



TOWN OF MIDDLEBURG, VIRGINIA

August 2016

REQUEST FOR QUOTATIONS

FOR

**INSTALLATION OF CHAIN LINK FENCE – WELL #6/STONEWALL AVENUE
WATER TREATMENT PLANT**

Any questions concerning the RFQ should be directed in writing NOT LATER THAN SEPTEMBER 7, 2016 to Mr. Marvin Simms, Superintendent of Facilities and Maintenance, Town of Middleburg, P.O. Box 187, Middleburg, VA 20118-0187 or at maintenance@middleburgva.gov

QUOTATION DUE DATE AND TIME: 11:00 A.M. on September 15, 2016 prevailing local time. Quotations are to be presented for time and date validation at the Middleburg Town Office, 10 W. Marshall St., Middleburg.

SITE INSPECTION (OPTIONAL): Meet Mr. Simms at 11:00 AM on August 15, 2016 at the Stonewall Avenue Water Treatment Plant, 800 Stonewall Avenue, Middleburg 20117.

ADDRESS QUOTATION AS FOLLOWS:

If hand-delivered or via delivery service:

SEALED QUOTATION – Bid for Installation of Chain Link Fence –
Well #6/Stonewall Avenue Water Treatment Plant

ATTENTION: Superintendent of Facilities and Maintenance
Town of Middleburg
10 West Marshall Street
Middleburg, VA 20117
(571) 233-0020

If delivered via USPS:

SEALED QUOTATION – Bid for Installation of Chain Link Fence –
Well #6/Stonewall Avenue Water Treatment Plant

ATTENTION: Superintendent of Facilities and Maintenance
Town of Middleburg
P. O. Box 187
Middleburg, Virginia 20118

SECTION ONE INSTRUCTIONS TO BIDDERS

A. Invitation Letter

We are pleased to invite you to submit a Quotation on the subject PROJECT in accordance with the following:

1. General

1.1 Definitions

In this Tender, the words and expressions listed hereunder shall have the meaning assigned to them respectively:

OWNER: shall mean the Town of Middleburg, Virginia.

PROJECT or WORK: shall mean the installation as described in the Scope of Work (Appendix - A).

CONTRACTOR: shall mean the successful Bidder assigned by the OWNER to carry out the WORK.

CONTRACT: shall mean the eventual Agreement to be signed between the OWNER & CONTRACTOR for the performance of the WORK.

QUOTATION: shall also mean a bid.

1.2 All Quotations shall be prepared and submitted by and at the cost of the Bidder, hence all costs associated with preparation and submission of the Quotation shall be borne by the Bidder.

1.3 All Quotations must be typed. Handwritten Quotations may be rejected and may not receive consideration if the handwriting is not clearly legible.

1.4 CONTRACTOR shall carry out the WORK within the time frame allowed in the approved WORK Schedule.

1.6 Bidder shall address inquiries, if any, in writing to Mr. Marvin Simms, Superintendent of Facilities and Maintenance, who alone is empowered to clarify such inquiries; not later than seven (7) days before the date of opening of the Quotations.

2. Validity of Quotation

The Quotation shall remain valid for ninety (90) days from the date of opening the Quotations.

The successful Bidder, within a period of fifteen (15) days from the date of the OWNER's acceptance of their Quotation, shall be requested to sign the contract and to submit the Certificate of Insurance as required in the relevant article of the contract. Failure to do so will cause the Quotation to be considered withdrawn.

Under no circumstances shall a Bidder whose Quotation has not been accepted be entitled to any claim for compensation.

3. Scope of Work

CONTRACTOR shall carry out the PROJECT for the OWNER, as described in Appendix A, Scope of Work, for approximately four hundred seventy-six (476) linear feet of six foot (6') tall black vinyl coated chain link fence, with three strands of barb wire on top, around the Town's well, known as Well #6, located at the Stonewall Avenue Water Treatment Plant.

4. Tender Document

Bidders are requested to collect a copy of the RFQ Document, comprising the following, from the Town of Middleburg, 10 West Marshall Street, Middleburg, VA 20117.

Section 1: Instructions to Bidders

Section 2: General Proposal Terms and Conditions

Section 3: Contract Agreement

Section 4: General Conditions and Instructions to Bidders

Section 5: Supplementary Conditions to the Contract

Section 6: Evaluation of Proposals: Selection Factors

Section 7: Appendices:

Appendix-A: Scope of Work

Appendix-B: References

Appendix-C: Addendum Acknowledgment

Appendix-D: RFQ Submission Form

Appendix-E: Federal Requirements

5. Site Visit

It is the Bidder's responsibility to visit the site and obtain all information required for the submission of the Quotation. The Bidder shall carefully examine the RFQ Documents and satisfy themselves as to the risks, obligations, and responsibilities to be undertaken in the contract. All costs in connection with visit to and inspection of the site and the preparation of the Quotation shall be borne by the Bidder.

6. Quotation Submission

Quotation shall include all required information as outlined in Section 6 of this document, including but not limited to the following:

- a. A list of references for projects similar in scope to the project herein identified, which have been undertaken by Bidder within the past two (2) years, including phone numbers, who can be contacted in respect to these contracts.
- b. Acknowledgment of all Addenda (if issued).
- c. Others (to be specified by Bidder)

8. Consideration of Bidders

The OWNER reserves the right to reject any and all Quotations, to waive technicalities and irregularities, advertise for new Quotations, or to proceed to do the PROJECT otherwise, if it is in the judgment of the OWNER, as to its best interests. The Bidder shall not be entitled to any indemnity in respect of claims, demands, proceedings, damage costs, charges and expenses, whatsoever arising out of such rejection. Quotations shall be considered irregular and may be rejected for, but not limited to, the following reasons:

- a. If there are any unauthorized additions, conditional or alternate proposals or percentage increase or decrease in the Quotation price or irregularities of the kind which tend to make the Quotation incomplete, indefinite or ambiguous as to its meaning.
- b. If there is a lack of any of the required documents.

Bidders may be disqualified and their quotation rejected for, but not limited to, the following reasons:

- a. If more than one Quotation for the PROJECT is submitted from an individual firm, partnership or corporation under the same name or different name.
- b. If there is evidence of any collusion between Bidders.
- c. Falsification of any documents or price submitted with the Quotation shall be the cause for annulling the Quotation and the Bidder shall be liable for legal action.

Completed Quotations shall be submitted before 2:00 p.m. on September 15, 2016 in a Sealed Envelope and shall be addressed as follows:

If delivered via USPS:

SEALED QUOTATION – Bid for Installation of Chain Link Fence –
Well #6/Stonewall Avenue Water Treatment Plant

ATTENTION: Superintendent of Facilities and Maintenance
Town of Middleburg
P. O. Box 187
10 West Marshall Street
Middleburg, Virginia 20118

If hand-delivered or via delivery service:

SEALED QUOTATION – Bid for Installation of Chain Link Fence –
Well #6/Stonewall Avenue Water Treatment Plant

ATTENTION: Superintendent of Facilities and Maintenance
Town of Middleburg
10 West Marshall Street
Middleburg, VA 20117
(571) 233-0020

SECTION TWO

GENERAL CONTRACT TERMS AND CONDITIONS

Submission of Quotations

Quotations must be submitted in accordance with the instructions given. The container must be completely and properly identified. The face of the container shall indicate the title of the RFQ. Quotations must be received by the Superintendent of Facilities and Maintenance BEFORE the hour specified on the acceptance date. Quotations may either be mailed to P.O. Box 187, Middleburg, Virginia, 20118-0187, or hand delivered to the Town Office, 10 W. Marshall Street, Middleburg, VA, 20117.

Late Bids

LATE Bids will be returned to Bidder UNOPENED if the RFQ title and Bidders' return address are shown on the container.

Authority to Bind Firm in Contract

Quotations MUST give full firm name and address of Bidder. Failure to manually sign Quotation may disqualify it. Person signing Quotation should show TITLE or AUTHORITY TO BIND HIS FIRM IN A CONTRACT and include documentation showing such authority. Firm name and authorized signature must appear on the Quotation in the space provided in the lower right hand corner.

Exemption from Taxes

The Town of Middleburg is exempt from State Sales Tax and Federal Excise Tax.

Completion

Quotations must show number of days required to complete the Project under normal conditions. Failure to state completion time obligates Bidder to complete it according to the Town's schedule. Unrealistically short or long completion schedules may cause Quotation to be disregarded. Work shall occur during normal working hours only, 8:30 a.m. to 4:30 p.m., unless prior approval for alternative hours has been obtained from the Superintendent of Facilities and Maintenance.

Delays

If delay is foreseen, the contractor shall give seven (7) days prior written notice to the Town, via the Superintendent of Facilities and Maintenance. The Town has the right to extend the completion date if reasons appear, in the sole discretion of the Town to be valid. Contractor must keep the Superintendent of Facilities and Maintenance advised at all times of status of the Project. Default in promised completion (without accepted reasons) or failure to meet specifications, authorizes the Town to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting contractor.

Inquiries

Inquiries pertaining to Request for Quotations must include RFQ title.

Substitutions

NO Substitutions or cancellations shall be permitted after award without the written approval by the Town Administrator.

Rights of the Town of Middleburg

The Town reserves the right to accept or reject all or any part of any Quotation, waive minor technicalities and award the contract to best serve the interest of the Town.

Prohibition as Subcontractors

No Bidder who is permitted to withdraw a Quotation shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Quotation was submitted.

Employment Discrimination by Contractors Prohibited

Every contract over \$10,000 shall include the following provisions:

- a. During the performance of a contract, the contractor shall agree that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex or natural origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient to meet this requirement.
- d. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Drug-free Workplace Maintained

During the performance of the Work described in the Contract, the Contractor agrees to:

- a. Provide a drug-free workplace for the Contractor's employees;
- b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- c. State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and
- d. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Whistleblower Reprisal Prohibited

During the performance of the Work described in the Contract, the Contractor agrees that the following activity shall be prohibited:

The discharging, demotion or otherwise discrimination against an employee of a contractor, subcontractor, or grantee in response to a disclosure of information that the employee reasonably believes is evidence of:

1. Gross mismanagement of a Federal contractor or grant;
2. Gross waste of Federal funds;
3. Abuse of authority relating to a Federal contract or grant;
4. Substantial and specific danger of public health or safety; or
5. A violation of a law, rule or regulation related to a Federal contract (including competition for or negotiation of a contract) or grant.

Davis Bacon Act

During the performance of the Work described in the Contract, the Contractor agrees to pay the local prevailing wages on public works projects for laborers and mechanics on all federally funded or assisted contracts in excess of \$2,000 for the construction, alteration or repair (including painting and decorating) of public buildings or public works.

Copeland Act

During the performance of the Work described in the Contract, the Contractor is prohibited from inducing an employee to give up any part of the compensation he/she is entitled to under the terms of his/her employment contract. The contractor shall also comply with the provisions of Executive Order #5778 regarding the filing of weekly compliance reports.

Contract Work Hour & Safety Standards Act

During the performance of the Work described in the Contract, the Contractor shall pay laborers and mechanics employed in the performance of the contract one and one-half times their basic rate of pay for all hours worked over forty (40) in a work week for all federal service contracts and federally assisted construction contracts worth over \$100,000. The Contractor shall also be prohibited from allowing its employees to work in unsanitary, hazardous or dangerous working conditions.

Resource Conservancy & Recovery Act

During the performance of the Work described in the Contract, the Contractor shall abide by the requirements of the Resource Conservancy & Recovery Act, Section 6002.

Ethics in Public Contracting

The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the Town. A copy of these provisions may be obtained from the Town Administrator.

Criminal Sanctions

The provisions referenced in Ethics in Public contracting above supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§2.2-3100 et. seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et. seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interest Act. To the extent that violations of the ethical standards of conduct constitute violations of the Code of Virginia, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth.

Immigration Reform & Control Act

Compliance with federal, state and local laws and federal immigration law – The Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Competition Intended

It is the Town's intent that this Request for Quotations (RFQ) permits competition. It shall be the Bidder's responsibility to advise the Town in writing if any language, requirements, specifications, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFQ to a single source. Such notification must be received by the Town not later than fifteen (15) days prior to the date set for acceptance of Quotations.

Inconsistencies in Conditions

In the event there are inconsistencies between the General Contract Terms and Conditions, and the Special Contract Terms and Conditions and other schedules contained herein, the latter two shall govern.

License Requirement

All firms doing business in the Town are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance.

Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Town Treasurer, telephone (540) 687-5152. The successful Bidder must obtain a Town BPOL license prior to beginning work on the PROJECT.

Proprietary Information

It is the responsibility of each Bidder to clearly mark any part of his Quotation considered to be of PROPRIETARY OR CONFIDENTIAL NATURE. Bidders shall not mark sections of their Quotation as PROPRIETARY OR CONFIDENTIAL if they are to be part of the award of the contract and are of a "Material" nature, (i.e., prices).

Subcontractors

Bidders shall include a list of all subcontractors in their Quotation. Quotations shall also include a statement of the subcontractors' qualifications. The Town reserves the right to reject the successful firm's selection of subcontractors.

Insurance

Contractor recognizes that the Town must be satisfied with the insurance certificates provided. The Town must be named as "additional insured" on all policies. Evidence of such status as an additional insured must be provided by an endorsement to the insurance policy and such endorsement provided to the Town with the required certificates of insurance.

The successful Bidder shall provide and maintain the following minimum limits of insurance coverage during the period of performance required under a contract resulting from this Request for Quotation:

a. Commercial General Liability

1. The successful Bidder's insurance shall cover the Bidder for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payments, and the elimination of coverage for Fire Damage Legal Liability.
2. The minimum limits to be maintained by the successful Bidder (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement to a Commercial General Liability Policy with the following amounts specified for this project:

Limits

General Aggregate Limit (Other than Products/Completed Operations)	\$2,000,000
Products-Completed Operation Aggregate Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Fire Damage Limit	\$ 500,000
Medical Expense Limit	\$1,000,000

- The successful Bidder shall continue to maintain Products/Completed Operations coverage for a period of three years after the contract completion date. The insurance shall cover those sources of liability which would be covered by the latest edition of Coverage A of the Commercial General Liability Form or Coverage A of the Product/Completed Operations Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office without restrictive endorsements. The minimum limits to be maintained by the successful Bidder (inclusive of any amounts provided by an umbrella or excess policy) shall be those that would be provided with the attachment of the Amendment of Limits of Insurance (Designated Project or Premises) endorsement with the following amounts specified for this project.

<u>Limits</u>	
Products-Completed Operations	
Aggregate Limits	\$ 500,000
Each Occurrence Limit	\$ 500,000

b. Business Auto Policy

- The successful Bidder's insurance shall cover the Bidder for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.
- The minimum limits to be maintained by the successful Bidder (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per accident combined single limit for bodily injury liability and property damage liability.

c. Workers' Compensation and Employers' Liability

- The successful Bidder's insurance shall cover the Bidder and its subcontractors of every tier of those sources of liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in the Commonwealth of Virginia by the National Council on Compensation Insurance, without restrictive endorsements, but including Broad Form All States Endorsement. In addition to coverage for the Virginia Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshore and Harbor Workers' Compensation Act, Maritime including Jones Act, Federal Employers Liability Act and any other applicable federal or state law.
- Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Virginia Workers' Compensation Act, the United States Longshore and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy. The minimum amount of coverage for those coverage's customarily insured under Part Two of the standards Workers' Compensation (inclusive of any

amounts provided by an umbrella or excess policy) shall be \$1,000,000 bodily injury by accident each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 bodily injury by disease policy limit or aggregate where such aggregate is applicable under the terms of the standard Workers' Compensation Policy.

Safety

All contractors and subcontractors performing services for the Town are required to comply with OSHA standards and accepted safety rules and regulations.

Hold Harmless Clause

The successful Bidder shall, during the term of the contract including any warranty period, for the firm indemnify, and hold harmless the Town, its' officials, employees, agents and representatives thereof from all suits, actions, or claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violations of rights, sustained by any person or property in consequence of any negligent act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The contractor agrees that this clause shall include claims involving infringement of patent or copyright.

Indemnification

The contractor shall, during the term of the contract including any warranty period, indemnify, defend, and hold harmless the Town, its officials, employees, agents, volunteers, and representatives thereof from all suits, actions, or claims of any kind, including attorney's fees, and the costs of appeals arising out of any such claims or suits, brought on account of any personal injuries, damages, or violations of rights, sustained by any person or property in consequence of any neglect in safeguarding contract work or on account of any error or omission or negligent or wrongful act by the Contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation, or decree. It is understood and agreed that the Contractor is at all times herein acting as an independent Contractor.

Procedures

The extent and character of the work to be performed by the Contractor shall be subject to the general control and approval of the Superintendent of Facilities and Maintenance. The Contractor shall not comply with requests and/or orders issued by anyone other than the Superintendent of Facilities and Maintenance acting within his authority for the Town.

Contract Period

The Contract shall cover the period of construction as well as the warranty period.

Termination

Subject to the provisions below, the contract may be terminated by the Town upon seven (7) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then this contract may be extended upon written approval of the Town of Middleburg until said work or services are completed and accepted.

a. Termination for Cause

The Town may terminate this contract for cause, default, or negligence on the part of the Contractor at any time. Termination by the Town for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision (a) hereinabove; termination cost, if any, shall not apply. The seven (7) days advance notice requirement is waived in the event of Termination for Cause.

b. Termination Due to Unavailability of Funds

If funds become unavailable to support continuation of the performance of this contract, then the contract shall be canceled and the Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Ownership of Products

All interim and final products and materials shall be the sole property of the Town. The Town shall be furnished reproducible and or electronic copies of all plans, reports and information collected or prepared under this agreement, upon request. The Town shall be furnished duplicate copies of other materials upon request.

Invoicing and Payment

The Contractor shall submit invoices, in duplicate, upon completion of the project, to include a detailed breakdown of all charges, the total amount of which shall not exceed the contract price.

The invoice will be paid promptly by the Town unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation. All invoices shall be forwarded to the following address:

Town of Middleburg
P.O. Box 187
Middleburg, Virginia 20118-0187
Attention: Town Treasurer

Payments to Subcontractors

Within seven days after receipt of amounts paid by the Town for work performed by a subcontractor under this contract, the Contractor shall either:

- a. Pay the Subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the Subcontractor under this contract; or
- b. Notify the Town and Subcontractor, in writing, of its intention to withhold all or a part of the Subcontractor's payment and the reason for non-payment. The Contractor shall pay interest to the Subcontractor on all amounts owed that remain unpaid beyond the seven day period except for amounts withheld as allowed above.

Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

The Contractor shall include this provision in each of its subcontracts requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to this provision may not be construed to be an obligation of the Town.

Examination of Records

- a. The Bidder agrees that the Town of Middleburg Treasurer, or his/her duly authorized representative, shall, until the expiration of five (5) years following the final payment on the contract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Bidder involving transactions related to the contract in question.
- b. The Bidder shall include a similar access, examination and copying requirement to the aforementioned, in any subcontract which is for more than \$10,000.
- c. In the event there is litigation or arbitration involving the contractor or subcontractor, rights of access, examination and copying thereunder shall continue until any litigation, appeals, claims or arbitration shall have been finally concluded.

Addendum and Supplement to Request

If it becomes necessary to revise any part of this request or if additional data is necessary to enable an interpretation of provisions of this request, revisions will be provided to all firms who request this RFQ.

Withdrawal of Quotation

- a. All Quotations submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance.
- b. Quotations may be withdrawn on written request from the Bidder at the address shown in the solicitation prior to the time of acceptance.
- c. Negligence on the part of the Bidder in preparing the Quotation confers no right of withdrawal after the time fixed for the acceptance of the Quotation.

Miscellaneous Requirements

The contents of the Quotation submitted by the successful Bidder and this RFQ will become part of any contract awarded as a result of the Scope of Services contained herein. The successful firm will be expected to sign a contract with the Town.

The Town's Purchasing Regulations are part of any contract awarded. The Quotation, this RFQ, and the Town Purchasing Regulations shall be incorporated by reference into the contract as though fully set forth therein.

These General Terms and Conditions shall become a part of the Contract and shall apply to the Contractor and all subcontractors and suppliers.

SECTION THREE CONTRACT AGREEMENT

OWNER-CONTRACTOR AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2016, by and between the Town of Middleburg, Virginia, hereinafter called "Owner" and _____, (an individual or a Partnership or a Corporation), hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor shall commence and complete the Project, as detailed in Appendix-A (Scope of Work).
2. The Contractor shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described herein.
3. The Contractor shall commence the work required by the Contract Documents within 7 days after the date of the NOTICE TO PROCEED.
4. The Contractor agrees to perform all of the work described in the Contract Documents.
5. The term "Contract Documents" means and includes the following:
 - a. Instructions to Bidders
 - b. General Contract Terms and Conditions
 - c. Contract Agreement
 - d. General Conditions & Instructions to Bidders
 - e. Supplementary Conditions to the Contract
 - f. Evaluation of Proposals: Selection Factors
 - g. Appendices:
 - Appendix-A: Scope of Work
 - Appendix-B: References
 - Appendix-C: Addendum Acknowledgment
 - Appendix-D: RFP Submission Form
 - Appendix E: Federal Requirements
 - h. Town's Purchasing Regulations
 - i. Notice of Award
 - j. Notice to Proceed
 - k. Change Order(s)
 - l. Supplementary Conditions.
 - m. Addenda:
 - No. _____, dated _____, 20__.
 - No. _____, dated _____, 20__.
6. The Owner shall pay to the Contractor in the manner as set forth in the General Conditions such amounts as required by the Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in two copies, each of which shall be deemed an original on the date first above written.

Notary Public Commission Expires

Commission Number: _____

Notary Public Commission Expires

Commission Number: _____

OWNER:

Town of Middleburg _____

By _____

Name _____

Title _____

CONTRACTOR:

BY _____

Name _____

Title _____

I, the undersigned, on behalf of the Town of Middleburg, hereby verify that the contents of the above Owner-Contractor Agreement have been reviewed and approved.

Contents Approved By

SECTION FOUR

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

The General Conditions and Instructions set out below shall apply to all formal Quotation solicitations and resulting contract award issued by the Town of Middleburg unless otherwise specified. Bidders are responsible for informing themselves of these requirements prior to submission of Quotations. Failure to do so will be at the Bidder's own risk, and pleas of error or ignorance shall not be honored. Bidders requiring additional information about the General Conditions and Instructions set forth below should consult Town Code and/or contact the Town Administrator.

In the event there is a conflict between these General Terms and Conditions and any other terms and conditions that may be included elsewhere in this solicitation, the other terms and conditions shall prevail.

1. Awards made in response to a RFQ will be made to the highest qualified bidder whose quotation is determined, in writing, to be the most advantageous to the Town, taking into consideration the evaluation factors set forth in the RFQ.
2. Unless canceled or rejected for good cause, a responsive quotation from the lowest responsible bidder shall be accepted as submitted except that if the quotation from the lowest responsible bidder exceeds available funds, the Town may reject the bid.
3. If received after the time specified for Public Quotation Opening, formal quotations, amendments thereto, or requests for withdrawal of quotations will not be considered. Late quotations will be returned to the bidder UNOPENED if the bidder's return address is shown. If the Town declares administrative or liberal leave, scheduled quotation openings or receipt of quotations will be extended to the next business day.
4. Quotations must be properly identified as a "SEALED QUOTATION". Properly marked quotations received prior to the specified time of Public Quotation Opening will be securely kept, unopened, in the Town Office. The Superintendent of Facilities and Maintenance or duly appointed representative will determine when the specified time has arrived and no quotation shall be received thereafter.
5. No liability shall attach to the Superintendent of Facilities and Maintenance or appointed representative for the premature opening of an improperly addressed or improperly identified quotation. When improperly identified quotations are received, the bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the quotation to be disqualified. The Town reserves the right to declare such a quotation as non-responsive.
6. Telegraphic or facsimile quotations will not be considered.
7. At the time fixed for the opening of responses to a RFQ, quotation contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. Quotations are available for public inspection subsequent to the Public Quotation Opening for a period of not less than 60 days.
8. Unless otherwise specified in the solicitation, all quotations shall be properly signed in ink in the proper spaces, and submitted in a sealed envelope. The item pages of the RFQ which do not include any items for which a quotation price or signature is required need not be included in the submission of a quotation.
9. The bidder must supply all information required by the RFQ, Instructions to Bidders, Specifications, and Bid Forms. Failure to fill all blanks may result in disqualification of the bid.

10. Unless otherwise specified by the Town, all formal quotations submitted shall be binding for Town acceptance for ninety (90) days from the date of the bid opening.
11. Quotation prices must be net, including transportation and handling charges fully prepaid by the contractor to destination, and subject only to cash discount for prompt payment of invoice.
12. The Town of Middleburg is exempt from State Sales Tax and Federal Excise Tax. A Tax Exemption Certificate is available upon request.
13. When an error is made in computing the extension of total price(s), the unit quotation price will govern. Erasures in quotations must be initialed by the bidder. Carelessness in quoting prices or in preparation of quotations otherwise, will not relieve the bidder. Bidders are cautioned to recheck their quotations for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her quotation is accepted.
14. Bidders must submit any and all exceptions to conditions of specifications in writing at time of quotation as part of the quotation submission.
15. Unless otherwise provided in the Request For Quotations, any catalog, brand name, or manufacturer's reference does not restrict bidders to the specified brand, make or manufacturer names; it conveys the general style, type, character, and quality of the articles desired, and any article which the Town, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
16. No employee of the Town shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.
17. Specific requirements as to bid bonds shall be incorporated in individual quotation specifications, if required. Although performance bonds may be directly addressed in the specifications, the Town reserves the right to require a performance bond as it deems may be in the Town's best interest to do so, at time of award.
18. A written notice of award (or acceptance of quotation) shall be provided to the successful bidder within the specified acceptance period. It may be in the form of a letter or a purchase order, either of which shall be deemed a binding contract without further action by either party.
19. Delivery of merchandise must conform to instructions in the quotation and/or in the applicable notice of award or purchase order(s). All goods are purchased F.O.B. destination. All costs for transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation charges are included in the unit prices bid unless otherwise specified.
20. The Town of Middleburg does not discriminate against faith-based organizations in accordance with the Code of Virginia, Section 2.2-4342.1, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in accordance with the Code of Virginia, Section 2.2-4311.

The foregoing conditions shall be binding on all sealed quotations unless specifically deleted or amended by reference within the quotation documents.

SECTION FIVE

SUPPLEMENTARY CONDITIONS TO THE CONTRACT

1. Arbitration shall not be applicable for the resolution of disputes between OWNER and CONTRACTOR. Disputes by the Contractor with respect to this Contract shall be decided in the first instance by the Town Administrator, who shall reduce her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within twenty (20) days from the date of such decision the Contractor mails or otherwise furnishes the Town Administrator a written appeal addressed to the Town Council. The decision of the Town Council shall be final and binding unless set aside by a Court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the Town Administrator, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.
2. The contents of the Quotation submitted by the successful Bidder and terms, conditions, particular requirements, and specifications contained in Request for Quotations issued by the Town of Middleburg and the Purchasing Regulations shall be incorporated into the terms and conditions of this contract to the same extent as if they had been set out fully. To the extent that any conflict arises between the provisions of this contract and those of the Request for Quotations and the Purchasing Regulations, they shall be resolved by giving first preference to the Purchasing Regulations, then to the Request for Quotations, then to this contract.
3.
 - a. The Contractor agrees that the Owner, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.
 - b. The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the Owner or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts of purchase orders for public utility services at rates established for uniform applicability to the general public.
 - c. The periods of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally concluded.
4. The effective date of this Contract shall be the date of issue of the Letter (Telefax) of Intent by OWNER to CONTRACTOR.

SECTION SIX

EVALUATION OF PROPOSALS: SELECTION FACTORS

The General Contract Terms and Conditions set forth certain criteria which will be used in the receipt of quotations and selection of the successful vendor. In addition, the criteria set forth below will be considered.

Each quotation will be reviewed and evaluated on the basis of compliance with the Scope of Work. Once each quotation has been reviewed and evaluated, the Town may award a contract to the lowest responsive, responsible bidder.

INSTRUCTIONS FOR PREPARING AND SUBMITTING BIDS

Proposal Format

Bidders shall respond to the RFQ with a written quotation in the format outlined below. The Quotation shall include as a minimum the following sections arranged in the specified order

- A. Task Understanding
- B. Capability for a Timely Response
- C. Compliance with Contractual Terms
- D. Any supplemental information about your firm.

Proposal Content

- A. Understanding of Task Requirements
Provide a narrative describing how you intend to accomplish task requirements. Address your understanding of the requirements.
- B. Capability for Timely Response
 - Acknowledgement and understanding of required timeframe for completion and approval of the plans.
- C. Compliance with Contractual Terms
 - Provide a definitive statement of intent to comply with Contract Terms and Conditions as delineated in this RFQ.
 - Verify that insurance coverage is available (insurance certificates need not be submitted until the award stage) and express willingness to sign contract as written.
 - If proposed terms and conditions are not acceptable as described, note and explain any exceptions; however, failure to agree to terms required by law of Town purchasing regulations may be grounds for disqualification of the quotation.
 - Acknowledge and describe any proposed deviations from Scope of Services.
- D. Overall Quality and Completeness of the quotation submission will be reviewed for:
 - Completeness
 - Attention to Detail
 - Clarity

**SECTION SEVEN
APPENDICES A THROUGH E**

APPENDIX-A SCOPE OF WORK

The Town of Middleburg (“Town”) is responsible for improving and maintaining efficient, effective and safe public facilities, including the drinking water system for the community. The Town ensures that all construction and maintenance work for wells, water treatment facilities, and water lines follow acceptable standards to ensure the efficient use of capital expenditures to provide the residents of the Town with a safe and dependable water supply.

The purpose of this quotation solicitation is to procure the construction of approximately four hundred seventy-six (476) linear feet of six foot (6’) tall black vinyl coated chain link fence, with three strands of barb wire on top, around the Town’s well, known as Well #6, located at the Stonewall Avenue Water Treatment Plant. The fence should include a six by ten foot double swing gate and a six by four foot single swing gate. The fence should be constructed using 2”x9” gauge core 2b fabric, 2 ½ inch OD line posts, 3” OD terminal posts, and 1 5/8” OD top and brace rail. It should contain a bottom tension wire. All posts should be set in concrete footings, with the fence to follow the general grade of the property.

Bid prices should include the costs for securing all applicable permits.

As the Project is being completed using a Virginia Department of Health, Office of Drinking Water Source Water Protection Grant, completion of the project within a specific timeframe is important. Accordingly, the quotation shall contain the timeframe for completion of the project.

Finally, the quotation shall contain the proposed warranty period for the work and materials, which shall be no less than one year from completion of the Project.

This RFQ, plus the resulting agreement, shall be consistent with, and governed by the Virginia Public Procurement Act (VPPA) and the *Town of Middleburg* Purchasing Regulations.

APPENDIX-B

REFERENCES

Reference for:

BIDDERS shall provide references on this form.

1. Firm Name _____
Contact _____
Title _____
Mailing Address _____
Phone _____

2. Firm Name _____
Contact _____
Title _____
Mailing Address _____
Phone _____

3. Firm Name _____
Contact _____
Title _____
Mailing Address _____
Phone _____

APPENDIX-C
ADDENDUM ACKNOWLEDGMENT

Addendum Acknowledgment

The undersigned bidder acknowledges receipt of the following Addenda, and any required adjustments have been included in the bid sum:

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

CONTRACTOR _____

FIRM NAME _____

ADDRESS _____

ADDRESS _____

APPENDIX-D
RFQ Submission Form
RFQ PRE-PROPOSAL FORM

SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company _____

Address _____

Contact Person _____ Title _____

Telephone No. _____ Fax No. _____ E-mail _____

Organized under the laws of State of _____

Principal place of business at _____

Following are names and addresses of all persons having ownership of 3% or more in the company (attach more sheets if necessary):

Name	Address
_____	_____
_____	_____
_____	_____

The *Town of Middleburg* requests, as a matter of policy, that any company receiving a contract of award resulting from this Request for Quotation issued by the *Town of Middleburg* shall make certification as specified below. Receipt of such certification shall be a prerequisite to the award of contract and payment thereof.

SECTION II – EMPLOYEES NOT TO BENEFIT

I (we) hereby certify that if the contract is awarded to our company, partnership, or corporation, that no employee of the *Town of Middleburg*, or members of his/her immediate family, including spouse, parents or children has received or been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution or any similar form of remuneration on account of the act of awarding and/or executing this contract.

SECTION III – CONFLICTS OF INTEREST

This solicitation is subject to the provisions of Va. Code Ann. Section 2.2-3100 et seq., the State and Local Government Conflict of Interests Act.

The Bidder [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If such a conflict exists, the bidder is prepared to sign a non-disclosure agreement.

SECTION IV – COLLUSION

I certify that this quotation is made without prior understanding, agreement, or connection with any corporation, company, or person submitting for the same services, materials, supplies, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this RFQ and certify that I am authorized to sign for my company.

Signature _____ Date _____

Name (Printed) _____ Title _____

BIDDER MUST RETURN THIS FORM WITH PROPOSAL

ADVERTISEMENT

Town of Middleburg, Virginia
REQUEST FOR QUOTATIONS

**Installation of Black Vinyl Coated Chain Link Fence – Well
#6/Stonewall Avenue Water Treatment Plant**

The Town of Middleburg has secured a grant from the Virginia Department of Health, Office of Drinking Water, for the construction of a fence around Well #6 located at the Stonewall Avenue Water Treatment Plant in order to help protect the Town's source water. Accordingly, the Town is requesting quotations from contractors interested in installing approximately four hundred seventy-six (476) linear feet of six foot tall black vinyl coated chain link fence, with a six by ten foot double swing gate and a six by four foot single swing gate.

Download the Request For Quotations (RFQ) at the website <http://www.middleburgva.gov> or contact Marvin Simms, Superintendent of Facilities and Maintenance, Town of Middleburg, 571-233-0020, maintenance@middleburgva.gov. Proposals will be accepted until September 15, 2016 at 11:00 AM at the Town Office located at 10 W. Marshall Street, Middleburg, Virginia 20117.

An optional site inspection will be held on August 15, 2016 at 11:00 AM in the Stonewall Avenue Water Treatment Plant, located at 800 Stonewall Avenue.

APPENDIX-E

Federal Requirements

The following provisions shall be applicable to Town projects that receive Federal funding and are subject to specific federal procurement and reporting requirements. Contractors that are able to meet these requirements should complete the applicable paperwork, and clearly state that they can meet the requirements.

SF030AF-0702

Reissued July 9th, 2002

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

Females- 6.9%
Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of

meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 workings days the award of any construction subcontract in excess of \$10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As, used in this provision:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area.

Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project.

The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such

opportunities through appropriate training or other means.

- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246. as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

Economic Area
(Percent)

Goal

Washington, DC:
020 Washington, DC.
SMSA Counties:
8840 Washington, DC - MD - VA28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince
Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William; VA
Alexandria; VA Fairfax City; VA Falls Church.

SF010AF-0702

4

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

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ATTACHMENTS

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

I. GENERAL

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

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion

in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

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

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

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

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

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

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **NONDISCRIMINATION**

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

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

forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

3. **Dissemination of Policy:** All members of the contractor's staff who are 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 will be taken as a minimum:

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

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

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

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

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

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

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants.

To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

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

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

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

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

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

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination

may extend beyond the actions reviewed, such corrective action shall include all affected persons.

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

6. Training and Promotion:

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

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

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

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

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

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

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be

contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

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

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

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

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

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

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

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

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

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

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

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

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

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

If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

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

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

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

2. Classification:

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

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

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

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

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

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

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210.

The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be

paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

If the trainee program doesn't mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. **Helpers:**

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

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

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

6. Withholding:

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

have ceased.

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

The contractor shall comply with the Copeland Regulations of the

Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

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

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b) (2) (B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid.

In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b) (2) (B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the

Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction.

If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the

Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

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

Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

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

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

* * * * *

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

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

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

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

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

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

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

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its

certification was erroneous by reason of changed circumstances.

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this

certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**CIVIL RIGHTS DIVISION REQUIREMENTS FOR
LOCALLY ADMINISTERED PROJECTS
(FEDERALLY FUNDED)**

The BIDDER, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Virginia Fair Employment Contracting Act, Sections 2.2-4200 through 2.2-4201 of the Code of Virginia, as amended. During the performance of this Agreement, the BIDDER agrees as follows:

- a. The BIDDER will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the BIDDER. The BIDDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the BIDDER has agreements of over ten thousand dollars.
- b. The BIDDER will, in all solicitations or advertisements for employees placed by or on behalf of the BIDDER, state that the BIDDER is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The BIDDER will include the provisions of the foregoing paragraphs "a" and "b" in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor. Nothing contained in this section shall be deemed to empower any agency to require any BIDDER to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such BIDDER in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

NON-DISCRIMINATION PROVISION: The BIDDER agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Sections 49 CFR 21 and 26 CFR 710.405(b) are incorporated by reference in all contracts and

subcontracts funded in whole or in part with federal funds. The BIDDER shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

In the event of the BIDDER'S noncompliance with the nondiscrimination provisions of this Agreement, the VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) shall impose such contract sanctions as it or the Federal Highway Administration (FHWA) may determine to be appropriate, including but not limited to:

- a. withholding of payments to the BIDDER under this Contract until the BIDDER complies; and/or**
- b. cancellation, termination or suspension of this Contract, in whole or in part.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Contract, the BIDDER, for itself, its assignees and successors in interest, agrees as follows:

- a. **Compliance with Regulations:** The BIDDER will comply with the Regulations of the United States Department of Transportation relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. **Nondiscrimination:** The BIDDER with regard to the services provided by it after award and prior to completion of this Agreement will not discriminate on the grounds of race, color, sex, national origin, age or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The BIDDER will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontractors:** In all solicitations, either by competitive bidding or negotiation made by the BIDDER for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the BIDDER of the BIDDER'S obligations under this Agreement.
- d. **Information and Reports:** The BIDDER will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LOCALITY, the VDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the BIDDER is in the exclusive possession of another who fails or refuses to furnish this information, the BIDDER shall so certify to the LOCALITY, the VDOT, or the FHWA as appropriate, and shall set forth what efforts it has

made to obtain the information.

- e. Incorporation of Provisions: The BIDDER will include the provisions of paragraphs "a" through "e" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The BIDDER will take such action with respect to any subcontractor or procurement as the LOCALITY, the VDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the BIDDER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the BIDDER may request the LOCALITY or the VDOT to enter into such litigation to protect the interests of the VDOT and, in addition, the BIDDER may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Contract, the BIDDER certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The BIDDER further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

TDD/TTY EQUIPMENT FOR THE DEAF: When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the BIDDER agrees to ensure that all citizens have equally effective communication.

The BIDDER agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The BIDDER will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

DISADVANTAGED BUSINESS ENTERPRISES: The BIDDER, its agents, employee, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR, Part 26, as amended, which is hereby made part of this Agreement by reference. The BIDDER shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, as amended, to ensure that DBE's have equal opportunity to compete for and perform on contracts and subcontracts under this Contract.

A Disadvantaged Business Enterprise ("DBE") is a business certified in accordance with the guidelines of 49 CFR, Part 26, as amended, by the United States Department of Transportation designated and approved agency. A listing of certified firms can be located at www.dnbe.state.va.us or by contacting the Department of Minority Business Enterprises, 200-202 9th Street, 11th floor, Richmond, VA 232219 or by calling (804) 786-6585.

RECORD KEEPING

The BIDDER shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the LOCALITY, the VDOT or the FHWA to be pertinent to ascertain compliance with such regulations, orders and requirements.

The VDOT'S Civil Rights Division or Office of Inspector General Auditing Division and FHWA will perform audits as needed to ensure compliance with all Guidelines.

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified a DBE firm is maintained on their web site (<http://www.dmb.e.state.va.us/>) under the **VDOT DBE Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBEs as potential subcontractors. The consultant is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE whereby the DBE promises not to provide services to other consultants is prohibited.

The DBE contract goal for this procurement is 0 %; however, the Department feels that these services support 10% DBE participation.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts.

If a DBE is not certified, the DBE must become certified with the Virginia Department of Minority Business Enterprise prior to the consultant's response being submitted. If a DBE is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE prime consultants are encouraged to make the same outreach efforts as other consultants. DBE credit will be awarded only for work actually being performed by themselves and their subcontractors only if the subcontractors are DBEs. A DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE certification entitles consultants to participate in VDOT's DBE program. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

FIRM DATA SHEET

Funding: ____ (S=State F=Federal)

Project No.: _____

Division: _____

EOI Due Date: _____

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE/SWAM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD = DBE Firm Certified by DMBE

N = DBE/SWAM Firm Not Certified by DMBE

YS = SWAM Firm Certified by DMBE.

NA = Firm Not Claiming DBE/SWAM Status

Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise

.....
41 USC SECTION 4712

WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES OF CONTRACTORS, SUBCONTRACTORS AND GRANTEEES

(a) Prohibition of Reprisals.-

(1) In general.- An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

(2) Persons and bodies covered.- The persons and bodies described in this paragraph are the persons and bodies as follows:

- (A) A Member of Congress or a representative of a committee of Congress.
- (B) An Inspector General.
- (C) The Government Accountability Office.
- (D) A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- (E) An authorized official of the Department of Justice or other law enforcement agency.
- (F) A court or grand jury.
- (G) A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

(3) Rules of construction.— For the purposes of paragraph (1)–

- (A) an employee who initiates or provides evidence of contractor, subcontractor, or grantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
- (B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Investigation of Complaints.—

(1) Submission of complaint.— A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.

(2) Inspector general action.—

(A) Determination or submission of report on findings.— Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) Extension of time.— If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) Prohibition on disclosure.— The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is–

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of section [552a](#) of title [5](#) or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) Time limitation.— A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) Remedy and Enforcement Authority.—

(1) In general.— Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the executive agency concerned shall determine whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor or grantee to take affirmative action to abate the reprisal.

(B) Order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor or grantee to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) Exhaustion of remedies.— If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under paragraph (b)(2)(B), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor or grantee to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) Admissibility of evidence.— An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.

(4) Enforcement of orders.— Whenever a person fails to comply with an order issued under paragraph (1), the head of the executive agency concerned shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the executive agency.

(5) Judicial review.— Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the executive agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an

executive agency, unless a stay is specifically entered by the court.

(6) Burdens of proof.— The legal burdens of proof specified in section [1221 \(e\)](#) of title [5](#) shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an executive agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.

(7) Rights and remedies not waivable.— The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.

(d) Notification of Employees.— The head of each executive agency shall ensure that contractors, subcontractors, and grantees of the agency inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

(e) Construction.— Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(f) Exceptions.—

(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 ([50 U.S.C. 401a \(4\)](#)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

(g) Definitions.— In this section:

(1) The term “abuse of authority” means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract or grant of such agency.

(2) The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts or grants awarded for or on behalf of, the executive agency concerned.

(h) Construction.— Nothing in this section, or the amendments made by this section, shall be construed to provide any rights to disclose classified information not otherwise provided by law.

(i) Duration of Section.— This section shall be in effect for the four-year period beginning on the date of that is 180 days after the date the enactment of this section.

.....
CONTRACT WORK HOURS & SAFETY STANDARDS ACT

PUBLIC LAW 107–217—AUG. 21, 2002 [as amended]

An Act

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, “Public Buildings, Property, and Works”.

Be it enacted by the Senate and House of Representatives of the United States of America in

Congress assembled,

SECTION 1. TITLE 40, UNITED STATES CODE.

Certain general and permanent laws of the United States, related to public buildings, property, and works, are revised, codified, and enacted as title 40, United States Code, “Public Buildings, Property, and Works”, as follows:

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

SUBTITLE II—PUBLIC BUILDINGS AND WORKS

PART A—GENERAL

CHAPTER 37 – CONTRACT WORK HOURS AND SAFETY STANDARDS

Sec. 3141. Definitions

(a) Definition.— In this chapter, the term “Federal Government” has the same meaning that the term “United States” had in the Contract Work Hours and Safety Standards Act (Public Law 87–581, 76 Stat. 357).

(b) Application.—

(1) Contracts.— This chapter applies to—

(A) any contract that may require or involve the employment of laborers or mechanics on a public work of the Federal Government, a territory of the United States, or the District of Columbia; and

(B) any other contract that may require or involve the employment of laborers or mechanics if the contract is one—

(i) to which the Government, an agency or instrumentality of the Government, a territory, or the District of Columbia is a party;

(ii) which is made for or on behalf of the Government, an agency or instrumentality, a territory, or the District of Columbia; or

(iii) which is a contract for work financed at least in part by loans or grants from, or loans insured or guaranteed by, the Government or an agency or instrumentality under any federal law providing wage standards for the work.

(2) Laborers and mechanics.— This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—

(A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the United States, a territory, or the District of Columbia; but

(B) not including an employee employed as a seaman.

(3) Exceptions.—

(A) This chapter.— This chapter does not apply to—

(i) a contract for—

(I) transportation by land, air, or water;

(II) the transmission of intelligence; or

(III) the purchase of supplies or materials or articles ordinarily available in the open market;

(ii) any work required to be done in accordance with the provisions of the Walsh-Healey Act (41 U.S.C. 35 et seq.); and

(iii) a contract in an amount that is not greater than \$100,000.

(B) Section 3702.— Section 3702 of this title does not apply to work where the assistance described in paragraph (1)(B)(iii) from the Government or an agency or instrumentality is only a loan guarantee or insurance.

3702. Work hours.

(a) Standard Workweek.— The wages of every laborer and mechanic employed by any contractor or subcontractor in the performance of work on a contract described in section 3701 of this title shall be computed on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permitted subject to this section. For each workweek in which the laborer or mechanic is so employed, wages include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of 40 hours in the workweek.

(b) Contract Requirements.— A contract described in section 3701 of this title, and any obligation of the Federal Government, a territory of the United States, or the District of Columbia in connection with that contract, must provide that—

(1) a contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided in this chapter; and

(2) when a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable—

(A) to the affected employee for the employee's unpaid wages; and

(B) to the Government, the District of Columbia, or a territory for liquidated damages as provided in the contract.

(c) Liquidated Damages.— Liquidated damages under subsection (b)(2)(B) shall be computed for each individual employed as a laborer or mechanic in violation of this chapter and shall be equal to \$10 for each calendar day on which the individual was required or permitted to work in excess of the standard workweek without payment of the overtime wages required by this chapter.

(d) Amounts Withheld to Satisfy Liabilities.— Subject to section 3703 of this title, the governmental agency for which the contract work is done or which is providing financial assistance for the work may withhold, or have withheld, from money payable because of work performed by a contractor or subcontractor, amounts administratively determined to be necessary to satisfy the liabilities of the contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

3703. Report of violations and withholding of amounts for unpaid wages and liquidated damages.

(a) Reports of Inspectors.— An officer or individual designated as an inspector of the work to be performed under a contract described in section 3701 of this title, or to aid in the enforcement or fulfillment of the contract, on observation or after investigation immediately shall report to the proper officer of the Federal Government, a territory of the United States, or the District of Columbia all violations of this chapter occurring in the performance of the work, together with the name of each laborer or mechanic who was required or permitted to work in violation of this chapter and the day the violation occurred.

(b) Withholding Amounts.—

(1) Determining amount.— The amount of unpaid wages and liquidated damages owing under this chapter shall be determined administratively.

(2) Amount directed to be withheld.— The officer or individual whose duty it is to approve the payment of money by the Government, territory, or District of Columbia in connection with the performance of the contract work shall direct the amount of—

(A) liquidated damages to be withheld for the use and benefit of the Government, territory, or District; and

(B) unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under this chapter.

(3) Payment.— The Comptroller General shall pay the amount administratively determined to be due directly to the laborers and mechanics from amounts withheld on account of underpayments of wages if the amount withheld is adequate. If the amount withheld is not adequate, the Comptroller General shall pay an equitable proportion of the amount due.

(c) Right of Action and Intervention Against Contractors and Sureties.— If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this chapter, the laborers and mechanics, in the case of a department or agency of the Government, have the same right of action and intervention against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(d) Review Process.—

(1) Time limit for appeal.— Within 60 days after an amount is withheld as liquidated damages, any contractor or subcontractor aggrieved by the withholding may appeal to the head of the agency of the Government or territory for which the contract work is done or which is providing financial assistance for the work, or to the Mayor of the District of Columbia in the case of liquidated damages withheld for the use and benefit of the District.

(2) Review by agency head or mayor.— The agency head or Mayor may review the administrative determination of liquidated damages. The agency head or Mayor may issue a final order affirming the determination or may recommend to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for the liquidated damages, if it is found that the amount is incorrect or that the contractor or subcontractor violated this chapter inadvertently, notwithstanding the exercise of due care by the contractor or subcontractor and the agents of the contractor or subcontractor.

(3) Review by secretary.— The Secretary shall review all pertinent facts in the matter and may conduct any investigation the Secretary considers necessary in order to affirm or reject the recommendation. The decision of the Secretary is final.

(4) Judicial action.— A contractor or subcontractor aggrieved by a final order for the withholding of liquidated damages may file a claim in the United States Court of Federal Claims within 60 days after the final order. A final order of the agency head, Mayor, or Secretary is conclusive with respect to findings of fact if supported by substantial evidence.

(e) Applicability of Other Laws.—

(1) Reorganization plan.— Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) applies to this chapter.

(2) Section 3145.— Section 3145 of this title applies to contractors and subcontractors referred to in section 3145 who are engaged in the performance of contracts subject to this chapter.

3704. Health and safety standards in building trades and construction industry.

(a) Condition of Contracts.—

(1) In general.— Each contract in an amount greater than \$100,000 that is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and is for construction, alteration, and repair, including painting and decorating, must provide that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as established under construction safety and health standards the Secretary of Labor prescribes by regulation based on proceedings pursuant to section 553 of title 5, provided that the proceedings include a hearing similar in nature to that authorized by section 553 of title 5.

(2) Consultation.— In formulating standards under this section, the Secretary shall consult with the Advisory Committee created by subsection (d).

(b) Compliance.—

(1) Actions to gain compliance.— The Secretary may make inspections, hold hearings, issue orders, and make decisions based on findings of fact as the Secretary considers necessary to gain compliance with this section and any health and safety standard the Secretary prescribes under subsection (a). For those purposes the Secretary and the United States district courts have the authority and jurisdiction provided by sections 4 and 5 of the Walsh-Healey Act (41 U.S.C. 38, 39).

(2) Remedy when noncompliance found.— When the Secretary, after an opportunity for an adjudicatory hearing by the Secretary, establishes noncompliance under this section of any condition of a contract described in—

(A) section 3701 (b)(1)(B)(i) or (ii) of this title, the governmental agency for which the contract work is done may cancel the contract and make other contracts for the completion of the contract work, charging any additional cost to the original contractor; or

(B) section 3701 (b)(1)(B)(iii) of this title, the governmental agency which is providing the financial guarantee, assistance, or insurance for the contract work may withhold the guarantee, assistance, or insurance attributable to the performance of the contract.

(3) Nonapplicability.— Section 3703 of this title does not apply to the enforcement of this section.

(c) Repeated Violations.—

(1) Transmittal of names of repeat violators to comptroller general.— When the Secretary, after an opportunity for an agency hearing, decides on the record that, by repeated willful or grossly negligent violations of this chapter, a contractor or subcontractor has demonstrated that subsection (b) is not effective to protect the safety and health of the employees of the contractor or subcontractor, the Secretary shall make a finding to that effect and, not sooner than 30 days after giving notice of the finding to all interested persons, shall transmit the name of the contractor or subcontractor to the Comptroller General.

(2) Ban on awarding contracts.— The Comptroller General shall distribute each name transmitted under paragraph (1) to all agencies of the Federal Government. Unless the Secretary otherwise recommends, the contractor, subcontractor, or any person in which the contractor or subcontractor has a substantial interest may not be awarded a contract subject to this section until three years have elapsed from the date the name is transmitted to the Comptroller General. The Secretary shall terminate the ban if, before the end of the three year period, the Secretary, after affording interested persons due notice and an opportunity for a hearing, is satisfied that a contractor or subcontractor

whose name was transmitted to the Comptroller General will comply responsibly with the requirements of this section. The Comptroller General shall inform all Government agencies after being informed of the Secretary's action.

(3) Judicial review.— A person aggrieved by the Secretary's action under this subsection or subsection (b) may file with the appropriate United States court of appeals a petition for review of the Secretary's action within 60 days after receiving notice of the Secretary's action. The clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary then shall file with the court the record on which the action is based. The findings of fact by the Secretary, if supported by substantial evidence, are final. The court may enter a decree enforcing, modifying, modifying and enforcing, or setting aside any part of, the order of the Secretary or the appropriate Government agency. The judgment of the court may be reviewed by the Supreme Court as provided in section 1254 of title 28.

(d) Advisory Committee on Construction Safety and Health.—

(1) Establishment.— There is an Advisory Committee on Construction Safety and Health in the Department of Labor.

(2) Composition.— The Committee is composed of nine members appointed by the Secretary, without regard to chapter 33 of title 5, as follows:

(A) Three members shall be individuals representative of contractors to whom this section applies.

(B) Three members shall be individuals representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies.

(C) Three members shall be public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(3) Chairman.— The Secretary shall appoint one member as Chairman.

(4) Duties.— The Committee shall advise the Secretary—

(A) in formulating construction safety and health standards and other regulations; and

(B) on policy matters arising in carrying out this section.

(5) Experts and Consultants.— The Secretary may appoint special advisory and technical experts or consultants as may be necessary to carry out the functions of the Committee.

(6) Compensation and expenses.— Committee members are entitled to receive compensation at rates the Secretary fixes, but not more than \$100 a day, including traveltime, when performing Committee business, and expenses under section 5703 of title 5.

3705. Safety programs.

The Secretary of Labor shall—

(1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employment covered by this chapter; and

(2) collect reports and data and consult with and advise employers as to the best means of preventing injuries.

3706. Limitations, variations, tolerances, and exemptions.

The Secretary of Labor may provide reasonable limitations to, and may prescribe regulations allowing reasonable variations to, tolerances from, and exemptions from, this chapter that the Secretary may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Federal Government business.

3707. Contractor certification or contract clause in acquisition of commercial items not required.

In a contract to acquire a commercial item (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a certification by a contractor or a contract clause may not be required to implement a prohibition or requirement in this chapter.

3708. Criminal penalties.

A contractor or subcontractor having a duty to employ, direct, or control a laborer or mechanic employed in the performance of work contemplated by a contract to which this chapter applies that intentionally violates this chapter shall be fined under title 18, imprisoned for not more than six months, or both.

RESOURCE CONSERVANCY & RECOVERY ACT

Section 6002 of RCRA (42 USC 6962)

[Laws in effect as of January 24, 1994]
[Document affected by Public Law 103-355 Section 1554(1)]
[Document affected by Public Law 103-355 Section 4104(e)]
[Document affected by Public Law 103-355 Section 1554(2)]
[CITE: 42USC6962]

TITLE 42--THE PUBLIC HEALTH AND WELFARE
CHAPTER 82--SOLID WASTE DISPOSAL
SUBCHAPTER VI--FEDERAL RESPONSIBILITIES

Sec. 6962. Federal procurement

(a) Application of section

Except as provided in subsection (b) of this section, a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items-

(A) are not reasonably available within a reasonable period of time;
(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:
(A) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

(B) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications--

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used, and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

- (C) the economic and technological feasibility of producing and using such items; and
- (D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) ``Recovered materials'' defined

As used in this section, in the case of paper products, the term ``recovered materials'' includes-

(1) postconsumer materials such as--

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as-

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain--

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum

recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and
(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section.

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(j) Preference for recycled toner cartridges

(a) Notwithstanding any other provision of law, a Federal agency in conducting a procurement for toner cartridges for use in laser printers, photocopiers or microphotographic printers shall purchase recycled cartridges, unless the contracting or purchasing officer determines in writing that--

(1) adequate market research establishes that recycled cartridges for the type of equipment used by the agency do not exist,

(2) the price or life cycle cost offered for the recycled cartridge is higher than the original equipment manufacturer's new cartridge, or

(3) recycled cartridges are not available in quantities needed within the timeframes required.

(b) Nothing in this subsection shall prohibit the purchase of one newly manufactured cartridge (or a number equal to those normally supplied at the time of initial purchase) as part of an initial printer or copier acquisition.

(c) For purposes of this subsection, "recycled cartridge" means a laser printer, photocopier, or microphotographic toner cartridge which has been remanufactured in the United States by a small-business concern which has been certified by an independent laboratory to meet generally accepted industry standards. In the absence of an independent laboratory certification, a contracting officer may in his discretion rely on the agency's past experience with the offered recycled cartridge as evidence that the offered product meets generally accepted industry standards.

(d) For purposes of this subsection, "small-business concern" has the meaning given such term in the Small Business Act (15 U.S.C. 632(a)).

(e) For purposes of this subsection, "independent laboratory" means an independently owned engineering and product testing firm, whose primary business activity is not limited to the testing and certification of recycled cartridges.

(Pub. L. 89-272, title II, Sec. 6002, as added Pub. L. 94-580, Sec. 2, Oct. 21, 1976, 90 Stat. 2822; amended Pub. L. 95-609, Sec. 7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, Sec. 22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97-375, title I, Sec. 102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-616, title V, Sec. 501(a)-(e), Nov. 8, 1984, 98 Stat. 3274-

3276; Pub. L. 100-418, title V, Sec. 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-393, title VI, Sec. 630, Oct. 6, 1992, 106 Stat. 1773.)

References in Text

The Small Business Act, referred to in subsec. (j)(d), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Codification

Section 630 of Pub. L. 102-393, which directed that this title be amended by adding a new section 6962j, was executed by classifying provisions of purported new section to subsec. (j) of this section, to reflect the probable intent of Congress, in light of Senate Report 102-353, p. 115, which described the amendment by section 630 of the proposed legislation as adding the provisions as subsec. (j) of section 6962 of this title. In view of this execution, references in subsec. (j) to ``this section'' have been translated ``this subsection''.

Amendments

1992--Subsec. (j). Pub. L. 102-393 added subsec. (j). See Codification note above.

1988--Subsecs. (c)(1)(C), (e). Pub. L. 100-418 substituted ``National Institute of Standards and Technology'' for ``Bureau of Standards''.

1984--Subsec. (c)(1). Pub. L. 98-616, Sec. 501(c), inserted ``(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable)''.

Subsec. (d)(1). Pub. L. 98-616, Sec. 501(e), substituted ``eighteen months after November 8, 1984'' for ``five years after October 21, 1976''.

Subsec. (e). Pub. L. 98-616, Sec. 501(b)(2), substituted ``for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985'' for ``for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982.'' in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98-616, Sec. 501(b)(1), inserted ``, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section''.

Subsec. (g). Pub. L. 98-616, Sec. 501(d), substituted ``the requirements of'' for ``the policy expressed in'' and inserted ``, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section''.

Subsecs. (h), (i). Pub. L. 98-616, Sec. 501(a), added subsecs. (h) and (i).

1982--Subsec. (g). Pub. L. 97-375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980--Subsec. (c)(1). Pub. L. 96-482, Sec. 22(1), (2), in provision preceding subpar. (A), substituted ``After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such'' for ``After two years after October 21, 1976, each procuring agency shall procure'', and in subpar. (C), ``subparagraph (B)'' for ``clause (B)''.

Subsec. (c)(2). Pub. L. 96-482, Sec. 22(3), substituted ``energy or fuels derived from solid waste'' for ``recovered material and recovered-material-derived fuel''.

Subsec. (c)(3). Pub. L. 96-482, Sec. 22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96-482, Sec. 22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any requirement that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96-482, Sec. 22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978--Subsec. (c). Pub. L. 95-609, Sec. 7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted ``After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section,'' before ``contracting''.

Subsec. (e). Pub. L. 95-609, Sec. 7(n)(3), inserted provision dealing with certification by vendors of the materials used.

Transfer of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

Similar Provisions

Provisions similar to those comprising subsec. (j) of this section were contained in the following appropriation act:

Pub. L. 103-123, title IV, Sec. 401, Oct. 28, 1993, 107 Stat. 1238.

Federal Acquisition, Recycling, and Waste Prevention

Executive agency heads to develop and implement affirmative procurement programs in accordance with this section and Ex. Ord. No. 12873, and specifications, standards, and product descriptions inconsistent with this section or Ex. Ord. No. 12873 to be revised, see Ex. Ord. No. 12873, Secs. 402, 501(a), Oct. 20, 1993, 58 F.R. 54914, 54915, set out as a note under section 6961 of this title.

Section Referred to in Other Sections

This section is referred to in sections 6905, 6941 of this title.