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or street work zone or project. These plans may range in scope from a very detailed TCP designed solely for a specific project, to a reference to standard plans, a section of the MUTCD, or a standard highway agency manual. The degree of detail in the TCP will depend on the project complexity and traffic interference with construction activity.

(2) Traffic control plans shall be developed for all projects and be included in plans, specifications, and estimates (P.S. & E.'s) and shall be consistent with part VI of the MUTCD.

(3) The scope of the TCP should be determined during planning and design phases of a project.

(4) Provisions may be made to permit contractors to develop their own TCP's and use them if the highway agency and FHWA find that these plans are as good as or better than those provided in the P.S. & E.

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(A) Where the TLTWO is located on an urban type street or arterial where operating speeds are low;

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse of separation devices based on unusual circumstances.

(ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

(b) *Responsible person.* The highway agency shall designate a qualified person at the project level who will have the primary responsibility and sufficient authority for assuring that the TCP and other safety aspects of the contract are effectively administered. While the project or resident engineer may have this responsibility, on large complex projects another person should be assigned at the project level to handle traffic control on a full-time basis.

(c) *Pay items.* The P.S. & E. should include unit pay items for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the TCP. Suitable force account procedures may be utilized for traffic control items. Lump-sum method of payment should be used only to cover very small projects, projects of short duration, contingency, and general items. Payment for traffic control items as incidental to other items of work should be discouraged.

(d) *Training.* All persons responsible for the development, design, implementation, and inspection of traffic control shall be adequately trained.

(e) *Process review and evaluation.* (1) A review team consisting of appropriate highway agency personnel shall annually review randomly selected projects throughout its jurisdiction for the purpose of assessing the effectiveness of its procedures. The agency may elect to include an FHWA representative as a member of the team. The results of this review are to be forwarded to the FHWA Division Administrator for his review and approval of the highway agency's annual traffic safety effort.

(2) Construction zone accidents and accident data shall be analyzed and used to continually correct deficiencies which are found to exist on individual projects, and to improve the content of future traffic control plans.

[43 FR 47140, Oct. 12, 1978, as amended at 47 FR 21780, May 20, 1982]

PART 633—REQUIRED CONTRACT PROVISIONS

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

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

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

633.201 Purpose.
633.202 Definitions.
633.203 Applicability of existing laws, regulations, and directives.
633.204 Fiscal allocation and obligations.

633.205 Prefinancing.
633.206 Project agreements.
633.207 Construction labor and materials.
633.208 Maintenance.
633.209 Notices to prospective Federal-aid construction contractors.
633.210 Termination of contract.
633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.
APPENDIX A TO SUBPART B—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE
APPENDIX B TO SUBPART B—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS
APPENDIX C TO SUBPART B—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS
APPENDIX D TO SUBPART B—FEDERAL-AID PROPOSAL NOTICES

Subpart C—Direct Federal Construction Contracts

633.301 Purpose.
633.302 Applicability.
APPENDIX A TO SUBPART C—CONTINUATION OF STANDARD FORM 19–A LABOR STANDARDS PROVISIONS (DOT–FHWA 3–74)

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

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

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

§ 633.101 Purpose.

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

§ 633.102 Applicability.

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

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

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

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

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA–1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA–1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA–1273.

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

§ 633.103 Regulatory authority.

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

§ 633.104 Availability.

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

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

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

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

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

§ 633.201 Purpose.

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

§ 633.202 Definitions.

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

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

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

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

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

§ 633.204 Fiscal allocation and obligations.

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

(b) The division administrator's authorization to proceed with the proposed work shall establish obligation of Federal funds with regard to a particular project.

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

§ 633.205 Prefinancing.

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

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

§ 633.206 Project agreements.

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

(1) ''For projects constructed under section 201 of the Appalachian Regional

Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued thereunder, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of title 49, Code of Federal Regulations, part 21, §21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program.''

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

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

§ 633.207 Construction labor and materials.

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

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

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

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

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

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

§ 633.208 Maintenance.

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

§ 633.209 Notices to prospective Federal-aid construction contractors.

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

§ 633.210 Termination of contract.

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

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

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

[40 FR 49084, Oct. 21, 1975]

APPENDIX A TO SUBPART B OF PART 633—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

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

1. Construction.
2. Planning.
3. Research.
4. Highway Safety.
5. Engineering.
6. Property Management.
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:

a. Advertising contracts.
b. Agreements for economic studies.
c. Contracts for surveys and plats.
d. Contracts for abstracts of title certificates and title insurance.
e. Contracts for appraisal services and expert witness fees.
f. Contracts to negotiate for the acquisition of right-of-way.
g. Contracts for disposal of improvements and property management services.
h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
i. Contracts for escrow and closing services.

[40 FR 49084, Oct. 21, 1975]

APPENDIX B TO SUBPART B OF PART 633—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

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

I. *Application.*

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

2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

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

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):

Section 1, paragraph 2.

Section VI, paragraphs 1, 2, 3, 5 and 8a.

Section VII, paragraphs 1, 5a, 5b and 5d.

II. *Employment preference.*

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

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

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

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

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

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

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

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

III. *Equal opportunity: employment practices.*

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

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the

said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this section III in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. *Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment.*

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the *contractor), agrees as follows:*

1. *Compliance with regulations.* The contractor shall comply with the provisions of 23 U.S.C. 324 and with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, ''DOT'') title 49, Code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination.* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.

3. *Solicitations for subcontracts including procurement of materials and equipment.* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. *Information and reports.* The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

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

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

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

V. *Nonsegregated facilities.*

(Applicable to Federal-aid construction contracts and related subcontracts exceeding

$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, 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, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. *Payment of predetermined minimum wages.*

1. *General.* All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. *Classifications*—a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. *Payment of fringe benefits*—a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. *Payment of excess wages.* While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be

obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. *Apprentices and trainees (Programs of Department of Labor).* a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

6. *Apprentices and trainees (Programs of Department of Transportation).* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

8. *Overtime requirements.* a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in

such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. *Statements and payrolls.*

1. *Compliance with Copeland Regulations (29 CFR part 3).* The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH–348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH–347, or on any form with identical wording.

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

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

* * * * *

The undersigned, contractor on

(Project No.)

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

Signature and title _____

* * * * *

5. *Payrolls and payroll records*—a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to section VI, paragraph 3.b., has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.

3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

5. The itemized deductions made and

6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall given information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies and labor.*

1. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR–47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR–47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR–47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR–47 with attendant explanations.

3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.*

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items

designated by the State as *Specialty Items* may be performed by subcontract and the amount of any such *Specialty Items* so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. *His own organization* shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.

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

2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as *Specialty Items* for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in thiscontract shall apply to labor performed on all work encompassed by the request.

X. *Safety: Accident prevention.*

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (title 29, Code of Federal Regulations, part 1926, formerly part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

XI. *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. Willfull falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

* * * * *

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18 U.S.C., section 1020, reads as follows:

''Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed or

the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

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

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

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

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

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

[40 FR 49084, Oct. 21, 1975]

APPENDIX C TO SUBPART B OF PART 633—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

EQUAL OPPORTUNITY: EMPLOYMENT PRACTICES AND SELECTION OF SUBCONTRACTORS, SUPPLIERS OF MATERIALS, AND LESSORS OF EQUIPMENT

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

1. *Compliance with regulations.*

The contractor will comply with the provisions of 23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. *Employment practices*

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representative of the contractor's commitments under the employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment.*

a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. *Information and reports.*

The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions.*

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however,* That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

6. *Sanctions for noncompliance.*

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

APPENDIX D TO SUBPART B OF PART 633—FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

I. *Certification of nonsegregated facilities.*

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

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the ''Certification of Nonsegregated Facilities'' in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

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

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

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to

the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds $10,000 and is not exempt from the provisions of the Equal Opportunity clause.

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

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

II. *Implementation of Clean Air Act.*

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91–604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

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

Subpart C—Direct Federal Construction Contracts

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 22418, June 24, 1974, unless otherwise noted.

§ 633.301 Purpose.

To prescribe for direct Federal highway construction contracts, provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

§ 633.302 Applicability.

(a) The form ''Continuation of Standard Form 19–A, Labor Standards Provisions'' (appendix A) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19–A, Labor Standards Provisions and the clauses set forth in paragraph 7 of appendix A shall be included in all subcontracts.

(b) Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form.

APPENDIX A TO SUBPART C OF PART 633—CONTINUATION OF STANDARD FORM 19–A LABOR STANDARDS PROVISIONS (DOT–FHWA 3–74)

1. *Weekly Statement.*

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR part 3, and by 29 CFR part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, ''Statement of Compliance,'' or on an identical form on the back of U.S. Department of Labor Form WH 347, ''Payroll (For Contractor's Optional Use),'' or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

2. *Employment Practices.*

a. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any of his agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, or his subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

3. *Payment of Excess Wages.*

While the wage rates shown in the wage determination decision are the minimum hourly rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

4. *Safety.*

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, part 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

5. *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 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 contractor shall post the Notice, Form PR–1022 on each Federal highway project in one or more places where it is readily available to all personnel concerned with the project.

6. *Specific Equal Employment Opportunity Responsibilities.*

a. *General.* (1) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23–A, General Provisions and in these Provisions. The requirements set forth in these Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of $10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

b. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

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, or national origin. 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.

c. *Equal Employment Opportunity Officer.*

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

d. *Dissemination of Policy.*

(1) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

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

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity 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.

e. *Recruitment.*

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: ''An Equal Opportunity Employer.'' He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) 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, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, 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.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

f. *Personnel Actions.*

(1) 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, or national origin. 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 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. 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.

g. *Training and Promotion.*

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

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

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

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

h. *Unions.*

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

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

i. *Subcontracting.*

(1) The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

j. *Records and Reports.*

(1) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(a) The number of minority and nonminority group members employed in each work classification on the project.

(b) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(c) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.

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

(2) All such records must 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 the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and nonminority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR–1391.

7. *Subcontracts.*

The contractor shall include, verbatim, clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than $10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

Sec.
635.101 Purpose.
635.102 Definitions.
635.103 Applicability.
635.104 Method of construction.