, or any portion thereof, when the Contractor is prevented from proceeding with the prescribed work for any of the following reasons:

1. An Executive Order of the President of the United States with respect to the prosecution of war; in the interest of national defense; or any civil emergency or natural disaster.

2. An Executive Order of the Governor of the State with respect to a natural disaster or civil emergency.

3. Court orders relating to energy consumption, and orders or injunctions obtained by third party action resulting from national or local environmental protection laws.

4. Discovery of unanticipated archaeological artifacts of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly recovery.

5. Occurrence of an unanticipated environmental situation of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly mitigation.

6. Any other circumstances beyond the control of either the Department or the Contractor that precludes the orderly prosecution or completion of the work and that is in the public interest.

   The Engineer shall terminate the Contract by delivering to the Contractor a Notice of Termination which shall specify the extent of the termination, the reasons therefore, and the effective date thereof.

Termination Procedures

After receipt of a Notice of Termination, and except as directed by the Engineer, the Contractor shall immediately proceed with the following obligations:

1. Stop work as specified in the notice.

2. Place no further subcontracts or orders (referred to as subcontracts in this clause for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

3. Terminate all subcontracts to the extent they relate to the work terminated.

4. With approval or ratification to the extent required by the Engineer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause. 1−74

5. As directed by the Engineer, transfer title and deliver to the Department the fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and the completed or partially competed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Department.

6. Complete performance of the work not terminated.

7. Take any action that may be necessary, or that the Engineer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Department has or may acquire an interest.

8. At the direction of the Engineer, acceptable materials obtained by the Contractor for the Project but which have not been incorporated therein, may be purchased from the Contractor at actual cost delivered to a prescribed location, or disposed of as mutually agreed.

When the Department orders termination of a Contract, or portion thereof, effective on a certain date, all completed items of work as of that date will be paid for at the contract bid prices. Payment for partially completed work will be made either at agreed prices or in accordance with the subparagraph below entitled, "Contractor and Department Fail to Agree." Items that are eliminated in their entirety by such termination shall be paid for as provided in Subsection 109.05; Eliminated Items.

The Contractor shall submit, within 60 days of the effective termination date, a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an equitable settlement be reached with the Contractor.

In no event will loss of anticipated profits be considered as part of any settlement. The Contractor and the Department may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work performed. The Contractor shall be amended, and the Contractor paid the agreed amount.

Contractor and Department Fail to Agree

If the Contractor and the Department fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Department shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon above;

1. For contract work performed before the effective date of termination, the total of the following:
   a. The cost of this work;
   b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract; and
   c. A sum, as profit on (a), above, determined by the Department to be fair and reasonable; however, if the Contractor would have sustained a loss on the entire Contract had it been completed, the Department shall allow no profit and shall reduce the settlement to reflect the indicated rate loss.

2. The reasonable costs of settlement of the work terminated, including:

   a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;

   b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and

   c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

3. Except for normal spoilage, and except to the extent that the Department expressly assumed the risk of loss, the Department shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Department or to the buyer.

4. In arriving at the amount due the Contractor under this clause, there shall be deducted:

   a. All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;

   b. Any claim which the Department has against the Contractor under this Contract; and

   c. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Department.

   d. Partial Termination

      If the termination is partial, the Contractor may file a proposal with the Department for an equitable adjustment of the price(s) of the continued portion of the Contract. The Department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Engineer.

   e. Records

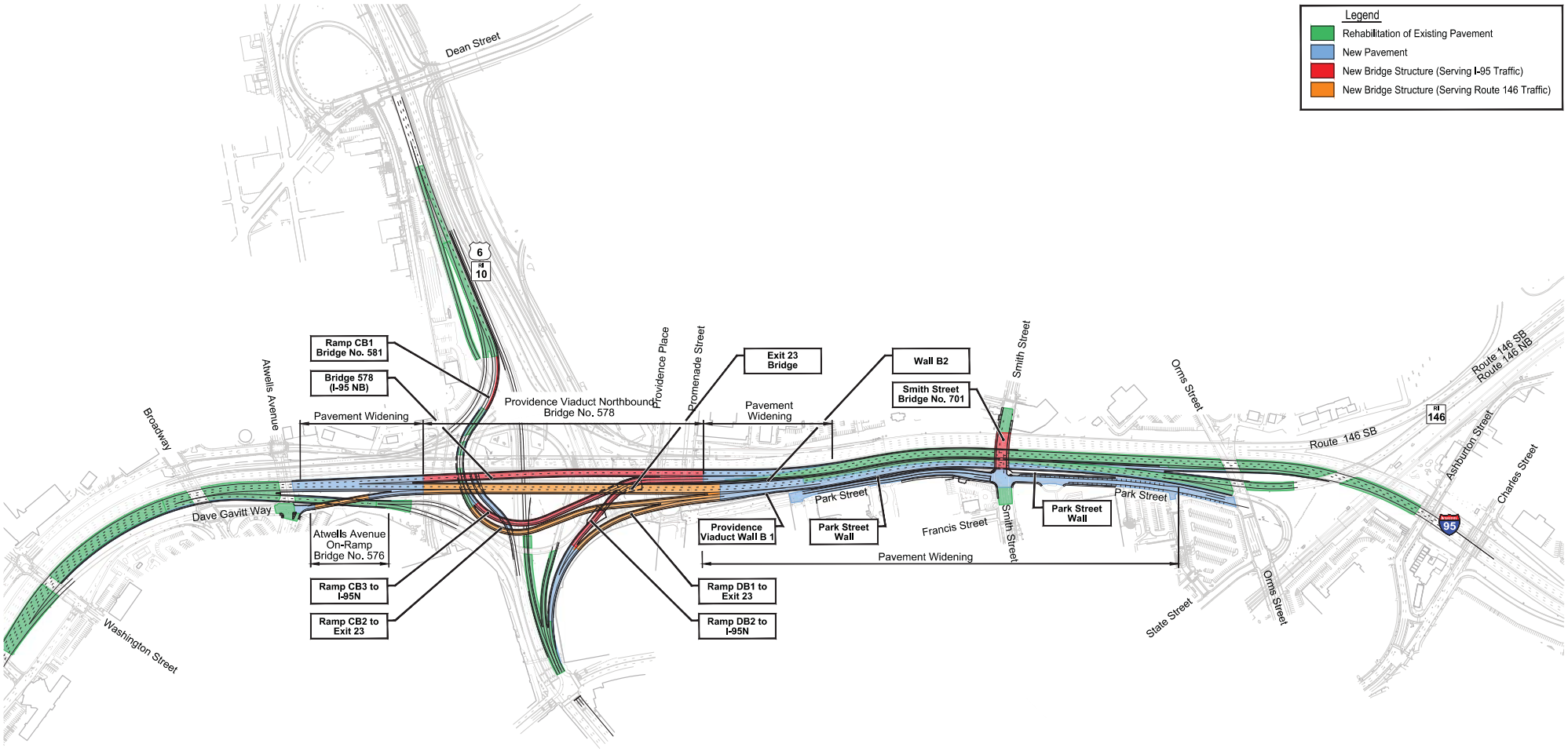
      The Department may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Department believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

      The Contractor shall maintain and make available all project cost records to the Department for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Department, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Department, photographs, 1−76 microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

   f. Contractual Responsibilities

      Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

END



I-95 Northbound Providence Viaduct
Providence, Rhode Island

CONSULTANTS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS FOR PRIME CONSULTANTS AND LOWER TIER PARTICIPANTS (SUBCONSULTANTS ETC.)

Appendix B - - certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

INSTRUCTIONS FOR CERTIFICATION:

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

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

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

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

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

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

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

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

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, ineligibility And Voluntary Exclusion - - Lower Tier Covered Participants

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

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

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

In accordance with the code of Federal Regulations, Part 49 CFR Section 29.510, the prospective primary participant _____ (name of Authorized Agent), _____ (Title), being duly sworn (or under penalty of perjury under the laws of the United States), certifies to the best of his/her knowledge and belief, that its principals:

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

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

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

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

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall list exceptions below.

Exceptions will not necessarily result in denial of award, but, will be considered in determining contractor responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and the dates of the action. Providing false information may result in criminal prosecution or administrative sanctions. If an exception is noted the contractor must contact the Department to discuss the exception prior to award of the contract.

_____

_____

_____

_____ _____

Signature of Authorized Agent Date

Certification for Federal-Aid Construction/Consultant Contracts

IN ACCORDANCE WITH PUBLIC LAW 101-1210 SECTION 319 (DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES) THE PROSPECTIVE PARTICIPANT CERTIFIES, BY SIGNING AND SUBMITTING THIS BID OR PROPOSAL, TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, THAT:

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

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

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

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

(R.I.D.O.T. APPENDIX C)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity,not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any o her aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-00-46), Washington, D.C. 20503.

Approved by
03-48-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 - 0348-0046
(see reverse for public burden disclosure)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Report Entity: ☑ Prime ☐ Subawardee Tier ___, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: $	
10. a. Name and Address of Lobbying Entity: (if individual, last name, first name, mi):	10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, mi):	
11. Amount of Payment (check all that apply) $_____ ☐ actual ☐ planned	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify:	
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contracted, for Payment indicated in Item 11 (Attach Continuation Sheet(s) SF-LLL-A, if necessary):		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ yes ☑ no		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. this disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No: _____ Date: _____	
For Federal use Only:	Authorized for Local Reproduction Standard Form – LLL-A	

Approved by
03-48-0046

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

RIDOT 12/27/07

CONFLICTS DISCLOSURE POLICY

To ensure that the Rhode Island Department of Transportation (RIDOT) maintains the continued confidence and trust of the people of Rhode Island in carrying out its mission, prospective vendors must disclose any family (or other personal) relationships, associations or connections that the vendor, its affiliates, or employees, may currently have with any RIDOT employee. A Conflicts Disclosure Statement shall be submitted to RIDOT from the following:

- Owners;
- Directors;
- Principals;
- Officers, board members, or individuals with corporate authority;
- If the vendor is a partnership, the applicant's partners;
- If the vendor is a limited liability company, its members and managers;
- Employees with decision-making authority, including executive directors, managers or individuals in a similar position with corporate authority; and
- Shareholders with a controlling interest.

RIDOT 12/27/07

CONFLICTS DISCLOSURE STATEMENT

RE: _____

_____

I, _____ **hereby certify as follows:**

I am employed as a _____ **of** _____
[TITLE] **[COMPANY]**
and to the best of my knowledge:

PLEASE CHECK THE APPROPRIATE BOX:

☐ **I have no family or personal relations currently employed either on a full-time or part-time basis at the Rhode Island Department of Transportation.**

☐ **I do have family or personal relations currently employed at the Rhode Island Department of Transportation. Please list their name(s), title(s), and RIDOT Division(s) (if known):**

NAME	TITLE	RIDOT DIVISION

If necessary, please add any additional names as attachments hereto.

FOR ILLUSTRATIVE PURPOSES, FAMILY RELATIONS SHALL INCLUDE, WHETHER BY BLOOD, ADOPTION OR MARRIAGE, ANY OF THE FOLLOWING RELATIONSHIPS:

Father, Mother, Son, Daughter, Brother, Sister, Grandfather, Grandmother, Grandson, Granddaughter, Father-In-Law, Mother-In-Law, Brother-In-Law, Sister-In-Law, Son-In-Law, Daughter-In-Law, Stepfather, Stepmother, Stepson, Stepdaughter, Stepbrother, Stepsister, Half-Brother Or Half-Sister, Niece, Nephew, And Cousin

❖ *If you are unsure whether a relationship, association, or connection you have may need to be disclosed, please consult with RIDOT's Legal Office at (401) 222-6510.*

_____

SIGNATURE **DATE**

By signing this form you: (1) certify that the information contained in this form is complete and accurate to the best of your knowledge; and (2) acknowledge your continuing obligation to complete and submit a new Disclosure form when there is any change in your family or personal relations during the course of this Contract.

This document is used for internal RIDOT purposes only in order to address and avoid any potential conflicts at the inception of the contract process and to avoid any impropriety or the appearance of impropriety during the contract process. Any disclosures made hereto will not prejudice prospective vendors from selection.

USDOT Standard Title VI/Nondiscrimination Assurances for Contractors DOT Order 1050.2A

I, _____ _____, _____, a duly
authorized representative of _____
do hereby certify that the organization affirmatively agrees to the provisions set forth by *U.S. DOT Order 1050.2A, DOT Standard Title VI Assurances and Non-Discrimination Provisions (April 11, 2013)*

_____
Signature

_____
Date

APPENDIX A

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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements 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 procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives 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 Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

<u>Pertinent Non-Discrimination Authorities:</u>

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq*.), (prohibits discrimination on

the basis of sex);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq*).

DBE SPECIAL PROVISION

DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR CONTRACTORS AND CONSULTANTS

With respect to the above numbered project, I hereby certify that I am the _____ and duly authorized representative of _____ whose address is _____ _____.

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

DEFINITIONS:

A "Broker," for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

A "DBE Contractor" or "DBE Subcontractor," for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

"Disadvantaged Business Enterprise" or "DBE," for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A "Joint Venture," for purposes of this provision, is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A "Manufacturer," for purposes of this provision, is a DBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.

A "Regular Dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the

public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

"Race conscious" measures (goals) or programs are those that are focused specifically on assisting DBEs.

"Race neutral" measures (goals) or programs are those that are, or can be, used to assist all small businesses, including DBEs.

"Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race;
    c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian Tribe[1], Alaska Natives, or Native Hawaiians;
    d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    e. "Subcontinent Asian Americans," this includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
    f. Women; and
    g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such as time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

[1] A "tribally-owned concern" means any concern at least 51 percent (51%) owned by an Indian tribe as defined in 49 CFR 26.5.

I. GENERAL REQUIREMENTS AND SANCTIONS:

A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its DBE commitment during the construction period will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the established DBE percentage (listed in Section II. A. below), and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in paragraphs below.

B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department, or such remedy as the Department deems appropriate. Greater detail of the rules and regulations regarding DBE utilization can be found in the Rules and Regulations for RIDOT DBE Program.

C. Brokering of work by DBEs is not allowed and is a contract violation unless DBE is a certified DBE broker. A DBE firm involved in brokering of work may have their certification removed or suspended and shall be subject to the sanctions stated herein. Any firm that engages in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in paragraph (B) above and referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, USC Section 1001.

D. The Disadvantaged Business Enterprises Directory or other available resources may be obtained at the Rhode Island Department of Transportation Office of Civil Rights (OCR), 2 Capitol Hill, Providence, RI 02903, or at http://odeo.ri.gov/.

E. The utilization of Disadvantaged Business Enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the Contractor shall include:
   1. The number of DBE contractors, subcontractors and suppliers; and the type of work, materials or services being performed on or incorporated in this project.
   2. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
   3. Documentation of all correspondence, contacts, telephone calls, etc. necessary to obtain the services of DBEs on this project.
   4. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
   5. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.

F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

A. Prior to contract award and within five (5) days from the opening of bids, the contractor/consultant shall, at a minimum, take the following actions to meet the race-conscious goal established by OCR, hereinafter referred to as the 'contract goal,':
   1. Appoint an EEO Officer to administer the Contractor's DBE obligations.
   2. Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the

work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.

3. Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
4. Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.

B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith effort (GFE) review to determine the extent of the prime contractor's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26, Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.

1. Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
2. Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS:

A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with DBE participation will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for crediting DBE participation toward contract goals are as follows:

1. When a DBE participates in a contract, RIDOT will consider only the value of the work actually performed by the DBE toward DBE goals. RIDOT includes the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT credits the cost of supplies and materials purchased or leased by the DBE subcontractor for the work of the contract. However, supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
2. RIDOT credits the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function (CUF) on that contract.

1. A DBE performs a CUF when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Even if a DBE is performing pursuant to normal industry practices, if those practices, in fact, erode the ability of the DBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE goal and may raise questions about the DBE eligibility.
2. Suppliers: A supplier is considered to perform a CUF when it packages, i.e. takes quotes from several manufacturers, and/or sells from its own inventory in order to provide one or more items to a contractor. A supplier may own a franchise and/or may be a factory representative to one or more manufacturers. Consistent with a contractor's probable needs, a supplier, not a contractor, may place orders for production with manufacturers.
3. "Pass through" supply operations occur when the contractor decides what items shall be bought from what sources and/or agrees directly with the manufacturer, or other non-DBE party, to schedule delivery and/or directs adjustments and/or routes payments and purchase orders through the DBE. Pass through operations are not commercially useful functions and will not be counted toward contract goals.
4. Management: The DBE must manage the work that has been contracted to its firm. The DBE owner must supervise daily operations, either personally, or with a full-time, skilled and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be present on the job site and under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.
5. Workforce: In order to be considered an independent business, a DBE must keep a regular workforce. DBEs cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control, see paragraph 9 of this section. The DBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.
6. Trucking: RIDOT will consider the following factors in determining whether a DBE trucking company is performing a CUF. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
    a. The DBE itself must own and operate at least one fully licensed, insured, and operational vehicle being used on the contract.
    b. The DBE must receive compensation for the total value of the services it provides on the contract using vehicles it owns, insures, and which are operated by drivers it employs.
    c. The DBE may lease vehicles from another DBE firm, including an owner-operator who is certified as a DBE. The DBE which leases vehicles from another DBE shall receive credit for the total value of the services the lessee DBE provides on the contract.
    d. The DBE may also lease vehicles from a non-DBE firm, including from an owner-operator. The DBE which leases vehicles from a non-DBE is entitled to credit for the total value of

services provided by non-DBE lessees not to exceed the value of services provided by DBE-owned vehicles on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this subsection (6) (d): DBE firm X uses two of its own trucks on a contract. It leases two trucks from DBE firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by firm X and firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by firm Z, DBE credit could be awarded only for the fees or commission pertaining to those trucks firm X receives as a result of the lease with firm Z.

e. For purposes of this subsection, a lease must indicate that the DBE has exclusive use of and control over vehicles used on the project. This does not preclude vehicles from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased vehicle. Leased vehicles must display the name and identification number of the DBE.

7. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation. RIDOT will count expenditures with DBEs for materials or supplies toward DBE goals as follows:
   a. For a DBE contractor (furnish and install) to receive credit for supplying materials, the DBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.
   b. If the materials or supplies are purchased from a DBE manufacturer, RIDOT will count 100 percent of the cost of the materials or supplies.
   c. If the materials or supplies are purchased from a DBE regular dealer, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.
   d. With respect to flaggers, when flaggers are provided, RIDOT will count 60 percent of the labor. When traffic signs are included with flaggers, the work will be counted as 100 percent.
   e. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals.
8. Subcontractor: A subcontractor arrangement exists when a person or firm has a contractual obligation to perform a defined portion of the contract work and the following conditions are present:
   a. Compensation is determined by the amount of work accomplished, rather than being paid on an hourly basis.
   b. The subcontractor exercises control over work methods (except as limited by project specifications), while furnishing and managing its own labor and equipment with only minimal, general supervision being exercised by the prime contractor.

c. The personnel involved in the DBE subcontractor's portion of the project are both under the subcontractor's direct supervision and identified on its payroll records. When warranted by unique circumstances of a project, a DBE subcontractor may be permitted to employ on a limited basis specialty trades personnel who are not normally employed by the DBE subcontractor.
d. Second tier DBE subcontracting will be approved only in accordance with normal industry practice and when the type of work differs from work which the DBE usually performs.

9. All factors pertaining to the unique conditions of a project shall be considered in determining whether a DBE subcontractor relationship actually exists on the project. A DBE subcontractor may need to lease/rent equipment, other than over-the-road trucks, and/or augment its workforce with additional skilled personnel in order to perform certain project-related work. The DBE subcontractor is required to arrange for the necessary equipment through rental/leasing agreements, as necessary. (Off-the-road equipment, such as "Euclids," may be rented/leased from the prime contractor even though the CUF guidelines prohibit rental/lease of over-the-road trucks from the prime contractor.) Likewise, in limited instances, the prime contractor may provide some, but not all, personnel to the DBE subcontractor when the following conditions are present:
   a. A DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
   b. The DBE must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
   c. The personnel must have a specialized expertise which has not been mastered by the DBE's own skilled/supervising/managerial personnel.
   d. Such personnel must be placed on the DBE's payroll and come under the direct supervision of the DBE for the performance of the particular subcontract work.
   e. The deployment of such personnel must be accomplished within the framework of a mentor-protégé agreement; or for emergency purposes, by contract change order. All instances of combining personnel must be for developmental purposes in which teaching/demonstration/consulting to the DBE must occur.
   f. Long term, continual (e.g. from one contract to another) or chronic use by a DBE firm, of personnel normally employed by another specific firm, lacking a mentor-protégé agreement which is being carried out in good faith, is not consistent with the CUF guidelines.
   g. To place entire work crews on DBE's payrolls when such personnel are normally employed by another specific firm is not consistent with the CUF guidelines.
   h. A DBE may need to lease/rent equipment, except for over-the-road trucks, in order to be properly equipped to execute the work of a mentor-protégé agreement. In such cases where the DBE has investigated several possible sources of such equipment within a reasonable geographical area to the project, the DBE may find the best offer was made by the prime contractor or another subcontractor on the project. In such cases, the DBE may rent/lease such equipment from the prime or another subcontractor, provided that the use of such equipment is material to demonstrating/teaching objectives set forth in the mentor-protégé agreement. Thus, the DBE's regular employees, not those temporarily furnished by the prime contractor, or another subcontractor, shall operate such equipment for the majority of the time during which the equipment is used in the work of the DBE subcontractor under the mentor-protégé agreement.
   i. A DBE's use of equipment owned by a prime contractor or another subcontractor or without an appropriate mentor/protégé program is inconsistent with the CUF guidelines and will result in noncompliance.
10. If a contractor or subcontractor is not certified as a DBE by the Minority Business Enterprise Compliance Office under the specific NAICS code of line items identified in the contract, at the

time of the execution of the contract or issuance of the purchase order, RIDOT will not count that firm's participation toward any DBE goals, except as provided in 49 CFR 26.87(i).

11. RIDOT will not count toward the contract goal the dollar value of work performed by a contractor or subcontractor after it has ceased to be a certified DBE.
12. RIDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until all payments being credited have been fully paid to the DBE.

B. DBE Replacement and Termination:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains RIDOT's written consent as provided in this section; and unless RIDOT's consent is provided under this paragraph, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

1. Good Cause for Replacement or Termination

The prime contractor must provide the Department's OCR with a copy of its "Intent to Substitute /Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate good cause and obtain written approval from the OCR.

In accordance with 49 CFR Part 26.53 good cause includes the following circumstances:

a. The listed DBE subcontractor fails or refuses to execute a written contract;
b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
f. RIDOT determines that the listed DBE subcontractor is not a responsible contractor;
g. The listed DBE subcontractor voluntarily withdraws from the project and provides to RIDOT written notice of its withdrawal;
h. The listed DBE is ineligible to receive DBE credit for the type of work required;

i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
j. Other documented good cause that RIDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that RIDOT deems appropriate.

2. Good Faith Efforts to Replace

When a DBE subcontractor is terminated as provided in paragraph (1) of this section, or fails to complete its work on the contract for any reason, RIDOT requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal RIDOT established for the procurement. The good faith efforts shall be documented by the contractor. If RIDOT requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and RIDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. The determination shall be made by the DBELO, under the criteria established below.

If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the change order as well as to the original contract. In the event of significant change orders, good faith efforts are required dependent upon the type of change order; RIDOT determines on a case-by-case basis what constitutes good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant. When a change order decreases work, i.e. RIDOT determines specific line items are no longer necessary on a contract or there is a quantity change on an item, no good faith effort must be shown. However, when an increase of work occurs or there is a termination of a DBE, good faith efforts must be shown in accordance with the preceding requirements.

C. Monthly Payment Certifications:

All contractors on RIDOT projects are required to certify their payments to subcontractors by use of RIDOT's contractor compliance software on a minimum of a monthly basis (which, at time of publishing, is Prism). A project may not proceed to finalization without the input of this information. RIDOT's Prompt Payment Clause applies to both DBE and non-DBE subcontracts. The Contractor is responsible for the subcontractors' compliance with the submission of their payment reporting by way of this software.

D. Joint Check Procedure for DBEs:

A prime contractor must receive written approval by the Department's DBELO before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime contractor to the Department's OCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

1. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE;
2. The second party (typically the prime contractor) acts solely as a guarantor;
3. The DBE must release the check to the supplier;
4. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only; and
5. The DBE remains responsible for negotiation of price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the Resident Engineer certification of the dollars paid to each DBE firm using Form "DBE Request for Verification Payment." The certification shall be dated and signed by a responsible officer of the Contractor and by the DBE. Falsification of this certification will result in sanctions listed in Sections I. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and subcontractor on the "Certification of Progress Payment" form, the Prime Contractor shall release all retainage held by the Prime Contractor within thirty (30) days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

_____

Signature of Contractor or Consultant

_____

Date

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

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

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

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

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

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

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits 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 paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration 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. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

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

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

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

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

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

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

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant 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, the participant 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 positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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