West Virginia Department of Transportation
Division of Highways

TRANSPORTATION ENHANCEMENT PROGRAM

"Guidelines and Application" Package/Manual

REVISED October 2010

Intent-To-Apply Forms may be submitted from:
September 1st—November 15th of each year

Full Application Packages may be submitted from:
September 15th—January 15th of each year

Joe Manchin III
Governor

Paul A. Mattox, Jr., P. E.,
Secretary of Transportation/
Commissioner of Highways

In cooperation with the U. S. Department of Transportation, Federal Highway Administration

IMPORTANT - PLEASE NOTE!

Applications for funding will be considered only from eligible applicants who have submitted an **"Intent-To-Apply"** form by the November 15th deadline and have subsequently been instructed by the West Virginia Division of Highways (WVDOH) to submit an application(s).

Notes:

- The Catalog of Federal Domestic Assistance (CFDA) number for all Transportation Enhancement (TE) projects is 20.205.

- The West Virginia Division of Highways (WVDOH) reserves the right of first option to administer the projects from design through construction. (WVDOH may design or hire a consultant to design, then have the option to perform complete administration of construction contracts [i.e., advertise for bids, award contract, oversee construction] with input from Sponsor.)

This manual is for guidance purposes only and is not intended to cover all rules, procedures, regulations, or situations. Contents of this manual, and the enclosed regulations, are subject to change without notice.

This page is intentionally blank.

TABLE OF CONTENTS

A. Introduction and Eligibility Requirements 1

B. Qualifying Activities 1

C. Descriptions and Examples of Eligible TE Activities 3

1. Provision of Facilities for Pedestrians and Bicycles 3

2. Provision of Safety and Educational Activities for Pedestrians and Bicyclists 4

3. Acquisition of Scenic Easements and Scenic or Historic Sites (Including Historic Battlefields) 5

4. Scenic or Historic Highway Programs (Including the Provision of Tourist and Welcome Center Facilities) 5

5. Landscaping and Other Scenic Beautification 7

6. Historic Preservation 8

7. Rehabilitation and Operation of Historic Transportation Buildings, Structures, or Facilities (Including Historic Railroad Facilities and Canals) 8

8. Preservation of Abandoned Railway Corridors (Including the Conversion and Use Thereof for Pedestrian or Bicycle Trails) 9

9. Inventory, Control and Removal of Outdoor Advertising 10

10. Archaeological Planning and Research 11

11. Environmental Mitigation to Address Water Pollution Due to Highway Runoff or Reduce Vehicle-Caused Wildlife Mortality While Maintaining Habitat Connectivity 11

12. Establishment of Transportation Museums 12

D. Who is an Eligible Applicant? 13

E. The Required Minimum 20% Match 14

F. Eligible Activities Associated with a Project 14

1. Acquisition of Property 14

2. Planning/Design/Engineering 17

3. Construction 18

G. Transportation Enhancement Application Review Process 20

TABLE OF CONTENTS—Continued…

H. What Happens After Your Project is Selected for Funding? 22

I. Section 106 Review 23

J. Environmental Review 23

K. Project Signage 24

L. Project Time Schedule 24

M. Reimbursement—PLEASE READ CAREFULLY 25

N. Records and Audit Requirements (A-133) 26

O. Rules and Guidelines 26

P. Important Notes 27

Q. Postscript 28

APPENDICES

1. TE "Intent-To-Apply" Form 31

2. TE Application for Funding (including Environmental Assessment and Checklist) 37

3. List of Contacts 59

4. Sample Invoices (80% and 100% Reimbursement) 71

5. Sample Agreements

   a. Sponsor "Match" Provided Up-Front (100% Reimbursement) 75

   b. Pay-As-You-Go (80% Reimbursement) 81

   c. Attachment A-1 "Grant Program General Clauses and Covenants (April 7, 2009) 87

6. Rules for Procurement of Negotiated Contracts 97

7. Required Contract Provisions 121

8. Audit Requirements Concerning A-133 177

9. Project Phases and Responsible Parties 181

A. INTRODUCTION AND ELIGIBILITY REQUIREMENTS

Prior to 1991, the Congress authorized a "Highway Bill" every six years to allocate federal funds to the states for highway and bridge construction. In 1991, the Congress instituted a number of new programs, to be funded from the Highway Trust Fund, to provide for "more-livable communities," in addition to highway and bridge construction. Among the new funding programs initiated by the Intermodal and Surface Transportation Efficiency Act (ISTEA) of 1991, is the Transportation Enhancement (TE) program.

On June 9, 1998, (then) President Clinton signed into law the Transportation Equity Act for the 21st Century (TEA-21). This legislation updated Titles 23 and 49 of the United States Code (U.S.C.) and built on the major changes made to Federal transportation policy and programs addressed in ISTEA. The legislation included numerous provisions that addressed improvements and changes to the implementation of TE activities.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU) was signed into law on August 10, 2005. SAFETEA-LU represents the largest surface transportation investment in our Nation's history and continues to expand the TE program. The new legislation modified the TE funding set-aside amount to be either: (a) 10% of the Fiscal Year Surface Transportation Program apportionment; or (b) the dollar amount of the TE set-aside for the State for Fiscal Year 2005; whichever is greater. TE activities were also amended slightly to include historic battlefields (under the scenic easements category) and the inventory of billboards (under the control and removal of outdoor advertising category).

Two (2) basic requirements determine eligibility: **First, the proposed TE activity must be one of the 12 qualifying activities listed in the legislation; Second, the activity must relate to surface transportation.**

The proposed TE project's relationship to the surface transportation system must be established. For example, in what way(s) is the project related to surface transportation through present or past use as a transportation resource? Is there a direct connection to a person or event nationally significant in the development of surface transportation? What is the extent of the relationship(s) to surface transportation? What groups and individuals are affected by the relationship(s), when did the relationship(s) start and end or does the relationship(s) continue? Is a relationship substantial enough to justify the investment of transportation funds? Proximity to a transportation facility alone is not sufficient to establish a relationship. Applicants should carefully think through this part of their application.

B. QUALIFYING ACTIVITIES

The list of qualifying TE activities provided in 23 U.S.C. 101(a)(35) of TEA-21 is intended to be exclusive, not illustrative. That is, only those activities listed therein are eligible as TE activities.

TE Activities —

1. Provision of facilities for pedestrians and bicycles
2. Provision of safety and educational activities for pedestrians and bicyclists
3. Acquisition of scenic easements and scenic or historic sites (including historic battlefields)
4. Scenic or historic highway programs (including the provision of tourist and welcome center facilities)
5. Landscaping and other scenic beautification
6. Historic preservation
7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)
8. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails)
9. Inventory, control and removal of outdoor advertising
10. Archaeological planning and research
11. Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity
12. Establishment of transportation museums

Many projects are a mix of these elements, some on the list and some not. Only those project elements which are on the list may be counted as TE activities. For example, a rest area might include a historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development would qualify as a TE activity.

Activities which are not explicitly on the list **may** qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered for TE funding. Similarly, environmental analysis, project planning, design, land acquisition, and construction enhancement activities are eligible for funding.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public.

Given the nature of the list of eligible activities, it is not necessary that each TE activity be associated with a specific surface transportation project to be eligible for funding. Examples which illustrate this include: the rehabilitation of a historic train structure, the provision of a bike or pedestrian path, or the establishment of a transportation museum.

Proximity to a highway or transportation facility alone is **not sufficient** to establish a relationship to surface transportation. Additional discussion, beyond proximity, is needed in the TE project proposal to establish the relationship to transportation. For example, a historic barn that happened to be adjacent to a particular highway facility would not automatically be considered eligible for TE funds simply because of its location; visibility to the traveler in a way that enhances the traveling experience could qualify. Specific

documentation of the enhanced experience is required; conversely, a historic structure, such as the barn in the above example, could not be disqualified from consideration because it was not adjacent to a particular Federal-aid facility, as long as some other relationship to surface transportation could be established.

It is not necessary to have a TE activity function as an active transportation facility, either past or current, to qualify as an eligible TE activity. For example, a scenic or historic site may have a relationship to transportation but not function as a transportation facility.

Once a relationship to surface transportation is established, TE activities can be implemented in a number of ways. For example, they can be developed as parts of larger joint development projects, or as stand-alone projects.

Where questions arise, please contact the WVDOH at either (304) 558-3165 or 558-9596 for assistance in the determination of a project's relationship to surface transportation.

C. DESCRIPTIONS AND EXAMPLES OF ELIGIBLE TE ACTIVITIES

A more detailed description of these qualifying activities, along with examples, appear on the next few pages. Examples are from either past years of West Virginia's program or examples from other states' programs.

These examples are presented only as a guide to consideration of potential projects in your area; please feel free to contact the TE Coordinator with specific questions of eligibility.

1. PROVISION OF FACILITIES FOR PEDESTRIANS AND BICYCLES

This activity includes providing for safe bicycle/pedestrian accommodations, either through construction of new facilities or improvements to existing facilities. Such construction/improvement activities must be independent from any new construction or reconstruction of highways.

Activities to improve facilities for bicycles or pedestrians to an existing roadway may include widening curb lanes, striping bike lanes, adding road shoulders, installing sidewalks where none currently exist (note: repair to existing sidewalks is not eligible unless a minor element of construction of new sidewalks; however, reconstruction of deteriorated sidewalks is an eligible activity.).

There must be a documented transportation need for bicycle or pedestrian transportation; **a project that is more "recreational" in use or benefit, rather than serving a transportation need, would NOT be eligible**. Examples of eligible projects might include installation of bike racks, construction of a separate bike path along a roadway from an area school to a residential area, or construction of crosswalks where an obvious need exists to allow the safe passage of pedestrians.

According to 23 U.S.C. 217(h), motorized vehicles (including ATVs) may not be permitted on trails and pedestrian walkways which use federal TE funds (except snowmobiles, where specifically authorized by State or local ordinance, motorized wheelchairs, electric bicycles, and maintenance vehicles).

NOTE: "Recreational" bicycle or pedestrian facilities may be eligible for funding under the Recreational Trails Program, also administered by the WVDOH. Call (304) 558-9615 for more information, or see our website at www.transportation.wv.gov, select Agencies, Highways, Program Planning, Planning, Grant Administration Unit, then the appropriate grant program.

EXAMPLES:

Bridgeport Main Street—The construction of new sidewalks and installation of new streetlights and pedestrian amenities along Main Street (US Route 50).

Elkins Pedestrian Bridge—Construction of a pedestrian/bicycle bridge linking River Bend area and Glendale area.

Ritter Park Bike-North Boulevard Extension Trail—Pave, illuminate, landscape and provide parking for the bike and pedestrian pathways through the park connecting multiple entrances.

2. PROVISION OF SAFETY AND EDUCATIONAL ACTIVITIES FOR PEDESTRIANS AND BICYCLISTS

The "provision of safety and educational activities for pedestrians and bicyclists" includes non-construction safety-related activities and the reasonable costs to provide safety and educational activities such as bike/pedestrian safety training, cost of facilitators and classes. It may also include related training materials such as brochures, videotapes, other training aids, as well as rent for leased space and limited staff salaries. Long-term salary participation should be avoided. TE proposals should be written to reflect a definitive period for participation. Where salaries become an issue, they should be negotiated as part of the local buy-in to the project.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public. The activities must show a relationship to the surface transportation system, and as with all bicycle and pedestrian activities under the STP, bike and pedestrian projects using TE funds need **not** be located on Federal-aid highway routes, and may be non-construction activities.

Project sponsors using TE funds are encouraged to integrate safety messages and educational opportunities for bicyclists and pedestrians into enhancement projects through the development of campaigns, programs, educational materials including maps and brochures, and pedestrian and bicycle enforcement activities. Project sponsors are encouraged to coordinate these activities with the National Highway Traffic Safety Administration and other modal administrations. This TE activity is

not intended to replace or duplicate existing funding opportunities for bicycle and pedestrian activities currently available through the State and Community Traffic Safety Program.

EXAMPLE:

Bicycle Safety Brochure—The West Virginia Division of Tourism, in cooperation with The Hospital Association and Robert Woods Johnson Foundation, developed a bicycle safety brochure aimed, primarily, for younger bicyclists.

3. ACQUISITION OF SCENIC EASEMENTS AND SCENIC OR HISTORIC SITES (INCLUDING HISTORIC BATTLEFIELDS)

Acquisition of a scenic easement would be in connection with the preservation of a scenic vista or historic site related to travel along a specific route.

Where a TE activity is for acquisition for scenic preservation purposes, and proposes to contribute to the visual experience of the traveler, but is a substantial distance away with respect to a highway or transportation project, the TE activity must be determined to make a substantial contribution to the scenic viewshed.

EXAMPLE:

Rich Mountain Battlefield (Field of Fire)—Acquisition of 6.26 acres known as the "Field of Fire" and complete the development of tourist facilities.

Laurel Hill Battlefield (Griffith Farm)—Acquisition of Griffith Farm near Belington, construction of parking area, pedestrian amenities, trails and interpretive kiosk, signage, and brochure.

4. SCENIC OR HISTORIC HIGHWAY PROGRAMS (INCLUDING THE PROVISION OF TOURIST AND WELCOME CENTER FACILITIES)

Although funds are available through a separate Scenic Byways Program, TE funds provided under this category are in addition to those. Funds may only be provided for projects related to an existing state or federal designated scenic or historic highway or program. Funds may not be used for construction of a new scenic or historic highway. Funds may only be used to protect and/or enhance the scenic, historic, cultural, recreational, natural and/or archaeological integrity and visitor appreciation of an officially designated scenic or historic highway/byway. Project applications must have concurrence by the coordinating organization for the particular scenic or historic highway/byway and eligible projects must be included in the appropriate Corridor Management Plan.

Although linked with scenic and historic highway programs, the eligibility for tourist and welcome centers warrants discussion as a separate activity. The Congress provided additional language to assist in interpreting its intent regarding this activity. The Conference Report language notes:

> *"...In order to be eligible under the enhancement program, the tourist or welcome center (whether a new facility or existing facility) does* ***not*** *have to be on a designated scenic or historic byway,* ***but there must be a clear link to scenic or historic sites****."*

The connection to a scenic/historic site should take into account the intrinsic characteristics that make an area or site scenic/historic as determined by a state or area commission, where one exists. Where these mechanisms are not available, the proposal should document those characteristics that give evidence of compliance with the provisions of the Conference Report language. While a tourist or welcome center does not have to be on a designated scenic or historic byway, many of the characteristics that determine what is scenic are similar to those of the scenic byways program. Activities eligible under the scenic byways program are generally eligible under TE activities where all applicable criteria have otherwise been met. A historic site should have evidence of documented consultation and concurrence with the State Historic Preservation Officer or similar authority for determining the historicity of a particular site.

The eligibility for TE funding for the provision of tourist and welcome centers applies to both existing and new centers. This means that TE funds may be used for the construction of a new facility and/or the restoration of an existing facility but may not be used to construct either general rest areas or general information centers. This would include those related construction actions necessary to provide the facility, such as interior fixtures and parking areas. TE funds can be used to purchase and install items which support or interpret the scenic or historic highway program or site including kiosks or brochure racks for interpretive materials or maps. TE funds cannot be used for statewide programs, marketing, or promotion not related to the scenic or historic highway program. TE funds cannot be used for staffing, operating costs, or maintenance. TE funds should not be used to purchase items such as racks for advertising or brochures for local or national businesses.

The intent is not to use this category to simply repair and restore what are clearly rest areas. The intent is to fund those activities clearly linked to scenic or historic programs or scenic or historic sites.

The tourist or welcome center does not have to be immediately adjacent to an existing Federal-aid highway facility. However, where it is determined that a proposed tourist or welcome center would not be in connection with a particular Federal-aid highway facility, <u>the requirement to demonstrate a relationship to surface transportation must still be taken into consideration</u>. <u>Additionally, evidence of a connection to a scenic or historic site must be established</u>. An example could include efforts and materials to direct members of the traveling public to a specific local area site deemed to be of scenic or historic significance.

Recent Federal Highway Administration (FHWA) guidance indicates that a tourist or welcome center should be within close proximity to the specific scenic or historic highway site. Close proximity should be determined to be within a reasonable walking distance.

The visitor or welcome center should be publicly owned and open to the public. Proposals for privately owned facilities to be used for a welcome or tourist center, and leased to a public entity, should be reviewed by the FHWA Division Office on a case-by-case basis.

EXAMPLE:

Beckley Exhibition Coal Mine—Reconstruction of a company-store themed visitor center on the Coal Heritage Byway that interprets coal mining history in southern West Virginia.

George Washington Heritage Trail—Design and installation of signage for byway, informational kiosk, and an interpretive display in the Caperton Train Station in Martinsburg.

5. LANDSCAPING AND OTHER SCENIC BEAUTIFICATION

This activity includes landscape planning, design and construction projects that enhance the aesthetic or ecological resources along highways, other transportation corridors (roadways, sidewalks, rail trails, railways, rivers), points of access, and lands in proximity to other TE projects.

Funds should **not** be used for routine, incidental, or maintenance activities such as cutting grass, pruning trees and/or removal, soil stabilization, construction of noise barriers, drainage improvements and post-construction work, such as replanting and reseeding. Seeding and planting vegetation for erosion control or screening purposes are **not** eligible activities.

Eligible projects may include planting trees, flower beds and shrubs along a roadway entering a town, city, or scenic area. While the restoration of a historic stone wall along a street could be an eligible project, the creation or repair of a retaining wall to prevent soil erosion or collapse is a maintenance activity and **not** eligible. The restoration or planting of native species of plants along transportation corridors is an eligible project. Landscaping may include lighting, historic paving of pedestrian walkways, benches, planting containers, decorative walls, and walkways.

Based upon a recent FHWA interpretation, while the construction of PARKS is not an eligibility activity for TE funding, certain elements might be eligible for consideration. However, the purpose of the activity should be for transportation and not solely for recreation.

EXAMPLES:

Hurricane Landscaping—Landscaping and planting of trees, construction of planters and installation of "Welcome" signage for the entrances to the Town of Hurricane.

Ansted Greenspace—Acquisition and development of greenspace area including sidewalks, landscaping, lighting, and pedestrian amenities.

Tamarack Landscaping and Beautification—Landscaping and construction of new entrance to Tamarack Center including lighting, sidewalks, decorative walls, and installation of pedestrian amenities.

6. HISTORIC PRESERVATION

For historic preservation projects, it is **extremely** important that the project clearly meets the test of "having a relationship to surface transportation" in order to be considered for funding. **If this test is met**, questions that should be addressed in an application include: Are historic structures or sites on or eligible for the National Register of Historic Places; Are they threatened; Do they meet accepted preservation standards and involve qualified professionals; Are they adjacent to, or prominently visible from, the surface transportation system in a way that **significantly** enhances "the transportation experience"?

All rehabilitation work for historic buildings must be conducted according to the Secretary of the Interior's Standards for Rehabilitation, and requires concurrence by the State Historic Preservation Officer (SHPO). **For any historic building project funded under TE, it is required that the building be covered by sufficient fire and flood insurance.**

Eligibility will be limited to exterior renovation and preservation only.

EXAMPLES:

WVNCC B&O Building Renovation—Replacement of windows and exterior doors on the WV Northern Community College B&O Building (former depot).

Civil War Discovery Trail—Provision of interpretive wayside signage, directional signage, and associated informational brochure for Civil War sites statewide.

7. REHABILITATION AND OPERATION OF HISTORIC TRANSPORTATION BUILDINGS, STRUCTURES, OR FACILITIES (INCLUDING HISTORIC RAILROAD FACILITIES AND CANALS)

In this activity, "structures and facilities" include railway depots, roadway or pedestrian bridges, trestles, embankments, vehicles, canal viaducts, and other man-made features related to the operation, use, construction, or maintenance of any mode of surface transportation.

"Rehabilitation" means the process of returning the property to a state that makes possible a contemporary use, while preserving the significant historic features of the property. Eligible activities are limited to the actual stabilization and restoration of the historic elements of the structures/facilities' interior and exterior. Although the costs of contemporary upgrades of water, electric, heating and air conditioning, etc., are eligible, the costs of creating improvements designed for a particular non-transportation use or tenant (such as cubical petitions, furniture, display cases, etc.) **are not eligible**.

All rehabilitation work for historic buildings must be conducted according to the Secretary of the Interior's Standards for Rehabilitation, and requires concurrence by the SHPO. For any historic building project funded under TE, it is required that the building be covered by sufficient fire and flood insurance.

All structures/facilities **must** be open to the public on a not-for-profit basis **and improvements to accommodate private tenants are not eligible**. The costs associated with compliance with the Americans with Disabilities Act (ADA) are eligible only when an actual part of the rehabilitation and not a separate project goal.

The Secretary of the Interior's Standards for Rehabilitation **must** be followed for all historic preservation projects. **The important consideration is that the historic structure must continue in appearance as a restored transportation facility**.

TE funds are generally not to be used for the operation and/or long-term maintenance of eligible TE activities. The exception to this provision is the TE activity category defined in legislation as *Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)*. Consistent with Section 101 of Title 23, the term "operating costs" is defined to mean all reasonable costs for the structure/facility to function. These costs may include administrative costs, costs of utilities and rent, and other costs associated with the continuous operations of the structure/facility. The determination of what constitutes reasonable costs should be by Agreement between the State and the FHWA Division Office. The operating portion of the "rehabilitation and operation of historic transportation buildings, structures or facilities," is to only be used to continue the functions of the historic structure/facility as per the original project proposal and Agreement.

EXAMPLES:

Tunnelton Depot—Restoration of historic railroad depot to serve as community center.

Sistersville Ferry—Coverage of costs for a two-year period including payroll, parts, fuel, services, permits and repairs for the ferry to remain operational.

Center Point Covered Bridge—Rehabilitation of historic covered bridge in Doddridge County.

8. PRESERVATION OF ABANDONED RAILWAY CORRIDORS (INCLUDING THE CONVERSION AND USE THEREOF FOR PEDESTRIAN OR BICYCLE TRAILS)

This category has funded many so-called "rail trail" projects throughout the state. Eligible activities could include the purchase of an abandoned rail corridor (including the acquisition costs, title search, appraisals, etc.), architect and engineering costs, as well as development and construction activities (surface preparation, paving, signage, lighting, barricades, trailhead facilities, parking, restrooms, picnic areas, etc.).

Acquisition must be from a willing seller and the purchase price must be established from an appraisal prepared by a certified general appraiser. The appraisal must be reviewed and approved by the WVDOH prior to an offer to purchase being presented to the seller. In most cases, acquisition of the railway property is through less-than fee ownership (quick claim deed). In such cases, it is highly advisable that the title be delivered to the State Rail Authority and "rail banked" by this agency. The State Rail Authority will then lease the corridor to the project sponsor for development of the rail trail with the understanding that it could be returned to railroad purposes sometime in the future. Acquisition where full title ownership (fee simple) is acquired, does not require rail banking.

According to 23 U.S.C. 217(h), motorized vehicles (including ATVs) may not be permitted on trails and pedestrian walkways which use federal TE funds (except snowmobiles, where specifically authorized by State or local ordinance, motorized wheelchairs, electric bicycles, and maintenance vehicles).

EXAMPLES:

North Bend Rail Trail—Multiple awards for various stages of development along its 57-mile length including surface improvements, lighting, rest areas, construction, and signage.

Marion County Rail Trail—Multiple awards for acquisition and various stages of development along this countywide rail trail system including paving and trailhead construction.

Glen Dale to Moundsville Rail Trail—Acquisition and construction of a 3.8 mile rail trail from Glen Dale to Moundsville.

9. INVENTORY, CONTROL AND REMOVAL OF OUTDOOR ADVERTISING

This category includes the control and removal of existing outdoor advertising signs, displays, and devices which is in addition to the requirement to exercise "effective control" of outdoor advertising under Section 131 of Title 23, U.S.C. Expenditures made to remove existing signs, displays and/or devices shall be made according to a legal process that bases payment on an equitable appraisal. Control and removal of outdoor advertising must accomplish a recognizable improvement to the scenic enjoyment of the traveling public, not just the removal of a locally perceived annoyance.

EXAMPLE:

WVDOH Outdoor Advertising—Development of an inentory management system for all outdoor advertising under WVDOT jurisdiction to include digital photographs, GPS coordinates, permit information, and dimensions.

10. ARCHAEOLOGICAL PLANNING AND RESEARCH

This category may include archaeological site preservation and interpretation; planning to improve identification, evaluation and treatment of sites; data recovery; research on sites; etc. Expenditures under this category should be used for research or interpretation of sites associated either with a transportation facility or an eligible TE project.

EXAMPLE:

Fort Boreman Site—Archaeological research and development of Civil War site in Parkersburg.

Fort Edwards—Acquisition and preservation of French and Indian War era fort and a segment of West Virginia's earliest road.

11. ENVIRONMENTAL MITIGATION TO ADDRESS WATER POLLUTION DUE TO HIGHWAY RUNOFF OR REDUCE VEHICLE-CAUSED WILDLIFE MORTALITY WHILE MAINTAINING HABITAT CONNECTIVITY

TEA-21 expanded the category under transportation enhancements that addresses environmental mitigation for water pollution due to highway runoff and added measures to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity. These activities can be either stand-alone projects or part of a larger existing or proposed project under the TE activities as long as such activity is related to surface transportation. TEs are a means of promoting additional efforts, projects, and activities which relate to transportation but go beyond what is considered ordinary environmental mitigation for a project. As part of the National Environmental Policy Act (NEPA) process, all Federal-aid transportation projects are required to provide environmental mitigation based on their impacts. Mitigation efforts include measures to avoid and minimize impacts. Where impacts are unavoidable, compensatory mitigation is provided. This TE category is to expand on this concept. **However, TE projects are not to replace mitigation currently either eligible or required under regular Federal-aid funded projects.** ISTEA and TEA-21 set aside TE funds to be used to rectify current or prior impacts from transportation facilities. Examples of such projects for the area of water quality improvement in this category of TE funding include:

- Retrofitting an existing highway by creating a wetland to filter highway runoff based on the impacts from the road in terms of water pollution.
- Improving streams and drainage channels through landscaping to promote filtering and improve the overall water quality conditions of receiving channels.
- Providing payment in-kind for existing highway water quality impacts that warrant mitigation to regional or watershed-based planned improvement projects.

This category in the TE program now also addresses activities for the reduction of vehicle-caused wildlife mortality while maintaining habitat connectivity. This

funding category is not limited to threatened and/or endangered species, but may include any wildlife mortality directly caused by vehicles. The criteria used to determine a need for a wildlife crossing or control project in a specific location are determined by the states based on migration patterns, habitat use and distribution, and crossing characteristics of the wildlife through data collection on safety of motorists, habitat fragmentation, and wildlife mortality.

Examples of projects eligible for funding in this TE category could include:

- Projects designated as wildlife underpasses or overpasses.
- Measures at areas identified as crossings for wildlife, which include the necessary fencing and other markings and mitigation techniques associated with movement of wildlife across transportation corridors.
- Bridge extensions to provide or improve wildlife passage and wildlife habitat connectivity.
- Monitoring and data collection on habitat fragmentation and vehicle -related wildlife mortality.

If a direct measure to reduce wildlife mortality at a highway crossing area is determined to be unfeasible (i.e., too expensive, geologically impossible, or unsafe for motorists), it might be possible to provide for the loss of wildlife due to vehicle collisions by developing new habitat resources, or improving existing habitat resources to support additional population numbers. The results could be deemed to be reducing the effects of the highway-related mortality on the long-term population stability or public use benefits of wildlife. When considering this approach, coordination with appropriate wildlife management agencies must be initiated. The decision to undertake this approach should be made in cooperation with, and approved by, the WVDOH.

EXAMPLE:

To date, there have been no projects undertaken for this category in West Virginia.

12. ESTABLISHMENT OF TRANSPORTATION MUSEUMS

Transportation Museums established using TE funds **must** meet the following definition of a museum. The facility must: (1) either be a legally organized not-for-profit institution, or part of a not-for-profit institution or government-entity; (2) be essentially educational in nature; (3) have a formally stated mission; (4) have, at minimum, one full-time paid professional staff member who has museum knowledge and experience and is delegated authority and allocated financial resources sufficient to operate the museum effectively; (5) present regularly scheduled programs and exhibits that use and interpret objects for the public according to accepted standards; (6) have a formal and appropriate program of documentation, care, and use of collections and/or tangible objects; and (7) have a formal and appropriate program of presentations and maintenance of exhibits. **To be eligible for funding under this TE activity, the Sponsor must address, in their application, each of the above listed seven (7) qualities needed to meet the qualifications to be "defined" as a museum.**

Establishment of transportation museums is interpreted by the FHWA to mean "funding of capital improvements." The funds are **not** intended to reconstruct, refurbish, or rehabilitate existing museums, nor portions of museums, that are **not for transportation purposes**. It does **not** cover operations, nor maintenance of the facility. **The museum must be related to surface transportation.** Establishment of transportation museums is interpreted to include the costs of the structure and the purchase of artifacts necessary for the creation and operation of the facility. Displays, segments of buildings, or objects not directly related to transportation will not be funded with TE funds. TE funds may be used to build a new facility, add on a transportation wing to an existing facility, or convert an existing building for use as a transportation museum.

The museum must be open to the public and run by a public, non-profit or not-for-profit organization meeting the definition of museums stated above in this section. If entrance fees are charged for the museum, a portion of the fee must be provided for the long-term maintenance and operation of the facility.

The legislation governing the TE program specifically refers to TE activities "relating to surface transportation." Therefore, TE funds are not to be used to preserve aircraft or create an airport or air museum. Objects or structures related to aviation are not normally eligible for TE funds.

EXAMPLE:

Point Pleasant River Museum—Construction of addition to museum to house new aquarium and pilot house exhibits, exhibit prep room and conference room.

Princeton Rail Museum—Design and construction of "railroad depot" to house a rail transportation museum.

D. WHO IS AN ELIGIBLE APPLICANT?

In West Virginia, only governmental bodies can apply for, and/or receive, TE funding. These include federal, state, county or city governments, as well as agencies, boards or commissions created by an act of the State Legislature, a county commission or city council. Other organizations may participate in a TE project **only** if sponsorship and responsibility for the project rests with a governmental body. The official Sponsor must be identified within the project application and that Sponsor must be willing and able to enter into the required project Agreements, as well as to fulfill the necessary financial and maintenance responsibilities for the project.

IMPORTANT: PLEASE NOTE:

The minimum project application acceptable is $30,000 Total Project Cost. This would be $24,000 TE funds and $6,000 Sponsor funds.

There is not a maximum application limit. However, the amount of TE funds available for West Virginia is established by the Congress. West Virginia receives about $5 million per year from the program. The average award in the past has been about $200,000 per project. This is not a recommended maximum, as projects much higher have been awarded; this is only offered as information.

E. THE REQUIRED MINIMUM 20% MATCH

The Sponsor of an approved TE project **must** contribute a minimum of twenty percent (20%) of the total project costs. **This is a cash match**; in-kind contributions are **not** recognized except for donated property (refer to "Acquisition of Property" below); and in some instances, the costs of preliminary engineering prior to project approval. Meeting this required minimum twenty percent (20%) cash match can be achieved by: either submitting the twenty percent (20%) up front at the start of the project; or through the program's reimbursement of eighty percent (80%) of paid project invoices during the grant period (refer to pages 25-26 entitled "Reimbursement").

If the Sponsor of a project chooses reimbursement of paid invoices at eighty percent (80%), experience has shown that a Sponsor may need about forty percent (40%) of a project's total costs in-hand to maintain the cash flow required to keep invoices paid. Should the Sponsor elect to pay the twenty percent (20%) up front, that twenty percent (20%) is to be available at the **time of application**. Should a potential Sponsor not have the resources available (or at least clearly identified and available upon executing an Agreement for the project), the project should **NOT** be initiated. Failure to demonstrate the financial ability to initiate a project may cause the cancellation of a project approved for funding.

Checks should be payable to the WEST VIRGINIA DIVISION OF HIGHWAYS, and must be received by WVDOH before a NOTICE TO PROCEED will be issued.

F. ELIGIBLE ACTIVITIES ASSOCIATED WITH A PROJECT

There are three (3) broad types of activities associated with TE projects. These are:

1. Acquisition of Property
2. Planning/Design/Engineering
3. Construction

The following more fully describes these three (3) activities and the responsibility of the project Sponsor.

1. ACQUISITION OF PROPERTY

TE funds may be used to acquire property for an approved project. This might be historic or scenic sites, abandoned railway corridors or other property associated

with an approved project. The purchase price of any property must be derived from an appraisal conducted by a West Virginia licensed and board certified appraiser. The Appraisal Report must be, at a minimum, a Complete Summary appraisal, in narrative form, that considers all three (3) accepted approaches to value: cost, market, and income. The appraisal must also develop all applicable approaches to value for the subject property. The appraisal report must be compliant with the current requirements of the "uniform standards of professional appraisal practice" as promulgated by the appraisal foundation. Restricted use appraisal reports are not acceptable. The appraisal must be submitted to the WVDOH for review and approval; this review may either reduce or increase the appraiser's value. DO NOT initiate negotiations with the owner based ONLY on the appraisal figure. The dollar value, once approved by the WVDOH, represents the Fair Market Value of the property that must be conveyed to a willing seller (please note the property owner is entitled to the full Fair Market Value for their property, if they so desire). The ultimate purchase price can be arrived through negotiations. If the seller insists on a price above the Fair Market Value, the amount over Fair Market Value is the sole responsibility of the Sponsor. Should all, or part of, a property be offered as a donation to the TE project, the Fair Market Value is used to establish the cash value of the donation and that amount may be used toward the required minimum twenty percent (20%) match requirement. (This is one of only two non-cash matches allowed for West Virginia's TE Program.) If the seller is willing to accept a purchase price below the Fair Market Value, the difference may be applied to the required minimum twenty percent (20%) match. In any case involving acquisition of property, either by purchase or donation, an appraisal must be initiated by the Sponsor.

The cost of the appraisal may be reimbursed **only** if the appraisal is to occur after the project has been given a **NOTICE TO PROCEED**. However, the Sponsor may wish to undertake an appraisal prior to submission of an application to insure that sufficient funds are requested to actually purchase the property. **COST OVER -RUNS ARE THE RESPONSIBILITY OF THE SPONSOR AND NOT SUBJECT TO REIMBURSEMENT.**

Acquisition requirements for **approved** projects include, but are not limited to, the following:

- The Sponsor shall submit to the WVDOH an appropriate plan, map, or exhibit suitable for recording, which depicts the property and improvements to be acquired.

- The Sponsor shall submit to the WVDOH an appropriate certification of ownership including a list of all liens and encumbrances (i.e., title report).

- Every reasonable effort shall be made to acquire the property expeditiously by negotiations.

- Real property shall be appraised by a qualified appraiser before the initiation of negotiations and the owner shall be afforded opportunity to accompany the appraiser.

- The Sponsor shall convey to the willing seller the WVDOH derived Fair Market Value. Only then may negotiations begin.
- The Sponsor shall pay property transfer expenses.
- Coercion is prohibited.
- To the greatest extent possible, no person shall be required to move from their dwelling, business, or farm operation without at least ninety (90) days written notice prior to the date such move is required.
- If the Sponsor permits an owner or tenant to occupy real property acquired, rent shall not exceed the Fair Market Value of the property to a short-term occupier.
- The Sponsor shall offer to acquire uneconomic remnants.
- The Sponsor shall acquire an equal interest in land and improvements.
- Federal requirements for real property acquisition are further described in 49 CFR, Part 24, and 23 CFR Subchapter 4, Parts 710 through 740.

Federal funds are not available to acquire property that is already within the public domain (i.e., owned by a municipality or governmental agency). Property acquisition authorizations on all projects will be in accordance with the State approved right-of-way manual. Relocation assistance procedures will be in accordance with Titles 23 and 49, US CFR.

The real property disposal provisions of 49 CFR Part 18 and 23 CFR Section 156 apply only when real property, or an interest in real property, is acquired for a federally assisted project.

Condemnation - or the use of eminent domain - shall not be utilized for property acquisition with TE funds.

Voluntary transaction procedures may be used if the acquisition—and this is the key—is, indeed, voluntary. Voluntary means that the owner is informed by the entity acquiring the property that it is unable to acquire the property if negotiations fail. In other words, the potential buyer must convey clearly its intention to "walk away" if the owner does not agree to sell the property. When this condition is met, the acquiring entity then needs only to provide the owner with an estimate of the fair market value of the property. When these two conditions are met, no other Uniform Act requirements apply to the owner.

2. PLANNING/DESIGN/ENGINEERING

TE projects may require the contracting for planning, design, and/or engineering of a construction project. While funds may be used for such activities, TE funds cannot be used for ONLY such work. **"Plans-for-plans-sake" are not eligible.** There must be an actual enhancement project constructed from such planning, design, or engineering activities. Conversely, plans for the TE project should only cover what is necessary and reasonable to complete the scope of work as enumerated in the project Agreement. Concept/master plans for an entire community will not be a reimbursable element.

All project plans must be reviewed and approved by the WVDOH prior to the Sponsor beginning any reimbursable construction element for the project. Project plans should include, but not be limited to the following, as applicable: (1) project right-of-way limits; (2) WVDOH right-of-way; (3) existing and proposed drainage structures, utility locations, and any other pertinent features to the project; (4) any drainage modifications necessary, particularly those associated with the construction/reconstruction of sidewalks; and (5) a plan regarding the maintenance of traffic flow during construction, if the project affects a roadway.

The Sponsor will be responsible for obtaining any permits required by WVDOH, other State and/or Federal agencies, County governments and will be responsible for assuring compliance with all applicable Federal, State and local environmental, historical, archaeological and American with Disabilities Act (ADA Standard) requirements.

All directional signage must be approved by WVDOH. All interpretive signage must be approved by WVDOH and SHPO. All interpretive signage installation must also meet ADA standards.

Any consultant contracts for engineering and design related services must result from negotiations which utilize qualifications - based selection procedures; these procedures do not allow for price to be used as a factor in the selection process. WVDOH Regulations, which provide compliance with Federal and State laws, governing the procurement of such services are included elsewhere in this handbook (see Appendix 6). To contract for work on a project, a consulting, engineering and/or architectural firm must be licensed to do business in West Virginia.

In certain limited instances, upon approval by and at the discretion of the WVDOH, the cost of preliminary engineering PRIOR TO PROJECT APPROVAL may be credited toward the required twenty percent (20%) Sponsor's match. Such a credit may be allowed only provided that appropriate documentation in support of such expenditures would be available for review, as needed. Where the cost of these services is incurred PRIOR to approval of the project, only the value of expenses determined to be reasonable and necessary to complete the project, will be allowed to be used toward the Sponsor's match (Sponsor must use "pay-up-front" method). In addition, if the costs incurred represent payment for consultant services, the credit will ONLY be allowed if these consultant services have been secured in accordance with 23 CFR 172.

Please note: It is highly recommended that Sponsor negotiate with consultant a reasonable date for delivery of plans. Sponsor may also wish to consider penalties for failure to deliver on time.

In most cases, consultant fees for design/engineering/specifications should not exceed 10-15% of the total project cost. Construction oversight costs should not exceed an additional 5-7% of the total project cost. If costs exceed these amounts, please contact your TE project manager.

FORCE ACCOUNT OPTION (PLANNING/DESIGN/ENGINEERING)

Project sponsors also have the option to utilize a "force account," for design, engineering and/or the drafting of bid specification documents for all or portions of the project. "Force Account" is defined as regularly employed (City, County, etc.) employees and (City, County, etc.) owned or rented equipment. All "Force Account" labor and/or equipment shall be invoiced at the rate normally paid by the Sponsor and all labor shall be documented by name of worker, rate of pay, hours and dates of work and work performed. Equipment shall be documented by type of equipment, source of equipment, rate of rental/expense, use and dates of use. Rates are not to exceed that of comparable rental equipment. All requests for the use of a "Force Account" are to be made in writing to the Commissioner of Highways.

See Appendix 6—Rules for Procurement of Negotiated Contracts.

3. CONSTRUCTION

All project plans must be reviewed and approved by WVDOH prior to beginning construction. All construction must be performed in compliance with applicable State and/or Federal laws and regulations (e.g., ADA standards, SHPO regulations, etc.). All rehabilitation work for historic buildings must be conducted according to the Secretary of Interior's Standards for Rehabilitation, and requires concurrence by the SHPO. All materials used in conjunction with a project must meet the requirements of the contract documents included in both the approved Plans, Specifications and Estimate (PS&E) package and the Federal-aid contract provisions. **The project Sponsor is required to provide responsible project oversight and management, as well as all necessary construction inspection.** All TE projects are subject to periodic, unannounced inspection by State and/or Federal representatives.

If cultural materials are encountered during construction, all such activities must cease and the State Historic Preservation Office and the WVDOH must be contacted immediately.

The predetermined minimum wage (Davis-Bacon) rate must be paid to all construction contract workers on projects that are located on the right-of-way of a federal-aid highway and exceed $2,000. Projects not subject to Davis-Bacon rates are required to follow prevailing wage rates established by the West Virginia Division of Labor. If both wage rates apply, the higher of the two must be paid. It is the Sponsor's responsibility to ensure proper wages are being paid by the contractor. Sponsor should interview workers, check pay stubs, and contractor's records, etc., to ensure proper payment.

In addition, all workers paid or unpaid, who are working within the right-of-way of a federal-aid highway, must wear highly visible safety apparel that meets the Performance Class 2 or 3 requirements of ANSI/ISEA 107 -2004 publication entitled "American National Standard for High-Visibility Apparel and Headware".

All projects are subject to "Buy America" requirements. The main focus of "Buy America" is to insure all steel and iron materials used in the project are manufactured in the United States. See 23 CFR 635.410(b) for the basic rule and its exceptions.

BIDDING - Construction projects are required to be advertised and awarded to the lowest responsible and responsive bidder through open competitive bidding (Exception: see Force Account Option [Construction], Page 19). Sponsor's are encouraged to require a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions. **Showing preference** to contractors (based on geographic location), to labor forces (based on their residence), or for materials (based on the location of their origin), **is strictly prohibited**. For projects that require a contractor to perform physical construction or rehabilitation, the Sponsor will assemble the contract proposal package. Requests for bids must be published once a week, on a week day, for two (2) successive weeks, at least three (3) weeks in advance of taking bids (WVA Code 59-3-2).

Prebid conferences are highly recommended with all interested bidders required to attend. If held, those not in attendance would be automatically disqualified. No one person can represent more than one bidder.

See Appendix 7—Required Contract Provisions.

To perform contract work on the project, a contractor/subcontractor must have a valid West Virginia Contractor's License.

Both the Sponsor and its contractor(s)/subcontractor(s) must comply with Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Copeland (Anti-Kick Back) Act, the Contract Work Hours and Safety Act, the Anti-Lobbying Requirement (Sec. 1352, Title 31, US Code), Drug Free Workplace Act of 1988, the Buy America requirements, Worker Visibility Regulations, and the West Virginia Division of Labor Wages for Construction of Public Improvements pursuant to the West Virginia Code 21-5A-3.

In addition, no contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs. The Excluded Parties List System may be viewed at: www.epls.gov/.

REQUIRED CONTRACT PROVISIONS - Form FHWA-1273 is required to be included in all Federal-aid construction contracts (refer to Appendix 7). It will be the responsibility of the project Sponsor to obtain ALL necessary permits to design and/or implement the project.

FORCE ACCOUNT OPTION (CONSTRUCTION)

Project sponsors also have the option to utilize a "force account," for construction for all or portions of the project. "Force Account" is defined as regularly employed (City, County, etc.) employees and (City, County, etc.) owned or rented equipment. All "Force Account" labor and/or equipment shall be invoiced at the rate normally paid by the Sponsor and all labor shall be documented by name of worker, rate of pay, hours and dates of work and work performed. Equipment shall be documented by type of equipment, source of equipment, rate of rental/ expense, use and dates of use. Rates are not to exceed that of comparable rental equipment. All requests for the use of a "Force Account" are to be made in writing. The project Sponsor must request, and receive approval, in writing, from the Commissioner of Highways, for any method other than open competitive bidding.

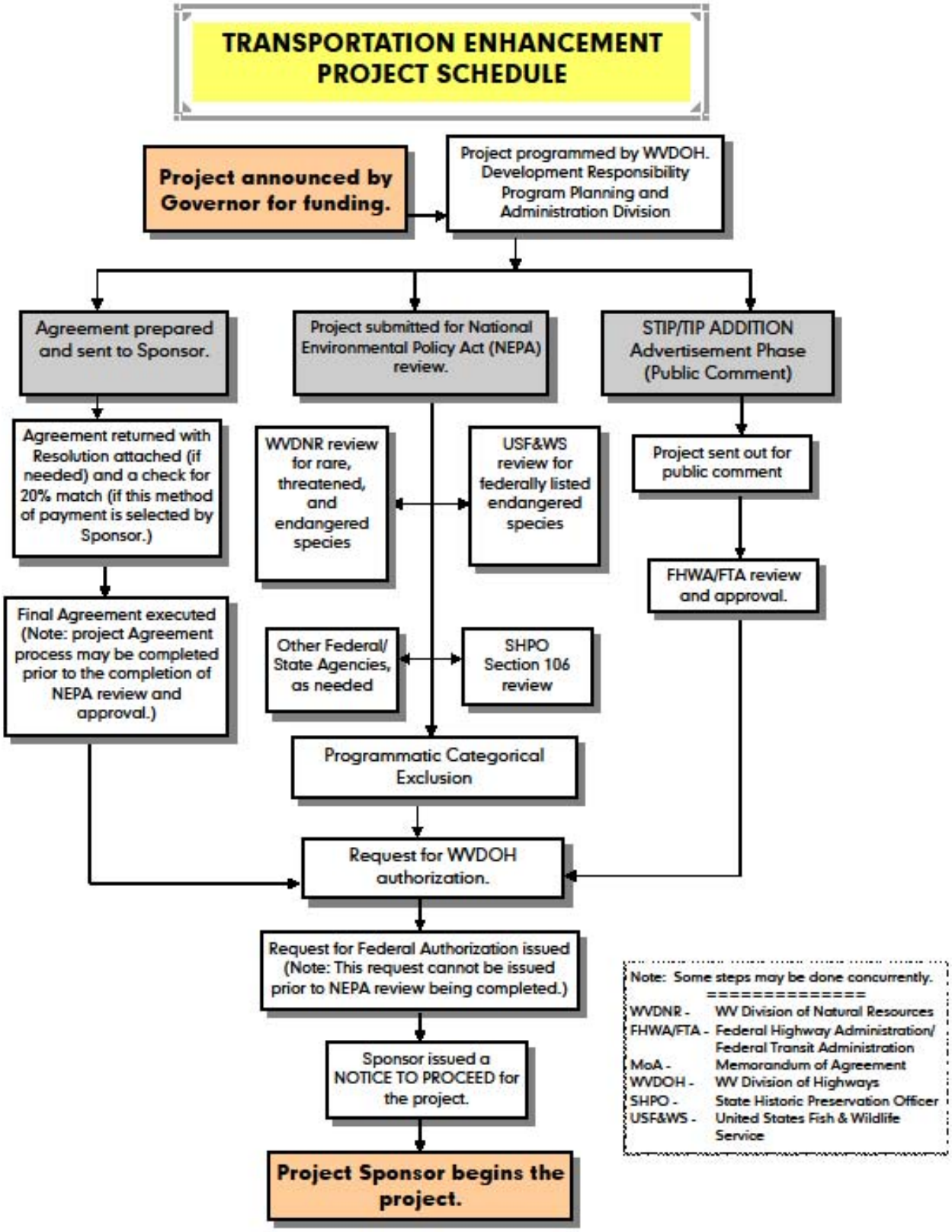
See Appendix 7—Required Contract Provisions.

G. TRANSPORTATION ENHANCEMENT APPLICATION REVIEW PROCESS

All applicants are **REQUIRED** to submit an "Intent-To-Apply" form to help WVDOH staff to identify applications that may either be ineligible (as written) or that may either need clarification or additional information in order to be competitive. All applications are reviewed by the staff of the Program Planning & Administration Division. The FHWA is consulted during this review, as necessary. Applications that are incomplete will be returned and may be resubmitted **only** if such resubmission is received prior to (or on) the deadline date for applications. **It is, therefore, advisable to submit both the "Intent -To-Apply" form and the project application well before the respective deadline dates.**

NOTE: Only those applicants whose "Intent-To-Apply" form are approved in writing shall be eligible to submit an application package.

Applications will be ranked based partially upon consideration of the following factors (not necessarily in priority order):


TRANSPORTATION ENHANCEMENT PROJECT SCHEDULE
Project announced by Governor for funding.
Project programmed by WVDOH. Development Responsibility Program Planning and Administration Division
Agreement prepared and sent to Sponsor.
Project submitted for National Environmental Policy Act (NEPA) review.
STIP/TIP ADDITION Advertisement Phase (Public Comment)
Agreement returned with Resolution attached (if needed) and a check for 20% match (if this method of payment is selected by Sponsor.)
WVDNR review for rare, threatened, and endangered species
USF&WS review for federally listed endangered species
Project sent out for public comment
FHWA/FTA review and approval.
Final Agreement executed (Note: project Agreement process may be completed prior to the completion of NEPA review and approval.)
Other Federal/ State Agencies, as needed
SHPO Section 106 review
Programmatic Categorical Exclusion
Request for WVDOH authorization.
Request for Federal Authorization issued (Note: This request cannot be issued prior to NEPA review being completed.)
Sponsor issued a NOTICE TO PROCEED for the project.
Project Sponsor begins the project.
Note: Some steps may be done concurrently.
==========
WVDNR - WV Division of Natural Resources
FHWA/FTA - Federal Highway Administration/ Federal Transit Administration
MoA - Memorandum of Agreement
WVDOH - WV Division of Highways
SHPO - State Historic Preservation Officer
USF&WS - United States Fish & Wildlife Service

1. The strength of the federally required "relation to transportation."
2. Eligibility within the Project Categories.
3. Quality of planning behind the project.
4. Local support of the project.
5. Clear financial backing for the project's required minimum twenty percent (20%) minimum match.
6. Level of past funding received by the Sponsor and/or geographic area.
7. Overall quality of the project.
8. Quality of Sponsor's administration of previously approved projects.

9. Degree of project completion with the funds requested (i.e., will a viable project be completed?).
10. Positive impact of the project on the community, the region, and the State.
11. Realistic and accurate cost estimates.
12. Application is of such detail to allow a defensible review and recommendation.
13. Project cost neither exceeds funds available, nor seeks to capture a major portion of available funds. (West Virginia, during the first six (6) year program usually had about $3 million each year for the entire State for this program. Selected projects averaged about $200,000 in Federal TE funds. Some projects received multiple years of funding as phased projects. However, <u>each phase</u> should represent a <u>completed and useable project</u> should funding not be approved during the subsequent application years.) Presently, some $5 million, in Federal funds, is available annually.

H. WHAT HAPPENS AFTER YOUR PROJECT IS SELECTED FOR FUNDING?

If your application is one selected for funding, an announcement, usually by the Governor, will be scheduled and you will be notified. This, however, is only the first step in achieving a Federally approved project. **The following actions**, <u>to be initiated by the WVDOH</u>, **will need to be completed before you can begin your project**:

1. A Project Agreement will be drafted by the WVDOH detailing how the project will be funded and the responsibilities of both the Sponsor and the WVDOH. When mutually acceptable, the Agreement will be executed between the Sponsor and the WVDOH. (See Appendices 5a, 5b, and 5c concerning the Project Agreement and standard Attachment A-1, they include additional rules and guidance concerning the TE Program.)

2. The project will be submitted for environmental review and, if required, Section 106 Review (refer to page 23).

3. The project will be included as an amendment to the Statewide Transportation Improvement Program (STIP). Projects located within a Metropolitan Planning Organization (MPO—see Appendix 3) must also receive Transportation Improvement Program (TIP) approval. Joint

approval of STIP and/or TIP amendments are required by both the Federal Transit Administration (FTA) and the FHWA.

4. Once the above three (3) activities are successfully completed, a request for Federal Authorization can be forwarded by the WVDOH to the FWHA.

5. If authorized by the FHWA (and the Sponsor has submitted the required twenty percent [20%] cash match in those cases where this method of payment is selected by the Sponsor), a **NOTICE TO PROCEED** will be issued by the WVDOH to the Sponsor.

   Only at this point may the Sponsor initiate activities on the project and expend funds for which they are eligible for reimbursement. ANY EXPENDITURES BY A SPONSOR PRIOR TO THE RECEIPT OF A WRITTEN NOTICE TO PROCEED FROM THE WVDOH WILL NOT BE REIMBURSED EITHER BY THE WVDOH, OR THE FHWA.

I. SECTION 106 REVIEW

All TE projects, once announced for funding, must be submitted for Section 106 Review, which requires that every federal agency "take into account" how each project affects historic properties. This review is initiated by the WVDOH and requires approval by the SHPO. The following determinations may result: No Effect; No Adverse Effect; or Adverse Effect. A finding of either No Effect or No Adverse Effect will conclude the review. A finding of Adverse Effect will require review and concurrence by the Advisory Council on Historic Preservation, an independent Federal agency located in Washington, D. C. An Adverse Effect will require a mitigation plan to be created and included in a Memorandum of Agreement among the Sponsor, FHWA, SHPO, WVDOH, and the Advisory Council. The costs involved in the documentation needed are the responsibility of the Sponsor and for some types of documentation may involve several thousands of dollars and consume several months to complete. Such costs are not subject to reimbursement since they would occur prior to the receipt of a **NOTICE TO PROCEED**. The Sponsor will be responsible for the total costs involved. The rehabilitation of historic structures must also comply with the Standards for Rehabilitation of Historic Buildings or Structures issued by the National Park Service. This may result in greater costs than an applicant had initially determined.

Please note that WVDOH will submit all successful applications to SHPO for review, comment, and project approval as part of the Section 106 Review process.

J. ENVIRONMENTAL REVIEW

Once announced for funding, all TE projects must be submitted for an environmental review, which requires that every federal agency "take into account" how each project affects endangered species, water resources and environmentally sensitive areas. This review is initiated by the WVDOH and requires approval by the West Virginia Division of Natural Resources (WVDNR) and the U. S. Fish and Wildlife Service (USF&WS).

A finding of "no known occurrences of rare, threatened or endangered species or natural trout streams" or "no effect/not likely to adversely affect…federally listed species" would conclude the review. However, any finding of potential adverse effects or work near specified endangered species zones, waterways, and the like could trigger further reviews or ongoing reviews as the project progresses. In such cases, guidance would be provided with Notices to Proceed for design or construction. In those instances, it would be the responsibility of the Sponsor to insure that procedures were in place to protect those resources or species, as per the directives of the WVDNR or USF&WS, and that their contractors were aware of said findings and made use of the recommended procedures.

K. PROJECT SIGNAGE

Applicants must include in their proposal the costs of a project sign. This sign is to be made of a durable material, at least four feet by eight feet (4' x 8') in size and placed at the site of the project where it can be viewed by persons in the area of the project. The sign will contain the following information, at a minimum, in letters clearly legible:

NAME OF PROJECT

This project is funded in part from the Federal Highway Administration's Transportation Enhancement Program administered by the West Virginia Department of Transportation, Division of Highways

Federal Transportation Enhancement Funds

$_____

At a minimum, the project sign shall be placed at the site immediately following the Sponsor's receipt of a **NOTICE TO PROCEED** and remain at the site until the project's final inspection by staff from the WVDOH. The Sponsor must notify the WVDOH of any ceremonies or "ribbon-cutting" celebrations commemorating a TE project. Such notice shall be at least thirty (30) days, in order to allow possible participation by the Governor, WVDOH, and/or FHWA. Also, please recognize both the FHWA's and WVDOH's participation in <u>all</u> press releases and announcements regarding a TE project.

L. PROJECT TIME SCHEDULE

Sponsors are required to move expeditiously with their TE project, once **NOTICE TO PROCEED** is received. Projects approved for funding and issued a **NOTICE TO PROCEED** <u>MUST</u> commence within nine (9) months of the date of the **NOTICE TO PROCEED**. Failure could result in a cancellation of the project, unless an extension is approved by the WVDOH, for good cause. TE projects <u>MUST</u> be completed within two (2) years of the date of the **NOTICE TO PROCEED**. Failure to do so may result in a cancellation and forfeiture of remaining funds, unless an extension is approved, by the WVDOH, for good cause.

M. REIMBURSEMENT—PLEASE READ CAREFULLY !!!

The TE will **reimburse** a project Sponsor for up to eighty percent (80%) of the eligible costs of an approved project. The Sponsor may select either of two (2) payment methods. The first method requires the Sponsor to pay all invoices associated with the project and then submit copies of those paid invoices to the WVDOH for reimbursement of up to eighty percent (80%) of the total dollar amount of the paid invoices submitted. A cover invoice on the Sponsor's letterhead must be attached to the package of paid invoices. All invoices from Sponsors must be in approved format, and Sponsor must initial and date all supporting backup invoices to indicate authorized review and approval. Two (2) sample cover invoices are included in this guideline handbook (see Appendix 4).

Generally, a Sponsor will submit one (1) month's worth of **paid** invoices as a reimbursement package. A check representing the eighty percent (80%) reimbursement, **payable to the Sponsor**, will be issued about 4-6 weeks after receipt by the WVDOH. The final invoice package for a project will take 4-6 months for reimbursement since a final project audit must be performed prior to the final reimbursement payment. It is advisable to make this final project invoice relatively small, due to the more lengthy delay caused by the required final audit. A final invoice of only a few hundred dollars would be acceptable. The Sponsor must insure that they have the cash available during the project to cope with this eighty percent (80%) reimbursement schedule. If the Sponsor cannot insure this cash flow requirement they may wish to utilize the second method of payment, as detailed below.

The second possible method of payment would require the Sponsor to submit a check, payable to the **"West Virginia Division of Highways"**, for the twenty percent (20%) match at the start of the project. The full amount representing the twenty percent (20%) match must be submitted along with the executed Agreement; the project cannot be initiated until this check is received and deposited in the State Road Fund. The Sponsor may then submit copies of either paid or **unpaid** invoices, again packaged with the appropriate cover invoice described above, certifying that the invoices represent work that has been done but not yet paid for. Again, the issuance of a check, **payable to the Sponsor**, will require 4-6 weeks. The sponsor, upon receipt of the check, will be required to then pay the individual vendors, contractors, or consultants whose invoices were submitted. **The WVDOH will not pay a project Sponsor's contractors, vendors, or consultants directly.** Likewise, the final invoice package will require a final audit and, again, it is best to make this final invoice relatively small (a few hundred dollars would be acceptable) and with the vendor's knowledge that there will be a longer than usual delay in payment. The Sponsor may wish to pay the affected vendor and wait for the final reimbursement.

At the time of application, the Sponsor must identify one (1) of these two (2) payment methods, which will be detailed in the Project Agreement. No matter which option is selected, invoices may be submitted no more often than on a monthly basis, and MUST be accompanied by an up-to-date Progress Report reflecting the work which justifies the reimbursement requested to be considered for reimbursement.

VERY IMPORANT:

Any **non-authorized** expenditure made by the Sponsor of a selected TE project PRIOR to the Sponsor's receipt of a written **NOTICE TO PROCEED** from the WVDOH **cannot** be reimbursed. **DO NOT MAKE THIS VERY EXPENSIVE MISTAKE!!**

N. RECORDS AND AUDIT REQUIREMENTS (A-133)

1. The Sponsor and its consultants and contractors shall maintain all books, documents, papers, records, supporting cost proposals, accounting records, employees' time cards, payroll records and other evidence pertaining to costs incurred in the project and shall make such materials available at all reasonable times during the contract period and for three (3) years from the date of submission of the final voucher to FHWA or seven (7) years after the date of final payment to the contractor, whichever is the later date, for inspection and/or audit by the WVDOH, the FHWA or any other authorized representatives of the State or Federal government; and copies shall be furnished, if requested. Time records for personnel performing any work shall account for direct labor performed on the project as well as the time of any personnel included in the computation of overhead costs. In addition, a complete record of time shall be kept for personnel assigned part-time to the project. A record of time limited to only their work on this project will not be acceptable.

2. Non-federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Office of Management and Budget Circular No. A-133 and shall submit a copy of aforesaid audit report to the WVDOH for review.

   See Appendix 8—Audit Requirements Concerning A-133.

O. RULES AND GUIDELINES

Appendices 5a, 5b, 5c, 6, 7, and 8 cover additional applicable rules and guidelines for the TE Program. Sponsor must review, concur and insure concurrence of the rules and guidelines mentioned throughout this manual. The TE Program Standard General Clauses and Covenants are discussed in Appendix 5c and will incorporated and made a part of the Project Agreement. Sample Agreements are found in Appendices 5a and 5b.

P. IMPORTANT NOTES

IMPORTANT NOTE #1:

PROJECT MAINTENANCE - The project Sponsor is responsible for the continued maintenance of the project after completion. It should be noted that the maintenance term designated by the Project Agreement, is the minimum maintenance term to fulfill the Federal funding obligation. If the Sponsor fails to maintain the project for the minimum maintenance term, it will be at the sole discretion of the Federal Highway Administration and/or the WVDOH to determine if the violation warrants repayment and the amount to be repaid. It should be noted that the Sponsor is responsible for all project maintenance beyond the Federal obligation set by the Agreement. Maintenance for all project elements constructed under the TE Program will be the sole responsibility of the Sponsor at all times.

IMPORTANT NOTE #2:

Program Misconceptions VS. Reality

MISCONCEPTION	REALITY
"Grant" Program	Reimbursement Program
Federal Funding Paid Up Front	Sponsor reimbursed for eligible expenses as Project elements are satisfactorily completed and invoiced
Minimal (or no) Federal Regulations	Numerous Federal Regulations
Can begin construction immediately after project is awarded	Several months to reach the design and/or construction phase
Any work done prior to Federal-Aid approval and notice to proceed will be reimbursed to Sponsor	No reimbursement for costs incurred prior to Federal-Aid approval and notice to proceed

IMPORTANT NOTE #3:

Depending on the complexity of a project, its impact on historic properties and/or the need for a Memorandum of Agreement (MoA) (refer to page 23, Section 106 Review) this process alone can take anywhere from five (5) months to eighteen (18) months after a project has been announced as selected for funding. The affected project cannot begin until this review is completed. THERE ARE NO EXCEPTIONS UNDER FEDERAL LAW. Applicants should consider this time schedule when determining whether to participate in this program.

IMPORTANT NOTE #4:

CANCELLATION OF A PROJECT - A project Sponsor may, at any time in the project development process, cancel the project and withdraw from the program. However, the project Sponsor will then be responsible for the repayment of all Federal funds received as of that date, as well as be responsible for payment of all outstanding invoices. The Sponsor shall also be responsible for ensuring that, in the event of cancellation, the existing physical condition of the project is such that it poses no health or safety concern to the public. The Sponsor shall be held liable in the event of injury resulting from an unsafe condition at a project site.

Q. POSTSCRIPT

The TE Program offers a unique and valuable opportunity for local communities to improve and enhance their transportation system. Applications received far exceed available funds each year. The resulting competition means that only the best proposals can be funded and many worthwhile projects cannot be addressed, due to funding constraints.

Communities are encouraged to participate in this program and the WVDOH is available to assist applicants and Sponsors, both with their project applications and with their projects. The successful completion of an eligible project reflects favorably on the TE Program, the Departments involved, the Sponsors, the communities improved by these projects, and the State of West Virginia.

If you have any questions, or are in need of any assistance, please contact:

West Virginia Division of Highways
Program Planning & Administration Division
Attn: Jeff Harpold, Community Development Specialist
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Phone: (304) 558-9596
Fax: (304) 558-3783
E-Mail: Jeffrey.L.Harpold@wv.gov

APPENDICES

When reviewing the following appendices, some sample documents are included and should be used only as a starting point in preparing your documents. Your project may require additional statements/information to cover pertinent situations such as audit provisions, pre-contractual requirements, or other federal, state or local guidelines which apply. If you have questions concerning the process, please contact the West Virginia Division of Highways, Program Planning and Administration Division, Grant Administration Section at either (304) 558-3165 or 558-9596.

LIST OF APPENDICES

1. TE "Intent-To-Apply" Form (due November 15th)
2. TE Application for Funding (including Environmental Assessment and Checklist) (due January 15th)
3. List of Contacts
4. Sample Invoices (80% and 100% Reimbursement)
5. Sample Agreements
   a. Sponsor "Match" Provided Up-Front
   b. "Pay-As-You-Go"
   c. Attachment A-1—"Grant Program General Clauses and Covenants (April 7, 2009)"
6. Rules for Procurement of Negotiated Contracts (Consultant Information)
7. Required Contract Provisions (Contractor Information)
8. Audit Requirements Concerning A-133
9. Project Phases and Responsible Parties

APPENDIX 1

FORM NOW AVAILABLE ON-LINE

TE "Intent-To-Apply" Form

(due November 15th of each year)

NOTE: **Only those who both submit an Intent-To-Apply form, and receive a written "go-ahead" from WVDOH, may submit an application for funding.**

This page is intentionally blank.

FORM NOW AVAILABLE ON-LINE

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

TRANSPORTATION ENHANCEMENT PROGRAM

(Instructions for "Intent-To-Apply" Form)

What is an "Enhancement"?

The West Virginia Division of Highways (WVDOH) Transportation Enhancement (TE) Program provides funding to local, regional and State government entities to undertake projects that can demonstrate that they "relate to surface transportation" and that may not be eligible for funding through other WVDOH programs. Examples of projects that might be eligible include rails-to-trails, development of scenic byways, restoration of historic transportation facilities and other projects directly related to transportation. The TE Program developed for West Virginia is not intended for major long-term transportation projects; the intent of the program is to assist governmental entities in accomplishing smaller, user-effective projects over a relatively shorter period of time.

The Federal Highway Administration may reimburse up to 80% of the cost of approved eligible activities; the project Sponsor must provide a minimum of 20% of the total project cost.

The West Virginia Division of Highways (WVDOH) reserves the right of first option to administer the projects from design through construction. (WVDOH may design or hire a consultant to design, then have the option to perform complete administration of construction contracts [i.e., advertise for bids, award contract, oversee construction] with input from Sponsor.)

What types of projects are eligible for Enhancement funds?

In addition to the requirement that the project must "relate to surface transportation," projects must clearly fall into one or more of the following qualifying activities provided in 23 U.S.C. 101(a)(35):

- facilities for pedestrians and bicycles;
- safety and educational activities for pedestrians and bicyclists;
- acquisition of scenic easements and scenic or historic sites;
- scenic or historic highway programs (including tourist and welcome center facilities);
- landscaping and other scenic beautification;
- historic preservation;
- rehabilitation of historic transportation buildings, structures, or facilities (including historic railroad facilities);
- preservation of abandoned railway corridors (including conversion and use as pedestrian/bicycle trails);
- control and removal of outdoor advertising;
- archaeological planning and research;
- environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and/or
- establishment of transportation museums.

The WVDOH reserves the right to prioritize both categories and individual projects for funding. For additional information on eligibility requirements for each qualifying activity visit our website.

Who may apply for Enhancement funds?

State and local governmental agencies or political subdivisions within the State of West Virginia are eligible to apply. This includes local units of government (towns, cities and counties) and State agencies. Certain other governmental entities may also be eligible to apply. Please contact the WVDOH TE Coordinator, Jeff Harpold, for clarification, if needed. Mr. Harpold may be reached by telephone at (304) 558-9596, by fax at (304) 558-3783, or by e-mail at Jeffrey.L.Harpold@wv.gov.

WVDOH recognizes that many fine private non-profit and/or civic organizations will have a strong interest and support for use of these funds. Therefore, we encourage interested advocacy groups to work with appropriate local, regional and/ or State governmental units to develop project applications.

Proof must be provided that your project will meet at least four (4) initial criteria to qualify for Enhancement funding:

- The project must fit within the eligibility activities;
- The activity must have a demonstrative relationship to surface transportation;
- The applicant must provide at least a 20% cash match of total project costs;
- The government entity must commit to provide future maintenance of the project.

Minimum total project cost: $30,000 ($24,000 TE funds + $6,000 Sponsor match = $30,000 Total Project Cost).

What is the Application Process?

The application process is intended to establish communication between the WVDOH and the various applicants. Therefore, we have established the following process:

STEP 1: Complete the "Intent-to-Apply" form *(see next page)*. Please indicate, in the space provided, a description of the proposed project including such information as (if appropriate): length, width, surface type, and beginning and ending points for trail projects; the historic or current transportation function and proposed scope of work for historic restoration projects; and location and purpose of proposed landscaping projects. Also, include information on what program eligibility requirements the project will fulfill, what is the connection to surface transportation, and the source and current status of matching funds.

Mail completed form to:

West Virginia Division of Highways
Program Planning and Administration Division
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0430

NOTE: Must be received no later than November 15th.*[1]
No faxed or e-mailed Intent-to Apply forms will be accepted.

STEP 2: Only if your project meets requirements for eligibility, will you be asked to continue by filling out a full Application form. An application packet with instruction booklet will be mailed to the contact person listed on the "Intent-to-Apply" form. Site visits to the proposed project locations may be conducted by the WVDOH. Do not complete an Application form unless instructed to by WVDOH.

STEP 3: Technical Review Committee meets to review project applications and make funding recommendations to the Department of Transportation (DOT) Cabinet Secretary and the Commissioner of Highways.

STEP 4: The DOT Cabinet Secretary and the Commissioner of Highways selects, with the concurrence of the Governor, projects for funding.

STEP 5: Governor makes announcement/award to successful applicants.

PLEASE NOTE: For additional information or to download blank Intent-To-Apply forms visit our website at www.transportation.wv.gov, select Agencies, Highways, Program Planning, Planning, Grant Administration Unit, then the appropriate grant program.

---

*[1] **It is the Sponsor's responsibility to ensure that their completed forms have been received by the deadline. If the deadline falls on a holiday or weekend, the forms will be due at the end of the next business day.***

FORM NOW AVAILABLE ON-LINE

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

TRANSPORTATION ENHANCEMENT PROGRAM
INTENT-TO-APPLY FORM

(Note: Must be received no later than November 15th[1].)
No faxed or e-mailed Intent-to-Apply forms will be accepted.

County(ies) _____

Project Name _____ **Fiscal Year** _____

NAME OF SPONSOR'S ORGANIZATION:	DATE:

CONTACT PERSON AND TITLE:

ADDRESS:

CITY:	STATE:	ZIP:

TELEPHONE: ( )	FAX: ( )	E-MAIL ADDRESS:

APPROXIMATE AMOUNT OF FEDERAL FUNDS YOU WILL BE REQUESTING [a,b]: $	IS 20% MATCH NOW AVAILABLE? IF NO, EXPLAIN [c].

SPECIFIC PROJECT INFORMATION REQUESTED:

- ► Is this a continuation of a project previously approved for funding? YES _____ NO _____
- ► Does your proposal include land acquisition? YES* _____ NO _____

  *If yes, is it from a willing seller/lessor? YES _____ NO _____

  - Has an appraisal been prepared? YES* _____ NO _____
    *If yes, what is the appraisal amount? $_____
    *When was the appraisal performed? _____
- ► Does your proposed project impact a historic and/or archaeological site?
  YES* _____ NO _____

  *If yes, has the State Historic Preservation Officer been notified? YES _____ NO _____

NOTES:
[a] Construction costs should be computed using Davis-Bacon and/or West Virginia Prevailing Wages, as applicable.
[b] Federal funds may be reimbursed up to 80% of the total project cost.
[c] 20% minimum Sponsor's match must be available at the time of application.

* * * * * Please photocopy as needed. * * * * *

PLEASE SUMMARIZE THE PROPOSED PROJECT (SEE APPLICATION PROCESS STEP #1):

Please limit your response to the space provided.

PLEASE IDENTIFY THE PUBLIC BENEFIT AND THE RELATIONSHIP TO TRANSPORTATION OF THIS PROJECT INCLUDING ECONOMIC AND TOURISM DEVELOPMENT. INDICATE IF THIS PROJECT CONTRIBUTES TO EXISTING OR PROPOSED TRANSPORTATION/COMMUNITY DEVELOPMENT PLANS.

NOTE: Intent-to-Apply forms must be returned either by mail or delivered. Faxed or e-mailed forms will NOT be accepted.

APPENDIX 2

FORM NOW AVAILABLE ON-LINE

TE Application For Funding (including Environmental Assessment and Checklist)

(due January 15th of each year)

NOTE: To be completed ONLY by those whose Intent-To-Apply form has been "approved" by WVDOH.

For additional information or to download blank Application forms visit our website at www.transportation.wv.gov, select Agencies, Highways, Program Planning, Planning, Grant Administration Unit, then the appropriate grant program.

This page is intentionally blank.

FORM NOW AVAILABLE ON-LINE

PROJECT NAME: _____

COUNTY(IES): _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

TRANSPORTATION ENHANCEMENT PROGRAM

APPLICATION FOR FUNDING

(photocopy as needed)

~ ~ ~ ~

FEDERAL FISCAL YEAR 2011

(Applications are due January 15, 2011)

REVISED OCTOBER 2010. DO NOT USE PREVIOUS VERSIONS.

PLEASE NOTE:

- The Transportation Enhancement Program is an 80/20 reimbursement program. Sponsors must either pay all invoices associated with an approved project and then seek reimbursement OR provide the required 20% cash match to the West Virginia Division of Highways prior to final approval of their project. Please review the program guidelines and understand the Sponsor responsibilities BEFORE submitting an application.

- Submit an application ONLY if you have previously submitted an Intent-To-Apply form that was "approved" by WVDOH.

- All application entries and attached submissions must be typed.

- The WVDOH reserves the right of first option to administer the projects from design through construction. (WVDOH may design or hire a consultant to design, then have the option to perform complete administration of construction contracts [i.e., advertise for bids, award contract, oversee construction] with input from Sponsor.)

~ ~ ~ ~ ~ ~

It is the Sponsor's responsibility to ensure that their completed Application form(s) have been received by the deadline. If the deadline falls on a holiday or weekend, the forms will be due at the end of the next business day.

TRANSPORTATION ENHANCEMENT PROGRAM
APPLICATION FOR FUNDING
Fiscal Year 2011 (due January 15, 2011)

FORM NOW AVAILABLE ON-LINE

I. SPONSOR INFORMATION

PROJECT SPONSOR (Must be a Governmental Body):

CONTACT PERSON AND TITLE:

MAILING ADDRESS:

TELEPHONE:

ALTERNATE TELEPHONE:

E-MAIL ADDRESS:

FAX:

II. PROJECT DESCRIPTION

PROPOSED PROJECT DESCRIPTION (be sure to clearly outline the work elements including the project location)**:**

(Attach additional sheets, as necessary, to fully describe proposed project.)

III. PROJECT LOCATION

Map(s) and photographs **ARE REQUIRED** to fully show the project location. Project location MUST be shown on a US Geological Survey (USGS) Map and included with the application. Failure to do so may result in your application being classified as incomplete and returned. In addition to the required USGS Map and photographs, please attach any other materials which may assist in the review/rating of your application.

(Attach additional sheets, as necessary.)

LOCATION OF PROPOSED PROJECT(S):

County(ies): _____ **City/Area:** _____

List name of street(s) on which project is, or will be, located. List beginning point, ending point, and length of project area. If needed, use a separate sheet to complete list.

IV. PROJECT INFORMATION (General)

A. Is this a continuation of a previously funded TE project?

Yes* _____ **No** _____

*If "yes," attach sheets, as necessary, to describe how this application differs from previous one(s).

B. Will this requested funding result in a completed project?

Yes _____ **No** _____

C. Will this project involve trail construction?

Yes* _____ **No** _____

*If "yes," length [miles] to be constructed? _____

D. **Please provide the approximate latitude and longitude, in *decimal degrees*, for the proposed project.**

Latitude _____
Longitude _____

How determined? Check one:

___ **GPS**
___ **Taken from Topographical Map**
___ **Survey**
___ **Other (specify):** _____

Location: _____

For trails or improvements along a trail the latitude and longitude should identify the beginning point of the trail improvement/construction area. A description of the location of the trail as well as the ending point latitude and longitude should be noted in the "Location" box. The latitude and longitude for all other types of projects should be identified as close as possible to the approximate center point of construction.

E. **Does the proposed project involve property acquisition?**

Yes* _____ **No**** _____

*If "yes," continue.
**If "no," skip to section "5".

◊ **Who currently owns the property proposed to be acquired?** _____

◊ **Is the property acquisition for a "rail trail"?**

Yes ____ **No** ____

◊ **Has CSX or other railroad company been notified?**

Yes* ____ **No** ____

*If "yes," please provide documentation of notification.

◊ **Is there a willing seller? Yes* ____ No ____**

*If "yes," please provide a letter from the willing seller denoting their interest in the project. Do not discuss price, this should be delayed until Fair Market Value is established.

◊ **Is the property being donated to the project?**
Yes* ____ No ____

*If "yes," please provide a letter from the property owner(s) denoting their willingness to donate all or part of the property needed to complete the project.

◊ **Has an appraisal been performed by a certified general appraiser? Yes* ____ No ____**

*If "yes," what is the appraised value?

$_____

***When was the appraisal performed?**

_____

V. PROJECT INFORMATION (Specific)

A. Describe fully the required "relation to surface transportation" (attach additional sheets, as necessary):

B. **Of the twelve (12) qualifying activities (see page 1), which ONE (1) best describes your proposed project?**

VI. ESTIMATED COSTS FOR PROJECT

Planning, Engineering, Design: $_____

Acquisition of Property: $_____

Construction: $_____

Other (Specify): $_____

_____ $_____

_____ $_____

Please detail, on a separate sheet, elements and costs (e.g., excavation, roofing, electrical, plumbing, HVAC, etc.). The cost estimate should be detailed enough to allow the project to be phased (if budgetary constraints dictate). In addition, a detailed cost estimate will allow ineligible work elements to be eliminated without causing the entire project to be deemed ineligible.

VII. REQUIRED SPONSOR'S MATCH (Minimum of 20% of Total Project Costs):

TE Funds Requested (maximum of 80%): $_____

Sponsor's Match (minimum of 20%): $_____

Total Project Cost: $_____

Is the required minimum 20% match to be paid up front?

Yes _____ **No** _____

Is the required minimum 20% match available at time of application?

Yes _____ **No*** _____

*If "no," fully describe below "when" and "how" match is to be available. Use additional sheets, as necessary.

VIII. SCHEDULE

If the project is approved for funding, will you be able to begin the project within nine (9) months of the NOTICE TO PROCEED?

Yes _____ **No** _____

Will you be able to complete the project within two (2) years from the NOTICE TO PROCEED?

Yes _____ **No** _____

IX. ENVIRONMENTAL ASSESSMENT REVIEW QUESTIONNAIRE

(please type—use additional sheets, as necessary)

Completion of the Environmental Assessment Review Questionnaire is required for each project. The questionnaire must be completed, signed, and the signature attested to process the application. Failure to do so may result in your application being classified as incomplete and returned.

PROJECT: _____

DATE: _____

COUNTY(IES): _____

COMPLETED BY: _____

_____

(name, title and organization)

PROJECT DESCRIPTION: _____

_____

_____

A. SOCIOECONOMIC IMPACT(S)

1. Will this project involve the acquisition of right-of-way?

   _____ Yes* _____ No

   *If "yes," describe the current ownership, acres, and impact on properties (e.g., businesses, residences, vacant property, etc.).

2. Is any public land to be used (e.g., United States Forest Service, other United States Managed Property, City Park, County Park, State or National Forest, etc.)?

   _____ Yes* _____ No

   *If "yes," describe impact of project on the land and attach a letter from public authority (if Project Sponsor is not owner) granting permission to use property (see Cultural Impact Question #1).

*If "yes," has the property received monies from the Land and Water Conservation Fund? _____ Yes _____ No

3. Will any building, business, residence, or structure (in whole or in part) be acquired, relocated or demolished by this project?

_____ Yes* _____ No

*If "yes," describe work to be completed.

(a.) Are persons/residents to be relocated due to the project?

_____ Yes _____ No

4. Is any farmland being taken by the project?

_____ Yes* _____ No

*If "yes," how many acres?

5. Is this project either different from or in conflict with planned growth, land use, or current zoning for the area?

_____ Yes* _____ No

*If "yes," please describe.

(a.) Will this project complement the current planned growth or land use for the area?

_____ Yes* _____ No

*If "yes," please describe.

B. CULTURAL IMPACT(S)

1. Are any parks or recreational facilities to be affected directly or indirectly by the project?

_____ Yes* _____ No

*If "yes," describe the positive impact.

*If "yes," describe the negative impact.

*If "yes," what percentage or number of acres of the park/recreational facility will be taken by this project?

2. Will this project directly impact churches or schools?

_____ Yes* _____ No

*If "yes," describe the positive impact.

*If "yes," describe the negative impact.

3. Are there any archaeological sites, historical markers, structures (buildings over 50 years old), historical events, famous people associated with the project or project area?

_____ Yes* _____ No

*If "yes," please describe.

(a.) If "yes," describe the impact (positive and negative) this project will have on the historic property.

(b.) If "yes" and the project will have no impact, please describe why this project will not impact the historic property.

4. Are there any archaeological features, old building foundations, or other cultural/historical/scenic features known within the project area which may be disturbed during the project work elements?

_____ Yes* _____ No

*If "yes," please identify features.

5. Is the project either located within or directly adjacent to a historic district?

_____ Yes _____ No

C. NATURAL ENVIRONMENT IMPACT(S)

1. Are there any wetlands directly or indirectly affected by the project?

_____ Yes* _____ No

*If "yes," have you acquired the necessary wetland permits?

_____ Yes _____ No

2. Is the project in a flood plain (100 year or less)?

_____ Yes _____ No

3. Are there any known or purported endangered or threatened species within the project corridor or area?

_____ Yes _____ No

4. Will any unique natural features and/or areas be negatively impacted?

_____ Yes* _____ No

*If "yes," please describe fully.

5. Are any designated or proposed Wild and Scenic Rivers within the project area?

_____ Yes* _____ No

*If "yes," how will this project impact the river and its corridor?

D. PERMITS

1. Will this project cross, lie within, or directly affect any section of roadway currently on or under the jurisdiction of the West Virginia Division of Highways (WVDOH)?

_____ Yes _____ No

(a.) Will this project, at any time, during or after construction, stop, or alter traffic patterns of a roadway on the State Highway System?

_____ Yes _____ No

If you answered "yes" to either question 1 or 1a, then please contact the West Virginia Division of Highways' District Office, for your area, concerning this project prior to submitting your project application. Please indicate the person contacted and the date of contact. See Appendix 3 for a list of WVDOH District Offices.

(b.) Have you acquired the needed permits from the WVDOH?

_____ Yes _____ No

2. **(a.)** Will the project either disturb (through clearing, grubbing and/or construction) one or more acres or create erosion, sedimentation or other types of "pollution"?

_____ Yes _____ No

(b.) Are any erosion/sediment permits required?

_____ Yes* _____ No

*If "yes," have you acquired the needed permits?

_____ Yes _____ No

3. Are you familiar with procedure for obtaining construction permits?

_____ Yes _____ No

4. **(a.)** Will this project involve the relocation of any utilities?

_____ Yes* _____ No

*If "yes," please describe the utilities to be relocated.

(b.) Has the utility company(ies) been notified?

_____ Yes* _____ No**

*If "yes," please provide documentation.

**If "no," please notify immediately and provide documentation.

E. WATER QUALITY / STREAM IMPACT

1. Identify all bodies of water (streams, creeks, rivers, lakes, wetlands, reservoirs, ponds, marshes, bogs, etc.) in the project area and describe the affects the project will have on them.

2. Will there be any disturbance of the water of any stream, creek, pond, lake, river, or banks thereof below the average high water mark at anytime during the construction of this project?

_____ Yes* _____ No

*If "yes," have you acquired the necessary permits for the project?

_____ Yes _____ No

3. Will this project involve a change in the vertical or horizontal clearance of a navigable stream?

_____ Yes* _____ No

*If "yes," have you acquired the needed permits for this project?

_____ Yes _____ No

**If you answered "yes," to questions 2 or 3, please contact the West Virginia Division of Natural Resources, Office of Land and Stream, 324 4th Avenue, Room 200, South Charleston, West Virginia 25303, Telephone (304) 558-3225; the West Virginia Department of Environmental Protection, Division of Water and Waste Management, 601 57th Street, S.E., Charleston, West Virginia 25304, Telephone (304) 926-0499; and the appropriate U.S. Army Corp of Engineers, Division Office (see Appendix 3).*

F. AIR QUALITY IMPACT

1. Will this project have any adverse impact to air quality?

_____ Yes* _____ No

*If "yes," please describe.

G. NOISE IMPACT

1. What permanent negative impacts will occur if this project is completed?

H. HAZARD WASTE / UNDERGROUND TANKS

1. Are there any waste/contaminated sites along or in the project area (e.g., sanitary landfills, dumps, gas stations, old storage tanks [buried or above ground], contaminated soils, pipelines, or industrial/household drainage)?

   _____ Yes _____ No

2. Will the proposed project require the disturbance of any suspected or confirmed asbestos?

   _____ Yes _____ No

3. Does lead paint contamination exist?

   _____ Yes _____ No

I. DRAINAGE IMPACT

1. Will this project alter or change the current flow of storm water (e.g., construction of new sidewalks where none currently exist)?

   _____ Yes* _____ No

   *If "yes," is drainage in place to handle the runoff?

   _____ Yes _____ No**

   **If "no," please explain when and how this will be addressed.

2. Have you acquired the necessary permits for storm water management?

   _____ Yes _____ No

ENVIRONMENTAL ASSESSMENT REVIEW QUESTIONNAIRE CERTIFICATION

I certify that, to the best of my knowledge, the above statements are true, complete and accurate.

_____	_____
Attest	**Signature**
_____	_____
Title	**Title**
_____	_____
Date	**Date**

This certification must be signed and the signature attested to process this application.

X. MAILING APPLICATIONS

- **DO NOT prepare and mail application unless you have been notified to do so after completing an Intent-To-Apply form.**
- **When sending an application for funding, please forward one (1) copy of the Application package to your Regional Planning and Development Council and, if the project is within the jurisdiction of one of the State's Metropolitan Planning Organizations (MPOs), as shown in Appendix 3, please also forward one (1) copy to the appropriate MPO.**

Additionally, forward four (4) completed application packages to:

West Virginia Department of Transportation
Division of Highways
Program Planning and Administration Division
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0430

NOTE: NO FAXED OR E-MAILED APPLICATIONS WILL BE ACCEPTED.

PLEASE NOTE: **COMPLETED APPLICATIONS MUST BE RECEIVED NO LATER THAN 4:00 P.M., JANUARY 15th. Applications received, even if postmarked earlier, after that time will be returned and will NOT be considered for funding. Exception: If January 15th falls on Saturday, Sunday, or a State/Federal Holiday, applications will be accepted through 4:00 p.m. on the first day of business after the 15th.**

It is the Sponsor's responsibility to ensure that their completed Application form(s) have been received by the deadline.

Incomplete applications will be returned to the Sponsor and will NOT be considered for funding UNLESS completed and returned prior to the deadline. It is to the Sponsor's advantage to make application early enough to allow time for clarification/modification before the stated deadline.

continued...

...continued

Applications deemed "ineligible," after consultation with the FHWA, will be returned to the Sponsor with a letter of explanation.

Questions about possible project eligibility may be discussed with Jeff Harpold at (304) 558-9596 before submission of application.

REQUIREMENT:

The Federal Office of Management and Budget has issued a policy directive requiring all grant applicants to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements. Organizations can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711. You may also request a DUNS Number online at www.dnb.com. Please note that it takes up to 30 days to receive your number.

Please indicate in the space below the DUNS Number for your organization. This application cannot be accepted without this number.

DUNS NUMBER: _____

Signature of Governmental Body Representative:

_____

(Print Name) ***(Title)*** ***(Date)***

_____

(Signature)

XI. CHECK LIST

HAVE YOU…

√ _____ Reviewed the application for completeness and accuracy?

√ _____ Enclosed a U.S. Geological Survey Map indicating the project area and location?

√ _____ Enclosed photographs of the project location?

√ _____ Included a complete, accurate and in-depth cost estimate?

√ _____ Completed, signed (and had your signature attested) on the Environmental Assessment Review Questionnaire?

√ _____ Forwarded one (1) copy of the application to the Regional Planning and Development Council (RPDC) and, if the project falls under the jurisdiction of an Metropolitan Planning Organization (MPO) area, one (1) copy to the MPO (see Appendix 3) for their review and comment?

√ _____ Forwarded four (4) application packages to the WVDOH? At least one (1) original application must be included.

√ _____ Forwarded the application package in ample time for the WVDOH to <u>receive</u> the package by 4:00 p.m. January 15th?

This page is intentionally blank.

APPENDIX 3

List of Contacts

APPENDIX 3

This page is intentionally blank.

LIST OF CONTACTS

West Virginia Department of Transportation
Division of Highways
Program Planning and Administration Division
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
(304) 558-3783 (fax)

Grant Administration Unit:

- Transportation Enhancement Program

Jeffrey Harpold (Project Manager)	(304) 558-9596	jeffrey.l.harpold@wv.gov
Rhonda Brisendine (Project Manager)	(304) 558-9577	rhonda.k.brisendine@wv.gov
R. Mark Scoular (Project Manager)	(304) 558-9616	r.mark.scoular@wv.gov
Charles "Ed" Mason (Project Manager)	(304) 558-9606	charles.e.mason@wv.gov
Ryan Burns (Project Manager)	(304) 558-9297	ryan.c.burns@wv.gov

- Recreational Trails Program/State Trail Coordinator

William Robinson (Coordinator)	(304) 558-9615	bill.c.robinson@wv.gov
James Hudson (Project Manager)	(304) 558-9613	jim.e.hudson@wv.gov

- Scenic Byways Program

Karen Ebert Allen (Coordinator)	(304) 558-9573	karen.e.allen@wv.gov

- Safe Routes To School Program

Rebecca Davison (Coordinator)	(304) 558-9600	rebecca.a.davison@wv.gov

Federal Highway Administration

Jeffrey Blanton
Federal Highway Administration
700 Washington Street, East
Suite 200
Charleston, West Virginia 25301
jeffrey.blanton@fhwa.dot.gov
(304) 347-5436 (telephone)
(304) 347-5103 (fax)

State Historic Preservation Office

Susan M. Pierce
Deputy State Historic Preservation Officer
WV Division of Culture and History
The Cultural Center
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
susan.pierce@wvculture.org
(304) 558-0220 Ext. 158 (telephone)
(304) 558-2779 (fax)

LIST OF CONTACTS (Continued…)

METROPOLITAN PLANNING ORGANIZATIONS:

Michele P. Craig, Executive Director
KYOVA Interstate Planning Commission
720 4th Avenue
Huntington, West Virginia 25701
(304) 523-7434 (telephone)
(304) 529-7229 (fax)
Counties in MPO area: Cabell and Wayne

Mark A. Felton, Executive Director
Regional Intergovernmental Council
315 D Street
South Charleston, West Virginia 25303
(304) 744-4258 (telephone)
(304) 744-2534 (fax)
Counties in MPO area: Kanawha and Putnam

Dr. John C. Brown, Executive Director
BHJ Regional Council and Metropolitan Planning Commission
124 North Fourth Street—Second Floor
Steubenville, Ohio 43952
(740) 282-3685 (telephone)
(304) 797-9666 (telephone)
(740) 282-1821 (fax)
Counties in MPO area: Brooke and Hancock

William Phipps, Executive Director
Belomar Regional Council and Interstate Planning Commission
Post Office Box 2086
Wheeling, West Virginia 26003
(304) 242-1800 (telephone)
(304) 242-2437 (fax)
Counties in MPO area: Marshall and Ohio

LIST OF CONTACTS (Continued…)

METROPOLITAN PLANNING ORGANIZATIONS (Continued…):

Randy Durst, Transportation Director
Wood-Washington-Wirt Interstate Planning Commission
531 Market Street
Parkersburg, West Virginia 26101
(304) 422-4993 (telephone)
(304) 422-4998 (fax)
Counties in MPO area: Wood

Robert Gordon, Coordinator
Hagerstown/Eastern Panhandle Metropolitan Planning Organization
33 West Washington Street, Suite 402
Hagerstown, Maryland 21740
(240) 313-2081 (telephone-MD office)
(304) 263-1743 (telephone-WV office)
(240) 313-2084 (fax)
Counties in MPO area: Berkeley and Jefferson

Bill Austin, Executive Director
Morgantown-Monongalia County Transportation Planning Organization
180 Hart Field Road
Morgantown, West Virginia 26505
(304) 291-9571 (telephone)
(304) 291-9573 (fax)
County in MPO area: Monongalia

REGIONAL PLANNING AND DEVELOPMENT COUNCILS (RP&DC):

Region I: David N. Cole, Executive Director
Region I Planning and Development Council
1439 East Main Street, Suite 5
Princeton, West Virginia 24740
(304) 431-7225 (telephone)
(304) 431-7235 (fax)
Counties within Region I: McDowell, Mercer, Monroe, Raleigh, Summers and Wyoming

LIST OF CONTACTS (Continued…)

REGIONAL PLANNING AND DEVELOPMENT COUNCILS (Continued…):

Region II: Michele P. Craig, Executive Director
Region II Planning and Development Council
720 4th Avenue
Huntington, West Virginia 25701
(304) 529-3357 (telephone)
(304) 529-7229 (fax)
Counties within Region II: *Cabell, Lincoln, Logan, Mason, Mingo and Wayne*

Region III: Mark Felton, Executive Director
BCKP Regional Intergovernmental Council
315 D Street
South Charleston, West Virginia 25303
(304) 744-4258 (telephone)
(304) 744-2534 (fax)
Counties within Region III: *Boone, Clay, Kanawha and Putnam*

Region IV: W. D. Smith, Executive Director
Region IV Planning and Development Council
885 Broad Street, Suite 100
Summersville, West Virginia 26651
(304) 872-4970 (telephone)
(304) 872-1012 (fax)
Counties within Region IV: *Fayette, Greenbrier, Nicholas, Pocahontas and Webster*

Region V: James P. Mylott, Executive Director
Mid-Ohio Valley Regional Planning and Development Council
531 Market Street
Parkersburg, West Virginia 26101
(304) 422-4993 (telephone)
(304) 422-4998 (fax)
Counties within Region V: *Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler, Wirt and Wood*

LIST OF CONTACTS (Continued…)

REGIONAL PLANNING AND DEVELOPMENT COUNCILS (Continued…):

Region VI: James L. Hall, Executive Director
Region VI Planning and Development Council
34 Mountain Park Drive
White Hall, West Virginia 26554
(304) 366-5693 (telephone)
(304) 367-0804 (fax)
Counties within Region VI: *Doddridge, Harrison, Marion, Monongalia, Preston and Taylor*

Region VII: Rosemary Wagner, Executive Director
Region VII Planning and Development Council
99 Edmiston Way, Suite 225
Buckhannon, West Virginia 26201
(304) 472-6564 (telephone)
(304) 472-6590 (fax)
Counties within Region VII: *Barbour, Braxton, Gilmer, Lewis, Randolph, Tucker and Upshur*

Region VIII: Kenneth Dyche, Executive Director
Region VIII Planning and Development Council
Post Office Box 849
Petersburg, West Virginia 26847
(304) 257-2448 (telephone)
(304) 257-4958 (fax)
Counties within Region VIII: *Grant, Hampshire, Hardy, Mineral and Pendleton*

Region IX: Carol Crabtree, Executive Director
Eastern Panhandle Regional Planning and Development Council
400 West Stephen Street, Suite 301
Martinsburg, West Virginia 25401
(304) 263-1743 (telephone)
(304) 263-7156 (fax)
Counties within Region IX: *Berkeley, Jefferson and Morgan*

Region X: William Phipps, Executive Director
Belomar Regional Council and Interstate Planning Commission
Post Office Box 2086
Wheeling, West Virginia 26003
(304) 242-1800 (telephone)
(304) 242-2437 (fax)
Counties within Region X: *Marshall, Ohio and Wetzel*

LIST OF CONTACTS (Continued…)

REGIONAL PLANNING AND DEVELOPMENT COUNCILS (Continued…):

Region XI: Dr. John C. Brown, Executive Director
BHJ Regional Council and Metropolitan Planning Commission
124 North Fourth Street—Second Floor
Steubenville, Ohio 43952
(740) 282-3685 (telephone)
(304) 797-9666 (telephone)
(740) 282-1821 (fax)
Counties within Region XI: *Brooke and Hancock*

DIVISION OF HIGHWAYS, DISTRICT OFFICES:

District 1: John McBrayer, District Engineer/District Manager
WV Division of Highways, District 1
1334 Smith Street
Charleston, West Virginia 25301
(304) 558-3001 (telephone)
(304) 558-6391 (fax)
Counties within District 1: *Boone, Clay, Kanawha, Mason and Putnam*

District 2: Scott Epling, Acting District Engineer/District Manager
WV Division of Highways, District 2
801 Madison Avenue
Huntington, West Virginia 25701
(304) 528-5625 (telephone)
(304) 528-5614 (fax)
Counties within District 2: *Cabell, Lincoln, Logan, Mingo and Wayne*

District 3: James "Rusty" Roten, District Engineer/District Manager
WV Division of Highways, District 3
624 Depot Street
Parkersburg, West Virginia 26101
(304) 420-4595 (telephone)
(304) 420-4683 (fax)
Counties within District 3: *Calhoun, Jackson, Pleasants, Ritchie, Roane, Wirt and Wood*

LIST OF CONTACTS (Continued…)

DIVISION OF HIGHWAYS, DISTRICT OFFICES (Continued…):

District 4: Greg Phillips, District Engineer/District Manager
WV Division of Highways, District 4
Post Office Box 4220
Clarksburg, West Virginia 26302
(304) 842-1550 (telephone)
(304) 842-1518 (fax)
Counties within District 4: *Doddridge, Harrison, Marion, Monongalia, Preston and Taylor*

District 5: J. Lee Thorne, District Engineer/District Manager
WV Division of Highways, District 5
Post Office Box 99 (US 50)
Burlington, West Virginia 26710
(304) 289-3521 (telephone)
(304) 289-5085 (fax)
Counties within District 5: *Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral and Morgan*

District 6: Bob Whipp, District Engineer/District Manager
WV Division of Highways, District 6
1 DOT Drive
Moundsville, West Virginia 26041
(304) 843-4008 (telephone)
(304) 843-4085 (fax)
Counties within District 6: *Brooke, Hancock, Marshall, Ohio, Tyler and Wetzel*

District 7: Ron Hooton, District Engineer/District Manager
WV Division of Highways, District 7
Post Office Box 1228 (Depot Street)
Weston, West Virginia 26452
(304) 269-0414 (telephone)
(304) 269-0422 (fax)
Counties within District 7: *Barbour, Braxton, Gilmer, Lewis, Upshur and Webster*

LIST OF CONTACTS (Continued…)

DIVISION OF HIGHWAYS, DISTRICT OFFICES (Continued…):

District 8: Michael Moran, District Engineer/District Manager
WV Division of Highways, District 8
Post Office Box 1516 (US 219 N)
Elkins, West Virginia 26241
(304) 637-0220 (telephone)
(304) 637-0218 (fax)
Counties within District 8: *Pendleton, Pocahontas, Randolph and Tucker*

District 9: Matthew Rowan, Acting District Engineer/District Manager
WV Division of Highways, District 9
103 1/2 Church Street
Lewisburg, West Virginia 24901
(304) 647-7450 (telephone)
(304) 647-7452 (fax)
Counties within District 9: *Fayette, Greenbrier, Monroe, Nicholas and Summers*

District 10: Tom Camden, Acting District Engineer/District Manager
WV Division of Highways, District 10
270 Hardwood Lane
Princeton, West Virginia 24740
(304) 487-5228 (telephone)
(304) 487-5033 (fax)
Counties within District 10: *McDowell, Mercer, Raleigh and Wyoming*

LIST OF CONTACTS (Continued…)

U.S. ARMY CORP OF ENGINEERS DISTRICT OFFICES:

Pittsburgh: 100 Liberty Avenue
Pittsburgh, Pennsylvania 15222-4186
(412) 395-7156 (telephone)
Counties within District: *Barbour, Brooke, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Preston, Randolph, Tucker, Upshur and Wetzel*

Baltimore: P.O. Box 1715
Baltimore, MD 21203-1715
(410) 962-7608
Counties within District: *Berkeley, Grant, Hampshire, Hardy, Jefferson, Morgan and Pendleton*

Huntington: 502 Eighth Street
Huntington, West Virginia 25701-2070
(304) 529-5710 (telephone)
Counties within District: *Counties not listed above.*

This page is intentionally blank.

APPENDIX 4

Sample Invoices

80% and 100% Reimbursement

APPENDIX 4

This page is intentionally blank.

SAMPLE COVER INVOICE

Must be on Sponsor's letterhead

NOTE: Use this if cash (only) match is furnished "up front".

DATE: _____
INVOICE #: _____

INVOICE PERIOD: _____ to _____

TO: _____ (WVDOH Project Manager)
WVDOH, Program Planning and Administration Division
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

FROM: *(Sponsor's Name and FEIN#)*

PROJECT: Project Name: _____
State Project Number: _____
Federal Project Number: _____

DESCRIPTION: *(Insert a one or two sentence description of the project.)*

INVOICE INFORMATION:

a. Total funds available for project: $_____
b. Total funds reimbursed prior to attached invoice(s): $_____
c. Total funds remaining prior to attached invoice(s): $_____

d. Total amount of attached invoice(s): $_____
e. Percentage payment requested: _____100%_____
f. Total amount to be paid to sponsor: $_____
g. Total funds remaining after payment of attached invoice(s): $_____

(Sponsor's Name) certifies that the attached invoices represent work on the project that has been satisfactorily completed.

_____
Name Title Date

NOTE:
1) **Must be an original signature; no photocopy or fax acceptable.**
2) **Must be accompanied by an up-to-date progress report indicating percentage of completion of tasks invoiced.**
3) **REQUIREMENT—*Sponsor must initial and date all backup invoices to indicate authorized review and approval.***

NOTE: Use this if payment method is "Pay-As-You-Go".

SAMPLE COVER INVOICE

Must be on Sponsor's letterhead

DATE: _____
INVOICE #: _____

INVOICE PERIOD: _____ to _____

TO: _____ (WVDOH Project Manager)
WVDOH, Program Planning and Administration Division
Building 5, Room A-863
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

FROM: *(Sponsor's Name and FEIN#)*

PROJECT: Project Name: _____
State Project Number: _____
Federal Project Number: _____

DESCRIPTION: *(Insert a one or two sentence description of the project.)*

INVOICE INFORMATION:

a. Total funds available for project (for reimbursement): $_____
b. Total funds reimbursed prior to attached invoice(s): $_____
c. Total funds remaining prior to attached invoice(s): $_____

d. Total amount of attached invoice(s): $_____
e. Percentage payment requested: 80%
f. Total amount to be paid to sponsor: $_____
g. Total funds remaining after payment of attached invoice(s): $_____

(Sponsor's Name) certifies that the attached invoices represent work on the project that has been satisfactorily completed, **and paid for**.

_____
Name Title Date

NOTE:
1) **Must be an original signature; no photocopy or fax acceptable.**
2) **Must be accompanied by an up-to-date progress report indicating percentage of completion of tasks invoiced.**
3) **REQUIREMENT—Sponsor must initial and date all backup invoices to indicate authorized review and approval.**

APPENDIX 5.a.

Sample Agreement

100% Reimbursement

Sponsor "Match" Provided "Up Front"
(Minimum 20%, in property donation or paid by check at time Agreement is executed.)

APPENDIX 5 a

This page is intentionally blank.

TEP - 100% reimbursement
(20% match provided up front)

AGREEMENT

STATE PROJECT: ***(State Project Number)***

FEDERAL PROJECT: ***(Federal Project Number)***

(Project Name)

(County)

THIS AGREEMENT, executed in duplicate, made and entered into this *(date agreement is executed by Deputy State Highway Engineer-Development)* day of _____, 201____, by and between the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, hereinafter called **"DEPARTMENT"** and the ***(name of Sponsor's organization)*** hereinafter called **"SPONSOR".**

WITNESSETH that,

WHEREAS, DEPARTMENT and **SPONSOR** have determined that a project for the *(brief description of the scope of work for the project)* is an eligible project for funding under the Transportation Enhancement Program as appropriated in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and

WHEREAS, DEPARTMENT desires to cooperate with **SPONSOR** in accomplishing the project; and

WHEREAS, by Resolution bearing the date of the _____ day of _____, 201_____, the *(name of the City/Town Council, Board of Directors, etc.)* directed the proper authorities to execute, acknowledge and deliver this Agreement, a copy of which Resolution is affixed hereto and made a part hereof;

NOW THEREFORE, it is mutually agreed as follows:

A. That **SPONSOR** shall contract with a qualified consultant for design, engineering and bid specification documents for the project and shall submit such designs to **DEPARTMENT** for review and written approval prior to any construction then contract with a qualified contractor for construction of those project elements approved within the design plan, which may include: *(description of project details, such as: select a consultant, acquire property, renovation, purchase materials, construct sidewalks, etc.)*. The above described scope of work is to hereafter be referred to as **"PROJECT".**

B. That **SPONSOR** shall provide for, or cause to be provided for, the future maintenance of **PROJECT** for a period of no less than *(number of years—spelled out)* (*number of years—numeric*) years once the work under this Agreement is completed. Further it is acknowledged and agreed that all future maintenance of project elements constructed under this Agreement will be the sole responsibility of **SPONSOR**.

C. That the total eligible project cost as set by this Agreement is *(dollar amount representing total project cost—spelled out)* dollars ($*dollar amount representing total project cost—numeric*) and the amount of funds available for reimbursement from **DEPARTMENT** shall be eighty percent (80%) of the funds expended by **SPONSOR** for eligible project costs, up to a maximum reimbursement of *(dollar amount representing 80%—spelled out)* dollars ($*dollar amount representing 80%—numeric*). **SPONSOR** shall be responsible for the remaining twenty percent (20%) of the eligible project costs that are expended, in addition to all costs deemed ineligible by **DEPARTMENT**. **SPONSOR** will also be responsible, at the one hundred percent (100%) level, for any and all costs in excess of the total eligible project cost as set by this Agreement. **SPONSOR'S** twenty percent (20%) match for the estimated total eligible project cost is *(dollar amount representing 20%—spelled out)* dollars ($*dollar amount representing 20%—numeric*).

D. That **SPONSOR** will submit to **DEPARTMENT**, as the minimum match, a check payable to the West Virginia Division of Highways for the sum of *(dollar amount representing 20%—spelled out)* dollars ($*dollar amount representing 20%—numeric*). The check shall be submitted with the Agreement upon execution by the **SPONSOR.**

E. That **SPONSOR** may submit invoices to **DEPARTMENT**, on no more often than a monthly basis, for up to one hundred percent (100%) reimbursement to **SPONSOR** for the performance of work set forth herein, and certify that the invoices properly represent approved work that has been satisfactorily completed. Each invoice must be accompanied by an up-to-date progress report detailing work undertaken and percentage of completion that reflects the reimbursement sought.

F. That **SPONSOR** will comply, and insure compliance, with established provisions of the West Virginia Prevailing Wage Code and Federal Davis-Bacon Act Wage Codes. When both wage rates apply, the higher of the two must be paid.

OR

That **SPONSOR** will comply, and insure compliance, with established provisions of the West Virginia Prevailing Wage Code. Federal Davis-Bacon Wage Codes do not apply to this project.

G. That the following attachment(s) is incorporated herein and made a part hereof as though fully set out herein: Attachment A-1 – "Grant Program General Clauses and Covenants (April 7, 2009)."

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

ATTEST:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

(Witness to WVDOH's signature)

(Signature)

(Title of Witness)

(Title)

(WVDOH's Signature)

(Signature)

(Title of WVDOH representative with signature authority)

(Title)

ATTEST:

(Name of Sponsor's Organization)

(Witness to Sponsor's signature)

(Signature)

(Title of Witness)

(Title)

(Signature of person authorized to enter into agreement with WVDOH)

(Signature)

(Title of person authorized to enter into agreement with WVDOH)

(Title)

(To be executed in duplicate)

Distribution: Master File
(Name of Sponsor's Organization)

This page is intentionally blank.

APPENDIX 5.b.

Sample Agreement

80% Reimbursement

"Pay-As-You-Go"
(Sponsor pays all invoices and then seek 80% reimbursement.)

APPENDIX 5 b

This page is intentionally blank.

TEP - 80% reimbursement
(Pay-as-you-go)

AGREEMENT

STATE PROJECT: ***(State Project Number)***

FEDERAL PROJECT: ***(Federal Project Number)***

(Project Name)

(County)

THIS AGREEMENT, executed in duplicate, made and entered into this *(date agreement is executed by Deputy State Highway Engineer-Development)* day of _____, 201____, by and between the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, hereinafter called **"DEPARTMENT"** and the ***(name of Sponsor's organization)*** hereinafter called **"SPONSOR".**

WITNESSETH that,

WHEREAS, DEPARTMENT and **SPONSOR** have determined that a project for the *(brief description of the scope of work for the project)* is an eligible project for funding under the Transportation Enhancement Program as appropriated in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and

WHEREAS, DEPARTMENT desires to cooperate with **SPONSOR** in accomplishing the project; and

WHEREAS, by Resolution bearing the date of the _____ day of _____, 201_____, the *(name of the City/Town Council, Board of Directors, etc.)* directed the proper authorities to execute, acknowledge and deliver this Agreement, a copy of which Resolution is affixed hereto and made a part hereof;

NOW THEREFORE, it is mutually agreed as follows:

A. That **SPONSOR** shall contract with a qualified consultant for design, engineering and bid specification documents for the project and shall submit such designs to **DEPARTMENT** for review and written approval prior to any construction then contract with a qualified contractor for construction of those project elements approved within the design plan, which may include: *(description of project details, such as: select a consultant, acquire property, renovation,*

purchase materials, construct sidewalks, etc.). The above described scope of work is to hereafter be referred to as **"PROJECT".**

B. That **SPONSOR** shall provide for, or cause to be provided for, the future maintenance of **PROJECT** for a period of no less than *(number of years—spelled out)* (*number of years—numeric*) years once the work under this Agreement is completed. Further it is acknowledged and agreed that all future maintenance of project elements constructed under this Agreement will be the sole responsibility of **SPONSOR**.

C. That the total eligible project cost as set by this Agreement is *(dollar amount representing total project cost—spelled out)* dollars ($*dollar amount representing total project cost—numeric*) and the amount of funds available for reimbursement from **DEPARTMENT** shall be eighty percent (80%) of the funds expended by **SPONSOR** for eligible project costs, up to a maximum reimbursement of *(dollar amount representing 80%—spelled out)* dollars ($*dollar amount representing 80%—numeric*). **SPONSOR** shall be responsible for the remaining twenty percent (20%) of the eligible project costs that are expended, in addition to all costs deemed ineligible by **DEPARTMENT**. **SPONSOR** will also be responsible, at the one hundred percent (100%) level, for any and all costs in excess of the total eligible project cost as set by this Agreement. **SPONSOR'S** twenty percent (20%) match for the estimated total eligible project cost is *(dollar amount representing 20%—spelled out)* dollars ($*dollar amount representing 20%—numeric*).

D. That **SPONSOR** may submit invoices to **DEPARTMENT**, on no more often than a monthly basis, for up to eighty percent (80%) reimbursement to **SPONSOR** for the performance of work set forth herein, and certify that the invoices properly represent payment for approved work that has been satisfactorily completed and paid for by **SPONSOR**. Each invoice must be accompanied by an up-to-date progress report detailing work undertaken and percentage of completion that reflects the reimbursement sought.

E. That **SPONSOR** will comply, and insure compliance, with established provisions of the West Virginia Prevailing Wage Code and Federal Davis-Bacon Act Wage Codes. When both wage rates apply, the higher of the two must be paid.

OR

That **SPONSOR** will comply, and insure compliance, with established provisions of the West Virginia Prevailing Wage Code. Federal Davis-Bacon Wage Codes do not apply to this project.

F. That the following attachment(s) is incorporated herein and made a part hereof as though fully set out herein: Attachment A-1 – "Grant Program General Clauses and Covenants (April 7, 2009)."

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

ATTEST:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

(Witness to WVDOH's signature)

(Signature)

(Title of Witness)

(Title)

(WVDOH's Signature)

(Signature)

(Title of WVDOH representative with signature authority)

(Title)

ATTEST:

(Name of Sponsor's Organization)

(Witness to Sponsor's signature)

(Signature)

(Title of Witness)

(Title)

(Signature of person authorized to enter into agreement with WVDOH)

(Signature)

(Title of person authorized to enter into agreement with WVDOH)

(Title)

(To be executed in duplicate)

Distribution: Master File
(Name of Sponsor's Organization)

This page is intentionally blank.

APPENDIX 5.c.

Attachment A-1
"Grant Program General Clauses and Covenants (April 7, 2009)"

(This attachment is part of the project agreement between the WVDOH and the project Sponsor.)

APPENDIX

5 c

This page is intentionally blank.

ATTACHMENT A-1
TRANSPORTATION ENHANCEMENT GRANT PROGRAM
GENERAL CLAUSES AND COVENANTS
(April 7, 2009)

1. **SPONSOR**, by signature on the attached Agreement, confirms that it has both the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this Agreement.

2. **SPONSOR** shall not begin work, or cause any work to begin, for which costs **SPONSOR** intends to seek reimbursement, until such time that **SPONSOR** receives written notice to proceed from **DEPARTMENT.**

3. **SPONSOR** is responsible for **PROJECT** oversight and inspection during any and all phases of construction, as well as for obtaining all necessary permits. **SPONSOR** shall provide and maintain competent and adequate supervision at the construction site to ensure that the completed work conforms with the **DEPARTMENT** approved plans and specifications and shall furnish progress reports and/or such other information as may be required by **DEPARTMENT**.

4. **SPONSOR** agrees, as between **DEPARTMENT** and **SPONSOR**, that **SPONSOR** shall be responsible for any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work performed by **SPONSOR**, its agents, employees or contractors, under this Agreement, during or any time after such work is being or has been performed, including (without limitation) liability involving bodily injury, death, property damage or any violation or alleged violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or the negligence of **DEPARTMENT**, its employees, agents or contractors.

5. **SPONSOR**, unless otherwise noted in the attached agreement, shall erect a sign, made of a durable material, at least four foot by eight foot (4′ x 8′) in size, at the site of the **PROJECT** where it can be viewed by persons in the area of the **PROJECT**. It will, at minimum, contain the following information in letters clearly legible:

(NAME OF PROJECT)

This project includes funding from the Federal Highway Administration's Transportation Enhancement Program administered by the West Virginia Department of Transportation, Division of Highways

Transportation Enhancement Funds
$_____

Such sign is to be placed at the site immediately following **SPONSOR'S** receipt of notice to proceed and remain at the site until the **PROJECT'S** final inspection by **DEPARTMENT**.

6. **SPONSOR** shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes, or presents the appearance of, either personal or organizational conflict of interest, or personal gain.

7. **SPONSOR** shall comply with and ensure compliance with all Federal Statutes relating to the Anti-Lobbying Requirement, Pub. L. 101-121, Section 319, 31 U.S.C. § 1352, that prohibits the recipient, or any lower tier subrecipients, of a Federal contract, grant, loan or cooperative Agreement from expending Federal funds to pay any person for influencing or attempting to influence a Federal agency or the Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan or the entering into of any cooperative Agreement.

8. **SPONSOR** agrees to establish a proper accounting system in accordance with generally accepted accounting standards or agency directives, and shall be responsible for insuring that its consultant(s) and/or contractor(s)/subcontractor(s) maintain all books, document papers, records, supporting cost proposals, accounting records, employees time cards, payroll records and other evidence pertaining to costs incurred in the **PROJECT** and is to make such materials available at all reasonable times during the contract period and for four (4) years after the date of **DEPARTMENT'S** closing of the project, for inspection and/or audit by **DEPARTMENT**, Federal Highway Administration, or any other authorized representative of either the State or Federal government.

9. **SPONSOR**, unless otherwise noted in the attached Agreement, agrees to complete **PROJECT** within two (2) years after the date the notice to proceed is issued by **DEPARTMENT.** Failure to meet this deadline, without good and acceptable cause,

may cancel **DEPARTMENT'S** participation in this **PROJECT**, at the sole discretion of **DEPARTMENT,** and any remaining funds may be forfeited by **SPONSOR**; repayment of the **PROJECT'S** Federal portion may also be required. It is the express responsibility of **SPONSOR** to inform **DEPARTMENT**, in an expeditious manner, if any condition arises which may result in this deadline not being met.

10. **SPONSOR** acknowledges that construction contracts are required to be advertised and awarded to the lowest responsible and responsive bidder through competitive bidding, while consulting services are to be chosen by solicitation of letter of qualifications, interview of candidate, and selection based on qualification, rather than price. Any deviation from these processes requires prior written approval by **DEPARTMENT**. In addition, **SPONSOR** acknowledges and agrees that no contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" and 49 CFR 29.

11. **SPONSOR** must retain a copy of all newspaper advertisements for requests for proposals for consultant and/or contractor/subcontractor bids, and a copy of all proposals and bids received for consideration. The documents must be kept on file by **SPONSOR** pending Final Audit by **DEPARTMENT**.

12. **SPONSOR** must retain a copy of the contract for the consultant(s) and/or contractor (s)/subcontractor(s) chosen. To ensure compliance with requirements, all bid documents and request for proposal/consultant documents must be kept on file by **SPONSOR** pending Final Audit by **DEPARTMENT.**

13. **SPONSOR**, if it is a non-Federal entity and has received five hundred thousand dollars ($500,000) or more in Federal funds in the prior fiscal year, shall furnish to **DEPARTMENT** a single or program-specific audit conducted for that year in accordance with the provisions of the Office of Management and Budget Circular No. A-133.

14. **SPONSOR** shall notify **DEPARTMENT**, at least thirty (30) days in advance, of any ceremonies or "ribbon-cutting" celebrations commemorating the **PROJECT.**

15. **SPONSOR** shall recognize both **DEPARTMENT** and the Federal Highway Administration in all press releases, announcements, brochures, websites and/or literature concerning the **PROJECT**.

16. **SPONSOR** shall ensure that:

    a. No person, on the grounds of age, race, religion, color, sex, national origin or disability shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the use of said **PROJECT**.

    b. Discrimination against the public shall not be practiced in accommodations operated within the area of use.

    c. The property shall be used in compliance with all other requirements imposed by **DEPARTMENT** pursuant to Title 49, CFR, Part 21, and as said regulation may be amended.

17. **SPONSOR** shall comply, and ensure compliance by its consultant(s) and contractor(s)/ subcontractor(s), with the provisions of the West Virginia Prevailing Wage Code regarding labor standards for Federally assisted construction, the Copeland "Anti-Kickback" Act (40 U.S.C. § 276C and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), "Equal Employment Opportunity" Executive Orders 11246 and 11375 and 41 CFR 60, the Drug Free Workplace Act of 1988, the "Buy American" requirements concerning the purchase of steel for Federally funded projects (23 CFR 635.410 (b), Worker Visibility Regulations that require that all persons working within the right-of-way of a Federal Aid Highway wear highly visible safety apparel that meets the Performance Class 2 or 3 requirements of ANSI/ISEA 107 -204 publication entitled, "American National Standard for High-Visibility Safety Apparel and Headwear," and if applicable Davis-Bacon Act Wage Codes (40 U.S.C. §§ 276a to 276a-7).

18. **SPONSOR** shall notify and shall furnish **PROJECT** plans to utilities known to have facilities within the **PROJECT** limits and/or affected by the **PROJECT**; and shall arrange for any necessary relocation or adjustment of affected utilities.

19. **SPONSOR** shall ensure that all property and/or right-of-way necessary to construct this **PROJECT** shall be acquired in accordance with all applicable Federal and State laws, policies and procedures, which include but are not limited to Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

20. **SPONSOR** shall comply with, and ensure compliance by its consultant(s) and contractor(s)/subcontractor(s) with, all Federal statutes, executive orders, rules, and regulations regarding the "Americans With Disabilities Act," 28 CFR 35 and 29 CFR 1830 and with the "General Prohibitions Against Discrimination," 28 CFR 35 and all other regulations under Title II of "The American With Disabilities Act" which are applicable.

21. **SPONSOR** shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

22. It is the policy of **DEPARTMENT** that Disadvantaged and Women-owned Business Enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

23. **DEPARTMENT** shall review the **PROJECT'S** applicability to both Federal Highway Administration and State requirements for a Federally funded project and if the **PROJECT** qualifies, will complete the appropriate documents for a Programmatic Categorical Exclusion or Categorical Exclusion for compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act of 1966, as amended (106 process).

24. **SPONSOR** shall be responsible for any additional documentation, actions, or permits necessary for compliance with the NEPA and the 106 process, which include but are not limited to documentation, actions, or permits involving; archaeological surveys, 4(f) statements, noise assessment and abatement, air quality impact assessment and abatement, water quality impact assessment and abatement, hazardous waste/ underground toxic assessment and abatement, navigable stream impact assessment and abatement, wetland impact assessment and abatement, endangered species impact assessment and abatement, wild and scenic river impact assessment and abatement, and/or any other environmental, cultural, or natural impact statement and abatement as applicable.

25. **SPONSOR** shall secure all necessary approvals, permits and licenses from all other governmental agencies as may be required to complete **PROJECT**. This obligation shall include the responsibility for the preparation or revision of environmental impact statements, environmental assessments, environmental reports or other documents required by law and/or environmental litigation; and the defense of environmental

litigation resulting from the planning, design and/or construction of **PROJECT**. At the **DEPARTMENT'S** request, **SPONSOR** shall furnish to **DEPARTMENT**, prior to advertising and letting **PROJECT**, evidence of the approvals, permits, licenses and approved environmental documents.

26. **SPONSOR** shall comply with, and ensure compliance by its consultant(s) and contractor(s)/subcontractor(s) with, all applicable standards, executive orders or regulations, if applicable, issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et. seq.), and the Energy Policy and Conservation Act (Pub. L. 94-163).

27. **SPONSOR** shall administer all contracts/subcontracts and be responsible for insuring that all work shall be performed and purchases made in a manner satisfactory to **DEPARTMENT** and in accordance with the established practices and procedures of the **DEPARTMEN**T, and all Federal and State laws, rules, regulations, executives orders, policies and procedures which include, but are not limited to, those included in the Transportation Enhancement Program Revised Guidelines and Application Package, the Federal Aid Policy Guide 23 CFR 633A and entitled "PART 633 – REQUIRED CONTRACT PROVISIONS", and the Rules and Regulations of the West Virginia Department of Transportation, Division of Highways, Series I Section 8 entitled Procurement Procedures for Negotiated Contracts, as applicable.

28. **SPONSOR** acknowledges and agrees that **DEPARTMENT** and the Federal Highway Administration reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purpose(s):

    a) the copyright of any work developed under this grant, subgrant or contract under this grant or subgrant; and

    b) any rights of copyright to which a grantee, subgrantee, consultant, or contractor acquires or purchases ownership with support from this grant.

29. **DEPARTMENT** shall bear one hundred percent (100%) of all administrative costs incurred by **DEPARTMENT**, such as reviewing and processing invoices from **SPONSOR**.

30. **SPONSOR** acknowledges and agrees that the future sale, lease, transfer of title or modification in use of any property either purchased with, or receiving improvements funded through, this Agreement and occurring within the specified maintenance term

requires prior approval by **DEPARTMENT** and/or the Federal Highway Administration and could require repayment, by the **SPONSOR**, of Federal funds involved.

31. **SPONSOR** acknowledges and agrees that failure to adhere to and comply with, and ensure compliance by its consultant(s), contractor(s) and subcontractor(s) with any item in the attached Project Agreement may result in the repayment, by the **SPONSOR**, of any and all Federal funds expended on the project. It will be at the sole discretion of the Federal Highway Administration and/or the **DEPARTMENT** to determine if the violation warrants repayment and the amount to be repaid. Prior to any obligation of repayment, **SPONSOR** shall be provided with a written notice of any alleged violation and allowed a reasonable opportunity to cure said violation.

This page is intentionally blank.

APPENDIX 6

Rules for Procurement of Negotiated Contracts

APPENDIX 6

GRANT INFORMATION SHEET

MINIMUM REQUIREMENTS FOR ADVERTISING

- Begin at least 3 (three) weeks prior to the opening of letters of qualification.
- Advertise for 1 (one) day each week on a week day, for 2 (two) weeks, at least 7 (seven) days apart. Bid opening must be at least ten (10) working days after the last day of advertisement.
- You must advertise in the Charleston Gazette and/or Charleston Daily Mail AND at least 1 (one) "local" paper with a county-wide distribution.
- Sponsors may feel free and are encouraged to advertise electronically on the web, however, it is not required, nor will it be considered as a substitute for the above-mentioned requirements.

GRANT PROGRAM INFORMATION SHEET

A summary of the steps for hiring a consultant through the competitive selection process

1. **SPONSOR** must develop a technical Request For Proposals (RFP) which will include: a general description of the work to be accomplished, the location of the project, and a clear and accurate description of the technical requirements for the services to be rendered. NOTE: The RFP must list tasks in order of their relative importance. (It is recommended that an evaluation committee of three to five persons be formed to develop the RFP and to rank and interview the consultants.) **Do not request pricing/cost information. Consultant reviews must be based upon qualifications. Price/cost may not be considered until Step 7, at the time of negotiations.**

2. **SPONSOR** must solicit for letters of qualifications from consultants interested in performing the services. The solicitation shall include a clear and accurate description of the service to be performed, shall identify all significant evaluation factors and their relative importance, and shall include the submission data (deadline) for final acceptance of letters of qualification. (The deadline shall be at least ten working days after the last day of advertisement.) The minimum requirements for publicizing the solicitation are that the advertisement shall appear once each week, on a weekday, for at least two successive weeks in the Charleston Gazette and/or Charleston Daily Newspaper and in a local newspaper based in the county where the project is located. The local newspaper must have a countywide distribution.

3. **SPONSOR** must review all letters of qualifications received from consultants to assure that all pertinent information and data had been submitted. Any letters which were received not containing complete information, or which were not received prior to the deadline, shall be rejected and the consultant so notified.

4. **SPONSOR**, after reviewing the letters of qualifications, shall develop a short list of consultants, the number being at least two more than required, who are, in their opinion, best qualified to perform the desired service.

5. **SPONSOR** will schedule interviews with each firm on the short list. Discussions will be held regarding anticipated concepts and proposed methods of approach to the assignment, including those items noted in the qualification and technical evaluation. **During these interviews, any discussions or conversations concerning either price or cost issues is prohibited. Price/cost may not be considered until Step 7 at the time of negotiation.**

6. **SPONSOR** will review all the information available, and after the scheduled interviews with the consultants on the short list, **SPONSOR** will select the highest qualified. The remaining consultants will be ranked in order of preference for future use if negotiations fail with the highest rated consultant.

7. **SPONSOR will meet with the preferred consultant to discuss detailed scope of work, after which time the consultant will submit a priced proposal.** After reviewing the proposal, the **SPONSOR** and the preferred consultant will begin the negotiations for a contract/agreement. Contract/agreement should include a reasonable date for delivery of plans and penalties for failure to deliver on time. If a contract/agreement and fee can be negotiated then a contract/agreement can be executed. In the event that a fee or contract/agreement cannot be agreed upon, the **SPONSOR** will initiate action to begin negotiations with the consultant who was listed number two. If negotiations with the second choice are unsuccessful, the **SPONSOR** shall move to the third choice, and so on. If the **SPONSOR** moves to negotiate with consultant number two, **SPONSOR** may not go back to number one. If **SPONSOR** goes to negotiations with number three, **SPONSOR** may not go back to one or two. If **SPONSOR** cannot negotiate a contract with the top three candidates, they must contact the Division of Highways, Program Planning and Administration Division, Grant Administration Unit at (304) 558-3165 for further instructions.

8. A Disadvantaged Business Enterprises (DBE) goal of zero has been set for all Transportation Enhancement, Recreational Trail, Scenic Byway, or Safe Route To School projects, however, the WVDOH always encourages the consideration of DBEs when hiring contractors. If you, as the sponsoring agency, have specific DBE goals or guidelines established, then you must utilize them when hiring for this project.

9. **SPONSOR** will promptly notify, in writing, <u>all</u> consultants who submitted proposals that the selection has been made and the name of the preferred consultant.

This is only a <u>summary</u> of the actions to be taken. For additional information, see Enclosed Rules and Regulations for Procurement of Negotiated Contracts. If you have questions concerning the competitive selection process or, if you are unfamiliar with the process, please contact the West Virginia Division of Highways, Program Planning and Administration Division, Grant Administration Unit at (304) 558-3165 or (304) 558-9596.

RULES AND REGULATIONS
FOR
PROCUREMENT OF NEGOTIATED CONTRACTS[1 and 2]

Section A

Purpose – To set forth procedures for negotiated contracts to ensure that a qualified consultant is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner at a just and reasonable cost, pursuant to the WV Code §5G-1, et. seq., 23 CFR 172 and 23 U.S.C. 112 for Federally funded work.

Section B

Application – This regulation applies to all engineering and design-related service contracts such as:

a) project management
b) construction management and inspection
c) feasibility studies
d) preliminary engineering
e) design engineering
f) design
g) engineering
h) surveying
i) mapping
j) architectural
k) materials, inspection, sampling, and testing
l) archaeological investigation
m) historic investigation
n) related services to any above

Section C

Definitions

1) CFR – Code of Federal Regulations

2) Competitive Selection – All procurement transactions conducted in such a manner as to provide unrestricted opportunities for any and all prospective consultants to obtain work with the Sponsor.

3) Consultant – A business, education institution, individual or public agency qualified to perform a service required by the Division. A consultant may be a consulting engineer, architect, public agency or other professional firm or agency.

4) Contract Modification – An agreement modifying the existing contract, such as an agreement to accomplish work beyond the scope of the original contract.

5) Cost Analysis – A review and evaluation of the separate cost elements and proposed fixed fee of:

   a) A consultant's cost or pricing data, and

   b) The judgmental factors applied in projecting from the data to the Engineer's Cost Estimate in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Any major variations from norms shall be documented and supported.

---

[1] *State and Federal Agencies may use their current procedures for Federally funded projects.*

[2] *Local, County, and Regional Governmental bodies, whose written procedures differ from those below, may contact WVDOH to discuss other possible options.*

6) Disadvantaged Business Enterprise (DBE) – A small business concern, which is owned and controlled by one or more socially or economically disadvantaged individuals, which has been certified under the Small Business Administration's 8(a) program.

7) Extra Work – Any service or actions required of the consultant above and beyond the obligations of the original or modified contract.

8) Fixed Fee – A dollar amount established to cover the consultant's profit and business expenses not allocable to overhead.

9) Letter of Qualification – A written expression of interest made by the consultant indicating his desire to perform a particular project, task or service. This should include, as a minimum, the location of where work would be performed; a description of the firm's overall capabilities to handle the work, including work force available to be assigned to the project; personnel qualifications, and present work load. Additional statements as to the consultant's particular abilities and qualifications pertinent to preliminary scope of work may be included if deemed necessary. (See Exhibit A.)

10) Methods of Pay – Methods of pay which may be used are as follows:

a) Lump sum
b) Cost per unit of work
c) Cost plus a fixed fee
d) Specific rates of compensation

Each contract shall have a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

11) Negotiation Memorandum – At the conclusion of each negotiation of an initial or revised price, the Sponsor shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall include as a minimum:

a) The project number/name
b) The purpose of the negotiation
c) The name and position of each person representing the consultant and the Sponsor
d) The most significant facts or considerations controlling the establishment of the negotiated price.

12) Noncompetitive Selection – The procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources, competition is determined to be inadequate.

13) Performance Reports – a report prepared by the Sponsor monitoring the service after the final acceptance of work or after contract termination, as applicable, evaluating the overall performance of the consultant.

14) Price Proposal – A statement by a consultant which is submitted after the consultant is selected to accomplish the work and after the detailed scope of work meeting indicating his proposed costs to perform the required service.

15) Procurement Standards – the Sponsor's own procurement procedures which reflect applicable State and local laws and regulations.

16) Qualification and Technical Analysis – A review of the consultant's qualifications, including a review of experience, reputation, expertise for a particular project under consideration, demonstrated ability, capability to meet requirements, location of offices, distribution of work to individuals and firms (specifically DBEs), time frame proposed by the consultant or required by the Sponsor, and past performance; both administratively and technically. Other criteria may be required in special cases.

17) Scope of Work –

a) Preliminary: A general description of the work to be accomplished; including the location.

b) Detailed: A clear, accurate and detailed description of the technical requirements for the services to be rendered.

18) Selection Committee – This committee shall consist of at least three members authorized by the Sponsor to conduct the selection.

19) Short List – A list of consultants, the number being two more than needed, considered to be most qualified to accomplish a proposed project.

Section D

Competitive Selection – When Federal aid projects are estimated to cost over $25,000 and the service of a consultant under this procedure is desired, the Sponsor will advertise for letters of intent/qualification from consultants interested in performing the service and develop a list for the specific project.

1) The minimum requirements for publicizing the solicitation are that the advertisement shall appear once each week, on a weekday, for least two successive weeks in the daily Charleston newspapers and in the newspaper covering the Sponsor's local area. (The local area newspaper must have a countywide distribution.) The notice will also be furnished to other organizations, such as engineering/architectural societies, upon their specific request, who may desire to disseminate the information to their members.

2) The solicitation shall include a clear and accurate description of the service to be performed, shall identify all significant evaluation factors, and their relative importance and shall include the date to be submitted. (See Exhibit B.)

3) All letters of qualification received from consultants will be reviewed by the Sponsor initiating the request to assure that all pertinent information and data have been submitted. Any letters which were received not containing complete information or which were not received prior to the submission date (deadline), shall be rejected and the consultant so notified. The deadline shall be at least ten working days after the last day of advertisement.

4) The Sponsor will provide written qualification and technical information to the Selection Committee.

5) The Selection Committee will develop a short list of consultants, the number being two more than needed, who are, in their opinion, best qualified to perform the desired service.

6) All Disadvantaged Business Enterprises on the list of consultants who submitted proposals will be so identified on the qualifications and technical analysis.

7) Multiple consultants may be obtained through the use of a single solicitation when the services to be performed are of a similar nature and can be clearly defined in the advertisement. The listing submitted to the Selection Committee should indicate the number of consultants required.

8) The Selection Committee will review the short list and schedule interviews with each firm. Discussions will be held regarding anticipated concepts and proposed methods of approach to the assignment, including those items noted in the qualification and technical analysis.

9) After scheduled interviews with the short-listed consultants, the highest qualified is/ are selected. The remaining consultants will be ranked in order of preference for future use if negotiations fail with the highest rated consultant.

10) All consultants who have submitted proposals will be notified promptly in writing that the selection has been made and the name of the preferred consultant.

Section E

Small Purchases – For Federal aid projects estimated to cost less than $25,000.

1) The Sponsor shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for assignment prior to awarding of any contract.

2) The Sponsor shall submit a qualification analysis to the Selection Committee for selection of a consultant.

Section F

Noncompetitive Selection

1) Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

   a) The item is available only from a single source; or

   b) When there is an emergency which will not permit the time necessary to conduct competitive negotiations; or

   c) After solicitation of a number of sources, competition is determined inadequate; or

   d) When it is determined appropriate to use available services of a public agency or educational institution.

2) The name of the consultant who is considered qualified to perform the service will be submitted to the Selection Committee with an explanation of the circumstances in 1.06, paragraph 1.

3) Approval from the Commissioner, Division of Highways, West Virginia Department of Transportation, must be received prior to using this process.

Section G

Negotiation of Fee

1) The consultant selected for the service will be requested to attend a detailed Scope of Work Meeting, after which time he is to submit a priced proposal.

2) The Sponsor should prepare a cost estimate prior to the receipt of the fee proposal from the consultant and for negotiating an agreement with the consultant selected number one.

3) Negotiations shall be conducted by the Sponsor.

4) In the event that an agreement with the fee is unable to be reached, the Sponsor shall initiate action to begin negotiations with the consultant who was listed number two by the Selection Committee and so on, if necessary.

5) Should it be impossible to reach an agreement with any of the consultants selected, the Sponsor will then request the Selection Committee to make a reassessment to determine whether or not to extend the list, to renegotiate with consultants from the existing selections, or to remove the work from the program. (A written request by the Sponsor must be forwarded to the Division of Highways, West Virginia Department of Transportation for review and approval. Written approval from the Division of Highways, West Virginia Department of Transportation must be received prior to any renegotiations.)

6) A negotiation memorandum shall be maintained for a three-year period after final payment.

Section H

Contract Modifications

a) Contract modifications are required for any modifications in the terms of the original contract; that significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

b) A contract modification shall clearly outline the changes made and determine a method of compensation.

c) Overruns in the costs of the work shall not warrant an increase in the fixed fee portion of a cost plus fixed fee contract. Significant changes to the Scope of Work may require adjustment of the fixed fee portion in a cost plus fixed fee contract or in a lump sum contract.

d) A modification to an original agreement, where the original advertisement concerned all phases of the work, shall be negotiated following the requirements of Section G. Negotiation of Fee. A detailed Scope of Work meeting and an independent engineer's estimate are required. The original advertisement must have included all phases of work for this procedure to be used. If the original advertisement did not contain all phases of the work, the requirements of Section D

Competitive Selection shall be followed for the selection of a consultant.

Section I

Control of Work – After notification to proceed is given to a consultant in writing, the responsible Sponsor will meet regularly with the consultant to discuss progress and problems as they may occur with notes of the meetings recorded in the project files. These meetings are usually held every month. At these meetings, a complete review of the progress to date is made with emphasis on acceptability of costs billed, as well as the next phases of the work to be performed. Periodic submission of data is also made in accordance with the applicable type project involved. If deemed necessary by the Sponsor, visitation of the consultant's office shall be made.

Section J

Evaluation of Work – Upon completion or performance termination of the consultant's work, the responsible Sponsor will prepare a report recording its evaluation of the consultant's efforts. It should include comments from the Division of Highways when appropriate. A copy shall be sent to the consultant for review and comment and any written comments received shall be attached to the final report.

Section K

Protest Procedures – Consultants who feel they have not been selected to perform work for unjust cause may appeal to the Sponsor for a hearing to be held on their behalf. They must do so in writing within ten days after the date of being notified of the determination. In addition, any claims or disputes in reference to payment, work, method of compensation or performance evaluation may be appealed to the Sponsor. The Sponsor shall immediately notify the Commissioner, Division of Highways, West Virginia Department of Transportation upon receipt of any appeals.

Matters concerning work performed, wherein Federal funds are utilized in whole or in part, may be protested to the Federal Highway Administration once all administrative procedures have been exhausted with the Sponsor and Commissioner, Division of Highways, West Virginia Department of Transportation. However, review of protests by the Federal agency will be limited to:

1) Violations of Federal law or regulations, and

2) Violations of the Sponsor's/Commissioner's protest procedures for failure to review a complaint or protest. Protests received by the Federal Highway Administration other than those specified above will be referred to the Commissioner, Division of Highways, West Virginia Department of Transportation.

Section L

Contractual Responsibilities – The Sponsor is responsible for the settlement of all contractual/administrative issues. The Sponsor is responsible for determining the extent to which consultants are accountable for the professional quality, technical accuracy, coordination of services, and costs, for which consultants may be reasonably liable, resulting from errors or deficiencies in design furnished under its contracts. When it is determined that an error or deficiency exists, the Sponsor shall report its findings to the Commissioner, Division of Highways, West Virginia Department of Transportation. All documentation under this procedure will be retained on file by the Sponsor, pending final audit of the project.

If you are unfamiliar with the process or have any questions, please contact the West Virginia Division of Highways, Program Planning and Administration Division, Grant Administration Unit at (304) 558-3165.

SAMPLE EXHIBITS

A. Solicitation of Letters of Qualification

B. Suggested Notice for Consulting Services

This page is intentionally blank.

SAMPLE—EXHIBIT A

SOLICITATION OF LETTERS OF QUALIFICATION

The following items are typical of those to be obtained from or furnished to the consultants from whom Letters of Intent/Qualification are solicited:

Typical information to be obtained from the consultant:

1. Overall capabilities to handle the project (e.g., work force, work load, professional qualifications, specialized experience, and past performances of similar projects);

2. Work to be subcontracted;

3. Location of the office in which the work will be performed; and

4. Assurance that a job order cost accounting system is maintained and is capable of segregating and identifying accumulating costs for cost-type contracts.

These items should be listed in the advertisement in their relative order of importance for evaluation.

Typical information to be furnished to the consultant:

1. The type of service required;

2. The description and location of the work;

3. Any data or work that is a prerequisite to the project;

4. The anticipated scheduled for performing the service; and

5. The date by which the proposal must be submitted.

SAMPLE—EXHIBIT B

SUGGESTED NOTICE FOR CONSULTING SERVICES

Notice is hereby given that consulting engineering services will be utilized for the preparation of construction contract plans and related documents for _____
_____
_____ in _____ County. The work will consist of _____
_____
_____
_____. Firms interested in being considered for this project must submit a letter of interest, qualifications, and unpriced proposal to:

_____
_____
_____,
Prior to __(time)__ (eastern standard time or day light savings time) on __(date)_____.

As a minimum, the letter will include the following items listed in their relative order of importance for evaluation:

1. Overall capabilities to handle this work, including work force available to assign to the project, professional qualifications, specialized experience, past performance on similar projects, and present work load.

2. Location of office in which the work would be performed and knowledge of project locality.

3. Amount and type of work anticipated to be subcontracted or performed by a subconsultant.

4. Any brochures or other information which may have a direct relation to the subject project.

5. A Cost Accounting Information Statement indicating whether a cost accounting system has been maintained and is in effect such that is capable of segregating and identifying accumulating costs for each job that is performed under cost type projects.

A single letter of interest and unpriced prospectus is required. All evaluations factors will be given equal consideration in the selection process. Prior to entering into contract negotiations, the selected firm and any subconsultants shall submit a company computed overhead rate for review.

It is the policy of the West Virginia Department of Transportation, Division of Highways, that Disadvantaged and Women-owned Business Enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

ATTACHMENT

STANDARD SPECIFICATIONS FOR CONSULTANT SERVICES
SECTION I: DEFINITIONS

When used in these Specifications for Consultant Services, or any documents to or governed by these Specifications, the following terms shall be interpreted as follows:

1.01 SPONSOR

The organization or duly-authorized representative of such organization, entering into an Enhancement Agreement with a consultant for specific services on a specific project.

1.02 CONSULTANT

The engineer/architect or engineering/architectural firm or other professional firm, agency, or individual participating in an Enhancement Agreement with the Sponsor.

1.03 SUBCONSULTANT

Any firm, person, or organization to whom the consultant has transferred any portion of the work covered by its obligation to the Sponsor under the Enhancement Agreement.

1.04 ENHANCEMENT AGREEMENT

The Agreement or Contract between the consultant and the Sponsor for the performance by the consultant and the Sponsor of services and work specified therein.

When the term "Agreement" is used in these Specifications, it shall be taken to mean the Enhancement Agreement as above defined unless otherwise specifically stated in context therewith.

These Specifications, or applicable portions thereof as noted in the Agreement, are part of the Enhancement Agreement. The Agreement shall be initiated and prepared by the Sponsor.

1.05 WORK

All necessary activities including technical, inspection, engineering and other services, and all necessary materials required of the consultant under the terms of the Enhancement Agreement. No more than fifty percent (50%) of the work may be performed by a subconsultant without written approval of the Sponsor and only under extreme or unusual circumstances.

1.06 SUPPLEMENTAL AGREEMENT

An Agreement or Contract between the consultant and the Sponsor for the performance of services and work, and payment therefore, for any major changes in the terms of the original Enhancement Agreement.

1.07 FEE PAYMENT

A payment of money (by the Sponsor) to the consultant at intervals, and within limitations set forth in the Enhancement Agreement, for work accomplished, as described in the Enhancement Agreement.

1.08 ADDITIONAL FEE PAYMENTS

Special payments (by the Sponsor) to the consultant for changes or other extra work, as specified in the Enhancement Agreement or in a Supplemental Agreement.

1.09 ADDITION

The joining or uniting so as to increase the number, to augment the quantity, or to enlarge the magnitude of the work by Supplemental Agreement.

1.10 DELETION

The removing or eliminating so as to decrease the number, to diminish the quantity, or to reduce the magnitude of the work by Supplemental Agreement.

1.11 SCOPE OF WORK

Extent of work mutually and originally agreed upon by the Sponsor and consultant and upon which the consultant bases its proposals.

1.12 WORK SCHEDULE

A detailed sequential listing on a Progress Report form of the activities required to perform the work specified in the Enhancement Agreement and/or Supplemental Agreement, a schedule of time needed to perform each activity, and a graphic representation thereof.

1.13 MONTHLY PROGRESS REPORT

A narrative and tabular report revised and submitted with invoices showing the progress and current status of the work. The report will be used as a basis for calculating payments on the fee, as specified in the Enhancement Agreement.

1.14 FIELD REVIEW

An official field inspection of a proposed work by the Sponsor to check on and review the features thereof, for the purpose of determining its acceptability for further development or the need for revision.

1.15 OFFICE REVIEW

An official detailed review and analysis by the Sponsor of a consultant's proposed report or plan to determine its acceptability, or the need for revisions.

1.16 FHWA

US Department of Transportation, Federal Highway Administration.

1.17 DIRECTIVES

Written instructions and/or policy statements issued by the Division of Highways, West Virginia Department of Transportation or by the Federal Highway Administration.

SECTION II: GENERAL CLAUSES AND COVENANTS

The following requirements and conditions shall govern the execution and performance of the consultant's services as delineated in all Enhancement Agreements with the Sponsor.

2.01 INSURANCE AND INDEMNIFY

The consultant shall comply with all Workers Compensation Laws of the State of West Virginia, and shall carry at least the following minimum amounts of insurance:

a) Public Liability Insurance in an amount not less than one hundred thousand dollars ($100,000) for injuries, including those resulting in death to any one person, in an amount not less than three hundred thousand dollars ($300,000) for damages on account of any one accident or occurrence.

   Property Damage Insurance in an amount not less than three hundred thousand dollars ($300,000) from damages on account of any accident or occurrence.

   Said insurance shall be maintained in full force and effect during the life of the Enhancement Agreement and shall protect the consultant and the Sponsor, their employees, agents, and representatives from claims for damages for personal injury and wrongful death, and for damages to property arising in any manner from the negligent or wrongful acts or omissions of the consultant, its employees, agents, or representatives in the performance of the work covered by the Enhancement Agreement, and any supplemental thereto.

b) The policy, or insurance herein required must be countersigned by a Resident Agent of the State of West Virginia in accordance with the applicable statutes of the State of West Virginia.

c) Certificates showing the consultant is carrying the above described insurance, in at least the above specified minimum amounts, shall be furnished to the Sponsor before the Sponsor is obligated to make any payment to the consultant for work performed under the provisions of the Enhancement Agreement. The consultant

shall indemnify and save harmless the Sponsor from any claims or liabilities of any type or nature to any person, firm or corporation, arising in any manner from the consultant's performance of the work covered by the Enhancement Agreement, except if any such claim or liability results from the sole negligence of the Sponsor.

d) If any part of the work is transferred to a subconsultant, all the above provisions shall apply to the subconsultant and the work performed by it.

2.02 PLANS AND RECORDS

Upon request, the Sponsor shall deliver to the consultant, without cost to the consultant, one copy of any plans, photographs, reports, and other pertinent public records applicable to the work, currently possessed by the Sponsor.

2.03 OWNERSHIP OF THE WORK

Upon completion of the work as provided in the Enhancement Agreement, and any Supplemental Agreements thereto, and acceptance thereby by the Sponsor, or upon termination of the work under the terms of Subsections 2.15, 2.16 and 2.17 herein, the consultant shall index, catalogue, and upon request, deliver to the Sponsor all data and instruments of service used in the work, including that of subconsultants, all of which shall become the property of the Sponsor.

These data and instruments of service shall not be furnished to any party or parties other than the Sponsor, except upon written permission of the Sponsor.

2.04 IDENTIFICATION

All documents, reports, plans and correspondence pertaining to the work shall carry the current date thereof, and be identified with the Sponsor's project name appearing on the Enhancement Agreement.

2.05 TRANSFERS

The consultant shall not assign, sublet and transfer any interest in the work covered by the Enhancement Agreement without the prior written approval or consent of the Sponsor.

Sponsor's approval or consent to assign or sublet any part of the work shall not relieve the consultant of its primary responsibility for the performance of work so transferred. In any case, the consultant shall perform more than fifty percent (50%) of the work as measured by fee payment outlined in the Enhancement Agreement and any Supplemental Agreement thereto.

2.06 ACCESS TO RECORDS

The consultant and its subconsultants shall maintain records of material cost, direct salary and payroll additives, other direct and indirect costs and profit used to support the estimate of agreement cost and shall maintain all accounts, papers, maps, photographs, other documentary material, and any evidence pertaining to cost incurred, and shall make such materials available at its offices at all reasonable times during the contract period for three years after final payment for the project by the Sponsor for inspection by the Sponsor, or

any authorized representatives of the State or Federal Government, and copies thereof shall be furnished if requested. If a claim, investigation, or litigation is pending after what was assumed to be the final payment, the retention period will not begin until final settlement of the claim, investigation, or litigation.

2.07 SUBMISSIONS, REVIEWS AND ACCEPTANCE

All documents prepared or executed by the consultant shall be subject to reviews and acceptance by the Sponsor, and other public agencies involved insofar as the interest of each is concerned.

The official date of any submission by the consultant shall be the date upon which an acceptable version thereof is received by the Sponsor. A review by the Sponsor shall be the basis of determining whether a submission is acceptable. If an original submission is found acceptable, the date of submission shall be the official date of acceptance. If, as a result of the Sponsor's review, it is decided that a submission is not acceptable, the date of acceptance shall be the date upon which an acceptable revision is received by the Sponsor.

Acceptance of a submission shall not relieve the consultant of its obligation to correct any defects or errors in its work, at its own expense.

2.08 COORDINATION OF WORK

The consultant shall confer with all State, Federal and local governmental agencies including planning commissions, public utilities, corporations, other private or public organizations, and any other official bodies whose work and plans may be either directly or indirectly affected by the work contemplated under the provisions of the Enhancement Agreement. The consultant shall, insofar as it is consistent with the work of the Enhancement Agreement, fully consider such work and plans in the performance of its work, and shall report to the Sponsor, in writing, any such work or plans of others which may be inconsistent with the work of the Enhancement Agreement.

The consultant shall cooperate with those performing work on adjacent sections and shall provide all information and data in its possession necessary for the coordination and performance of such work.

2.09 PUBLIC UTILITIES

Where privately, publicly or cooperatively-owned utility companies, other than railroads, will require changes or alterations because of the proposed work, the consultant shall meet and confer with the owners regarding the revisions or changes required to their facilities, and report the results of such conferences to the Sponsor.

The consultant shall make no commitments with the utilities binding upon the Sponsor.

The Sponsor shall conduct all negotiations with the public utilities and authorities. The consultant shall participate in such negotiations at the request of the Sponsor.

2.10 APPEARANCES AND CONFERENCES

The consultant shall provide further services which the Sponsor deems necessary for the furtherance of the work under the Agreement, such as appearances at conferences, public

gatherings and hearings, and other such services as may be required prior to acceptance of the work covered by the Enhancement Agreement.

The consultant shall have a qualified representative, authorized to speak and act for it, at meetings to be held in the Sponsor's offices at a frequency agreed upon by consultant and Sponsor.

Should further appearances be necessary subsequent to the acceptance of the final detailed work plans, such as court appearances, such appearances shall be paid for as stipulated in Section 2.13 of these Specifications.

At any time during construction of an improvement contemplated under these Specifications, the consultant shall confer with the Sponsor as to interpretation of plans or documents, correction of errors and omissions, and prepare any plan or document necessary therefore without added compensation.

2.11 DETERMINATION OF FEES

The basis of payment for work performed under the provisions of these Specifications shall be specified in the Enhancement Agreement by one or more of the following methods:

1) A lump sum.

2) A cost per unit of work.

3) All costs related to the salaries of employees of the consultant for time directly chargeable to the work, and salaries of principals of the consultant for the time it is productively engaged in work necessary to fulfill the terms of the Enhancement Agreement, direct nonsalary costs incurred by the consultant in fulfilling the terms of the Enhancement Agreement; and the consultant's overhead or indirect costs to the extent they are properly allocated to the work covered by the Enhancement Agreement, plus a fixed fee to cover profit, miscellaneous expenses and other factors that may be considered under the applicable regulations and that are not paid for otherwise.

4) Specific rates of pay for each class of employee, and for any principal of the consultant's organization, for the time each employee or principal is directly utilized on work necessary to fulfill the terms of the Enhancement Agreement. In addition, an allowance for transportation and subsistence may be made.

2.12 ADDITIONS OR DELETIONS

Upon written notice, and without invalidating or supplementing the Enhancement Agreement, the Sponsor may require additions or deletions of a minor nature within the scope of work originally contemplated.

Any request for extension of time caused thereby shall be considered and agreement reached at the time such addition or deletion is ordered.

2.13 CHANGES REQUIRING ADJUSTMENT OF FEE PAYMENT

Upon written notice and execution of a Supplemental Agreement by all parties and without invalidating the Enhancement Agreement, the Sponsor may require changes in fees due to the revision or abandonment of work contemplated or already satisfactorily performed by the consultant.

The amount of adjustment in fees for such changes should be determined by mutual agreement in accordance with Subsection 2.11 of these Specifications.

The Sponsor will not be otherwise obligated to honor claims for additional fee payments unless the work has been previously authorized by a Supplemental Agreement.

2.14 WORK SCHEDULE AND PROGRESS REPORTS

Within _____ days after notification to proceed with the work, the consultant shall submit a draft copy of its proposed schedule for performance of the work showing the various work activities of the schedule as related to each other, and the time required to perform each work activity, as defined in Subsections 1.12 and 1.13 herein. The consultant agrees to complete the work in accordance with the time estimates shown on the approved schedule presentation. The schedule presentation is made a part of the Enhancement Agreement.

The consultant shall, following the Sponsor's acceptance of the proposed Work Schedule, submit with invoices (or as requested by Sponsor) to the Sponsor, two copies of its progress report of progress actually achieved, including in the transmittal letter appropriate mention of any matter that may, or has, adversely affected the work progress.

2.15 RESPONSIBILITY FOR DELAY

Neither the Sponsor, nor the consultant shall be held responsible for delay of performance of the work when such delay is due to unforeseeable causes against which provision cannot be made, such as an act of God, or public enemy, fire, strikes, floods or legal acts of public authorities not occasioned through negligence on the part of the consultant.

2.16 CONTINUING OBLIGATIONS

In the case of death of any of the principals or associates of the consultant's organization, or any other occurrence that may preclude satisfactory performance of the work covered by the Enhancement Agreement, neither the consultant, nor the surviving principals shall be relieved of the obligation to complete the performance thereof. However, the Sponsor may terminate the Enhancement Agreement if it considers the death or incapacity of such principal or associate, or the circumstance, to be a loss of such magnitude as to affect the consultant's ability to complete the performance of the work in a satisfactory manner.

2.17 SPONSOR'S OPTION TO TERMINATE

In addition to its rights and options as herein provided to terminate this Enhancement Agreement, the Sponsor may terminate the Enhancement Agreement at any time before full completion of the work covered by the Agreement by giving written notice of its intention by certified mail not less than fifteen days prior to the effective date of termination.

If the termination is requested by the Sponsor, payment will be made promptly to the consultant of any fees earned by it up to the date of termination, less any previous payments.

2.18 FIELD REVIEWS

The consultant shall arrange for a responsible and informed representative to accompany representatives of the Sponsor in making any field reviews requested by the Sponsor.

2.19 PUBLICITY

All news releases to newspapers, magazines, other publications, television and radio shall be approved and released through the Sponsor. The consultant shall not give information to any person, company, corporation, or any other organization (except as required in compliance with the provisions of Subsection 2.08 of these Specifications) regarding the possibility or probability of the location of, or right-of-way requirements or time schedules for, any facility or structure covered by the Enhancement Agreement unless specifically authorized thereto in writing by the Sponsor in each individual case.

2.20 COPYRIGHT

The consultant shall not copyright any papers, reports, forms, or other material which are a part of the work under the Enhancement Agreement without consent and approval of both, the Sponsor and the West Virginia Division of Highways.

2.21 COMPLIANCE WITH LAWS AND REGULATIONS

The consultant shall observe and comply with all Federal, State, and local laws, ordinances and regulations in any manner affecting the conduct of the work.

2.22 OVERPAYMENTS

It is hereby expressly covenanted, agreed and understood by and between the parties hereto, that the consultant will immediately make payment and refund to the Sponsor any and all overpayments made by said Sponsor to the consultant for any work performed under the Enhancement Agreement. It is further agreed that the Sponsor is given the right and authority to withhold and apply any funds in its possession, belonging to or owed by it to the consultant on any Enhancement Agreement or from any other source, for the recovery of any overpayment made in connection with this Enhancement Agreement; and it is further expressly agreed that the statute of limitations shall not commence to run against the Sponsor for such overpayment until such overpayment is discovered and made known to the Sponsor.

2.23 WARRANTY

The consultant warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for it, to solicit or secure the Enhancement Agreement, and that it has not agreed to pay any company or person other than bona fide employees working solely for it, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting in the award of this Enhancement Agreement with the Sponsor. For breach of the warranty, the Sponsor shall have the right

to annul the Enhancement Agreement without liability, or, at its discretion, to deduct from the Sponsor's payment to the consultant under this Enhancement Agreement an amount equal to the aforesaid fee, commission, percentage, brokerage fee, gifts or other consideration.

2.24 NONDISCRIMINATION OF EMPLOYEES

The consultant further agrees as follows: During the performance of the Agreement, the consultant and all of its subconsultants shall provide equal employment opportunities for all qualified persons and shall not discriminate against any employee or applicant because of race, color, age, handicap, religion, sex, or national origin. The consultant and its subconsultants shall comply with the executive orders of the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965; the Presidential Executive Order Number 11246, as amended by Executive Order Number 11375 and as supplemented in Department of Labor Regulations (Title 41 Code of Federal Regulations, Part 60); and the Civil Rights Acts of 1964, as amended.

During the performance of the Enhancement Agreement, the consultant, for itself, its assignees, and successors in interest (hereinafter called "consultant") shall agree as follows:

1) Compliance with Regulations:
The consultant shall comply with Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 Code of Federal Regulations (710.405(b)), hereinafter referred to as "Regulations," which are herein incorporated by reference and made a part of this Agreement.

2) Nondiscrimination:

The consultant, with regard to the work performed by it afterward and prior to completion of the work, shall not discriminate on the grounds of race, color, age, handicap, religion, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment.

The consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 Title 49 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B Title 49 of the Regulations.

3) Solicitations for Subcontractors, including Procurement of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation by the consultant for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligations under the Enhancement Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, age, handicap, religion, sex, or national origin.

4) Information and Reports:

The consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its

facilities, as may be determined by the Sponsor, the Commissioner of the West Virginia Division of Highways, or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, Orders and Instructions.

Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Sponsor and shall set forth what efforts it has made to obtain the information.

5) Sanctions for Noncompliance:

In the event of the consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Sponsor shall impose such Enhancement Agreement sanctions as it may determine to be appropriate, including, but not limited to:

a) Withholding of payments to the consultant under the Enhancement Agreement until the consultant complies, and/or

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

6) Incorporation of Provisions:

The consultant shall include the provisions of paragraphs one through six in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, Order, or instruction issued pursuant thereto. The consultant shall take such action with respect to any subcontract or procurement as the Sponsor may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a consultant becomes involved in or is threatened with litigation with a contractor or supplier, as a result of such direction, the consultant may request the Sponsor to enter into such litigation to protect the interest of the Sponsor; and, in addition, the consultant may request the United States to enter into such litigation to protect the interest of the United States.

These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of this Enhancement Agreement.

APPENDIX 7

Required Contract Provisions

APPENDIX

7

This page is intentionally blank.

GRANT INFORMATION SHEET

OPEN COMPETITIVE BID SELECTION PROCESS FOR CONSTRUCTION CONTRACTS

- In all construction projects which exceed twenty-five thousand dollars ($25,000) in total cost, the Sponsor must solicit competitive sealed bids through advertisement, conduct a public opening of the bids, and award the contract to the lowest qualified responsive and responsible bidder. (No preference or waiver may be given to the contractor, labor force or materials based on geographic location or residence.)

MINIMUM REQUIREMENTS FOR ADVERTISING:

- Begin at least 3 (three) weeks prior to the bid opening.
- Advertise for 1 (one) day each week on a week day, for 2 (two) weeks, at least 7 (seven) days apart. Bid opening must be at least ten (10) working days after the last day of advertisement.
- You must advertise in the Charleston Gazette and/or Charleston Daily Mail AND at least 1 (one) "local" paper with a county-wide distribution.
- Sponsors may feel free and are encouraged to advertise electronically on the web, however, it is not required, nor will it be considered as a substitute for the above mentioned requirements.

- For construction or purchasing contracts with a total cost of twenty-five thousand dollars ($25,000) or less, methods other than advertised competitive bidding may be used. Other methods, such as three (3) written bids or three (3) telephone bids, may be acceptable depending on the situation, cost and current Sponsor's contracting/purchasing procedures. To discuss and determine the procedures, please contact your WVDOH project coordinator or use the contact information listed below.

If you have any questions concerning the open competitive bid selection process, please contact the West Virginia Division of Highways, Program Planning and Administration Division, Grant Administration Unit at (304) 558-3165.

Form FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts," is required to be included in all Federal-aid construction contracts. (This includes Pages 125-136. In addition, Pages 137-176 must be included.)

SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 633 - REQUIRED CONTRACT PROVISIONS

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

Sec.

633.101 Purpose.

633.102 Applicability.

633.103 Regulatory authority.

633.104 Availability.

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

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

Sec. 633.101 Purpose.

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

Sec. 633.102 Applicability.

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

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

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

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

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

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

Sec. 633.103 Regulatory authority.

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

Sec. 633.104 Availability.

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

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

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

Form FHWA-1273 (Rev. 3-94)

Page

I. General....1
II. Nondiscrimination....1
III. Nonsegregated Facilities....3
IV. Payment of Predetermined Minimum Wage....3
V. Statements and Payrolls....6
VI. Record of Materials, Supplies, and Labor....6
VII. Subletting or Assigning the Contract....7
VIII. Safety: Accident Prevention....7
IX. False Statements Concerning Highway Projects....7
X. Implementation of Clean Air Act and Federal Water Pollution Control Act....8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion....8
XII. Certification Regarding Use of Contract Funds for Lobbying....9

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

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

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

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring 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 the 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 a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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

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

6. **Withholding:**

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

7. **Overtime Requirements:**

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

8. **Violation:**

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

9. **Withholding for Unpaid Wages and Liquidated Damages:**

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

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

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

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

2. **Payrolls and Payroll Records:**

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

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

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

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

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

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

(3) that each laborer or mechanic has been paid not less that [sic] the applicable wage rate and fringe benefits or cash equivalent for the classification of worked 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 that [sic] $10,000 or imprisoned not more than 5 years or both."

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

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

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

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

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

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

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

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

1. Instructions for Certification – Primary Covered Transactions:

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

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

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

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

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

• • • • •

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

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

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

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

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

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

• • • • •

2. Instructions for Certification – Lower Tier Covered Transactions:

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

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

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

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

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

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

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

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

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

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

• • • • •

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

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

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

• • • • •

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

ATTACHMENT A – EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which 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 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

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

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SPECIAL PROVISION
FOR
REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FORM FHWA-1273 (Rev 3-94) Section V. STATEMENTS AND PAYROLL—2. b.

DELETE THE FOLLOWING FROM THE FIRST SENTENCE OF SECTION V. 2. b.:

b. The payroll records shall contain the name, social security number, and addresses of each such employee; …

REPLACE WITH THE FOLLOWING:

b. The payroll records shall contain only an individually identifying number for each employee; …

CONTRACTOR CERTIFICATIONS

The following certification forms must be completed by the contractor and submitted to the Project Sponsor with their bid package. Failure to do so prior to the bid opening will cause the contractor to be disqualified.

Please note the affidavit must be sworn to before a notary public who must affix their seal thereto (seal required, see Sections I and J).

Project Sponsor is responsible to insure the completed certification forms are included with the bid packages submitted to the Sponsor prior to the bid opening.

CONTRACTOR CERTIFICATIONS

STATE PROJECT _____

FEDERAL PROJECT _____

FOR

BIDDING REQUIREMENTS AND CONDITIONS

_____

CONTRACTOR'S DRUG-FREE WORKPLACE POLICY

Each Contractor submitting a bid must include with the bid, on a form provided by the Project Sponsor, an affidavit that the Contractor implements and maintains a written drug-free workplace policy which meets the requirements of Article 1D, Chapter 21 of the Official Code of West Virginia, as amended. The successful bidder must submit a copy of its drug-free workplace policy within ten (10) days following the letting and prior to the awarding of the contract. Any successful bidder who fails to submit the policy within the specified time limit will risk forfeiture of his/her proposal guaranty bond.

The successful bidder must also insure that its subcontractors implement and maintain a written drug-free workplace policy complying with Article 1D, a copy of which must be submitted to the Project Sponsor by the Contractor prior to the start of the subcontract work. The contract may be terminated if the Contractor:

Fails to implement its policy;
Fails to provide information regarding implementation of the policy at the request of the Project Sponsor; or,
Provides to the Project Sponsor false information regarding the policy.

A clearly legible copy of the written drug-free workplace policy must be kept posted in a prominent and easily accessible place at the project site by each contractor subject to the provisions of Article 1D.

Every contractor shall keep an accurate record showing the names, occupation and safety-sensitive status of all employees, in connection with the construction on the project, and showing any drug tests or alcohol tests performed and employee education and supervisor training received, which record shall be open at all reasonable hours for inspection by the Project Sponsor. The Contractor must preserve these records for three years after completion and acceptance of the project.

All drug testing information specifically related to individual employees is confidential and should be treated as such by anyone authorized to review or compile program records.

NOTICE TO CONTRACTORS

PLEASE READ AND COMPLETE SECTIONS A THROUGH K. THIS DOCUMENT MUST BE EXECUTED BY CONTRACTOR FOR ACCEPTANCE OF THIS PROPOSAL. SIGNATURE ON PAGE 5 REPRESENTS CONTRACTOR'S UNDERSTANDING AND INTENTION TO COMPLY WITH ALL DOCUMENTS CONTAINED IN THIS PROPOSAL.

STATE OF _____,

COUNTY OF _____, To-Wit:

I, _____,
(Name of Company)
the contractor _____, subcontractor _____, supplier _____,

on Project No(s). _____,

in _____ County(s), West Virginia,

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

being duly sworn do depose, say and certify that:

Section A: FREE COMPETITIVE BIDDING AFFIDAVIT

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

Section B: CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS (FEDERAL AID ONLY)

That said person, firm, Association or Corporation has ____, has not ____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that said person, firm, Association or Corporation has ____, has not ____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

NOTE: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION AFFIRMATIVE ACTION CERTIFICATE

Section C:

A Disadvantaged Business Enterprises (DBE) goal of zero has been set for all Transportation Enhancement (TE), Recreational Trail (RT), Scenic Byway (SB), or Safe Routes To School (SRTS) projects, however, the West Virginia Division of Highways (WVDOH) encourages the consideration of DBEs when hiring contractors for any TE, RT, SB, or SRTS project. If you, as the sponsoring agency, have specific DBE goals or guidelines established, you must utilize them when hiring for this project.

CONTRACTOR'S PLAN FOR DBE PARTICIPATION

DBE [1] Sub-Contractor	LINE	ITEM #	DESCRIPTION	QUANTITY	UNIT	PER UNIT	AMOUNT [2]

CONTRACTOR'S DBE GOAL[3]: PERCENT _____% OF BID AMOUNT $_____

1. [1]DBE for the purpose of the certificate means a disadvantage business as defined by Special Provisions in the Proposal.
2. [2]If material is to be supplied the figure in this column shall not exceed 60% of the actual cost unless the material is manufactured by a DBE in which case 100% of the cost can be recorded.
3. [3]The total DBE GOAL participation as a percentage of the total contract bid amount, if applicable. The WVDOH DBE goal for this project is zero, however, if the sponsoring agency, has specific DBE goals or guidelines established, then they must be utilized.
4. If the material is not supplied by a regular dealer as defined in 49 CFR 26.55(e)(2)(ii), the figure in this column [2] shall include only a reasonable and customary fee or commission for providing a bonafide service.
5. The Contractor shall submit written and signed documentation of commitment to use a DBE subcontractor whose participation the contractor submits to meet a contract goal.
6. The Contractor shall submit written and signed confirmation from the DBE that is participating in the contract as provided in the prime contractor's commitment.

Section D: **ASSURANCE REQUIREMENT REGARDING EQUAL EMPLOYMENT OPPORTUNITY FOR VENDORS, SUPPLIERS AND CONTRACTORS ENGAGED IN COMMERCIAL TRANSACTIONS WITH THE PROJECT SPONSOR.**

Any firm desiring to avail itself of the benefits of engaging in commercial transactions with the Project Sponsor hereby agrees to:

(1) give assurances that all employment and personnel practices will be conducted without regard to race, color, sex, creed or national origin.

(2) include in all recruitment advertisement the following wording: "An Equal Opportunity Employer".

Section E: **COMPLETION DATE (OPTIONAL – It is recommended that this statement or a similar statement be included in the Contractor Certifications, however, it is not required.)**

Construction under the above proposal and calculation of working time will begin no later than ____ calendar days after notice to proceed, and will be completed by date of _____ .

It is agreed that time is of the essence for this contract, and that I(we) will, in the event of my(our) failure to complete the contract within the time limited named, reimburse the Project Sponsor an amount to be determined by the said Project Sponsor as sufficient to cover fully any additional demonstrable costs incurred by the Project Sponsor because of such failure, including extra engineering costs, unless covered by a Liquidated Damage Clause for this project.

Section F: **CERTIFICATE OF COMPLIANCE INVOLVING THE SUPPLYING OF ALUMINUM, GLASS, STEEL OR IRON PRODUCTS**

We have complied and shall continue to comply with the provisions of Chapter 5. Article 19, of the Official West Virginia code, 1931, as amended, which statute is incorporated herein by reference and the applicable specifications, involving Domestic Aluminum, Glass, and Iron in Public Works Projects. We have also complied and shall continue to comply with the provisions of Chapter 5A, Article 3, Section 56 of the West Virginia code, 1931, as amended, which statute is incorporated herein by reference and the applicable specifications, involving *Domestic Steel Products in State Supported Projects*.

Section G: **BLANK**

Section H: WEST VIRGINIA CONTRACTOR LICENSING ACT CHAPTER 21 ARTICLE 11 CODE OF WEST VIRGINIA[1] LICENSE NUMBER _____.

[1] Refer to Specification 102.6

State of West Virginia
DRUG FREE WORKPLACE CONFORMANCE AFFIDAVIT
***West Virginia Code* §21-1D-5**

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

I, _____, after being first duly sworn, depose and state as follows:

1. I am an employee of _____; and,
(Company Name)

2. I do hereby attest that _____
(Company Name)

maintains a valid written drug free workplace policy and that such policy is in compliance with ***West Virginia Code*** §21-1D-5.

The above statements are sworn to under the penalty of perjury.

_____
(Company Name)

By: _____

Title: _____

Date: _____

Taken, subscribed and sworn to before me this _____ day of _____.

My Commission expires _____

(Seal)

_____
(Notary Public)

<u>THIS AFFIDAVIT MUST BE SUBMITTED WITH THE BID IN ORDER TO COMPLY WITH WV CODE PROVISIONS. FAILURE TO INCLUDE THE AFFIDAVIT WITH THE BID SHALL RESULT IN DISQUALIFICATION OF THE BID.</u>

Jan 2009

Section J: ADDENDA (Project Sponsor to include this statement if addendums exist.)

I hereby acknowledge receipt of the following checked addendum(s) and have made the necessary revisions to the contractor's proposal, plans and/or specifications, or other applicable documents and have considered the addendum(s) in the calculation of my bid.

ADDENDUM NUMBERS: 1 __ 2 __ 3 __ 4 __ 5 __. I further acknowledge that failure to confirm receipt of the addendum(s) will cause my proposal to be rejected.

Section K: IF AN INDIVIDUAL, SIGN BELOW:

_____ _____
(Name) (Street and Post Office Address)

IF AN INDIVIDUAL DOING BUSINESS UNDER A TRADE NAME SIGN BELOW:

_____ _____
(Trade Name) (Street and Post Office Address)

_____ Sole Owner By _____

IF A PARTNERSHIP, SIGN BELOW:

_____ _____
(Name of Partnership) (Street and Post Office Address)

By _____ _____
(Authorized Partner) (Street and Post Office Address)

IF A JOINT BID, SIGN BELOW:

_____ _____
(Name of Corporation) (Name of Corporation)

Incorporated under the laws of the
State of _____

Incorporated under the laws of the
State of _____

By _____

By _____

_____ _____
(Title of Officer) (Title of Officer)

_____ _____
(Street and Post Office Address) (Street and Post Office Address)

IF A CORPORATION, SIGN BELOW:

_____
(Name of Corporation)

Incorporated under the laws of the State of _____

By _____

_____
(Street and Post Office Address) (Title of Officer Signing)

ACKNOWLEDGMENT, MUST BE NOTARIZED:

Taken, subscribed and sworn to before me this _____ day of _____, 20 _____.

My Commission Expires _____

Notary Seal is required

_____
Notary Public

HIGH VISIBILITY SAFETY APPAREL

As of November 24, 2008, the Code of Federal Regulations requires the use of "high-visibility safety apparel" for workers who are working within the rights-of-way of Federal-aid highways. The Federal Highway Administration, the Agency that makes funding available for Scenic Byways, Safe Routes To School, Transportation Enhancement, and Recreational Trails projects, is taking this action to decrease the likelihood of fatalities or injuries to workers on foot who are exposed either to vehicular traffic or to construction vehicles and equipment in use within the rights-of-way of Federal-aid highways.

High visibility is one of the most significant needs for workers who must perform tasks near moving vehicles or equipment; please note that this requirement applies both to paid and to unpaid workers within the rights-of-way. Please make certain that any volunteers or force account workers involved with your project be supplied with and utilize the recommended apparel and that any contractors involved supply their workers with the same.

For the purposes of this requirement, *high-visibility safety apparel* is defined as "personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime," and that meets the Performance Class 2 or 3 requirements of ANSI/ISEA107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headware." This publication is on file at the National Archives and Records Administration. It is also available for purchase from the International Safety Equipment Association (ISEA) at 1901 N. Moore Street, Suite 808, Arlington, Virginia 22209, http://www/safetyequipment.org.

This page is intentionally blank.

NOTE FOR CONSTRUCTION CONTRACTS:

All construction must be performed in compliance with applicable State and/or Federal laws and regulations.

The predetermined Davis-Bacon wage rates must be paid to all workers on projects that are located on the Right-of-Way of a Federal Aid Highway and exceed $2,000 in total cost.

Projects not subject to Davis-Bacon rates are required to follow prevailing wage rates established by the West Virginia Division of Labor.

If both wage rates apply, then the higher of the two must be paid.

It is the Sponsor's responsibility to ensure proper wages are being paid by the contractor.

MINIMUM WAGE DETERMINATIONS

The West Virginia Division of Labor Wage Rates and Prevailing Wage Classification Work Descriptions in effect at the time of the bid opening will become a part of the contract documents. The Contractor must post the West Virginia Division of Labor Wage Rates on the jobsite at a location accessible to employees.

The West Virginia Division of Labor Wage Rates may be found posted at the Division's Internet website www.wvlabor.org by choosing the "**Wage & Hour**" icon, then select "**Prevailing Wage Rates"** under the heading "**Administrative Law,**" then select the appropriate year of wage rates.

A printed version can be obtained from the West Virginia Division of Labor at the following address:

West Virginia Division of Labor
Building 6, Room 749-B
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0570

If the Proposal contains U.S. Department of Labor Wage Rates and the wage rates established by the West Virginia Division of Labor, the minimum wage paid shall be the higher rate for each job classification.

The Prevailing Wage Classification Work Descriptions may be found posted at the Division's Internet website www.wvlabor.org by choosing the "**Wage & Hour**" icon and selecting "**Links,"** then select "**WV Secretary of State,**" then under "**Administrative Law**" select "**See All,**" then "**Prevailing Wage Rates,**" then select "**Definitions**" or a printed version can be obtained from the West Virginia Division of Labor at the address listed above.

REVISED JANUARY 22, 2001
JUNE 6, 1978

West Virginia Department Of Transportation

DIVISION OF HIGHWAYS

Special Provision
For
Application of the Standard of Comparison

"PROJECTS OF A SIMILAR CHARACTER"

Under The Davis-Bacon and Related Acts

The purpose of this Special Provision is to set forth present policies of the U.S. Department of Labor, Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. Generally, construction projects are classified as either Building, Heavy, Highway or Residential. Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. The West Virginia Department of Transportation/Division of Highways as well as the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor will utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. Note, however, that the descriptions and illustrations are guides. The Department of Transportation/Division of Highways will seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77-23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

---

[1]Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work, which is a part of a building project, would not generally be separately classified. Where construction is "incidental" in function, twenty percent (20%) of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

Building Construction

Building Construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures; the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alternations and additions to buildings
Apartment buildings (five stores and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City Halls
Civic Centers
Commercial Buildings
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants

Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (buildings only)

Residential Construction

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (four stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

Heavy Construction

Heavy projects are those projects that are not property classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogenous classification. Because of this catchall nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (major bridges designed for commercial navigation)
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams

Demolition (not incidental to construction)
Dikes
Docks
Drainage projects
Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drip-in unites—not buildings)
Railroad construction reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storms, etc.)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

Highway Construction

Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)
Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses, grade separation)
Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street paving
Surface courses
Taxiways
Trails

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SPECIAL PROVISION

FOR

SUBCONTRACTOR PROMPT PAYMENT

1. - GENERAL:

Contractors shall pay subcontractors for work satisfactorily performed by the subcontractor, within fourteen (14) calendar days of receipt from the Division of payment for subcontracted work. Retainage may be held by the contractor during the pendency of a subcontractor's work in accordance with terms of the subcontract but must be released by the contractor within fourteen (14) calendar days of satisfactory completion of the subcontractor's work and payment for the completed subcontract work by the Division. Acceptance of the subcontracted work by the Division shall constitute satisfactory completion of subcontracted work.

2. - WITHHOLDING PAYMENT RESTRICTIONS:

The Contractor may delay or postpone payment, or delay or postpone release of retainage for good cause. This may include but shall now be limited to failure by the Subcontractor to pay for labor, supplies, or materials, or to provide any required documentation. Delay or postponement of payment may only be effected after written approval by the Division.

3. - PENALITIES FOR NONCOMPLIANCE:

Failure to promptly pay subcontractors or to release subcontractor's retainage may result in disqualification of a contractor as non-responsible or refusal by the Division to issue a Proposal Form to a contract for future projects as provided in Subsection 102.3. All subcontracting agreements made by the contractor as provided in Subsection 108.1 shall include this Special Provision as incorporated in the contract. All disputes between the contractors and subcontractors relating to payment for completed work or retainage shall be referred to an independent dispute resolution arbitrator. Division will provide internal controls to expedite the determination and processing of final quantities for the satisfactorily completed subcontracted portions of the contract in order to provide for prompt return of retainage.

July 2, 2002

ADDITIONAL CONTRACT PROVISIONS

EQUAL EMPLOYMENT OPPORTUNITY

1. The Contract requirements set forth herein shall be in addition to those set forth in the Required Contract Provisions (Form FHWA-1273, or Form PR-1316, as appropriate.)

2. All advertisements for employees in connection with this contract shall be inserted in newspapers having a large circulation in the area of the construction work among minority groups. Such newspapers shall include, but not be limited to, those listed below:

MINORITY NEWSPAPERS

Charleston Newspapers	PO Box 2993 Charleston, WV 25330	Statewide Distribution
West Virginia Beacon Digest	1116 Smith St., Suite 203 Charleston, WV 25301	Weekly Distribution

3. The Contractor shall conduct direct and systematic recruitment of employees in connection with this contract through public and private employee referral sources likely to yield qualified minority group applicants; including, but not limited to the vocational or trade schools and colleges located within a fifty (50) mile radius of the project.

This page is intentionally blank.

NON TRADITIONAL EDUCATION COORDINATORS

By County

Center	Street/PO Box	City	State	Zip	County	Contact	Title
Barbour Co. Vocational Ctr.	Route 2, Box 268	Philippi	WV	26416	Barbour	Douglas Schiefelbein	Nontraditional Edu Coord
Berkeley Springs High School	149 Concord Ave.	Berkeley Springs	WV	25411	Berkeley	Michelle Fleming	Nontraditional Edu Coord
CTC of Shepherd	315 West Stephen St.	Martinsburg	WV	25401	Berkeley	Margie Ways	Nontraditional Edu Coord
Ramer Ctr.	515 W. Martin Street	Martinsburg	WV	25401	Berkeley	Ray Bennett	Nontraditional Edu Coord
RESA VIII	109 S. College St.	Martinsburg	WV	25401	Berkeley	Beverly Baccala	Nontraditional Edu Coord
James Rumsey Tech Institute	3274 Hedgesville Rd.	Martinsburg	WV	25401	Berkeley	James Spears	Nontraditional Edu Coord
Boone Co. Career Tech. Ctr.	HC 81, Box 50B	Danville	WV	25053	Boone	Rodney Smith	Nontraditional Edu Coord
Braxton Co. High School	200 Jerry Burton Dr.	Sutton	WV	26601	Braxton	Loretta Hutchinson	Nontraditional Edu Coord
Brooke High School	Route 3, Box 610	Wellsburg	WV	26070	Brooke	Frank Ujcich	Nontraditional Edu Coord
Fred Eberle Tech. Ctr.	Route 5, Box 2	Buckhannon	WV	26201	Buckhannon	Michael Cutright	Nontraditional Edu Coord
Idress Gooden	Route 3, Box 239A	Buckhannon	WV	26201	Buckhannon	Idress Gooda	
Cabell Co. Career Tech. Ctr.	1035 Norway Ave.	Huntington	WV	25705	Cabell	Jeanie Perry	Nontraditional Edu Coord
RESA II	2001 McCoy Rd.	Huntington	WV	25701	Cabell	Tom Miller	Nontraditional Edu Coord
Tri-State OIC	836 6th Ave.	Huntington	WV	25701	Cabell	Rev. Larry Patterson	Director
Calhoun Co. Schools	Route 1, Box 1E	Grantsville	WV	26147	Calhoun	Gregory Cartwright	Nontraditional Edu Coord
Calhoun Gilmer Career Ctr.	Route 1, Box 542A	Grantsville	WV	26147	Calhoun	David White	Nontraditional Edu Coord
Clay Co. Schools	PO Box 120 Dr.	Clay	WV	25043	Clay	Kenneth Tanner	Nontraditional Edu Coord
Doddridge Co. Schools	104 Sistersville Pike	West Union	WV	26456	Doddridge	Richard Oyler	Nontraditional Edu Coord
Fayette Plateau Vo Tech Ctr.	200 W Oyler Ave.	Oak Hill	WV	25901	Fayette	Mary Flint	Nontraditional Edu Coord
Gilmer Co. High School	300 Pine Street	Glenville	WV	26351	Gilmer	Frances Fitzwater	Nontraditional Edu Coord
Grant Co. Schools	204 Jefferson Ave.	Petersburg	WV	26847	Grant	Scott Cather	Nontraditional Edu Coord
RESA VIII	PO Box 213	Petersburg	WV	26847	Grant	Donna Kuhn	Nontraditional Edu Coord
South Branch Vo Tech Ctr.	401 Pierpont St.	Petersburg	WV	26847	Grant	Robert Sisk	Nontraditional Edu Coord
Greenbrier Co. Schools	PO Box 987	Lewisburg	WV	24901	Greenbrier	Patricia Gray	Nontraditional Edu Coord
Hampshire High School	HC 63, Box 1970	Romney	WV	26757	Hampshire	Kathi Welton Davy	Nontraditional Edu Coord
WV School Deaf & Blind	301 E. Main St.	Romney	WV	26757	Hampshire	Joseph Corbin	Nontraditional Edu Coord
J. D. Rockefeller IV Career Ctr.	RD #2, Box 138A	New Cumberland	WV	26047	Hancock	Suzan Smith	Nontraditional Edu Coord
Hardy Co. Schools	510 Ashby Street	Moorefield	WV	26836	Hardy	Leonard Haney	Nontraditional Edu Coord
Harrison Co. Schools	PO Box 1370	Clarksburg	WV	26302	Harrison	Shaunet Nicholas	Nontraditional Edu Coord
United Tech. Ctr.	Route 3, Box 43C	Clarksburg	WV	26301	Harrison	Kathleen Krizner	Nontraditional Edu Coord
Jackson Co. Schools	PO Box 770	Ripley	WV	25271	Jackson	Blaine Hess	Nontraditional Edu Coord
Jefferson Co. Schools	PO Box 987	Charles Town	WV	25414	Jefferson	Patricia Hubbard	Nontraditional Edu Coord
Charleston Job Corp	1000 Kennawa Dr.	Charleston	WV	25311	Kanawha	Roni Spudich	Director
Kanawha Co. Schools	1660 Coonskin Dr.	Charleston	WV	25311	Kanawha	Marianne Rastle	Nontraditional Edu Coord
Linda Aldridge-Ellision	1233 Lyndale Dr.	Charleston	WV	25314	Kanawha		
OIC	727½ Virginia St., W.	Charleston	WV	25302	Kanawha	Sherwry Carey	Director
RESA III	501 22nd St.	Dunbar	WV	25064	Kanawha		Nontraditional Edu Coord
Marshall CTC	400 Hal Greer Blvd.	Huntington	WV	25505	Kanawha	Peggy Wilmink	Nontraditional Edu Coord
WVSC Community/Tech	PO Box 1000, Campus Box 190	Institute	WV	25112	Kanawha	Linda Nielsen	Nontraditional Edu Coord
WVU Institute of Technology	208 Davis Hall	Montgomery	WV	25136	Kanawha		Nontraditional Edu Coord
Potomac State College	Grand Central BS Ctr/Suite 2100	Keyser	WV	26726	Keyser	Walter Asonevich	Nontraditional Edu Coord
Lewis Co. Schools	239 Court Ave.	Weston	WV	26452	Lewis	Gabriel Devono	Nontraditional Edu Coord
Charles Yeager Career Ctr.	10 Maryland Ave.	Hamlin	WV	25523	Lincoln	Larry Bays	Nontraditional Edu Coord

Center	Street/PO Box	City	State	Zip	County	Contact	Title
Logan Co. Schools	PO Box 477	Logan	WV	25601	Logan	Peggy Vance	Nontraditional Edu Coord
Fairmont State College	1201 Locust Ave.	Fairmont	WV	26554	Marion	Kit Conner	Nontraditional Edu Coord
RESA VII	1000 Virginia Ave.	Fairmont	WV	26554	Marion	Robin Asbury	Nontraditional Edu Coord
Marion Co. Tech. Ctr.	Route 1, box 100A	Farmington	WV	26571	Marion	Linda Collins	Nontraditional Edu Coord
Marshall Co. School	PO Box 578	Moundsville	WV	26041	Marshall	Linda Berlin	Nontraditional Edu Coord
Mason Co. Schools	307 8th Street	Pt. Pleasant	WV	25550	Mason	Linda Rollins	Nontraditional Edu Coord
McDowell Co. Adult Learning Ctr.	PO Box 556	Welch	WV	24801	McDowell	Eugene Vandevander	Nontraditional Edu Coord
Mercer Co. Schools	1403 Honaker Ave.	Princeton	WV	24740	Mercer	Carol McClaugherty	Nontraditional Edu Coord
Mineral Co. Schools	One Baker Place	Keyser	WV	26726	Mineral	Eleanor Grubbs Paull	Nontraditional Edu Coord
Mineral Co. Tech. Ctr.	600 Harley O. Staggers SR Dr.	Keyser	WV	26726	Mineral	Alan Whetzel	Nontraditional Edu Coord
Southern WV Comm/Tech College	PO Box 2900	Mt. Gay	WV	25637	Mingo	Sharon Wagoner	Asst Nontraditional Edu Coord
Mingo Co. Schools	Route 1, Box 310	Williamson	WV	25661	Mingo	Sue Fullen	Nontraditional Edu Coord
Step Up For Women/WV Women Work!	1137 Van Voorhis Rd., Suite 15	Morgantown	WV	26505	Monogalia	Janis Gunel	
Monongalia Co. Tech/Edu. Ctr.	1000 Mississippi Street	Morgantown	WV	26505	Monongalia	Johnnie Hamilton	Nontraditional Edu Coord
Monroe Co. Tech. Ctr.	Route 1, Box 97	Lindside	WV	24951	Monroe	James Higginbotham	Nontraditional Edu Coord
Nicholas Co. Schools	400 Old Main Dr.	Summersville	WV	26651	Nicholas	Vickie Dillon	Nontraditional Edu Coord
OH-WV Northern College	1704 Market St/College Square	Wheeling	WV	26003	Ohio		Nontraditional Edu Coord
RESA VI	30 G C & P Rd.	Wheeling	WV	26003	Ohio		Nontraditional Edu Coord
Wheeling Park High School	1976 Parkview Road	Wheeling	WV	26003	Ohio	Connie Myers	Nontraditional Edu Coord
Pendleton Co. Schools	PO Drawer 888	Franklin	WV	26807	Pendleton	Donald Bucher	Nontraditional Edu Coord
PRT Tech. Ctr.	PO Box 29	St. Mary's	WV	26170	Pleasants	Kenneth Fisher	Nontraditional Edu Coord
Pocahontas Co. High School	Route 1, Box 133A	Dunmore	WV	24934	Pocahontas	Linda Vanreenen	Nontraditional Edu Coord
Preston High School	400 Preston Dr.	Kingwood	WV	26537	Preston	Hope Hill	Nontraditional Edu Coord
Putnam Career/Tech. Ctr.	PO Box 640	Eleanor	WV	25070	Putnam	Cindy Winters	Nontraditional Edu Coord
Academy Careers/Tech. Training	390 Stanaford Road	Beckley	WV	25801	Raleigh	Jerry Miller	Nontraditional Edu Coord
RESA I	205 New River Dr.	Beckley	WV	25801	Raleigh	Robert Gunter	Nontraditional Edu Coord
Randolph Co. Vocational Ctr.	200 Kennedy Dr.	Elkins	WV	26241	Randolph	Helen Kennedy	Nontraditional Edu Coord
Ritchie Co. Schools	134 South Penn Ave.	Harrisville	WV	26362	Ritchie	Linda Campbell	Nontraditional Edu Coord
Roane Jackson Tech Ctr.	4800 Spencer Rd.	Leroy	WV	25252	Roane	Keith Winter	Nontraditional Edu Coord
Roane Co. Schools	PO Box 609	Spencer	WV	25276	Roane	Doris Weekley	Nontraditional Edu Coord
Bluefield State College	219 Rock St.	Bluefield	WV	24701	Summers		Nontraditional Edu Coord
Summers Co. Schools	116 Main Street	Hinton	WV	25951	Summers	Dr. Sarah Brown	Nontraditional Edu Coord
RESA IV	404 Old Main Dr.	Summersville	WV	26651	Summers		Nontraditional Edu Coord
Taylor Co. Schools	1 Prospect Street	Grafton	WV	26354	Taylor	Mike Crutchfield	Nontraditional Edu Coord
Tucker Co. Schools	501 Chestnut Street	Parsons	WV	26287	Tucker	Bill Duncil	Nontraditional Edu Coord
Tyler Co. Schools	PO Box 25	Middlebourne	WV	26149	Tyler	Rick Leach	Nontraditional Edu Coord
Buckhannon Upshur High School	50 Buckhannon Upshur Dr.	Buckhannon	WV	26201	Upshur	Elizabeth Lee	Nontraditional Edu Coord
Spring Valley Tech/Academic Ctr.	1 Timber Wolf Dr.	Huntington	WV	25704	Wayne	Becky Wellman Butcher	Nontraditional Edu Coord
Webster Co. Schools	315 South Main Street	Webster Springs	WV	26288	Webster	Maryanne Carpenter	Nontraditional Edu Coord
Wetzel Co. Schools	333 Foundry Street	New Martinsville	WV	26155	Wetzel	Robyn Fitzsimmons	Nontraditional Edu Coord
Wirt Co. High School	PO Box 219	Elizabeth	WV	26143	Wirt	Catherine Heiney	Nontraditional Edu Coord
RESA V	2507 9th Ave.	Parkersburg	WV	26101	Wood	Carolyn Gragg	Nontraditional Edu Coord
Wood Co. Tech. Ctr.	1515 Blizzard Dr.	Parkersburg	WV	26101	Wood	Raymond Pyles	Nontraditional Edu Coord
WVU/Parkersburg	300 Campus Dr.	Parkersburg	WV	26101	Wood	Janet Ogilvie	Nontraditional Edu Coord
Wood Co. Tech Ctr.	515 Blizzard	Parkersburg	WV	26101	Wood	Raymond Pyles	Nontraditional Edu Coord
Wyoming Co. Career/Tech. Ctr.	HCR 72, Box 200	Pineville	WV	24874	Wyoming	Shelia Mann	Nontraditional Edu Coord

October 31, 2003

JOB SERVICE MANAGERS ADDRESSES

OFFICE	MANAGER	ADDRESS	CITY	STATE	ZIP
Beckley Job Service	Lisa Lilly	201 Grey Flats Road, Room 118	Beckley	WV	25801
Mercer County Job Service	David Hodge	195 Davis Street, Suite 102	Princeton	WV	24740
Charleston Job Service	Allan Galloway	1321 Plaza East	Charleston	WV	25325
Putnam County Job Service	Rex Stickler	4237-D RT. 34	Hurricane	WV	25626
Clarksburg Job Service	Sharon Cunningham	153 West Main Street	Clarksburg	WV	26302
Elkins Job Service	Angela Tingler	1 Pleasant Avenue Suite 3	Elkins	WV	26241
South Branch Job Service	Marco Zappala	HC65, Box 402 Rt. 55 East	Moorefield	WV	26836
Fairmont Job Service	Barbara DeMary	109 Adam's Street	Fairmont	WV	26554
Greenbrier Valley Job Service	Betty Carola	21 Red Oaks Shopping Center	Ronceverte	WV	24970
Huntington Job Service	Rocky McCoy	800 8th Street	Huntington	WV	25713
Logan Job Service	Larry Light	214 Dingess Street	Logan	WV	25601
Martinsburg Job Service	Marco Zappala	Berkeley Plaza Center	Martinsburg	WV	25401
Morgantown Job Service	Lori Turner	304 Scott Avenue	Morgantown	WV	26505
Parkersburg Job Service	Joe Baldwin	36th St. & Murdoch Avenue	Parkersburg	WV	26101

JOB SERVICE MANAGERS ADDRESSES

Pt. Pleasant Job Service		225 Sixth Street	Point Pleasant	WV	25550
Summersville Job Service	Rick Fiscel	806 Broad Street	Summersville	WV	26651
Weirton Job Service	Barbara Morris	217 Three Springs Drive	Weirton	WV	26062
Welch Job Service	Ron Wyatt	20 McDowell Street	Welch	WV	24801
Wheeling Job Service	Jacquelyn Ritter	Gateway Park Suite 3	Wheeling	WV	26003
New Martinsville Job Service	Jacquelyn Rutter	249 Clark Street	New Martinsville	WV	26155
Williamson Job Service	Albert Totten	120 W. First Avenue	Williamson	WV	25661

SPECIAL PROVISION

FOR

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

1.- GENERAL:

The West Virginia Division of Highways is committed to assuring the participation of Disadvantaged Business Enterprises (DBE) in our highway construction program. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The contractor shall designate and make known to the Division a liaison officer who is assigned the responsibility of effectively administering and promoting an active program for utilization of Disadvantaged Business Enterprises (DBE).

If a formal goal has not been designated for this contract, all contractors are encouraged to consider DBE's for subcontract work as well as for the supply of materials and services needed for the performance of this work.

The contractor is encouraged to use the services of banks owned and controlled by minorities or women. Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

2. - DEFINITIONS:

"Disadvantaged business" A small business concern:

1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a limitation of $16.6 million in average annual gross receipts (over 3 years) is placed on firms to be eligible as a DBE.

"Socially and economically disadvantaged individuals" Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans, Women and any other minorities or

individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Division shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Division also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish, or Portuguese culture or origin, regardless of race;

3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific islands (Republic of Palau), the Commonwealth of the Northern Marianas, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and

6) "Women".

3. - DBE CLASSIFICATION REQUEST:

In order to be classified as a DBE under this specification a firm must submit Form EO-475, Schedule A, for certification as a DBE. In addition Form EO-476, Schedule B, must be submitted for any proposed joint venture. These forms must be submitted and approved prior to letting date of any project in which a firm wants to participate as DBE. Copies of these forms are available from the Department of Transportation, Division of Highways Equal Employment Opportunity Office and shall be submitted to that Office. Attached to this special provision is a directory of DBE firms which are certified by the Division of Highways, categorized as follows:

DBE certified under 49 CFR Part 26:
Socially and Economically Disadvantaged.

4. - DBE GOAL:

A DBE goal of zero has been set for all Transportation Enhancement, Recreational Trail, Scenic Byway or Safe Routes to School projects, however, the WVDOH always encourages the consideration of DBEs when hiring contractors. If you, as the sponsoring agency, have specific DBE goals or guidelines established, then you must

utilize them when hiring for this project.

The contractor shall indicate his goal in the appropriate space in Section C, Item 3 - Contractor's Goal for DBE Participation, of the Notice contained in the project proposal. The goal so indicated will be used in determining the award of the contract in accordance with this Special Provision and Section 103 of the Standard Specifications.

5. - CONTRACTOR'S DBE PLAN:

All bidders are encouraged to submit their DBE Participation Plan (Section C - Contractor's Plan for DBE Participation) with their bid. This shall include the following:

1) Name of DBE Subcontractor(s) or Supplier(s).

2) Description of work each is to perform to include: Line Number, Item Number, Unit, Quantity, Unit price and Amount.

3) The dollar value of each proposed DBE subcontract and the percentage of the total contract value this represents.

4) The dollar value of materials to be furnished by DBE suppliers and manufacturers, provided that the DBE's assume the actual and contractual responsibility for the materials and supplies:

   (a) The Division of Highways may count the entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them for resale).

   (b) The Division may count 60 percent of expenditures to DBE suppliers that are not manufacturers provided the supplier is a regular dealer in the product involved. A regular dealer must be engaged in, as its principal business and in its own name, the sale of products to the public or maintain an inventory or own or operate distribution equipment.

   (c) The Division may count fees or commissions charged by the DBE firms for a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies, delivery of materials and supplies or for furnishing bonds, or insurance, providing such fees or commissions are determined to be reasonable and customary.

5) The dollar value of services provided by DBE's such as quality control testing, equipment repair and maintenance, engineering stakeout, etc.

6) The dollar value of proposed joint ventures. DBE credit for joint ventures will be limited to the percent of DBE participation in the joint venture. Joint

ventures must have an approved EO Form 476 - Schedule B at the time of the letting.

7) Written and signed documentation of the bidders commitment to use a DBE subcontractor whose participation is being utilized to meet the DBE contract goal.

8) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

The bidder who does not submit a DBE Participation plan with the bid shall submit it within 10 calendar days after the date of receipt of written notification from the Division. The project will not be considered for award prior to submission and approval of the bidders DBE plan.

Any changes to this plan must be approved by the Division.

In order to be accepted under this program all DBE subcontractors and suppliers of materials or services must be certified in accordance with Section 3 of this provision at the time of letting.

6. - CONTRACT AWARD REQUIREMENTS:

If the contractor's proposed goal as indicated in Section C, Item 3, of the Notice contained in the project proposal, is less than the Division of Highways' determined goal, as indicated in Section 4 of this Special Provision, he or she must demonstrate that good faith efforts were made prior to submitting the bid. This documentation must be submitted to the Contract Administration Division, and must be received in the Division no later than ten (10) calendar days after the date of receipt of written notification. Efforts to increase the goal after bid submission will not be considered in justifying the good faith effort. These documented attempts shall include but not be limited to:

1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the Division to inform DBE's of contracting and subcontracting opportunities;

2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;

3) Whether the contractor provided written notice to a reasonable number of specific DBE's that their interest in the contract was being solicited, in sufficient time to allow the DBE's to participate effectively;

4) Whether the contractor followed up initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's were interested;

5) Whether the contractor selected portions of the work to be performed by DBE's in order to increase the likelihood of meeting the DBE's goals

(including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE's participation);

6) Whether the contractor provided interested DBE's with adequate information about the plans, specifications and requirements of the contract;

7) Whether the contractor negotiated in good faith with interested DBE's, not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities;

8) Whether the contractor made efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by the recipient or contractor, and

9) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

Contractors that do not meet the contract DBE goal and who fail to demonstrate that good faith efforts were made prior to the bid shall not be eligible to be awarded the contract.

The bidder's signature in Section J of the Notice contained in this proposal shall be written assurance he/she will comply with this special provision. The Contractor's proposed DBE goal percent (Section C Item 3) must be completed or the bid will be deemed irregular.

7.- CONTRACT COMPLIANCE REQUIREMENTS:

Each contractor or subcontractor that fails to carry out the requirements set forth below will be subject to a breach of contract and, after notification of the Federal Highway Administration, the Division of Highways may terminate the contract or subcontract or initiate other such remedy as deemed appropriate.

A. **Policy**. It is the policy of the Federal Highway Administration that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of work financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

B. **DBE Obligation**. The contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard all contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contract work. Contractors and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Federally-assisted contracts.

C. **Sanctions**. Failure by the prime contractor to fulfill the DBE requirements and to demonstrate good faith efforts constitutes a breach of contract. When this occurs, the Division will hold the prime contractor accountable as would be the case with all other contract provisions. Therefore, the contractor's failure to carry out the DBE requirements shall constitute a breach of contract and may result in the following:

1) Withholding of progress payments.

2) Withholding payment to the prime in an amount equal to the unmet portion of the contract goal.

3) Termination of the contract.

D. **Records and Reports.** All contractors must keep detailed records and provide regular reports to the Division on a quarterly basis or as requested on their progress in meeting contractual DBE obligations. These records may include but shall not be limited to payroll, lease agreements, cancelled payroll checks, cancelled supply and material checks, executed subcontracting agreements, etc. At the end of each quarter, prime contractors will be requested to submit certified reports on monies paid to each DBE subcontractor/supplier on all active Federal Aid Projects.

8.- DBE PROGRAM REQUIREMENTS:

The DBE must perform a commercially useful function A commercially useful function is generally being performed when a DBE is responsible for the execution of a distinct element of the work and is carrying out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations and these guidelines) and when the DBE firm receives due compensation as agreed upon for the work performed. Regardless of whether an arrangement between the contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or does not meet the commercially useful function requirement, sanctions against the DBE firm and the prime contractor may be pursued.

A. **DBE Management:** The DBE must manage the work it has contracted. The management shall include scheduling work operations, ordering equipment and materials (if materials are a part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees. The DBE must perform the work of the contract with its own work force.

The DBE must supervise the daily operations of the work contracted. There are only two acceptable ways for the DBE to supervise the daily operations. The DBE owner may act as superintendent and directly supervise the work or a skilled and knowledgeable superintendent employed by and paid wages by the DBE may directly supervise the work. If the later is used, the

DBE owner must be actively involved in making the operational and managerial decisions of the firm. Basically, this means that all administrative functions must be performed by personnel responsible to or employed by the DBE at facilities or locations under the control of the DBE.

B. **DBE's Work Force:** In order to meet the commercially useful function requirements of the regulations and the contract, the following statements are applicable:

1) The DBE shall supervise and perform the work of the contract with workers on its payroll and under the direct supervision of the DBE. The DBE or his/her superintendent must, on a full time basis, supervise and control the work of the contract. The supervision of the contract work by personnel normally employed by another contractor or by personnel not under the control of the DBE constitutes failure to perform a commercially useful function.

2) Except in the instances defined below, the DBE shall perform its work with employees normally employed by and under the DBE's control. In all instances, the DBE shall be responsible for its payroll and labor compliance requirements concerning all workers under its control. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself.

(a) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(b) As a subcontractor, a DBE may not subcontract work of the contract to non-disadvantaged firms/persons. Exceptions will not normally be considered. As a prime contractor a DBE firm may subcontract as much of the work of the contract as the Division of Highways permits.

(c) Prior to allowing any arrangement, the DOT EEO office will ensure that:

- the arrangement is not designed to provide the DBE with the basic labor requirements of the contract;
- the arrangement is on a limited basis and not long term, repetitive use by a DBE firm of personnel primarily employed by a non-disadvantaged firm will be construed as an attempt to artificially inflate DBE participation and will not be allowed;
- exclusive of the arrangement, the majority of the DBE's

work force and his or her superintendent and/or foreman are regular employees of the DBE; and

- the arrangement should be indicative of normal industry practices and should not represent a significantly greater portion of the contract work than would be expected on the basis of normal industry practices.

C. **Equipment:** In order to perform a commercially useful function the DBE subcontractor shall be responsible for any equipment necessary to complete the work within the approved Participation Plan. In certain circumstances the DBE may lease specialty equipment or incidental equipment, but these arrangements must be consistent with standard industry practices. The DBE shall be responsible to negotiate the cost, arrange for the delivery of, and pay for leased equipment. Copies of the lease agreements shall be submitted for approval by the WVDOT prior to the work being performed. The subcontractor shall provide paid invoices to the WVDOT for all leased equipment.

The cost of equipment leased from the prime contractor or its affiliates will not be counted towards the goal.

If an emergency incident arises that presents a safety concern to either the workers or the traveling public, the DBE may find it necessary to lease equipment from the prime contractor in this situation. The WVDOT may approve the leasing of that equipment providing specific details of the incident are submitted to the WVDOT. All leases in these situations must be approved by the WVDOT DBE Office.

Incidental equipment leasing agreements between the prime contractor and the DBE subcontractor must be submitted to and approved by the WVDOT DBE office prior to the work being performed.

The approval of all leases will be contingent upon evidence of the DBE's independent performance and the performance of a commercially useful function.

D. **Materials:** The DBE shall negotiate the cost, arrange delivery of and pay for the materials and supplies required for the work of the contract. Invoices for materials should be in the name of the DBE firm not the prime contractor. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by

the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers representatives, or other persons who arrange or expedite transactions are not regular dealers.

3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

4) A prime contractor may occasionally find it necessary to pay suppliers directly for materials used by subcontractors. It is acceptable for the prime contractor to do so for DBEs, provided such a payment arrangement is available to all subcontractors and not restricted exclusively to DBEs. When such payments are made by the prime contractor, the payments must be made by jointly endorsable checks signed by the prime contractor and the DBE. The DBE must also participate in scheduling delivery of the materials and is fully responsible for ensuring that the materials meet specifications.

5) DBEs will not be considered as supplying material when payment for it is effected by making a deduction from the prime contractor's payment to the DBE unless such transaction is clearly documented as part of a formal written agreement between the two parties and approved by the DOT EEO office.

6) If the materials or supplies are obtained from the prime contractor or an affiliate of the prime contractor, the cost of the materials or supplies will not be counted toward the goal.

E. **DBE Trucking Firms:** To be certified as a DBE trucking firm, the firm must own at least one fully operational truck that is fully licensed and insured and that is used on a day to day basis. DBE trucking firms must be covered by a subcontract or a written agreement approved by the DOT EEO office prior to performing their portion of the work. In order to perform a commercially useful function, the DBE trucking firm is restricted to the same subcontracting limitation in effect for other contractors. The DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

1) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

2) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

3) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration. Example – DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z. <u>The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.</u>

4) A lease must indicate that the DBE has exclusive use of and control over the truck. Leased trucks must display the name and identification number of the DBE.

F. **Default or Decertification of DBE:** If a DBE subcontractor is decertified or defaults in the performance of its work, the overall goal cannot be credited for the uncompleted work unless it is approved by an approved DBE substitute or unless the Prime Contractor elects to fulfill the DBE goal with another DBE on a different item of work. If the Prime Contractor after exerting good faith effort is unable to replace the DBE, the unmet portion may be waived.

G. **North American Industrial Classification (NAIC):** DBE work to meet the goal can only be approved if the work performed is within the classification of their North American Industry Classification System (6 digit NAIC codes) approved for the DBE at the time of their DBE certification. Additional NAIC codes can be approved by request to the DBE Certifying Committee or when a firm is recertified.

May 23, 1978
Revised: January 3, 2000

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SPECIAL PROVISION

FOR

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
   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 Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);

      (iii.) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, 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).

   e. "Engineer" – The State Highway Engineer of the Department, or his authorized representative, limited by the scope of duties assigned.

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 and which is set forth in the solicitations from which this contract resulted.

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 Contractor's or Subcontractor's 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 7a through 7p 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 covered area. Covered construction contractors performing a construction work in geographical area 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. 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, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite 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 or 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 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 Engineer when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman 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, annual report, etc.; 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, General Foremen, etc., prior to the initiation of the 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 including it in any advertising in the news media, specifically including minority and female news media, 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. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female 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 any 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 reasonably, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a 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 at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

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 non-segregated 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 association 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 encourage to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group for which the contractor is a member and participant, may be asserted as fulfilling any one of more of its obligations under 7a through 7p 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. A single goal for women has been established. The Contractor, however, 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 (for example, even though the Contractor has achieved its goals for women generally, 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 national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246. A list of debarred persons or firms is available from the Engineer.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of 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 shall proceed in accordance with 41 CFR-60-4.8.

14. The Contractor shall designate a responsible official 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 shall 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).

THE DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS DETERMINES COMPLIANCE WITH THE AFFIRMATIVE ACTION GOAL REQUIREMENTS OF EO 11246 OR ITS IMPLEMENTING REGULATIONS.

Revised: January 3, 2000

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAYS

SPECIAL PROVISION

FOR

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

(EXECUTIVE ORDER 11246)

1. 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 minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

Goals for the utilization of women by Federal and federally assisted construction Contractors were last published on April 7, 1978 (43 FR 14888, 14900). The April 7, 1978 publication included a 6.9% goal for the period from April 1, 1980, until March 31, 1981. Pursuant to 41 CFR 60-4.6, the 6.9% goal for female utilization is extended until further notice.

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE

Location (County)	Goal (Percent)
Mineral	4.8
Berkeley, Grant, Hampshire, Hardy, Jefferson, Morgan	25.2
Pendleton	12.0
McDowell, Mercer	3.2
Cabell, Wayne	2.9
Lincoln, Logan, Mason, Mingo	2.5
Kanawha, Putnam	4.9
Boone, Braxton, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Monroe, Nicholas, Pocahontas, Raleigh, Roane, Summers, Webster, Wyoming	4.2

Barbour, Doddridge, Harrison, Lewis, Marion, Monongalia, Preston, Randolph, Taylor, Tucker, Upshur	2.1
Wirt, Wood	1.1
Pleasants, Ritchie	1.2
Brooke, Hancock	4.3
Marshall, Ohio	2.4
Tyler, Wetzel	3.0

These goals for Minority Participation became effective November 3, 1980 and will remain as such until further notice.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. 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 action obligation required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract and in each trade, 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 or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulation 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 Engineer within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. 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.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is

State _____ West Virginia_____

County_____

City _____

THE DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS DETERMINES COMPLIANCE WITH THE AFFIRMATIVE ACTION GOAL REQUIREMENTS OF EO 11246 OR ITS IMPLEMENTING REGULATIONS.

APPENDIX 8

Audit Requirements Concerning A-133

Requirement:

Please note that each year in October/November letters will be sent to all Sponsors asking them to certify whether they did receive or did not receive over $500,000 in Federal funds during their previous fiscal year. For the Sponsors to continue to be eligible to receive Federal funding, this certification letter must be completed, signed and returned.

This page is intentionally blank.

Subpart B—Audits

§___.200 Audit requirements.

(a) **Audit required.** Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in §___.205.

(b) **Single audit.** Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with §___.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §___.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) **Exemption when Federal awards expended are less than $500,000.** Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in §___.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§___.205 Basis for determining Federal awards expended.

(a) **Determining Federal awards expended.** The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) **Loan and loan guarantees (loans) at institutions of higher education.** When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

Revised 09/02/03

APPENDIX 9

Project Phases and Responsible Parties

APPENDIX 9

This page is intentionally blank.

NOTES: **(A) Not all projects will include all phases of work detailed.**

(B) Steps are not necessarily "linear"; certain steps may be performed concurrent with others and/or "combined."

(C) This is ONLY a "summary" and is not intended to be the only guide to performance of a project once awarded.

1. AUTHORIZATION PHASE

Do not expend any funds on this project, for which you wish to seek reimbursement through this grant, until after you receive a written Notice to Proceed. Any expenses incurred prior to Notice to Proceed (for the applicable phase) are not eligible for reimbursement.

STEP	ACTION	RESPONSIBLE PARTY
1	Grant awarded and announced.	Governor
2	Project assigned to a manager.	WVDOH
3	Congratulations letter to Sponsor.	WVDOH
4	PC-36 form completed.	WVDOH
5	Project number assigned.	WVDOH and FHWA
6	Scope of work meeting.	WVDOH and Sponsor
7	Force account requested by Sponsor, if appropriate.	Sponsor
8	Project undergoes STIP/TIP public review period, then submitted to FHWA for approval (Federal requirement).	WVDOH
9	STIP/TIP review process completed—FHWA approval received by WVDOH.	FHWA
10	Project to SHPO, WVDNR, WVDOH and USF&WS for review.	WVDOH, with assistance from Sponsor, as needed.
11	SHPO approval completed.	SHPO
12	4(f) statement completed, if appropriate.	WVDOH, with assistance from Sponsor, as needed.
13	Environmental questionnaire review.	WVDOH, with assistance from Sponsor, as needed.
14	In-house environmental review.	WVDOH
15	Environmental/historical review completed for this phase.	WVDOH, with assistance from Sponsor, as needed.
16	Draft Agreement prepared.	WVDOH

continued on next page...

Continued…

STEP	ACTION	RESPONSIBLE PARTY
17	Agreement to Sponsor for review.	WVDOH
18	Agreement reviewed by Sponsor.	Sponsor
19	Agreement executed by Sponsor and returned to WVDOH with appropriate Resolution.	Sponsor
20	Agreement executed by WVDOH.	WVDOH
21	BF-98 forwarded (initiates WVDOH request for Federal Authorization).	WVDOH
22	BF-98 approved—project authorized.	FHWA
23	Sponsor's match in place.	Sponsor
24	Notice to Proceed for design issued. A fully executed Agreement will be enclosed with the Notice to Proceed letter, as well as additional grant process information. Once Sponsor has received written Notice to Proceed, they may undertake the design phase.	WVDOH

If you have any questions, please contact the WVDOH, Program Planning and Administration Division, Grant Administration Unit at either (304) 558-3165 or 558-9596.

ABBREVIATIONS AND TERMS:

BF-98—A WVDOH form which authorizes a "financial account" to be opened for the project

FHWA—Federal Highway Administration

PC-36—A WVDOH form which triggers the assignment of a tracking number to the project

SHPO—West Virginia State Historic Preservation Officer

STIP—Statewide Transportation Improvement Program (a listing of projects for which WVDOH is seeking public involvement/comment prior to requesting Federal Authorization)

TIP—Transportation Improvement Program (a listing of projects located in Metropolitan or Urban areas for which WVDOH is seeking public involvement/comment prior to requesting Federal Authorization)

USF&WS—United States Fish & Wildlife Service

WVDNR—West Virginia Division of Natural Resources

WVDOH—West Virginia Division of Highways

4(f) Statement—A review, study or statement which may be necessary if the project negatively impacts schools, parks, playgrounds, historical sites, etc.

NOTES: (A) Some projects may not include a design phase in the scope of work.

2. DESIGN PHASE

Do not begin this phase of the project until you receive Notice to Proceed for the design phase.

STEP	ACTION	RESPONSIBLE PARTY
1	Review the Rules and Regulations for Procurement of Negotiated Contracts (for questions, please call (304) 558-3165).	Sponsor
2	Develop Request for Proposal (RFP).	Sponsor
3	Solicit Letters of Qualification for consultants and/or designers through publication of newspaper legal advertisement.	Sponsor
4	Select Review Committee (at least 3 members)	Sponsor
5	Review all letters of qualification.	Sponsor
6	Develop short list of candidates (2 more than are needed for project [minimum 3]).	Sponsor
7	Interview candidates on short list.	Sponsor
8	Rate candidates.	Sponsor
9	Meet with highest ranked candidate to negotiate contract and price. If negotiations are unsuccessful, then move to next candidate.	Sponsor
10	Sign agreement with selected candidate.	Sponsor
11	Notify, in writing, all candidates who submitted proposals that the selection has been made and the name of the selected candidate.	Sponsor
12	Retain copies of all newspaper advertisements soliciting letters of qualifications.	Sponsor
13	Retain documents of notification and a copy of the agreement for the candidate chosen, pending final audit by WVDOH.	Sponsor
14	Upon completion of the design plans, manuals and bid documents, submit two copies to the WVDOH for review and approval prior to bidding the project. Allow 45-60 days for review (see Notes [*1] and [*2] below).	Sponsor

continued on next page...

Continued…

STEP	ACTION	RESPONSIBLE PARTY
15	Review and approve project plans or return them for corrections and resubmission.	WVDOH
16	Upon approval of project plans, a Notice to Proceed for construction will be issued. Once Sponsor has received written Notice to Proceed, they may undertake the construction phase.	WVDOH

Notes for design phase

[*1]—If your project crosses, lies within, or directly affects any section of roadway or right-of-way currently under the jurisdiction of the WVDOH, please contact the appropriate District Office prior to beginning the design phase. WVDOH must be involved in the design; further permits may be required.

[*2]—All projects are reviewed by SHPO in the early stages of your project. If your project involves a historic area or property, the design documents must be reviewed and approved by SHPO prior to bidding the project. To avoid delays and added expense, it is advisable to involve SHPO in your project as early as possible.

[*3]—Invoices may be submitted, on no more often than a monthly basis, for reimbursement of eligible expenses for the performance of approved work that has been satisfactorily completed and undertaken after the Notice to Proceed for that phase was issued. Invoices must be accompanied by an up-to-date progress report detailing work undertaken and percentage of completion.

3. CONSTRUCTION PHASE

Do not begin this phase of the project until you receive Notice to Proceed for the construction phase.

STEP	ACTION	RESPONSIBLE PARTY
1	Review instructions for Required Contract Provisions and the Competitive Bid Selection Process for Construction Contracts.	Sponsor
2	Choose appropriate selection process required, then follow guidelines (for questions, please call (304) 558-3165).	Sponsor
3	Solicit bids and/or procurements through appropriate process (see Notes [*1] and [*3]).	Sponsor
4	If construction project is over $25,000, then (a) solicit sealed bids, (b) conduct public bid opening, and (c) award contract to lowest responsive and responsible bidder. If under $25,000, use appropriate procedure and award to lowest responsible and responsive bidder. (Government agencies may use their own procedures currently in place if they are in written form and are not in conflict with Federal procedures.) (No preference or waiver may be given to a contractor, labor force, or materials based on geographic location or residence.) (See Notes [*1] and [*3])	Sponsor
5	Retain copies of newspaper bid legal advertisements, telephone bid information, and written bid information, pending final audit by the WVDOH.	Sponsor
6	Retain copies of all contracts/agreements.	Sponsor
7	Notify WVDOH of beginning construction.	Sponsor
8	Provide project oversight and inspection during all phases of construction.	Sponsor
9	Routine inspection of project.	Sponsor
10	WVDOH is notified of project completion.	Sponsor
11	Final invoice submitted.	Sponsor
12	Final inspection of project.	WVDOH
13	Final inspection report and final invoice forwarded for processing.	WVDOH

continued on next page...

Continued…

STEP	ACTION	RESPONSIBLE PARTY
14	Final audit.	WVDOH
15	Final invoice paid and project closed.	WVDOH

Notes for construction phase

[*1]—West Virginia prevailing wage rates must be paid on all contract work. Davis-Bacon wage rates may also apply.

[*2]—Invoices may be submitted, on no more often than a monthly basis, for reimbursement of eligible expenses for the performance of approved work that has been satisfactorily completed and undertaken after the Notice to Proceed for that phase was issued. Invoices must be accompanied by an up-to-date progress report detailing work undertaken and percentage of completion.

[*3]—If you have any questions, please contact the WVDOH, Program Planning and Administration Division, Grant Administration Unit at (304) 558-3165.