



TOWN OF LEESBURG, VIRGINIA
REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT AND PROJECT INSPECTION SERVICES
FOR FEDERAL AND STATE FUNDED PROJECTS:
S KING STREET WIDENING, PHASE I
VIRTS CORNER INTERSECTION IMPROVEMENTS
AND
BATTLEFIELD PARKWAY ROUTE 15 TO THE GREENWAY

RFP NO. 300810-FY12-02

The Town of Leesburg requests proposals from interested construction management firms to provide construction management and project inspection services for the following projects: S King Street Widening Phase I (UPC 17687), Virts Corner Intersection Improvements (UPC 86989) and Battlefield Parkway Route 15 to the Greenway (UPC 100518).

Proposals shall be submitted no later than 4:00 p.m., Wednesday, December 21, 2011, to Ms. Renée LaFollette, PE, Acting Director, Office of Capital Projects, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176. All proposals must indicate RFP title, number and proposal date on the external shipping material.

Interested offerors should download a copy of the RFP from the bid board on the Town's website: <http://www.leesburgva.gov/index.aspx?page=266>, or contact Cindy Steyer at 703-737-2302 for additional information. **All addenda issued for this project will only be posted on the town's bid board.**

Renée LaFollette, PE, Acting Director
Office of Capital Projects



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REQUEST FOR PROPOSALS
RFP NO. 300810-FY12-02**

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S KING STREET WIDENING, PHASE I,
VIRTS CORNER INTERSECTION IMPROVEMENTS,
BATTLEFIELD PARKWAY ROUTE 15 TO THE GREENWAY**

Issue Date: November 21, 2011

Due Date: December 21, 2011 at 4:00 p.m.

RFP No. 300810-FY12-02

Remittance Address: By Mail
Town of Leesburg
25 West Market Street
Leesburg, Virginia 20176

Hand Delivered
Town of Leesburg
25 W Market Street, 3rd Floor
Leesburg, Virginia 20176

Technical Contact: Renée LaFollette, P.E., Acting Director
Office of Capital Projects
Phone: 703-737-6071
Fax: 703-737-7065
Email: rlafollette@leesburgva.gov

Purchasing Contact: Kathy S. Elgin, CPPO
Chief Purchasing Officer
Phone: 703-737-7176
Email: kelgin@leesburgva.gov

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**BID/PROPOSAL SUBMISSION FORM
CONSTRUCTION MANAGEMENT AND PROJECT INSPECTION SERVICES
RFP NO. 300810-FY12-02**

SECTION I – COMPANY IDENTIFICATION AND OWNERSHIP DISCLOSURE

Company _____
Address _____
Contact Person _____ Title _____
Telephone No. _____ Fax No. _____ Email _____
Organized under the laws of the State of _____
Principal place of business at _____
Federal Id Number _____ Registered Agent _____
State Corp. Commission Registration No. _____ (attach Certificate of Good Standing)

List the names and addresses of all persons having ownership of 3% or more in the company:

Name	Address
_____	_____
_____	_____
_____	_____

The Town of Leesburg requests, as a matter of policy, that any consultant or firm receiving a contract of award resulting from a formal solicitation issued by the Town 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 firm, partnership, or corporation, that no employee of the Town of Leesburg, 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 2.1-639.2 et seq., the State and Local Government Conflict of Interests Act. The Offeror [] is [] is not aware of any information bearing on the existence of any potential organizational conflict of interest.

SECTION IV – COLLUSION - I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer 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 the 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 RFP and certify that I am authorized to sign for my company.

Signature _____ Date _____
Name (Printed) _____ Title _____

BIDDER MUST RETURN THIS FORM WITH BID

VDOT FIRM DATA FORM

As one of the projects is a federally funded project through VDOT (S King Street Widening, Phase I), this DBE Vendor Data form is required with submission of the consultant proposal. 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 report on one combined sheet unless the number of firms requires the use of an additional sheet.

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE's) 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 DBE firms are 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 DBE's 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 participated 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

Offeror shall complete and return attached VDOT Firm Data Form

REQUIRED VDOT FIRM DATA FORM

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

- * YD = DBE Firm Certified DMBE
- N = DBE/SWAM Firm not certified b DMBE
- NA = Firm not claiming DBE/SWAM Status
- YS = SWAM Firm certified by DMBE - Indicate whether small business, woman-owned

DMBE: Virginia Department of Minority Business Enterprise

OFFEROR MUST RETURN THIS FORM WITH PROPOSAL SUBMISSION

**CONSTRUCTION MANAGEMENT AND
PROJECT INSPECTION SERVICES FOR
LEESBURG CAPITAL IMPROVEMENT PROJECTS**

RFP NO. 300810-FY12-02

I. GENERAL INFORMATION

This Request for Proposal (RFP) plus the resulting proposal content and contract shall be consistent with and governed by the Federal Acquisitions Regulations (FAR), Town of Leesburg Purchasing Policies, and the Virginia Public Procurement Act (VPPA). In the event of an inconsistency between the solicitation and selection requirements set forth in this RFP versus those set forth in the Purchasing Policies, the inconsistency shall be resolved by giving precedence to the FAR, then the solicitation and selection requirements of the Purchasing Policies.

Offerors are advised that the projects identified are either federally or state funded and subject to all applicable federal/state and local regulations. Consultants are encouraged to take all necessary and reasonable steps to ensure Disadvantage Business Enterprise (DBEs) have the maximum opportunity to compete for and perform services on the contract. 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.

Offerors shall have established audited indirect cost rates. A pre-award audit shall be conducted of the selected consultants, joint ventures and subconsultants to ensure its internal control systems are in place that meet Federal requirements for accounting. These systems must comply with requirements of 48CFR3 1, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23 CFR1 72, "Administration of Negotiated Contracts." The prime consultants, joint ventures and subconsultants must submit their FAR audit data upon request by the Town.

This Section of the RFP sets forth the general information to all potential Offerors to facilitate preparation of suitable proposals for the services identified in the RFP. The proposal submission requirements are addressed in Section V of this RFP while the Town's process for selecting the best proposal and developing a contract are summarized in Sections VI and VII. The requirements and process set forth therein shall be binding on all Offerors.

II. PURPOSE OF THE REQUEST

The Town of Leesburg (the Town) is seeking proposals from qualified engineering and inspection firms to provide Construction Management and Project Inspection Services for one federally funded construction project and two state funded construction projects.

The projects administered by the consultant shall provide pre-construction, construction, and post construction phase services related to the construction of the roadways listed in this solicitation for the Town, on an hourly rate with an upper not to exceed limit for each project. Services shall be performed under a written Task Order in accordance with this RFP and resulting contract. Additionally, the consultant shall provide administrative, management and ancillary support services as required. Services may include, but are not limited to: coordinating work between all activities, and acting as an agent for the Town in order to complete the project in accordance with the Town's objectives for cost, time, and quality.

The Town does not convey to the Consultant, guarantee nor make any promise that any of the three projects shall be authorized under a Task Order to the Consultant.

The requirements identified herein are for informational purposes only and the Town reserves the right to add and/or delete services based on specific tasks and/or projects. No design firm shall submit an offer for any project where it is contracted by the Town for design services on the projects listed.

All personnel shall be knowledgeable of the Town of Leesburg Design and Construction Standards Manual (DCSM), VDOT's Road and Bridge Specifications, VDOT Standards, the VDOT Locally Administered Project Manual (LAP Manual), Minimum Quality Assurance and Quality Control, and the Virginia Work Area Protection Manual.

A. Project Descriptions

- 1. Project No. 1 – S King Street Widening, Phase I:** This is a Construction Management and Project Inspection task for the improvements that are to include widening of the existing S King Street (Route 15) from Evergreen Mill Road (Route 621) to Greenway Drive. The project will widen the existing 2 lane road to a 4 lane divided roadway, with a raised median. Included with this work will be storm drainage, base aggregate, asphalt, milling, concrete curb/gutter, median construction, demolition of existing pavement, traffic signalization, erosion and sedimentation controls, seeding, signage, and landscaping. This project is a federally funded project.

The construction contract is anticipated to be awarded in late January or early February of 2012.

- 2. Project No. 2 – Virts Corner Intersection Improvements:** This is a Construction Management and Project Inspection task for the improvements that are to include intersection realignment of Masons Lane, Gleedsville Road, and S King Street (Route 15). The project will realign Masons Lane and Gleedsville Road to a single intersection point with S King Street (Route 15). Included with this work will be storm drainage, base aggregate, asphalt, milling, concrete curb/gutter, demolition of existing pavement, traffic signalization, erosion and sedimentation controls, seeding, signage, and landscaping. This project is a state funded project.

The construction contract is anticipated to be awarded in late spring 2012 for a summer 2012 start.

3. **Project No. 3 – Battlefield Parkway, Greenway (Route 267) to S King Street (Route 15):** This is a Construction Management and Project Inspection task for the improvement that includes construction of a 4 lane divided roadway with raised median. Included with this work will be storm drainage, base aggregate, paving, milling, concrete curb/gutter, demolitions of existing pavement, traffic signalization, erosion and sedimentation controls, seeding, signage, and landscaping. This project is a state funded project.

The construction contract is anticipated to be awarded in late spring of 2013 for a summer 2013 start.

III. CONTRACT PERIOD AND AWARD:

The initial contract period shall be three (3) years from the date of award by the Town of Leesburg Council. The Town shall have the option to extend the Contract Period for up to four (4) additional one-year terms, contingent upon the availability of funds for the purpose. The option to renew shall be exercised at the sole direction of the Town. These extensions will only be utilized to ensure coverage through the expiration of the warranty period on the final project listed.

The period of services under this contract for each individual project Task Order shall be from the date of the Purchase Order, through the construction phases and final acceptance of the roadway(s) by the Town and VDOT, and shall terminate one (1) year after final completion or expiration of the warranty period of the project, whichever is later.

IV. SCOPE OF SERVICES AND DELIVERABLES

The Construction Manager will be expected to work in full cooperation with the Town, and its designees including the Acting Director of Capital Projects. The overall scope of work includes full participation as a member of the project team while providing coordination for value engineering sessions, when feasible, project and construction management services, and some small specialty type projects to include design consultation and inspections. The Town reserves the right to expand or delete services as necessary. This change in services after contract award will be facilitated through a change order process.

The successful firm will be required to provide a cost proposal for the tasks involved for the project, along with a technical proposal and project schedule.

This contract requires comprehensive and professional construction management services through construction and acceptance for public use. The following comprises the Town's anticipated scope of work for the construction management services:

A. **Design Review and Recommendations**

Anticipated work tasks for the Construction Manager (CM) may be:

1. Familiarize themselves thoroughly with the current plans and specifications and follow the remaining development of design through construction drawings.
2. Perform a review and provide a written report covering suggestions, recommendations and cost saving alternatives dependent upon project schedule.
3. Identify long lead-time procurement items and conditions characteristic to construction and paving projects, which may impede construction, and make appropriate recommendations dependent upon project schedule.
4. Perform a constructability review and make recommendations on contract packaging, construction sequencing, construction cost, access to work, safety, construction methods, materials and minimization of construction interference as well as design detail improvements dependent upon projects schedule.
5. Perform a quantity take-off that could result in the actual bid tab used for the contractors bidding purpose.
6. Participate in neighborhood meetings.

B. **Bidding and Evaluation**

Anticipated work tasks during the bidding and evaluation phase of the project may be:

1. Review bid documents and make recommendations as appropriate dependent upon project status.
2. Prepare a recommended bidder's list dependent upon project status.
3. Attend and participate in pre-bid meetings.
4. Review all bids received and make recommendations on award of construction contract.

C. **Construction**

Anticipated work tasks during the construction phase of the project may be:

1. Organize, facilitate and document pre-construction meetings.
2. Ensure that the project is completed in accordance with the plans, specifications and requirements of the Town and VDOT. The Construction

Manager will be responsible to the Capital Projects Director or designee for all aspects of the project.

3. The Construction Manager will provide and be fully responsible for full-time on-site representation for construction inspection services. Full-time is defined as a minimum of eight (8) hours per workday, on site.
4. Implement a quality control/quality assurance program.
5. Coordinate all work activities and ensure all work is in accordance with the design documents provided by the engineer and approved by the Town.
6. Be responsible for resolution of conflicts with schedule, budget, construction, and site considerations. Resolve conflicts between the design and actual on-site conditions.
7. Coordinate activities with engineers, contractors and project managers of other projects on the site.
8. Review and evaluate contractors schedule submissions.
9. Review and evaluate submittals and shop drawings and make recommendations for approval or other appropriate action.
10. Review, evaluate and make recommendations on change orders.
11. Prepare project closeout documents.
12. Be responsible for resolution of citizen complaints dealing specifically with the project construction activities.
13. Provide daily inspection reports covering all aspects of the project, to include weather data, men and equipment, work underway, pay quantities completed each day.

D. Project Management Information

Anticipated project management work tasks may be:

1. Stress importance of safety. All safety procedures should be in accordance with OSHA and all other mandated regulations.
2. Design, implement and utilize a Project Management Information System (PMIS) to facilitate the rapid and accurate exchange and monitoring of information between all parties. The PMIS shall include as a minimum the following:
 - Narrative reporting on a monthly basis
 - Schedule control on a monthly basis
 - Cost control and estimating on a monthly basis
 - Project accounting
 - Action reports
 - Complaint log
 - Daily quality control/inspection reports
 - Non-conformance reports
 - Change order log
 - On-site document control system to ensure that current drawings are available to the contractors performing the work

- Submittal log with required submission and return dates to avoid schedule delays
3. Provide accurate reports, documents and data monthly on assessment of project status and of the work remaining to be accomplished. The information provided shall provide a sound basis for identifying variances and problems and shall include recommendations for making management decisions.
 4. Review contractor payment requests and recommend payment.

V. PROPOSAL FORMAT

Proposals are to be submitted in a format, which allows uniform review and easy access to information, by the evaluation committee. A Table of Contents shall be provided and pages and exhibits numbered in an organized manner. All proposal pages shall be printed in vertical format to the extent possible. Proposals are limited to thirty (30) single-sided pages or fifteen (15) double-sided pages. Dividers, letter of interest, and table of contents do not count towards this page total.

The items to be addressed in the proposal are listed below. All proposals shall provide a delineation of capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

- Introductory letter of interest.
- General understanding of the proposal.
- Your firm's technical approach to assure that the constructed facility provides the highest level of functional satisfaction at the least cost through all phases of construction engineering
- Client references, including the name, address and telephone number of a contact person along with a brief description of the project for which similar construction management/inspection services were provided.
- Statement of Qualifications.
- Standard Forms 255.
- Standard Forms 254.
- Project staffing and management to include project teams, project staffing, consultants, and your firm's management approach to ensure quality control and completion of the project within the time frame set forth.
- RFP SUBMISSION FORM

A. **Section 1 – Project Understanding and Approach**

1. Provide your firm's understanding of the project scope and the key construction issues involved.
2. Describe your approach to construction management/inspection services for all projects. Include how you will resolve problems and how proposed solutions will be identified and implemented.
3. Describe how your firm has used value engineering on previous projects to control costs and ensure quality.

4. Describe project cost controls, scheduling methods and quality assurance procedures that may be used during the final design and construction of the facility.
5. Describe any potential special considerations.
6. Identify key submissions, quality control measures and project management and review methods your firm would use as construction manager. Explain how your firm will provide for client involvement and resource management.

B. Section 2 – Qualifications and Experience

1. Provide specific information regarding your firm's or team's experience with design review, value engineering, and construction management. Focus, to the greatest extent possible, on your firm's past or present experience with projects similar in scope to this project that included expertise on the following types of facilities:
 - Roadway Improvement Projects
 - Storm drainage projects
 - Sidewalk/Trail Projects
 - Neighborhood Improvement Projects
2. Provide at least five (5) client references, from the last ten (10) years, (including contact person and phone number) for projects that are similar to the proposed projects and best demonstrate your firm's ability to ensure the timely completion of the proposed projects in the most efficient manner. Provide a brief description for each of the client's projects. The description should include: project name, client, year completed, estimated construction cost, final construction cost, portion of work for which your firm was responsible including the responsibilities of any personnel on those projects who are proposed to work on this project. Include a summary of change order amounts, any construction claims for each project and a description of any legal actions filed for the project.
3. Describe your firm's local area office, staff and equipment (including computer hardware and software).

C. Section 3 – Firm Staffing

1. An organization chart must be provided and should, at a minimum, include your firm's name, associated firm(s) and office location of key project personnel for each major project task including task leaders, project officers and the quality management team.
2. Include a one-page (single-sided) description of qualifications and specific experience for each project team member listed on the organizational chart. These descriptions shall include an estimate of the percent availability for each member during the project (based on current projections), as well as an estimate of the percent availability required for the project until completion.

3. Include current backlog versus capacity of the firm.

D. Section 4 – Supplemental Materials

This section can include materials such as technical papers, company brochures/publications, or industry awards that directly relate to the elements of this project.

VI. PROPOSAL/SELECTION PROCESS

An Evaluation Committee consisting of the Acting Director of Capital Projects and others will review the proposals. The Chief Purchasing Officer will participate as a non-voting member of this committee. The evaluation and selection of the Construction Management firm will be based on the criteria set forth in this RFP.

The Town intends to award this contract on the basis of competitive negotiation as outlined in the Virginia Public Procurement Act – Section 2.2-4301.3.a “Competitive Negotiations; Procurement of Professional Services.” Based on the Proposal Evaluation Criteria listed below in Section VI, the committee will determine the highest-ranked offeror. Offerors may be required to make an oral presentation of their proposal. Offerors may be required to provide a non-binding estimate of man-hours and cost at this meeting. The Evaluation Committee will schedule the time and location for this presentation, if it is necessary. After the presentations, the firms will be re-ranked. Negotiations will be conducted with the offeror ranked first. If these negotiations are unsuccessful, they will be formally concluded and the second ranking firm will be contacted.

The contract for these services will be based on hourly rates for services provided with an upper, not to exceed limit for each phase of professional services.

VII. EVALUATION OF PROPOSALS/SELECTION CRITERIA

EVALUATION CRITERIA

The following criteria will be used in the evaluation of proposals and developing a short list of qualified firms. The evaluation items are listed in order of relative importance:

- A. General understanding of the project, the firms proposed approach to construction management/inspection and their demonstrated solutions to achieving a cost-effective project that will meet all project requirements.
- B. Professional qualifications and project experience specific to construction management/inspection of projects for facilities mentioned in this proposal.
- C. General capabilities, experience and resources of the firm or team in required areas, and key personnel.
- D. The firm’s history in similar construction management/inspection services.

- E. The team's experience and qualifications in managing similar projects.

VIII. TERMS AND CONDITIONS

- A. **REJECTION OF PROPOSALS** - The town reserves the right to reject any or all proposals, to waive any informality in any proposals or reject any item or combination of items.
- B. **CONTRACT EXECUTION** - In the event that the offeror to whom the proposal is awarded does not execute a contract within 30 days after the award of proposal, the Town may give notice to such offeror of intent to award the proposal to the next most qualified offeror, or to call for new proposals, and may proceed accordingly.

The contents of the proposal submitted by the successful firm and this RFP shall become part of any contract awarded as a result of these specifications. The successful firm shall be expected to sign a contract with the Town, a copy of which is enclosed. See Section X. Any exceptions to this contract must be clearly noted in your proposal.

- C. **INQUIRIES** - All inquiries concerning this RFP must be directed, **in writing only (no emails accepted)**, to Renée LaFollette, P.E., Acting Director, Office of Capital Projects, 25 West Market Street, Leesburg, VA 20176, or by Fax at 703-737-7065. Questions will be entertained until close of business 5 days prior to the bid due date. A copy of all written questions received, and subsequent responses provided, will be posted on the town bid board, faxed or emailed to known potential applicants.
- D. **UNDERSTANDING OF RFP** - Offerors shall thoroughly examine and be familiar with the RFP. The failure or omission of any offeror to receive or examine this document shall in no way relieve any offeror of obligations with respect to this proposal or the subsequent contract. The submission of a proposal shall be taken as prima facie evidence of compliance with this paragraph.
- E. **ASSIGNMENT OF CONTRACT** - The firm is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this contract or its rights, title or interest therein or its power to execute such contract or its rights, title or interest therein or its power to execute such contract to any other person, company or corporation without the consent and approval in writing by the Acting Director of Capital Projects.
- F. **EXCEPTIONS TO RFP** – Offerors taking exception to any part or section of this RFP shall clearly indicate such exceptions in their proposal. Failure to indicate any exceptions shall be interpreted as the offeror's intent to fully comply with the RFP as written. Conditional or qualified proposals are subject to rejection in whole or in part.

- G. LAWS AND REGULATIONS – It shall be understood and agreed that any contract awarded on this proposal shall comply fully with all local, state and federal laws and regulations. Any litigation arising from this contract will be conducted in the Circuit Court of Loudoun County, a court within the Commonwealth of Virginia.
- H. COLLUSION AMONG OFFERORS – More than one proposal from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that an offeror has an interest in more than one proposal for the work contemplated will cause rejection of all proposals in which the offeror is interested. Any or all proposals will be rejected if there is any reason for believing that collusion exists among the offerors. Participants in such collusion may not be considered in future proposals for the same work. Each offeror, by submitting a proposal and the attached RFP Submission Form, certifies that it is not a party to any collusive action.
- I. TOWN EMPLOYEES – No employee of the Town of Leesburg, Virginia, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.
- J. QUALIFICATION OF OFFERORS – Each offeror may be required, before the award of any contract, to show to the complete satisfaction of the Evaluation Team that it has the necessary facilities, abilities, and financial resources to furnish the service or material specified herein in a satisfactory manner, and the offeror may also be required to show past history and reference which will enable the Evaluation Team to be satisfied as to the offeror’s qualifications. Failure to qualify according to the foregoing requirements will justify proposal rejection.
- K. LIABILITY – The successful offeror will not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the control of the successful offeror that make performance impossible or illegal, unless otherwise specified in the agreement.
- L. RELATION TO TOWN – It is the intent of the parties hereto that the successful offeror shall be considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the town and that these bodies shall be at no time legally responsible for any negligence on the part of said successful offeror, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
- M. EXPENSES INCURRED IN PREPARING PROPOSAL – The Town accepts no responsibility for any expense incurred in the proposal preparation and presentation. Such expenses are to be borne exclusively by the offeror.

- N. OFFEROR RESPONSIBILITY – Before submitting a proposal, each offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. Before submitting a proposal, each offeror shall make all investigations and examinations necessary to verify any representations made by the Office of Capital Projects that the offeror will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful offeror.
- O. PROTEST OF AWARD OR DECISION TO AWARD – An offeror may protest an award or decision to award a contract under procedures as set forth in the Town of Leesburg Procurement Policy.
- P. ETHICS IN PUBLIC CONTRACTING – This specification incorporates by reference, but is not limited to, the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, the Virginia Public Procurement Act, Chapter 7 of Title 11 of the Code of Virginia, as amended, and the Town of Leesburg Procurement Policy.
- Q. INSURANCE REQUIREMENTS – Contractor shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the contractor.

Contractor shall also carry automobile insurance in an amount not less than \$2,000,000 solely contained in a Commercial Auto Policy or in combination with an Umbrella or Excess Policy.

Contractor shall also carry Workers Compensation insurance, which meets the statutory requirements of the Commonwealth of Virginia.

In addition, contractor shall also carry other insurance coverage deemed by the town to be appropriate to his agreement.

The above-mentioned coverage shall be placed with an insurance carrier licensed to do business in the Commonwealth of Virginia. The carrier must have an AM Best Rating of A or better.

A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured shall be furnished to the Town. Liability coverage shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving 30 days prior written notice of such action to the town.

- R. **BUSINESS, PROFESSIONAL, AND OCCUPATIONAL LICENSE (BPOL)** – All firms doing business for the Town of Leesburg 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 Leesburg, Virginia are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Department of Finance, via email to bl@leesburgva.gov. The BPOL license number must be indicated on the pricing page of this Invitation for Bid. The BPOL requirements are attached.
- S. **EMPLOYMENT DISCRIMINATION BY CONTRACTORS PROHIBITED** – Every contract in excess of \$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 national origin, age, disability or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor; that he will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that he will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that he is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
 - b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- T. **FAITH BASED ORGANIZATIONS** – The Town of Leesburg does not discriminate against faith-based organizations.
- U. **UNAUTHORIZED ALIENS** – In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Construction Manager agrees that it does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1980.

IX. SUBMITTAL INSTRUCTIONS

- A. One (1) original and five (5) copies of the proposal must be received by Ms. Renée LaFollette, P.E., Acting Director, at the address specified below, not later than the advertised bid date.

Proposal submissions shall be addressed to:

By Mail or Hand Delivered

Town of Leesburg
ATTN: Renée LaFollette, P.E.
Acting Director
Office of Capital Projects
25 West Market Street
Leesburg, VA 20176

Proposals must be placed in a sealed envelope bearing the name of the offeror, the offerors address and the title and due date of the proposal. The proposal shall be signed in the name of the offeror and bear the signature of the person duly authorized to bind the firm in a contract. The name, address, and phone number of the point of contact shall be identified.

- B. LATE PROPOSALS - It is the responsibility of the offeror to insure that the proposal arrives on time and at the proper location. Late proposals will not be considered.
- C. RFP SUBMISSION FORM, VDOT FIRM DATA, SCC AND DPOR REGISTRATION - Each Offeror submitting a proposal must complete and include the RFP Submission Form regarding company identification and ownership disclosures, conflict of interests, and collusion and the VDOT Firm Data Sheet. The certification on this form must bear an original signature and may be included with the letter of transmittal.

Failure of the Offeror to include this RFP Submission Form with its proposal may be cause for rejection of the proposal. A brief explanation of the certifications on the form follows.

It is incumbent upon each firm conducting business in Virginia to be in compliance with state law and regulations. To ensure firms are in compliance Offerors shall furnish with proposal submission supporting evidence with their SCC and DPOR registration. Copies of on-line confirmation are acceptable documentation.

The Department of Professional and Occupational Regulation's mission is to protect the health, safety and welfare of the public by licensing qualified

individuals and businesses and enforcing standards of professional conduct for professions and occupations as designated by statute.

The SCC acts as one of Virginia's primary regulatory agencies, with oversight of varied business and economic interests throughout the Commonwealth. The SCC's authority encompasses utilities, insurance, state-chartered financial institutions, securities, retail franchising, and railroads. The Commission also serves as the Commonwealth's central filing office for corporations, limited partnerships, limited liability companies, business trusts, and Uniform Commercial Code filings.

Each business entity (prime and subconsultants) on the proposed team who is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, should provide evidence including full size copies of appropriate commercial professional registrations and licenses for all main and branch offices proposed for this Project, as well as providing full size copies of appropriate individual registrations/licenses for those professional occupations per the requirements listed below.

The EOI should convey the requested information for each regulate by the use of a concise table or matrix. (All full size copies of State Corporation Commission (SCC) and Department of Professional and Regulation (DPOR) supporting registration documentations should be included will not be counted towards page restriction):

- i. The SCC registrations detailing the name, registration number, type of corporation and status of the business entity.
- ii. For this Project/Contract, the DPOR registration information for each office practicing or offering to practice any professional services in Virginia: Provide the business name, address, registration type, registration number, expiration date.
- iii. For this Project/Contract, the DPOR license information for each of your Key Personnel practicing or offering to practice professional services in Virginia: Provide the name, the address, type, the registration number, and the expiration date. Provide the office location where each of the Key Personnel is offering to practice professional services.
- iv. For this Contract, the DPOR license information for those services not regulated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects (i.e. real estate appraisal): the business name, the address, the registration type, the registration number, and the expiration date.

Failure to comply with the law with regard to applicable requirements in Virginia (whether federal or state) regarding organizational structure, any required

registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature may render Offerors submittal(s), in the sole and reasonable discretion of the Town, as non-responsive and returned without any consideration or evaluation.

X.

CONTRACT NO. _____

**CONSTRUCTION MANAGEMENT AND PROJECT INSPECTION SERVICES
FOR THE LEESBURG CONSTRUCTION PROJECTS**

This **Contract** (the “**Contract**”) is made this ____ day of _____, 2011, by and between the **Town of Leesburg, Virginia** (the “**Town**”), a municipal corporation, and _____ (the “**Construction Manager**”), a corporation having a usual place of business at _____.

WHEREAS, the Town has issued or will issue an Invitation to Bid or Request for Proposals for the _____ Project (“**Project**”); and

WHEREAS, the Town has entered or will enter a construction contract (“**Construction Contract**”) for the Project with a construction contractor (“**Construction Contractor**”); and

WHEREAS, the Town wishes to engage Construction Manager to perform on the Town’s behalf certain construction management and inspection services on the Project.

NOW THEREFORE, the Construction Manager and the Town, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

1. Provision of Services. The Construction Manager hereby agrees to provide the services enumerated herein and shall do so by providing sufficient organization, personnel and management to carry out the requirements of this Contract in an expeditious and economical manner consistent with the interests of the Town. The Construction Manager will work in full cooperation with the Town and its designees including the Acting Director of the Office of Capital Projects. The overall scope of work includes full participation as a member of the project team while providing coordination for Value Engineering sessions, when feasible, and construction management services. The Town of Leesburg reserves the right to expand or delete services as necessary. Any change in services after contract award will be facilitated through a change order process.

A cost proposal for the tasks involved for the project will be prepared along with the technical proposal and project schedule.

This Contract requires comprehensive and professional construction management services through construction and acceptance for public use. The following comprises the Town of Leesburg’s scope of work for the construction management services:

A. **Design Review and Recommendations**

- b. Familiarize themselves thoroughly with the current plans and specifications and follow the remaining development of design through construction drawings.
- c. Perform a review and provide a written report covering suggestions, recommendations and cost saving alternatives dependent upon project schedule.
- d. Identify long lead-time procurement items and conditions characteristic to construction and paving projects, which may impede construction, and make appropriate recommendations dependent upon project schedule.
- e. Perform a constructability review and make recommendations on contract packaging, construction sequencing, construction cost, access to work, safety, construction methods, materials and minimization of construction interference as well as design detail improvements dependent upon projects schedule.

B. **Bidding and Evaluation**

1. Review bid documents and make recommendations as appropriate dependent upon project status.
2. Prepare a recommended bidder's list dependent upon project status.
3. Attend and participate in pre-bid meetings.
4. Review all bids received and make recommendations on award of construction contract.

C. **Construction**

Construction Manager agrees to perform the following services during the construction phase of the Project:

1. Organize, facilitate and document pre-construction meetings.
2. Ensure that the Project is completed in accordance with the plans, specifications and requirements of the Town. The Construction Manager will be responsible to the Capital Projects Director or designee for all aspects of the Project. The Construction Manager shall recommend courses of action to the Town when requirements of the Construction Contract are not being fulfilled.
3. Provide and be fully responsible for full-time on-site representation for construction inspection services. Full-time is defined as a minimum of eight (8) hours per workday, on-site.
4. Implement and/or oversee a quality control/quality assurance program as set forth in the Construction Contract.
5. Utilizing the Construction Schedules provided by the Construction Contractor, the Construction Manager shall review the update of the Project construction schedule provided by the Contractor incorporating the

activities of the Contractors and Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the Town's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall review the Contractor's update of the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Town.

6. Ensure all work is performed in accordance with the Construction Contract and immediately notify the Town if the Contractor is not in compliance with the Contract.
7. Schedule and conduct meetings to discuss such matters as procedures, progress and scheduling; prepare and promptly distribute minutes to the Town, Construction Contractor and other interested parties.
8. Resolve conflicts with schedule, budget, construction and site considerations. Resolve conflicts between the design and actual on-site conditions.
9. Coordinate activities with Construction Managers, contractors and project managers of other projects at the site.
10. Establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Construction Contractor. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Town those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Town or Construction Contractor.
11. Review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Town, and, if they are accepted, upon the request of the Town, prepare Change Orders and Construction Change Directives which incorporate the modifications to the Documents.
12. Maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.
13. Determine in general that the Work of the Construction Contractor is being performed in accordance with the requirements of the Construction Contract Documents, endeavoring to guard the Town against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Town, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is

fabricated, installed or completed. The Construction Manager, in consultation with the Town, may reject Work which does not conform to the requirements of the Construction Contract.

14. Assist the Town in the review, evaluation and documentation of Claims.
15. Receive certificates of insurance from the Construction Contractor and forward them to the Town.
16. Record the progress of the Project. The Construction Manager shall submit written progress reports to the Town including information on the Construction Contractor, his Work, and the entire Project, showing percentages of completion. The Construction Manager shall keep a daily log containing a record of weather, Construction Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Town may require.
17. Maintain at the Project site for the Town one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. As appropriate, Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Town and upon completion of the Project shall deliver them to the Town.
18. Shall, when the Construction Manager considers Construction Contractor's Work or a designated portion thereof substantially complete, Construction Manager shall, jointly with the Construction Contractor, prepare for the Town a list of incomplete or unsatisfactory items and a schedule for their completion. Construction Manager shall assist the Town in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.
19. Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.
20. Shall secure and transmit to the Town warranties and similar submittals required by the Contract Documents for delivery to the Town and deliver all keys, manuals, record drawings and maintenance stocks to the Town. Construction Manager shall forward to the Town a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

21. Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without the written consent of the Owner. Consent shall not be unreasonably withheld.
22. Prepare project closeout documents.

D. **Project Management Information**

Project management work tasks are:

1. Review and coordinate the safety programs developed by the Construction Contractor for compliance with all state, federal and other regulations and laws regarding occupational safety. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Construction Contractor, its subcontractors, agents or employees of the Construction Contractor or its subcontractors, or any other persons performing work on the Project not directly employed by the Construction Manager.
2. Design, implement and utilize a Project Management Information System (PMIS) to facilitate the rapid and accurate exchange and monitoring of information between all parties. The PMIS shall include as a minimum the following:
 - Narrative reporting on a monthly basis
 - Schedule control on a monthly basis
 - Cost control and estimating on a monthly basis
 - Project accounting
 - Action reports
 - Complaint log
 - Daily quality control/inspection reports
 - Change order log
 - On-site document control system to ensure that current drawings are available to the contractors performing the work
 - Submittal log with required submission and return dates to avoid schedule delays
3. Provide accurate reports, documents, and data monthly on assessment of project status and of the work remaining to be accomplished. The information provided shall provide a sound basis for identifying variances and problems, and shall include recommendations for making management decisions.
4. Develop and implement procedures for the review and processing of applications by Contractors for progress and final payments. Based on the Construction Manager's observations and evaluations of each Construction Contractor's Application for Payment, the Construction Manager shall review and certify the amounts due the Construction Contractor. The

Construction Manager shall prepare a Project Application for Payment based on the Contractors' Certificates for Payment. The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's determinations at the site and on the data comprising the Construction Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

2. **Contract Documents.** The Contract Documents consist of this Contract, RFP No. _____, the Town Purchase Order and _____ proposal, dated _____, attached hereto and expressly made a part hereof. Where the terms of this Contract and the Construction Manager's proposal are at variance, the higher or more stringent provision shall prevail. Capitalized words and terms not defined herein shall have the meaning ascribed to them in the Construction Contract.
3. **Contract Term.** The initial contract period shall be three (3) years. This contract may be renewed for up to four (4) additional one-year terms at the option of the Town.
5. **Contract Amount.** In return for the services identified above, the Town certifies that sufficient funds are budgeted and appropriated and shall compensate the Construction Manager within thirty (30) days after receipt of a proper invoice for the amount of payment due or thirty (30) days after receipt of services, whichever is later, and in accordance with paragraph numbered 5 of this Contract.
6. **Method of Payment.** Invoices with all supporting documentation shall be submitted monthly by the Construction Manager to the Town in the Construction Manager's standard invoice format detailing the hours worked and services performed. Invoices must reference the Town of Leesburg Purchase Order number on their first page. Invoices shall be mailed to: Ms. Renée LaFollette, P.E., Town of Leesburg, Office of Capital Projects, 25 West Market Street, Leesburg, Virginia 20176.
7. **Applicable Law and Courts.** This Contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of Loudoun County, Virginia. The Construction Manager shall comply with applicable federal, state and local laws and regulations in its work on this Project.

8. **Assignment of Contract.** This Contract shall not be assignable by the Construction Manager in whole or in part without the prior written consent of the Town, which the Town may withhold in its sole discretion.
9. **Audit.** The Construction Manager shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
10. **Indemnification.** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by Construction Manager in accordance with this Contract, the Construction Manager shall indemnify and hold harmless the Town and the Town's consultants, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Construction Manager's services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work under the Construction Contract), but only to the extent caused by the negligent acts or omissions of the Construction Manager, anyone directly or indirectly employed by Construction Manager or anyone for whose acts Construction Manager may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this article.
11. **Notice.** The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this agreement:
 1. **For Town:**
Renée LaFollette, P.E., Acting Director
Office of Capital Projects
25 West Market Street
Leesburg, VA 20176

And

Jeanette A. Irby, Esq.
Town Attorney
Town of Leesburg
25 West Market Street, P. O. Box 88
Leesburg, VA 20178
 2. **For Construction Manager:**

The parties may amend such addresses by written notice to the opposite party at the given address.

12. **Termination.**

- A. **By Town without Cause.** The Town may terminate this Contract for any reason upon ten (10) days notice, and upon payment of any and all sums already earned under the terms of Paragraphs numbered 4 and 5 of this Contract and reasonable expenses incurred in reliance upon the Contract.

Notwithstanding the foregoing, Construction Manager agrees that any resulting contract shall be subject to annual appropriations of the Leesburg Town Council and that non-appropriation of sufficient funding to continue the contract will result in its automatic termination once existing funding is exhausted.

- B. **By Town for Cause.** The Town may terminate this Contract for cause if the Construction Manager is in material breach of this Contract and fails to adequately remedy such a breach after written notice from the Town, and a 14-day period to cure the breach. If this Contract is terminated by the Town for cause, the Town may withhold any further payments to the Construction Manager until it determines its damages and may sue the Construction Manager for any damages caused by the breach.
- C. If this Contract is terminated by the Town, the Construction Manager shall, within seven (7) days thereafter, deliver to the Town all Contract Deliverables, as specified in paragraph 14.D, regardless of the current state of completion. In such case, the Construction Manager grants an irrevocable right to the Town to use the Contract Deliverables without additional compensation to the Construction Manager, but the Construction Manager will not be liable for any change or alterations to the Contract Deliverables, or for their use in an incomplete state.
- D. If the Town terminates this Contract for cause and it is later determined that such termination was not justified, then the termination shall be converted into one for without cause under paragraph 11.A., and any liability of the Town shall be limited solely to the liability provided by that paragraph for a termination without cause.

13. **Integration Clause.** This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations or agreements, written or verbal, between the parties hereto related to the subject of this Contract.

14. **Miscellaneous**

- A. Licenses and Permits - The Construction Manager shall pay all Town, County, State and Federal taxes required by law resulting from the Construction Manager's work or traceable thereto, under whatever name levied.
- B. Liability – The Construction Manager will not be liable for any damages for failure to perform the duties and responsibilities imposed by the Contract due to legal strikes, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences beyond the control of the Construction Manager that make performance impossible or illegal, unless otherwise specified in the agreement.
- C. Relation to Town – It is the intent of the parties hereto that the Construction Manager be considered as an independent consultant and that neither it nor its employees shall, under any circumstances, be considered servants or agents of the Town, and that the Town shall be at no time legally responsible for any negligence on the part of the Construction Manager, its servants or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.
- D. Ownership of Documents - The Construction Manager agrees that all information, finished or unfinished documents, data, studies, surveys, drawings, maps, specifications, models, photographs, records, reports, and other material gathered and/or prepared by or for it under the terms of the Contract (the "Contract Deliverables") shall be delivered to, become, and remain the property of the Town. The Town shall have the right to use and reproduce the Contract Deliverables without additional compensation to the Construction Manager. Construction Manager will not be liable for any unauthorized reuse, change, or alterations to the documents identified above by the Town.
- E. Ethics in Public Contracting – This Contract incorporates the provisions of law contained in the Virginia Conflict of Interest Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2, and the Virginia Public Procurement Act, Article 6, of Chapter 43 of Title 2.2 of the Code of Virginia.
- F. Insurance Requirements – Construction Manager shall secure at its own expense general liability insurance in an amount not less than \$2,000,000 solely contained in a Commercial General Liability Policy, or in combination with an Umbrella or Excess Policy. Included shall be coverage for Bodily Injury and Property Damage resulting from the operations, products, and completed operations of the Construction Manager.

Construction Manager shall also carry automobile insurance in an amount not less than \$2,000,000 solely contained in a Commercial Auto Policy, or in combination with an Umbrella or Excess Policy.

Construction Manager shall also carry Workers Compensation Insurance that meets the statutory requirements of the Commonwealth of Virginia.

Construction Manager shall also carry Professional Liability Insurance for any errors or omissions in the services it provides to the Town in an amount not less than \$2,000,000 and with a deductible no greater than \$500,000.

In addition, Construction Manager shall also carry other insurance coverage deemed by the Town to be appropriate to this agreement. The above-mentioned coverage shall be placed with an insurance carrier licensed to do business in the Commonwealth of Virginia. The carrier must have an AM Best Rating of A or better.

A Certificate of Insurance identifying coverage and naming the Town of Leesburg as additional insured with respect to the General and Automobile Liability Policies shall be furnished to the Town. Liability coverage including, without limitation, general liability and professional liability coverage, shall contain wording prohibiting cancellation of coverage, failure to renew, or reduction in limit without the insurer first giving thirty (30) days prior written notice of such action to the Town.

- G. Business, Professional, and Occupational License (BPOL) – All firms doing business for the Town of Leesburg 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 Leesburg, Virginia are exempt from this requirement.
- H. Employment Discrimination by Construction Manager Prohibited:
 - 1. During the performance of a contract, the Construction Manager shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by federal or state law relating to discrimination in employment in the solicitation and award of public contracts except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Construction Manager; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth nondiscrimination practices, and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
 - 2. The Construction Manager will include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

- I. Drug-Free Workplace – Pursuant to Section 2.2-4312 of the VPPA – § 2.2-4312. Drug-free workplace to be maintained by Construction Manager; required contract provisions. – All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the Construction Manager agrees to (i) provide a drug-free workplace for the Construction Manager 's employees; (ii) 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 Construction Manager 's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager that the Construction Manager maintains a drug-free workplace; and (iv) 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.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to the Construction Manager in accordance with this paragraph, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- J. Faith-Based Organizations – Pursuant to Section 2.2-4343.1 of the VPPA – The Town of Leesburg does not discriminate against faith-based organizations.

- K. Payment Clauses – Pursuant to Section 2.2-4354 of the VPPA

1. Within seven (7) days after receipt of amounts paid to the Construction Manager by the Town for work performed by the subcontractor under the resulting contract the Construction Manager will:
 - a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or
 - b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. Construction Manager must provide their Federal Employer Identification Number.

3. The Construction Manager will pay interest to the subcontractor on all amounts owed by the Construction Manager that remain unpaid after seven (7) days following receipt by the Construction Manager of payment from the Town for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. Interest on any sums due under this Contract shall accrue at the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal.

The Construction Manager will include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Construction Manager's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

L. Dispute Resolution.

- 1 The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the Town of Leesburg, Virginia, which is agreed to be the sole and exclusive venue.
- 2 If the procedures of subparagraph L. 1 have been followed, but more than ninety (90) days have passed since a party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit in the Circuit Court of Loudoun County, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- 3 Nothing in subparagraphs 1 or 2 shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Loudoun County Circuit Court if circumstances so warrant.
- 4 In the event of any dispute, claim, or other matter in question arising, the Construction Manager shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of

moneys, the Construction Manager shall be entitled to receive payments for non-disputed items.

M. **Waivers of Subrogation.** The Town and Construction Manager waive all rights against each other and against the Construction Contractors, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in this Contract or the Construction Contract. The Town and Construction Manager each shall require similar waivers from their Contractors, consultants, agents, and persons or entities awarded separate contracts administered under the Town's own forces.

N. **No Third Party Beneficiary.** Town and Construction Manager Parties hereby acknowledge and agree that no person receives any rights or benefits hereunder, either expressly or by implication from this Contract.

O. **Unauthorized Aliens** – In accordance with Section 2.2 – 4311.1 of the Code of Virginia, the Construction Manager agrees that it does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1980.

15. **Severability.** The provisions of this Contract are intended to be severable, and if any provision, including, without limitation, any portion of any subparagraph, is found to be invalid, then full effect shall still be given to the remaining provisions not found to be invalid.

In witness whereof, the parties below, execute this contract as the date first above written,

Town of Leesburg

[FIRM]

**Authorized
Signature**

**Authorized
Signature**

Name

Name

Title

Title

Date

Date

APPROVED AS TO FORM:

TOWN ATTORNEY

XI. **BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX REQUIREMENTS**

Town Code, Leesburg, Virginia, Sec. 17-163. License requirement.

- A. Every person engaging in the town in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:
- (1) Such person maintains a definite place of business in the Town of Leesburg;
 - (2) Such person does not maintain a definite office anywhere but does maintain an abode in the town, which abode for the purposes of this article shall be deemed a definite place of business; or
 - (3) There is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in § 58.1-3717, 3718 or 3728, respectively of the Code of Virginia, or is a contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the articles [Code] of the Town of Leesburg; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

-END OF DOCUMENT-

FHWA 1273, MEMORANDUM AND CFR CHANGE

January 19, 2009

REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (FHWA 1273) shall apply to this contract as well as the following:

- FHWA memorandum with the subject titled "THE DISCONTINUANCE OF THE FHWA-45, FHWA-47 & FHWA-810". In accordance with this memorandum the Contractor shall be governed by the following:

The submission of Form C-50 (FHWA 47) which is used to fulfill the reporting requirements of Section VI, Record of Materials, Supplies, and Labor of FHWA 1273—Required Contract Provisions Federal-Aid Construction Contracts is no longer required on Federal Aid Construction Contracts. Only that part of Section VI of FHWA 1273 is thus eliminated. All the other parts remain in effect.

- CFR (Code of Federal Regulations) change regarding Employee Social Security Numbers and Addresses on Payrolls. In accordance with the US Department of Labor regulations change in 29 CFR Parts 3 and 5 the Contractor shall be governed by the following:

Section V, Paragraph 2b of FHWA 1273—Required Contract Provisions Federal-Aid Construction Contracts is replaced with the following:

The payroll records shall contain the name, and the last four digits of the social security number 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.

FHWA-1273 Electronic version -- March 10, 1994

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 implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such

unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

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

- a. The records kept by the contractor shall document the following:
 - (1) The number of minority and non-minority group members and women employed in each work classification on the project;

- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR

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

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - (2) the additional classification is utilized in the area by the construction industry;
 - (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of

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

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

a. Apprentices:

- (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and

wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

- (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
 - (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
- b. Trainees:
- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
 - (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
 - (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
 - (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance

procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal

contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - (2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
 - f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
 - g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions:

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

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

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

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneously 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.

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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.
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FHWA MEMORANDUM



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

MEMORANDUM

Subject: ACTION: The Discontinuance of the FHWA-45, **Date:** May 22, 2007
FHWA-47 & FHWA-810

From: /s/ Original signed by
Dwight Horne,
Director Office of Program Administration

In Reply HIPA-10
Refer to:

To: Directors of Field Services
Division Administrators
Federal Lands Administrator

Effective immediately, Divisions and/or our State Transportation Agency (STA) partners will no longer be required to submit data to HIPA-10 that is collected as it relates to:

The FHWA-45, Bid Price Data¹,

The FHWA-47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds², and

The FHWA-810, Bid Tabulation Data³

For several years, STAs have commented that the reports generated from the data collection efforts were of little utility and that there were statistical limitations, statistical significance, and accuracy issues with the data which were felt could result in misleading information. There was also a noted reporting burden on States and contractors. The suggestions have often been to eliminate the reporting requirements all together.

In 2003, the GAO conducted a review of the States' highway construction costs. As part of its review, the GAO reviewed FHWA's cost data collection requirements. In its discussions, the GAO also identified similar issues and concerns with the data series as discussed above. In a December 2003 report GAO made recommendations to FHWA to review the usefulness and accuracy and/or under reporting of the data collected.

As a result, FHWA has determined that it is appropriate to discontinue the reporting requirements for the FHWA 45, 47 and 810 as collection of this data for needed reports such as the "Highway Statistics" publication can be collected through other means. The main reasons for this decision are the strong disinterest in the data collection activities and comments provided to us by our STA partners suggesting that we are not collecting the data extensively enough to be of utility. We will also be going through an abridged regulatory update as appropriate to reflect this action.

Please contact Bob Wright, at 202-366-4630, to answer any questions and/or for additional information on this matter.

The FHWA 45, Bid Price Data, was collected on NHS projects over \$500,000. The FHWA 45 served as a means to compute the highway construction bid price index, which is published in the document "Price

Trends for Federal-aid Highway Construction. The data was used in our "Highway Statistics" publication and by other outside sources, including its use by congressional committees in their deliberations on pending new highway legislation.

The FHWA 47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds, was collected on all NHS projects over \$1,000,000. The FHWA 47 served as a means to collect data related to the quantities of materials, supplies and labor used for various types of highway construction. The data reported on this form was used primarily to compute usage factors for these various materials, supplies, and labor. These factors were used to determine the economic impacts of cuts or increases in the cost of Federal-aid highway construction.

FHWA 810, Bid Tabulation Data was collected on all NHS projects. The needs for the FHWA 810 have been to compute national summaries on the largest contract awards and contract size statistics. The data was also used to produce state-by-state summaries on contracts awards, number of bids and average number of bids.

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 compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper 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

<u>Economic Area</u>	<u>Goal (Percent)</u>
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;	
VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;	
VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;	
VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena	
Vista:	
VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	
VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro;	
WV Pendleton.	
022 Richmond, VA	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell;	
VA Petersburg.	
6760 Richmond, VA	24.9

	VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
	Non-SMSA Counties	27.9
	VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023	Norfolk - Virginia Beach - Newport News VA:	
	SMSA Counties:	
	5680 Newport News- Hampton, VA	27.1
	VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
	5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
	NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
	Non-SMSA Counties	29.7
	NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:		
020	Washington, DC.	
	SMSA Counties:	
	8840 Washington, DC - MD - VA	28.0
	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.	
	Non- SMSA Counties	25.2
	MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:		
052	Johnson City - Kingsport - Bristol, TN - VA	
	SMSA Counties:	
	3630 Johnson City - Kingsport -Bristol, TN-VA	2.6
	TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.	
	Non-SMSA Counties	3.2
	TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Maryland:		
019	Baltimore MD	
	Non-SMSA Counties	23.6
	MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.	