NOTICE OF AWARD OF CONTRACT

TO: KIMLEY-HORN & ASSOCIATES
13221 WOODLAND PARK ROAD
SUITE 400
HERNDON, VA 20171

DATE ISSUED: JANUARY 1, 2011
CURRENT REFERENCE NO: 52-11-1

CONTRACT TITLE: ENGINEERING SERVICES, MASTER CONTRACT
PRIOR REFERENCE NO: 358-08-1

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective IMMEDIATELY and expires on DECEMBER 31, 2011.

This is the SECOND year award notice of a FIVE year contract.

The contract documents consist of the terms, conditions of Agreement No. 358-08-1 including any exhibits, attachments or amendments thereto.

ATTACHMENT:
AGREEMENT NO. 358-08-1

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: JOHN MARTIN
VENDOR EMAIL: JOHN.MARTIN@KIMLEY-HORN.COM
VENDOR PAYMENT TERMS: NET 30 DAYS
TAX IDENTIFICATION NUMBER (EIN/SSN): 56-0885615

VENDOR TEL. NO.: 703-674-1300
VENDOR FAX. NO.: 703-674-1350

COUNTY CONTACT: DAVID DONAHUE
COUNTY TEL. NO.: 703-228-3653

CONTRACT AUTHORIZATION DISTRIBUTION

VENDOR: 1
BID FOLDER: 2

MARYAM W. ZAHORY, CPPB 1/13/2011
PROCUREMENT OFFICER

DATE
ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO. 358-08-1

This agreement is made, on the date of execution by the County, between Kimley-Horn and Associates, Inc., 13221 Woodland Park Road, Suite 400, Herndon, Virginia 20171 ("Contractor"), a State of North Carolina Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

The Contract Documents consist of this Agreement, Exhibit A (Scope of Work), Exhibit B (Hourly Billing Rates) and Exhibit C (Federal Highway Administration Clauses). Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and Exhibit C shall prevail over Exhibits A and B, and Exhibit A shall prevail over Exhibit B.

The Contract Documents set forth the entire Agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Agreement which is not contained in the Contract Documents, and that all terms and conditions with respect to this Agreement are expressly contained herein. The Contract Documents shall constitute the Contract.

SCOPE OF WORK
The Contractor agrees to perform the services described in the Contract Documents (alternatively, the "Work"). The primary purpose of the Work is to provide the County professional engineering services for various projects in streetscape and water and sewer system improvement services category. The County and the Contractor shall negotiate specific Work requirements for individual projects prior to the assignment of such project to the Contractor. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the individual project assignment, and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

PROJECT OFFICER
The Contractor shall be the responsible for management of the details of the execution and performance of the required Work under this Contract. The performance of the Contractor required by this Agreement is subject to the general review and approval of the County Project Officer, who shall be appointed by the Director of the Arlington County Department of Environmental Services or designee. The Contractor shall not comply with requests and/or orders issued by other than the Project Officer or designee.
STANDARD OF CARE
In the performance or furnishing of professional services hereunder, the Contractor and all its agents, shall exercise the degree of skill and care normally accepted as professional practices and procedures by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care") of its Work under this Contract.

RESPONSIBILITY OF THE CONTRACTOR
The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials produced and other services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies in the Work as defined in Exhibit A (Scope of Services) or services provided, which are discovered within a twelve-month period of final completion of Work.

RESPONSIBILITY FOR CLAIMS AND LIABILITIES
The County's review, approval, or acceptance of, or payment for, any services required under this Contract shall not be construed to operate as a waiver by the County of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to the County for the accuracy and competency of plans, specifications, or other documents, within the Customary Standard of Care.

CONTRACT TERM
Work under this Agreement will commence upon execution of this Agreement by the County and will continue December 31, 2010, ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents. Upon satisfactory performance of the Contractor and with the concurrence of the Contractor, the County may, through issuance of issuance of a Notice Of Award, authorize continued operations of the Contractor not more than two (2) additional twelve (12) month periods from September 1, 2010 to August 30, 2012 (Each period is referred to as "Subsequent Contract Term").

CONTRACT AMOUNT
The County will pay the Contractor for each assigned Project in accordance with the terms of the Payment paragraph based on the approved by the County Total Project Amount. This amount will be derived from the Contractor’s Billing Hourly Rates as illustrated in Exhibit B.

The Contractor agrees that the total payment for each assigned project will not exceed the approved Total Project Amount, regardless of the number of hours spent in the performance of the tasks or the amount of reimbursable expenses previously approved by the County. No additional compensation will be paid for work within the approved Scope of Work for the assigned project, unless it is approved in writing by the County Project Officer. The Total Project Amount includes all of Contractor’s General Conditions cost and fee (Profit).

PAYMENT
Payment will be made by the County to the Contractor within 30 days after receipt by the County Project Officer of an invoice for Work done
which is reasonable and allocable to the Agreement and which has been performed to the satisfaction of the Project Officer.

**NOT-TO-EXCEED PROJECT COST**

The Contractor shall create and provide to the County detailed construction drawings, specifications and contract documents that will be sufficient for the County to obtain competitive bids that fall within Twenty Percent (20%) of the Contractor's cost estimate accepted by the County for the work. This cost estimate shall be referred to as the Not-to-Exceed Project Cost. If the lowest competitive bid exceeds the Not-to-Exceed Project Cost, and the County's negotiations with the lowest responsible bidder fail to result in a price within the Not-to-Exceed Project Cost, the Contractor shall redesign the Project and provide revised construction drawings and specifications at no additional cost to the County for a re-bid that will result in competitive bids that fall within the Not-to-Exceed Project Cost.

The Contractor's final cost estimate shall be commensurate with the level of design approved by the County. The Contractor shall submit a cost estimate at completion of Schematic Design and 75% Construction Documents. If any such cost estimate indicates a potential problem in securing a bid within the County's construction budget, the Contractor shall notify the County and shall work with the County to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the budget. Substantial changes in the Project scope, such as those which affect the area or function of the proposed facility must be justified by the Contractor and approved by the County's Project Officer.

**ADDITIONAL SERVICES**

The Contractor shall not be compensated for any goods or services provided except those included in Exhibit A and paid for by the Contract Amount unless those goods or services are covered by a written Amendment to this Agreement signed by the County and the Contractor and a County Purchase Order is issued covering the expected cost of such services.

**REIMBURSABLE EXPENSES**

No expenses except those identified in individual project assignment as project related expenses will be reimbursed if incurred without the prior written approval of the County and the issuance of a purchase order detailing the specific expenses to be incurred by the Contractor and their estimated amount. Payment for approved reimbursable expenses will be made within 30 days after receipt by the Project Officer of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to the County on a unit price basis at the Contractor's cost. All amounts paid for reimbursable expenses shall be considered part of the Contract Amount.

**ARLINGTON COUNTY BUSINESS LICENSES**

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code.
NON-DISCRIMINATION NOTICE
Arlington County does not discriminate against faith-based organizations.

COUNTY EMPLOYEES
No employee of Arlington County, Virginia shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED
During the performance of this contract, the contractor agrees as follows:

A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. The contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR
During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions
will be binding upon each subcontractor or vendor.

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

INDEMNIFICATION
The Contractor covenants to hold harmless, and indemnify the County and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards and commissions (collectively the "County") from and against any and all losses, damages, injuries, costs (including court costs and attorney's fees) or charges resulting from or arising out of the Contractor's negligent acts, errors or omissions, or breach of the applicable professional standard of care in performance of its services pursuant to the Agreement. This indemnification shall survive the termination of this Contract.

COUNTY PURCHASE ORDER REQUIREMENT
County purchases of goods over $5,000.00 per transaction and purchases of services over $500 per transaction are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. A purchase order will be issued for any purchase if the vendor requires a purchase order for its records. The County will not be liable for payment for any purchases of goods over $5,000 per transaction or purchases of services over $500 per transaction made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. Contractors providing goods or services without a signed County Purchase Order do so at their own risk and must satisfy themselves that the ordering person or agency is authorized to purchase goods or services in the name of the County. Please direct questions regarding this requirement to the County Procurement Officers at 703-228-3410.

ADJUSTMENTS FOR CHANGE IN SCOPE
The County may order changes in the work within the general scope of the work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by the County and the Contractor. If the Contractor believes that any particular work is not within the scope of the project or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer in writing of this belief. Within ten (10) days after any change or event which the Contractor believes calls for more compensation, the Contractor must provide to the Project Officer a proposal which sets forth the amount of additional compensation claimed, together with the basis therefor and supportive documentation for the amount. The Contractor will not
be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written amendment has been signed by the County and the Contractor and a County purchase order is issued covering the cost of the services to be provided under the amendment. If the Project Officer believes that the work is within the scope of the Contract as written, the Contractor will be ordered to continue work.

ETHICS IN PUBLIC CONTRACTING
This Contract incorporates by reference Article 9 of the Arlington County, Virginia, Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act, the Virginia Governmental Frauds Act, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Virginia Code, as amended. The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

FORCE MAJEURE
The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to strikes, fires, riots, rebellions, or Force Majeure, beyond the control of the Contractor, that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform the duties and responsibilities imposed by the Contract if such failure is due to strikes, fires, riots, rebellions, or Force Majeure, beyond the control of the County, that make performance impossible or illegal, unless otherwise specified in the Contract.

ASSIGNMENT
The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

APPLICABLE LAW
This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

AUTHORITY TO TRANSACT BUSINESS
The Contractor shall remain authorized to transact business in the
Commonwealth of Virginia during the term of this Contract

EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

ANTITRUST
By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under said Contract.

RELATION TO COUNTY
The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the County will not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the County for its employees.

ARLINGTON COUNTY PURCHASING RESOLUTION
The Contract is governed by the applicable provisions of the Arlington County Purchasing Resolution. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, incorporated herein by reference, and available upon request from the Office of the Purchasing Agent.

ARBITRATION
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

PATENTS AND ROYALTIES
The Contractor covenants to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees (collectively the "County") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its
use by the County. If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

CONFIDENTIALITY AND RETURN OF RECORDS

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the County's request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract or Agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Agreement.

No termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating this section.

COPYRIGHT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the County all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Agreement. The Contractor further agrees to execute such documents as the County may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the County by this paragraph are irrevocable. Notwithstanding anything else in this Agreement, the Contractor's remedy in the event of termination of or dispute over the terms of this Agreement shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Agreement is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or
third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work under this Contract.

PAYMENT OF SUBCONTRACTORS
The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

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

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

AUDIT
The Contractor agrees to retain all books, records and other documents related to this procurement for at least five (5) years after final payment, or until audited by the County, whichever is sooner. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) after the County's audit but within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

PROJECT STAFF
The County will, throughout the Contract Term and any renewal term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the County reasonably rejects staff or subcontractors, the Contractor must
provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor’s employees, and employees of any of its subcontractors, shall be solely the responsibility of the Contractor.

SUPERVISION BY CONTRACTOR
The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

CONTRACT EXTENSION WITH PRICE ADJUSTMENTS
The Contract unit price(s) shall remain firm for the first twelve (12) months of the Contract Term. The Contract unit price(s) for each ensuing Contract year, if the County elects to extend the Contract, shall be negotiated by the County and the Contractor. Increases in the price(s) for ensuing years shall not exceed the percentage of change in the U.S. Department of Labor, Employment Cost Index for total compensation, for civilian workers, by occupational group and industry (Table 4), Professional and related category, for the period ending in SEPTEMBER of each Contract Year.

If the Contractor and the County do not agree on a price using the procedure set forth above by the thirtieth (30th) day prior to the end of the initial Contract Term or the end of ensuing renewal term or terms, the County will terminate the Contract whether or not the County has previously elected to extend the term. The Contract unit price(s) changed as a result of this procedure shall become effective on the anniversary date of the Contract and shall be binding on the Contractor.

REPORT STANDARDS
Reports or written material prepared by the Contractor in response to the requirements of this Contract shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with the Contract requirements shall be borne by the Contractor.

When submitting documents to the County, The Contractor shall comply with the following guidelines:

• All submittals and copies shall be printed on at least 30% recycled-content and/or tree free paper;
• All copies shall be double-sided;
• Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
• The use of plastic covers or dividers should be avoided; and
• Unnecessary attachments or documents not specifically asked for
should not be submitted, and superfluous use of paper (e.g. separate
title sheets or chapter dividers) should be avoided.

ADJUSTMENTS FOR CHANGE IN SCOPE
The County may order changes in the work within the general scope of
the work consisting of additions, deletions or other revisions. No
claim may be made by the Contractor that the scope of the project or of
the Contractor’s services has been changed requiring adjustments to the
amount of compensation due the Contractor unless such adjustments have
been made by a written amendment to the Contract signed by the County
and the Contractor. If the Contractor believes that any particular
work is not within the scope of the project or if a material change or
otherwise will call for more compensation to the Contractor, the
Contractor must immediately notify the Project Officer in writing of
this belief. Within ten (10) days after any change or event which the
Contractor believes calls for more compensation, the Contractor must
provide to the Project Officer a proposal which sets forth the amount
of additional compensation claimed, together with the basis therefor
and supportive documentation for the amount. The Contractor will not
be compensated for performing any work unless a proposal complying with
this paragraph has been submitted in the time specified above and a
written amendment has been signed by the County and the Contractor and
a County purchase order is issued covering the cost of the services to
be provided under the amendment. If the Project Officer believes that
the work is within the scope of the Contract as written, the Contractor
will be ordered to continue work.

NONAPPROPRIATION
All funds for payments by the County under this Contract are subject to
the availability of an annual appropriation for this purpose by the
County Board of Arlington County. In the event of nonappropriation of
funds by the County Board of Arlington County for the goods or services
provided under this Contract or substitutes for such goods or services
which are as advanced or more advanced in their technology, the County
will terminate the Contract, without termination charge or other
liability to the County, on the last day of the then current fiscal
year or when the appropriation made for the then current year for the
services covered by this Contract is spent, whichever event occurs
first. If funds are not appropriated at any time for the continuation
of this Contract, cancellation will be accepted by the Contractor on
thirty (30) days prior written notice, but failure to give such notice
shall be of no effect and the County Board of Arlington County shall
not be obligated under this Contract beyond the date of termination.

TERMINATION FOR CAUSE
The Contract will remain in force for the full period specified and
until the County determines that all requirements and conditions have
been met and the County has accepted the Work, and thereafter until the
Contractor has met all requirements and conditions relating to the Work
under the Contract Documents following the Initial Contract Term and
all Subsequent Contract Terms. However, the County will have the right
to terminate this Contract sooner if the Contractor has failed to
perform the Work required within the Customary Standards of Care or otherwise defaults, as determined by the County in its discretion.

In the event the County decides to terminate this Contract for failure to perform satisfactorily, the County will give the Contractor at least fifteen (15) days written notice before the termination takes effect. Such fifteen (15) day period will begin upon the mailing of notice by the County. If the Contractor fails to cure within the fifteen (15) days period specified in the notice and the Contract is terminated for the Contractor's failure to provide satisfactory Contract performance, the Contractor will be entitled to receive compensation for all Contract services performed by the Contractor within the Customary Standard of Care and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract.

In the event the County terminates the Contract for default of any Contract term or condition, the termination will be immediate, unless the County in its discretion provides for an opportunity to cure, and the Contractor will not be entitled to termination costs.

Upon any termination for cause, an amount equal to all additional costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the project, shall be either subtracted from any amount due the Contractor or charged to the Contractor.

Except as otherwise directed by the County, the Contractor shall stop Work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

In the event any termination for cause shall be found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a termination for convenience.

**TERMINATION FOR THE CONVENIENCE OF THE COUNTY**  
The performance of work under this Contract may be terminated by the Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.
After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

INSURANCE REQUIREMENTS
The Contractor shall maintain the required insurance coverage during the term of this Agreement.

NOTICES
All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an over night or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO CONTRACTOR:
R. John Martin, P.E., Vice President/Senior Associate
Kimley-Horn and Associates, Inc.
13221 Woodland Park Road, Suite 400
Herndon, VA 20171

TO COUNTY:
Richard D. Warren, Jr., Purchasing Agent
Arlington County
Suite 500
2100 Clarendon Boulevard
Arlington, Virginia 22201

NONEXCLUSIVITY OF REMEDIES
All remedies available to the County under this contract are cumulative and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

AMENDMENTS
This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

SEVERABILITY
The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses,
sentences, paragraphs and sections of this Contract.

WITNESS these signatures:

WITNESS these signatures:
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE:  
NAME AND RICHARD H. WARREN, JR. TITLE:  PURCHASING AGENT
DATE:  1/26/2010

KIMLEY-HORN CORPORATION

AUTHORIZED SIGNATURE:  
NAME AND R. JOHN MARTIN, VICE PRESIDENT TITLE:  
DATE:  1/18/10

TAXPAYER 
ID NUMBER, SSN/EIN:  56-0885615
AGREEMENT NO. 358-08-1

EXHIBIT A

SCOPE OF WORK

BACKGROUND
The Contractor shall provide to the County professional engineering services for the following project categories:

- Streetscape
- Stormwater

Because availability of Contractor staff and time to complete work for specific projects is critical, this contract is not exclusive and the County will contract for services from several firms.

The work performed under this contract will consist of several projects initiated by one of several County Project Managers ("Project Officer").

STORM DRAINAGE PROJECTS
The Project Officer will identify to the Contractor when storm drainage engineering services are required. The Project Officer will provide a project scope to the Contractor and the Contractor shall clearly define the project limits within the subsequent proposal to the County. Typical (but not limited to) tasks may include the following:

- Hydrologic analysis and modeling to identify peak discharges and other watershed characteristics
- Hydraulic routing of existing flows to establish current base conditions for a variety of storm recurrence intervals
- Identification of several alternatives to address storm drainage deficiencies with detailed cost estimates and quantified hydraulic/hydrologic benefits
- Development of construction documents for selected alternatives
- Planning, design, and implementation of stormwater quality facilities such as infiltration basins, rain gardens, hydrodynamic in-line or off-line structures, etc.

TRAFFIC ENGINEERING SERVICES
The Project Officer will notify the Contractor when traffic engineering services are required. Typical tasks include the study, analysis and design of new signalized intersections. Specific project may include the conversion of a multi-way stop intersection to a total signal design including communications. Typical tasks may include the following:

A. DESCRIPTION OF WORK
The Contractor shall completely design the traffic signal including the associated communications, such as signal timing,
phasing and coordination with other traffic signals in close proximity. The adjoining traffic signal locations shall be included in the analysis to assure coordination of timing. The Contractor shall also design the nubs at all four corners, a mast arm and include a video detection system. The Contractor shall refer to the Arlington County shop drawings for pole foundation design.

B. DATA ACQUISITION

The Contractor shall provide the following data:
1. Current turning movement counts at selected intersection
2. Phasing diagrams at adjacent signalized intersections
3. Aerial photographs of the study area

C. DELIVERABLES

The Contractor shall submit all deliverables no later than forty five (45) calendar days after the issuance of a Purchase Order for the work for each individual traffic engineering project. At a minimum the Contractor shall submit the following deliverables:
1. Plans for total traffic signal design including cut sheets
2. Plans for all associated electrical drawings
3. Bidding Quantity Sheets
4. All drawings will be submitted electronically

PROJECT WORK ASSIGNMENTS

Any of the following and other criteria may be used by Arlington County at its sole discretion when issuing individual or multiple tasks to any of the up to three firms selected.

1. The ability to meet specific Arlington County schedule requirements as determined by the Project Manager.
2. The availability of the firm’s staff
3. Responsiveness to Project Officer requests

Typically, the Project Officer may provide to the Contractor a scope of work, which will include a sketch and a description of the project as well as concept cost estimate. Alternatively the Project Officer may require that the Contractor develop the above-mentioned scope of work, secure internal County approval and conduct a scope of work meeting at an agreed upon not-to-exceed amount before development of a final proposal.

For each project, based on discussions with the Contractors and using the above criteria, the Project Officer will select a Contractor from the appropriate project category to prepare a not-to-exceed cost proposal for approval by the County. If the cost proposal is not acceptable to the Project Officer, an alternate Contractor will be selected to prepare a proposal. The County will assign the particular project work to a particular Contractor under this contract as indicated above. No work shall be performed by the Contractor for any project until the cost proposal has been approved by the Project Officer, and the Contractor has received a valid County Purchase Order covering each individual project.
The proposal for each project shall include, at a minimum, a total price estimate showing a detailed breakdown based on the unit prices negotiated. Each proposal shall be divided into Tasks, with a total price for each Task (with the exception of those Tasks to be paid by direct cost-reimbursement, if any, as negotiated with the County, supported by a detailed labor hour estimate by staff category and the appropriate hourly billing rates assigned to that category in the contract). The Tasks to be included will vary depending on the nature of the specific project, but may include any or all of the following:

1. **SCOPE OF WORK**
   The Contractor shall prepare a preliminary plan as well as a project description and a preliminary cost estimate.

2. **FIELD SURVEY**
   The Contractor shall perform a topographic field survey and a property line survey.

3. **PREPARATION OF BASE SHEETS**
   The Contractor shall obtain the location of existing utilities from the County utility transmittal process and field survey.

4. **PREPARATION OF RIGHT-OF-WAY ACQUISITION PLANS**
   The Contractor shall prepare plans showing property boundaries, plan view of proposed project, temporary access easement limits and any permanent takings.

5. **PREPARATION OF 50% CONSTRUCTION PLANS (Submission for Review Required)**
   All new work shall be shown in plan and profile but invert elevations and top of curb elevations need not be computed. No construction details are needed for the 50% submission; however drainage area maps will be needed.

6. **COMPLETION OF FINAL CONSTRUCTION PLANS WITH A FINAL CONSTRUCTION COST ESTIMATE**
   The Contractor shall obtain plan approval from the Project Officer and appropriate agencies such as the Virginia Department of Transportation ("VDOT") and the Virginia Department of Health ("VDH") as well as signature approval from several departments and divisions within Arlington County. This Task may also include test hole submission and specifications, which if required will be paid for on a direct cost-reimbursement basis, based on the rates set forth in Exhibit B, and not included in the not-to-exceed project cost.

7. **PREPARATION OF EASEMENT OR FEE SIMPLE PLATS**
   The Contractor shall perform the necessary land record research, preparation of right-of-way acquisition plats sealed by a licensed surveyor, includes obtaining plat signature approval from the County's Department of Environmental Services (DES).

8. **RIGHT-OF-WAY ACQUISITION SERVICES**
   The Contractor shall prepare standard County master deed, securing signature(s) from the land owner(s) and
mortgage holder(s), recording of deed, and notification to the County Department of Environmental Services and the Real Estate Manager.

9. **CONSTRUCTION STAKE OUT**
The Contractor's proposal for each project shall include a breakdown of cost for construction stake out by type of construction. Cost and time sheet hours per linear foot shall be provided for each of the following: sanitary sewer, storm sewer, water main, curb and gutter, sidewalk and any other individual item to be staked out for the project.

10. **MANAGEMENT OF COUNTY CONSTRUCTION PROJECTS**
The Contractor shall conduct preconstruction meetings, receipt & processing of shop drawings, establishing start date, giving notice of construction start to citizens and citizen’s associations in project area, inspecting field work, conducting or arranging for field tests, receiving test reports, making daily reports, preparing & processing of payment estimates, resolving construction problems, processing change orders, processing contractor’s claims, conducting progress meetings, and performing project closeout.

11. **PREPARATION OF AS-BUILT PLANS**

**TASK COMPONENTS**
When included in a Project Work Assignment, required tasks shall generally be completed and delivered as described below:

**SURVEYS**
The Project Officer will identify to the Contractor when a field survey is required. The Project Officer will provide the project limits to the Contractor and the Contractor shall clearly define the project limits within the subsequent proposal to the County. At a minimum, a typical field survey assignment shall include the following services:

1) A retracement of existing County or VDOT centerlines (whenever possible);

2) Determination of the rights-of-way (boundary and public street easements) with all departing property lines and the station/offsets to all found monuments;

3) A vertical control network using Arlington County benchmark elevations, and the establishment of benchmarks within the project area;

4) A horizontal control network sufficient to establish control for the survey to be referenced in Virginia State Plane Coordinates; and
5) The Contractor’s field crews shall follow traffic management procedures as set forth by OSHA and the manual on Uniform Traffic Control Devices.

6) Unless directed by the Project Manager, all field surveys shall be performed using Computer Aided Drafting and Design ("CADD"). The Contractor shall provide the Project Officer a copy of the CADD files in a DWG format, compatible with Arlington County Engineering Bureau’s CADD software program (Autodesk Civil 3D 2008) and current Arlington County Drafting Standards. A copy of the current Arlington County Drafting Standards can be obtained from http://www.arlingtonva.us/Departments/EnvironmentalServices/cpe/EnvironmentalServicesSpecs.aspx. The following CADD files shall be included in the submission package to the County:

A) A Coordinate Geometry file showing the street centerline retracement determination, the rights-of-way (boundary and public street easements) determinator with departing property lines and station/offsets to found monuments and the exact placement of benchmarks and horizontal control used within the project area;

B) A file containing the field run topographic survey containing three dimensional survey data; and

C) A file containing a three-dimensional triangular intrasurface network (TIN) model.

D) A file containing points used within the drawing, including control points, DTM points and topographic points.

The Contractor shall submit a complete list of the above files as used by the Contractor, with a detailed description of what each represents and final plots, with the CADD files using current Arlington County drafting standards. Field notes taken during the course of the field survey shall be entered into survey field books provided by the County. When survey work is complete all survey books shall be returned to the County. CADD raw data collector files shall also be delivered to the County at the completion of surveying.

DESIGN PLANS
At a minimum, and unless explicitly specified otherwise, design plans shall include the following items:

- The Contractor shall prepare base sheets on a 1” = 25’ horizontal scale and 1” = 5’ vertical scale. Unless directed by the Project Manager, all base sheets shall be prepared with a CADD system that is compatible with Arlington County Engineering Bureau’s CADD software program, and be delivered in a DWG format.
The Contractor shall locate all existing underground utilities by obtaining and reviewing the records of all utility companies operating in Arlington County. The Contractor shall use the County utility transmittal system and obtain appropriate forms and reference numbers from the Project Officer. Existing utilities that may be in conflict shall be located both horizontally and vertically by the Contractor with test holes. Test hole records shall be provided to the County for review.

The Contractor shall conduct construction plan preparation to a level of detail appropriate for an urban environment. For curb and gutter projects, a proposed top of curb profile shall be prepared for each curb, and shall be designed to provide an economical fit with both the existing asphalt and adjacent property. Impact to adjacent private property shall be minimized. Cross sections shall be prepared at 25-foot stations and at critical points such as driveways, walkways and alleys showing both the existing and proposed condition. Each curb shall follow its own profile to minimize pavement removal, optimize transverse and longitudinal drainage, and minimize clearing and grading on adjacent private property.

The Contractor shall prepare a final construction cost estimate using units from the measurement and payment sections of the Arlington County DES Construction Standards and Specifications.

STORM DRAINAGE DESIGN

Typical (but not limited to) tasks may include the following:

- Hydrologic analysis and modeling to identify peak discharges and other watershed characteristics
- Hydraulic routing of existing flows to establish current base conditions for a variety of storm recurrence intervals
- Identification of several alternatives to address storm drainage deficiencies with detailed cost estimates and quantified hydraulic/hydrologic benefits
- Development of construction documents for selected alternatives
- Planning, design, and implementation of stormwater quality (BMP) facilities such as infiltration basins, rain gardens, hydrodynamic in-line or off-line structures, etc.
BIDDING AND CONSTRUCTION SERVICES
The Contractor’s services may include the following:

- The County will provide an electronic file of the General and Special Conditions, Bid Form and any other “boiler plate” documents generally included in the Bid Documents, and the Contractor shall ensure that the documents they provide do not duplicate or contradict the County language. However, the Contractor shall review the General Conditions section and provide necessary revisions specific to this project. The Contractor shall provide assistance in the bidding process to include preparation of bid documents, attendance at the pre-bid meeting and answering bidders’ questions and assistance with drafting any necessary amendments. Once bids are received and opened by the County, the Contractor shall assist in the bid review and evaluation process and make recommendations as required.

- The Contractor may be required to prepare Easement Plats according to County plat preparation procedures and per Virginia State Library and Archives Regulation 137.6 (Standards for Plats), and the APELSCIDLA Rules and Regulations.

- The Contractor shall prepare temporary access easements in accordance with County plan preparation procedures including area calculations.

- The Contractor may be required to provide construction stake out and cut sheet preparation within three (3) working days after notification by the Project Manager.

- The Contractor shall return to the County shop drawings and source and mix design rejections with comments and/or accepted within five (5) working days.

- The Contractor shall respond within one (1) working day to the County's request for consultation on field problems. Redesigns which are departures from the agreed upon scope for a specific project will be negotiated as increases to the project. No additional work shall be performed on any project unless the Contractor has received a written change order to the original Purchase Order.

- The Contractor shall perform construction management of construction projects at the County’s option from preconstruction conference to project closeout.

- The Contractor shall prepare as-built plans based upon field measurement after construction and shall be drafted on a Mylar copy of the design Mylar.

Right-Of-Way Services
The Project Officer will identify to the Contractor when right-of-way acquisition services are required.
All tasks shall be completed in accordance with the Arlington County standards and are subject to Arlington County Right-of-Way Section approval. Typical tasks are as follows:

**PHASE I**

A. The Contractor shall review documents and construction drawings
B. The Contractor shall coordinate meetings and other communications with County staff
C. The Contractor shall research public records and determine proper signatories
D. The Contractor shall conduct site visits with/without design engineers
E. Obtain and review
   1. temporary easement exhibits
   2. wall agreement exhibits
   3. permanent easement exhibits
   4. plans and plats - provide revisions as necessary
F. The Contractor shall prepare:
   Deeds of Temporary Easement & Construction Agreements
   1. Deeds of Temporary Easement, Construction & Wall Maintenance Agreements
   2. Deeds of Permanent Easement
   3. Other documents necessary to complete ROW acquisition
G. The Contractor shall coordinate meetings with civic associations/property owners
H. The Contractor shall prepare letters and other correspondence to property owners for signature by County Right-of-Way Section
I. The Contractor shall prepare and submit status reports.
   1. The report shall be submitted twice month on the dates designated by the County Project Officer.
   2. The report shall be prepared as a spreadsheet and provide updates on the status of each project and identify each individual property.
J. The Contractor shall submit copies all prepared documents and correspondence to the County Project Officer.
K. The Contractor shall mail letters, deeds and other necessary documents to appropriate owner representative(s) and County officials.

**NOTE:**
Contractor shall be at 25%-50% of budget at the end of Phase I, depending on Project.

**PHASE II**

A. The Contractor shall secure the contact with the property owners, revise documents (as necessary) and secure signatures
B. The Contractor shall prepare subordination agreements, if necessary
C. The Contractor shall provide property owners and the County with the fully executed copies of each agreement.
BILLING
The Contractor shall submit timesheets with billable time in 1/4-hour increments.
AGREEMENT NO. 358-08-1

EXHIBIT B

HOURLY BILLING RATES

The following are the Contractor’s fully burdened hourly rates by labor (staff) category to determine the Lump Sum Fee Amount for individual project assignments under this Agreement.

KIMLEY HORN, INC

<table>
<thead>
<tr>
<th>STAFFING CATEGORIES</th>
<th>HOURLY BILLING RATES</th>
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</thead>
<tbody>
<tr>
<td>PRINCIPAL</td>
<td>$200.35</td>
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<tr>
<td>ASSOCIATE/SENIOR PROJECT MANAGER</td>
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RICE ASSOCIATES, INC.

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<td>SCANNER CADD TECHNICIAN</td>
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<td>CREW CHIEF</td>
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<td>RESEARCHER</td>
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AGREEMENT NO. 358-08-1
EXHIBIT C

FEDERAL HIGHWAY ADMINISTRATION CLAUSES
C1-B

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION CERTIFICATION

The certification in this clause is a material representation of fact relied upon by The County of Arlington - Department of Environmental Services - Transportation (The County). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

________________________
Signature of Contractor's Authorized Official

________________________
Name and Title of Contractor's Authorized Official

________________________
Date

The undersigned chief legal counsel for the _____________________________ (entity)

Hereby certifies that the _____________________________ has authority under state and local law to comply with the subject assurances and that the certification above has been legally made.

________________________
Signature of Firm's Attorney

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

<table>
<thead>
<tr>
<th>Firm's Name and Address</th>
<th>Firm's DBE/SWAM Status *</th>
<th>Firm's Age</th>
<th>Firm's Annual Gross Receipts</th>
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* YD = DBE Firm Certified by DMBE by DMBE  
N = DBE/SWAM Firm Not Certified by DMBE  
YS = SWAM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.  
DMBE is the Virginia Department of Minority Business Enterprise
It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (http://www.dmbe.state.va.us/) under the VDOT DBE Directory link. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBEs as potential subcontractors. The consultant is encouraged to contact DBEs to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE whereby the DBE promises not to provide services to other consultants is prohibited.

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

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

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

DBE certification entitles consultants to participate in VDOT's DBE program. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.
REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (FHWA 1273) shall apply to this contract as well as the following:

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

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

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

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

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

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**FHWA-1273 Electronic version -- March 10, 1994**

**REQUIRED CONTRACT PROVISIONS**

**FEDERAL-AID CONSTRUCTION CONTRACTS**

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<td>IV. Payment of Predetermined Minimum Wage</td>
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<td>V. Statements and Payrolls</td>
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<td>VI. Record of Materials, Supplies, and Labor</td>
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<td>VIII. Safety: Accident Prevention</td>
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<td>IX. False Statements Concerning Highway Project</td>
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<td>XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion</td>
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<td>XII. Certification Regarding Use of Contract Funds for Lobbying</td>
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**ATTACHMENTS**

28
358-09-1
A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

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

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

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

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

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

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

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

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

   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.
II. NONDISCRIMINATION
(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

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

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

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

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

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

3. Dissemination of Policy: All members of the contractor's staff who are to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual will be taken as a minimum:

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

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

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

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

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

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

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

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

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

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

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

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

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

6. Training and Promotion:

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

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

   a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

   For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed,
without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

 Helpers will be permitted to work on a project if the helper classification is specified and defined in 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 than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

   c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

* * * * *

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

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

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

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

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

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

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

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

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

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts.

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J58-08-1
which exceed $100,000 and that all such recipients shall certify and disclose accordingly.
U.S. Department of
Transportation
Federal Highway
Administration

Subject: ACTION: The Discontinuance of the FHWA-45, FHWA-47 & FHWA-810

Date: May 22, 2007

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

To: Directors of Field Services
Division Administrators
Federal Lands Administrator

In HIPA-10
Reply
Refer

to:

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

The FHWA-45, Bid Price Data,

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

The FHWA-810, Bid Tabulation Data

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

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

As a result, FHWA has determined that it is appropriate to discontinue the reporting requirements for the FHWA 45, 47 and 810 as collection of this data for needed reports such as the "Highway Statistics" publication can be collected through other means. The main reasons for this decision are the strong disinterest in the data collection activities and comments provided to us by our STA partners suggesting that we are not collecting the data extensively enough to be of utility. We will also be going through an abridged regulatory update as
appropriate to reflect this action.
Please contact Bob Wright, at 202-366-4630, to answer any questions
and/or for additional information on this matter.

The FHWA 45, Bid Price Data, was collected on NHS projects over
$500,000. The FHWA 45 served as a means to compute the highway
construction bid price index, which is published in the document "Price
Trends for Federal-aid Highway Construction. The data was used in our
"Highway Statistics" publication and by other outside sources,
including its use by congressional committees in their deliberations on
pending new highway legislation.

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

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

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

The BIDDER, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Virginia Fair Employment Contracting Act, Sections 2.1-374 through 2.1-376.1 of the Code of Virginia, as amended. During the performance of this Agreement, the LOCALITY agrees as follows:

a. The BIDDER will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the BIDDER. The BIDDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the LOCALITY has agreements of over ten thousand dollars.

b. The BIDDER will, in all solicitations or advertisements for employees placed by or on behalf of the BIDDER, state that the BIDDER is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

NON-DISCRIMINATION PROVISION: The BIDDER agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Sections 49 CFR 21 and 26 CFR 710.405(b) are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The BIDDER shall comply with the Americans with Disabilities Act (ADA), and
with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

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

a. withholding of payments to the LOCALITY under this Contract until the BIDDER complies; and/or

b. cancellation, termination or suspension of this Contract, in whole or in part.

TITLE V: OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Agreement, the LOCALITY, for itself, its assignees and successors in interest (herein referred to as "the RECIPIENT"), agrees as follows:

a. Compliance with Regulations: The BIDDER will comply with the Regulations of the United States Department of Transportation relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The BIDDER with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, color, sex, national origin, age or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The BIDDER will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontractors: In all solicitations, either by competitive bidding or negotiation made by the BIDDER for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the BIDDER of the BIDDER’S obligations under this Agreement.

d. Information and Reports: The BIDDER will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the VDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the BIDDER is in the exclusive possession of another who fails or refuses to furnish this information, the BIDDER shall so certify to the VDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
e. Incorporation of Provisions: The BIDDER will include the provisions of paragraphs "a" through "e" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The BIDDER will take such action with respect to any subcontractor or procurement as the VDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the BIDDER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the BIDDER may request the VDOT to enter into such litigation to protect the interests of the VDOT and, in addition, the BIDDER may request the United States to enter into such litigation to protect the interests of the United States.

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

TDD/TTY EQUIPMENT FOR THE DEAF: When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the BIDDER agrees to ensure that all citizens have equally effective communication. The BIDDER agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The BIDDER will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

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

A Disadvantaged Business Enterprise ("DBE") is a business certified in accordance with the guidelines of 49 CFR, Part 26, as amended, by the United States Department of Transportation designated and approved agency. A listing of certified firms can be located at www.dmbe.state.va.us.

RECORD KEEPING

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

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

SF030AF-0708
Reissued July 2008

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

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

   Females - 6.9%
   Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.
The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

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

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

1. As, used in this provision:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the
availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO
obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even thought the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to
carry out such sanctions and penalties shall be in violation of these
specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these
specifications shall implement specific affirmative action steps, at
least as extensive as those standards prescribed in paragraph 7 of
these specifications, so as to achieve maximum results from its
efforts to ensure equal employment opportunity. If the Contractor
fails to comply with the requirements of the Executive Order, the
implementing regulations, or these specifications, the Director will
proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate and make known to the Department a
responsible official as the EEO Officer to monitor all employment
related activity, to ensure that the company EEO policy is being
carried out, to submit reports relating to the provisions hereof as
may be required by the Government and to keep records. Records shall
at least include for each employee the name, address, telephone
numbers, construction trade, union affiliation if any, employee
identification number when assigned, social security number, race,
sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer),
dates of changes in status, hours worked per week in the indicated
trade, rate of pay, and locations at which the work was performed.
Records shall be maintained in an easily understandable and
retrievable form; however, to the degree that existing records satisfy
this requirement, Contractors will not be required to maintain
separate records.

15. Nothing herein provided shall be construed as a limitation upon the
application of other laws which establish different standards of
compliance or upon the application of requirements for the hiring of
local or other area residents (e.g., those under the Public Works
Employment Act of 1977 and the Community Development Block Grant
Program).
**Economic Area**

**Virginia:**
- 021 Roanoke-Lynchburg, VA
  - SMSA Counties:
    - 4640 Lynchburg, VA
    - VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg
    - 6800 Roanoke, VA
    - VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem

**Non-SMSA Counties**
- VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;
  VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;
  VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;
  VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City;
  VA Buena Vista;
  VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;
  VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.

- 022 Richmond, VA
  - SMSA Counties:
    - 6140 Petersburg - Colonial Heights - Hopewell, VA
    - VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell;
    VA Petersburg.
    - 6760 Richmond, VA
      - VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.

**Non-SMSA Counties**
- VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline;
  VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA
Northumberland; VA Nottoway; VA Orange; VA Prince Edward;
VA Richmond
VA Sussex; VA Charlottesville; VA Emporia; VA South Boston

023 Norfolk - Virginia Beach - Newport News VA:
SMSA Counties:
5680 Newport News - Hampton, VA

VA Gloucester; VA James City; VA York; VA Hampton; VA
Newport
News; VA Williamsburg.
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA
Suffolk; VA Virginia Beach.

Non-SMSA Counties

NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford;
NC Pasquotank; NC Perquimans; VA Isle of Wight; VA
Matthews;
VA Middlesex; VA Southampton; VA Surry; VA Franklin.

Washington, DC:
020 Washington, DC.
SMSA Counties:
8840 Washington, DC - MD - VA

DC District of Columbia; MD Charles; MD Montgomery MD
Prince
Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince
William
VA Alexandria; VA Fairfax City; VA Falls Church.

Non-SMSA Counties

MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA
Clarke;
VA Culpeper; VA Fauquier; VA Frederick; VA King Georges; VA
Page; VA
Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA
Warren; VA Westmoreland; VA Fredericksburg; VA Winchester
WV Berkeley;
WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.

Tennessee:
052 Johnson City - Kingsport - Bristol, TN - VA
SMSA Counties:
3630 Johnson City - Kingsport - Bristol, TN - VA

TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA
Scott; VA
Washington; VA Bristol.

Non-SMSA Counties

TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee;
VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.

Maryland:

019 Baltimore MD
Non-SMSA Counties

MD Caroline; MD Dorchester; MD Kent; MD Queen Anne; MD Somerset;
MD Talbot; MD Wicomico; MD Worcester; VA Accomack; VA
Northampton.
USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.

B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).

C. A negative reply will not adversely affect consideration of your bid/proposal.

D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the contract(s).

E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

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Vendor Name: KIMLEY-HORN AND ASSOCIATES, INC.
13221 Woodland Park Road, Suite 400
Herndon, VA 20171
Office: 703-674-1300
Fax: 703-674-1350
Attn: R. John Martin, P.E.