CHAPTER 7 - PROSECUTION AND PROGRESS

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7-1 SUBCONTRACTING

7-1.1 General

The Standard Specifications permit subcontracting a portion of the work. The FAR specifically encourages subcontracting to small, small disadvantaged, and women owned small businesses. However, the Contractor is usually required to perform, with its own organization, work amounting to not less than 50 percent of the original Contract amount. This requirement is contained in FAR Clause 52.236-1. In some contracts an alternate percentage may be inserted. Contracts which are Small Business Set Asides contain FAR Clause 52.219-14, which permits a far higher percentage of the work to be subcontracted (85% less materials). For most FLH contracts written consent to subcontract is not required. However, contracts and subcontractors may be required to furnish certain regulatory and administrative items prior to beginning work on a subcontract. These items are as follows:

SF 1413 (Figure 7-1.1a) - Statement and Acknowledgement - A standard form in which the prime and the sub certify that the standard labor provisions are included in the subcontract. This form is required for all subcontracts involving onsite (Davis-Bacon) labor. It must be submitted to the Government within 14 days of award of the prime contract or 14 of the award of any applicable subcontract.

FHWA 1775 (Figure 7-1.1b) - Notice of Subcontract Award - Supplemental Information - This form is designed to solicit certain data on the size and socio-economic status of the subcontractor in order to report such data accurately to the Small Business Administration. The form also provides for documentation of the amount subcontracted to date. Prices shown should be based on the actual prices in the subcontract, regardless of the bid prices.* This form should be obtained from all subcontractors, including supply subcontracts, whether they involve onsite labor or not.

For those subcontracts for which the Contractor claims entitlement under the DBE/WBE Subcontract Compensation Clause, the contractor is required to furnish a written request for compensation and a variety of additional documentation including a copy of the subcontract itself, certification of amounts paid, proposed incentive computation, copies of current DBE/WBE certification or documentation which would support an ad hoc certification.

* *Significant differences between the subcontracted prices and the bid prices should be reviewed with respect to the prime's entitlement to full progress payments. For example if the prime bid $250,000 for clearing, but subcontracted the work for $25,000, the bid item may be an improper augmentation to the mobilization item and should be questioned. The Contractor would be entitled to any amount bid, but the Government may take the position that these excess amounts cannot be paid early in the Contract because they represent payment for underbid work to be completed later in the Contract. Instead the payments should be prorated on a reasonable schedule, through the remaining Contract. Situations such as this must be discussed with the COE, who will probably seek legal advice, before proceeding.*

Contracts which are awarded to large business concerns and which exceed $1,000,000 (original contract amount) contain a Subcontracting Plan submitted by the Contractor immediately after award. The goals contained in the Subcontracting Plan are contractually binding and must be monitored by the Project Engineer to verify that they are met. Failure to comply with these goals may result in liquidated damages being assessed in accordance with *FAR*

Clause 52.219-16, Liquidated Damages - Small Business Subcontracting Plan. A contractor who is operating under a Subcontracting Plan is required to submit periodic documentation to the Small Business Administration through the Contracting Officer, FLHO and DOT.

Figure 7-1.1c, SF-294, Subcontracting Report for Individual Contracts is required to be submitted semiannually on April 30 and October 30 each covering the semiannual periods ending March 31 and September 30.

Figure 7-1.1(d), SF-295, Summary Subcontract Report is required to be submitted annually on October 30 covering the fiscal year ending September 30.

The Construction Operations Engineer should be advised when the Contractor fails to submit required documentation, when there is apparent noncompliance with the subcontracting plan or when the invoking of such damages is apparently warranted.

During the preconstruction conference the Contractor should be apprised in detail of the subcontracting requirements and the required certification forms should be discussed and made available at that time. It should be made clear to the Contractor that, insofar as the Government is concerned, the prime Contractor is responsible for all work subcontracted and resubcontracted, and that all subcontracts must include the appropriate provisions of the original Contract.

7-1.2 Percent Subcontracted

In order to verify compliance with *FAR Clause 52.236-1, Performance of Work by the Contractor*, it is necessary, with each subcontract, to recompute the amount of the original contract which the prime Contractor is performing with its own forces (labor). **Figure 7-1.2(a), Subcontracting Guidelines**, provides guidance for computing the percent subcontracted, as well as whether specific kinds of subcontracts counts toward the DBE/WBE threshold or for compensation under the DBE/WBE SCC. **Figure 7-1.2b, Example Contract**, contains numerous first, second and third tier subcontracts. **Figure 7-1.2c, Example Computations, Part A**, is an example computation of the percentage which the prime is performing with its own forces. Only onsite subcontracts which include Davis-Bacon labor are counted as work not performed by the prime. Subcontracts which involve onsite services such as testing, surveying and inspection are not counted unless they include at least some Davis-Bacon labor. Whether they include Davis-Bacon labor or not varies from State to State. Supply type subcontracts do not count; nor do hauling subcontracts unless they are subject to Davis-Bacon.

FAR Clause 52.219-14, Limitations on Subcontracting, applies only to Small Business Set Asides. It permits the prime to perform as little as 15 percent of the amount of the original contract (exclusive of materials). Generally this percentage is so low, that as long as the prime has some presence on the site, including the submission of payrolls, no further documentation is necessary to verify the 15 percent requirement. If documentation is generated, the full amounts of all materials supply subcontracts (at any tier) must be deducted from the original Contract amount, and from the amounts of all subcontracts prior to computing the amount subcontracted.

7-1.3 Materials Supply Subcontracts

For purposes of computing the percent subcontracted and for administration of the DBE/WBE Subcontract Compensation Clause it is important to define a materials supply subcontract.

- Such subcontracts provide for the furnishing of materials which are to be incorporated in the work, such as concrete, steel and asphalt. Other materials such as form lumber, explosives or fuel do not count as materials supply subcontracts.

- Such subcontracts must be in writing prior to the delivery of the material, and both parties (the Contractor and the supplier) must have mutually enforceable obligations under the subcontract. Usually the prime agrees to purchase certain quantities of materials, the supplier agrees to a specific price for the materials. Simple price quotes or the purchase of occasional concrete from a local supplier to build headwalls would usually not count as materials supply subcontracts.

Traditionally, in accordance with the Labor Department regulations, materials supply subcontractors were simply called "suppliers" rather than subcontractors. That remains true in all DOL laws and regulations. However the FAR defines suppliers as a form of subcontractor, not a separate entity. This is important when applying DBE, Prompt Payment and other non-Labor provisions in the Contract.

7-1.4 Small and Small Disadvantaged Business Concerns

The FAR encourages small business and small disadvantaged business subcontracting. In order to be a disadvantaged business or a woman owned business as defined by the FAR, the company must also be a small business. Whether a company is a small business is determined by standards set by the Small Business Administration (SBA) and published in Part 19 of the FAR. A company's status also depends on the nature of the work it is doing. A company might be a large business as a general highway contractor, but a small business as an asphalt supplier. Also the Federal Aid regulations put additional limitations on the definition of "small business" that do not apply to Federal contractors. These additional definitions are such that a company could be excluded from small business programs (like DBE subcontracting) on Federal Aid projects, but still be eligible on FLH projects. Therefore, the lack of a State certification may not give an accurate indication respect to eligibility under Federal contracting (FAR) rules. FHWA 1775 asks for information on the subcontractor's small business and socio-economic status. This is done to be sure the subcontractors responses are consistent with the regulatory requirements and definitions. The information furnished should be checked by a designated specialist in the Division office. Among the information requested is the Standard Industrial Classification (SIC) code which is used by SBA to define small businesses. Most businesses should know their SIC code and be able to complete the form. **Figure 7-1.4, SIC Codes and Size Limitations for Typical Highway Contractors**, is edited from the FAR and may be used to verify or detect inconsistencies in information provided by the contractor.

7-1.5 DBE/WBE Subcontract Compensation Clause

The FLH DBE/WBE SCC is intended to be compatible with Federal Aid DBE Subcontracting regulations which are used by State Highway agencies. However, some key differences should be noted and reflected in our administration of the clause.

-Federal Aid regulations define women-owned businesses (WBE's) as a form of disadvantaged business (DBE). In Federal (FAR) procurement WBE's are a separate category and must not be reported as DBE's unless they also meet that criterion.

-Federal Aid regulations put certain size limitations on DBE/WBE's that are more restrictive than Federal regulations. This means that certain subcontractors, especially materials supply subcontractors may not be considered "small businesses" by Federal Aid regulations, but may be considered as such by Federal regulation and therefore eligible to participate in the DBE/WBE SCC.

We cannot always rely on DBE/WBE's being certified by a State DOT or being 8(a) certified by the Small Business Administration. Therefore, FLH has an *ad hoc*, or *for this contract only* means of certifying DBE/WBE's who believe they are eligible to participate in our program, but

do not have a State certification. **Figure 7-1.5a, Ad Hoc Certification Application**, is a tabulation of the information necessary to process an ad hoc certification. In addition to the information requested, contact with the certification department of the State DOT where the subcontractor has its home office is recommended. For consistency it is recommended that ad hoc certifications be processed through the Construction Operations Engineer by a designated specialist in the Division office.

Figure 7-1.5b, Example Computations, Parts B & C, show an example of how to determine the achievement of the minimum threshold for participation in the DBE/WBE SCC; and compute the actual incentive payment. Bear in mind, these computations come only after validation of the subcontractor's status as a DBE or WBE - either through State certification or an FLH ad hoc certification. It addition the subcontractor must perform a *commercially useful function* in order for the prime to qualify for the incentive. For example subcontractors which simply *pass through* the cost of supplies to the prime, or which furnish labor to be reimbursed by the prime are probably not performing a commercially useful function. Any contractual arrangement which is not normal in the industry and appears contrived to precipitate (or increase) eligibility for the incentive should be considered suspect.

Compensation under the DBE/WBE SCC is based on the net amounts paid by the prime to the DBE/WBE. *Net* means any deductions the prime makes for work, services or penalties are deducted from the amount of the subcontract before computing payment. E.g. if the DBE/WBE doesn't have a backhoe and the prime rents it one to complete the work and charges $2000 for the rental, the $2000 is in effect, a reduction in the subcontract amount, even if it is paid to the prime separately by check. In the absence of evidence to the contrary, it is acceptable to rely on the contractor's certification as to the net amount paid to the DBE/WBE.

Figure 7-1.5b, Example Computations, Part D, shows computation of a contract time extension on a completion date contract. This type of extension is applicable unless that provision is omitted from a particular contract.

7-1.6 Miller Act

Occasionally, subcontractors or even individuals may contact the Project Engineer about unpaid bills for labor, materials or services furnished to the project and request help in collecting payment from the Contractor or subcontractors. Sometimes the Project Engineer is asked to enforce payment or to withhold funds from the Contractor to make up the nonpayment. There is no specific authority in law for FHWA to take either of these actions under normal circumstances. However, see Section 8-3 dealing with Prompt Payment and false certifications. The only direct assistance FHWA can provide is to bring the reported nonpayments to the attention of the prime Contractor and its bonding company. The Payment Bond, required by the Miller Act, protects most persons furnishing labor, materials or services, just as a mechanics lien protects companies in the private sector. These companies cannot put a lien on parts of the project, or repossess items. Items which are *repossessed* after they have been wholly or partially paid for on progress payments are of particular concern because they are then Government property. If the prime does not immediately resolve such problems they should be reported to the Construction Operation Engineer.

Figure 7-1.6a, Example Miller Act Letter, is an example of a letter to a complaining subcontractor or supplier which advises them of their rights under the Miller Act. **Figure 7-1.6b**, **Miller Act Provisions**, is a copy of the pertinent parts of the law itself, which should be furnished to complaining subcontractors and suppliers.

7-2 NOTICE TO PROCEED

The Notice to Proceed will be issued by, or with the concurrence of, the Construction Engineer (CE).

SF 1442, Solicitation, Offer, and Award, and *FAR Clause 52.211-10, Commencement, Prosecution, and Completion of the Work*, establish the contract completion date for each project. The Contract may also provide a specific number of calendar days (i.e., after the bid opening or receipt of acceptable bonds), or a specific date, by which time the Notice to Proceed (NTP) must be issued. In the event the NTP is not issued within the specified time period, for reasons not the fault of the contractor, the Government is obligated to extend the fixed completion date accordingly. The NTP should be sent certified mail, return receipt requested.

Inordinate delays in issuing the NTP may warrant more than just a day-for-day extension if the project completion date has been pushed into the next construction season. In addition, the Contractor may be due compensation for additional costs such as remobilization for the extra season. Such eventualities should be treated as a Contract Modification requiring cost data, negotiations, etc., in accordance with Chapter 3 of this Construction Manual.

FAR 52.211-10 requires the Contractor to commence work within a specified period of time after receipt of the NTP. To allow the Contractor to coordinate operations and mobilization, the date for issuing the NTP should be discussed with the Contractor when possible. However, it is important that the Project Engineer (PE) and Construction Operations Engineer (COE) remain aware of the status of project award and establish a NTP date that falls within the time period specified in the Contract, unless the delay is due to the fault or negligence of the Contractor, e.g. by failing to submit acceptable bonds; or unless the Contractor and FLH have mutually agreed to delay the NTP in which case a CM signed by both parties should be executed.

Construction should provide input at the time of PS&E approval for an anticipated date by which the NTP will be issued. This is particularly important for contracts awarded in the fourth quarter when weather conditions may be unfavorable for work to commence immediately after award. When this is anticipated to occur, it may be best to provide a date the following spring when conditions are expected to be suitable for work. Failure to do this may result in the need to issue the NTP at a time when it is impossible for the Contractor to begin work in the specified period or delaying the NTP until conditions are suitable for work. If the Contractor requests and FLH agrees to a delay in the NTP, FLH has no obligation to extend the completion date unless that is a part of the overall agreement.

7-3 CONSTRUCTION SCHEDULES

7-3.1 General Requirements

FAR Clause 52.236-15, Schedules for Construction Contracts, and Section 155 of the Standard Specifications (FP) require the Contractor to submit a construction schedule. This construction schedule is to represent the sequence in which the Contractor plans to perform the contract work, showing start and end dates for each work activity including material ordering and delivery.

7-3.2 Limitations on Completing Work

The time allowed for completion of a contract is the ultimate limitation or constraint on the construction activities required for the project. Numerous activities can be planned, supplied and constructed within the contract time by recognizing the limitations on the work and the interdependence between activities of work.

Most activities are resource dependent, i.e., they rely on resources such as equipment and manpower. Other activities of work are independent and can be carried out simultaneously if sufficient resources are available such as constructing a bridge while earthwork or paving are being completed.
Some activities, however, are completely dependent on the completion of another activity such as the sequence of excavation to embankment construction, then fine-grading, followed by placement of any base courses, and finally the asphalt paving.

Other activities, such as concrete curing or form removal, are restraints since they cannot be completed before a minimum amount of time has elapsed, i.e., seven days is required for curing and a percentage of the 28-day strength must be achieved before the forms can be removed. Other possible restraints are shop drawing approvals, traffic lane closure restrictions, limited work hours and climatic conditions. To properly manage a construction project, all of these activities, constraints, and limitations must be logically organized and developed into a construction schedule.

7-3.3 Construction Schedule Format

The general format for the construction schedule includes a graphic representation of the sequencing of work activities and the time to complete each of these activities, and a written narrative supporting the Contractor's logic in the development of the graphic representation. The FP requires the Contractor to use one of two standard formats, the Bar Chart Method or the Critical Path Method. The Special Contract Requirements (SCR) may limit the choice to only one of these specific formats, otherwise it is the Contractor's option.

1. Bar Chart Method (BCM)

The BCM format consists of a progress bar chart and a written narrative. The FP outlines the information to be included on the bar chart and in the written narrative. The bar chart typically is comprised of a horizontal time scale and a vertical listing of project work activities. Bars are drawn to graphically represent the span of time necessary to accomplish each activity. See **Figure 7-3.3a, Example Bar Chart Schedule**.

Bar charts are the least sophisticated of scheduling methods because they do not show the relationships and dependencies of different work activities; do not tie the work to resource utilization; do not show float time; and are not effective in determining overall impact (cause-effect) on time resulting from a change or disruption. As such, delay analysis is impossible to perform accurately.

Bar charts are appealing to operations personnel because they identify the general course of the work in an uncomplicated fashion and they are easy to use in routinely monitoring the Contractor's progress. The development of a BCM schedule requires substantially less resources as compared to a CPM schedule.

Most non-complex projects do not warrant the resource investment required for a CPM schedule.

The narrative requirement for the BCM method of scheduling should result in more useful bar charts than received in the past. The Contractor is now required to identify anticipated resources and production rates. If during construction, the scheduled resources are not used on the project, or if the production rates are not achieved for unchanged work, it is possible to prove the Contractor's original schedule was defective. However, when the Government is responsible for a delay, using the BCM, it remains a difficult, if not impossible, job to evaluate the impact of each delay or inefficiency encountered through the course of the project and quantify the true delay for which the Government is liable.

2. Critical Path Method (CPM)

The CPM format consists of a diagram, a tabulated schedule, and a written narrative. The FP outlines the information required for each of these submittals. The CPM is the more sophisticated and useful format and will normally be required on complex or large contracts. It represents the sequence and interdependence of work activities and time, factors in any constraints and restrictions, and clearly defines the critical activities of work. Through this maze of activities, constraints and restrictions, lies a *critical path* sequence that cannot be altered without affecting the overall completion date. **See Figure 7-3.3b, Example CPM Schedule**.

a. The Critical Path

The critical path is the longest chain of dependent activities. These dependent activities are critical activities, also described as controlling activities of work. The critical path is of obvious importance when considering the impact of a CM on the completion date. If a CM affects a critical activity, a time extension should be considered. An event that causes a delay to part of the project may not increase the time required to perform the entire project unless it delays a critical activity on the critical path.

On many FLH highway contracts the critical activities are fairly obvious such that the Project Engineer and the Contractor are aware of what activities are controlling the completion of the contract. Computer software to complete CPM's (network analysis) or other resources (production rates, current bar chart, equipment lists, etc.) should be available to check the Contractor's schedule, determine the critical work activities, and document the reasons for granting or denying a time extension.

b. Float Time

For work activities not on the critical path, the Contractor has some leeway as to when these non-critical work activities are started. This leeway is called float time. Float time is the amount of time an activity can be delayed without affecting the completion date of the contract. Float time can also be defined as the amount of time between the earliest start date and the latest start date, or between the earliest finish date and the latest finish date. When the float time for an activity is exceeded, it becomes a controlling activity of work, moves onto the critical path, and affects the contract completion date. Activities on the critical path have no float time.

c. No Float and Multiple Critical Path CPM's

It is important that the Contractor assign a reasonable amount of time to all work activities and identify any float time in the schedule. With any delay, an activity with little float time can become a controlling activity of work.

A schedule with little float time for most of the work activities often puts the Government at a disadvantage, since any delay will soon affect completion and could result in a delay claim.

CPM's with multiple critical paths should also be closely reviewed, since seldom is there more than one truly critical path. If a schedule with

multiple critical paths is accepted, the Government is at a disadvantage because any delay will probably impact one of the paths. Multiple critical paths are usually created by assuming low production rates and eliminating float on noncritical activities so that the activities appear critical.

If the Government can show that actual production and activity durations were consistently better than those assumed on the original schedule, that evidence can be used to question whether those durations were *realistic*, and whether the activities were therefore *critical*. A new schedule can be requested on this basis. It is best to make such observations prior to a change or differing site condition which may impact time.

7-3.4 Submittal Requirements and Review

The FP requires that three copies of a preliminary construction schedule (PCS) be submitted at least 7 days before the preconstruction conference. The PCS is a written narrative detailing the Contractor's contract activities for the first 45 calendar days after the NTP is issued. Seven calendar days after the preconstruction conference, the PCS must be accepted or rejected and returned for revisions. The Contractor should not be permitted to start any work, except mobilization and traffic control, i.e., erection of construction signs, until the PCS is approved.

The PCS should be reviewed to determine if it generally represents those activities that logically should occur in the beginning of the specific type of contract. This could involve all traffic control as on an urban road rehabilitation project; erection of an onsite batch plant for a remote paving or concrete project; or only time for material ordering and delivery for a pre-manufactured installation, i.e., precast guardwalls. The Project Engineer's review must consider the type of project and need not be overly critical. The PCS should also be used to plan and schedule the Government's initial onsite personnel and equipment needs.

The FP requires that three copies of the initial or "as bid" construction schedule for the total contract work be submitted within 30 calendar days after the NTP is issued. This initial schedule must be accepted, or rejected and returned for revisions within 14 calendar days after receipt by the Government. This initial construction schedule, whether in the BCM or CPM format, is of particular importance. The Contractor's initial construction schedule should show how he plans to begin, sequence, and complete the principal phases of work within the time allotted by the Contract.

It is the Contractor's initial construction schedule that normally warrants the most thorough, in-depth review by the Government. Once accepted, this initial schedule will establish the basis against which all future schedule changes or updates and claims will be compared and justified. The Government's review should carefully consider each work activity on the schedule and the time proposed for its completion. Any unrealistic production rates based on proposed crew size or number of equipment should be questioned. Any impractical sequencing of work activities either for contractual reasons, e.g., impermissibly staged or phased construction, physical constraints such as assuming access where there is none, or for improper workmanship or aesthetic, e.g., placing final asphalt surface before construction of adjacent curb, should be questioned. Also, any actions involving the Government such as shop drawing approvals or time allotted for testing should be carefully reviewed. All reservations should be documented in writing and returned for resolution before final acceptance of the schedule. If it is determined that there are no contractual or supportable operational reasons for rejecting an optimistic schedule, all reservations should still be included in the acceptance letter. By accepting an unrealistic schedule from the Contractor, the Government could be at a distinct disadvantage when defending against any future delay or impact claims.

The FAR permits the withholding of progress

payments if the Contractor fails to submit his schedule within the time prescribed. Progress payments should be withheld until receipt and acceptance of the Contractor's initial construction schedule. Progress payments may be withheld, whole or in part, if schedule updates are not submitted as required. Prudent judgment should be used in withholding payment due to disagreements with the Contractor concerning his submitted schedule. Generally if the required initial schedule has been submitted in good faith, but is not acceptable for clear, objective reasons, or if the approved schedule has proven obsolete and the Contractor has failed to submit a requested update, the maximum ten percent retent provision contained in *FAR Clause 52.232-5, Payments Under Fixed-Price Construction Contracts* is usually more appropriate than total withholding of payments. Minor problems do not normally justify the withholding of progress payments.

7-3.5 Schedule Updates

FAR Clause 52.236-15 and the FP both require the Contractor to document actual progress on the approved construction schedule. Three copies of an updated construction schedule must be submitted at least every 8 weeks or when any delay or change occurs as outlined in the FP. The SCR may specify a different submittal frequency.

Construction schedules, especially those in the CPM format, should be updated frequently because any change in production or other events that impact time can make the schedules obsolete, may alter the critical path, and therefore change the controlling activities of work. Schedules reconstructed *after the fact* can be biased so that the true picture of the past work is not shown.

If the Contractor's progress is not satisfactory - usually defined as when the progress falls 10 percent behind the current schedule - an updated schedule should be requested, in writing. The request should ask the Contractor to identify any Government caused delays. It should also notify the Contractor of any intent to withhold retent due to unsatisfactory progress, or the assessment of liquidated damages if the Contract time is about to elapse. It is also prudent to request an updated schedule when issuing a major CM, time extension, or a directed acceleration.

All updated construction schedules should be reviewed, accepted, or rejected and returned for revisions. The review can focus on the areas of the updated schedule which have been significantly changed from the previously accepted schedule. The Contractor should identify these changes in the narrative submittal. Any reservations should be documented in the acceptance letter.

7-4 LIMITATION OF OPERATIONS

Most FLH projects are constructed under traffic. The Contractor is required to conduct the work at all times, in such a manner and in such sequence as will assure the least interference with public traffic. The Contract may include specific constraints such as when closures may occur, how long they may last and when one-way operations may take place. The Contract may also include one or more interim completion dates or phases which specify that certain portion of the project must be complete and open to the public before others are started.

If the Contractor is prosecuting the work in a manner which results in sections of the project being unnecessarily closed when little work is in progress, which results in substandard accommodation of traffic, or when temporary traffic control costs to the Government are unnecessarily high due to the inefficiency of the Contractor, the Project Engineer may require the Contractor to modify its operations to correct these problems. Since such orders are likely to result in a dispute, they should be discussed with the COE prior to issuance.

However, the Project Engineer and COE should have an understanding when situations are causing unsafe conditions or severe backups, the Project Engineer should be authorized to immediately order appropriate actions to alleviate the problem, rather than delay pending discussions with the COE. Such situations may be the result of the Contractor's operations, or they may relate to the need to modify or augment the specified Traffic Control Plan.

In accordance with *FAR Clause 52.236-11 Use and Possession Prior to Completion*, the Government has the right to order portions of the project open prior to completion of the entire contract. This clause in applicable only to a situation where the Contract provides for the closure of such portions until completion of the entire contract, but the Government elects to change the conditions of the Contract and order the portions opened. Such a decision may make the Government liable for an equitable adjustment, and therefore must be considered a change ordered in accordance with Chapter 3.

7-5 CHARACTER OF WORKERS AND ADEQUACY OF EQUIPMENT

The Contract, *FAR Clause 52.236-5, Material and Workmanship*, requires the Contractor to perform work in a skillful and workmanlike manner. The Government may order any Contractor employee removed, who is incompetent, careless or other wise objectionable. This is a serious action which may subject the Government to liability if the removal is later deemed by a court to be arbitrary or in bad faith. Normally the COE or higher Contracting Officer must sign such an order.

The same clause permits, unless otherwise specified, that when equipment, materials or processes are specified by catalog number, make, or other proprietary description, the Contractor may propose an alternate to that specified in the Contract as long as the Contracting Officer determines the equipment, material or process to be equal to that specified. Since FLH seldom specifies proprietary equipment, materials or processes, this issue does not often arise. When it does, approval or disapproval should be made in good faith, as a Contract Modification.

FAR Clause 52.236-6, Superintendence by the Contractor, requires the Contractor to assign to the work, a superintendent satisfactory to the Contracting Officer. If a superintendent is deemed to be unsatisfactory and removal is contemplated, the action should be taken be the COE or higher as delegated. This is a serious action which may subject the Government to liability if the removal is later deemed by a court to be arbitrary or in bad faith.

FAR Clause 52.246-12, Inspection of Construction, as well as the Contract Specifications, require the Contract to maintain an inspection system which ensures that the work complies with the Contract requirements. The inspection system should not be dependent on the presence of Government inspectors or the performance of Government testing. The work should comply with the Contract, whether or not a Government inspector is present, or whether or not Government testing has been performed. Failure to maintain an adequate inspection system subjects the Contractor to suspension and/or ordered correction of not just the work in question, but the inspection system itself. It also subjects the Contractor to an unsatisfactory performance rating which may be used to deny the company future Contracts.

The Project Engineer should keep the COE fully informed of any failure on the part of the Contractor to furnish suitable personnel and equipment, and actions taken or recommended.

The Project Engineer should maintain sufficient records on the Contractor's personnel and equipment to support actions and recommendations, and to document the facts in case a claim should arise or the Contractor should dispute any contract action.

7-6 CONTRACT TIME

The time allowed for completion of the work will be based on a specified completion date as stated in FAR 52.211-10. All work on the project is to be completed no later than on the date specified in the Contract, as adjusted under the Contract provisions.

7-6.1 Failure to Complete Work Within the Time Allowed

If the Contractor fails to complete the work by the close of business on the specified completion date (as adjusted), the charge of contract time and the attendant liquidated damages will include each calendar day between the specified completion date and the actual date of substantial completion.

Substantial completion is defined in Subsection 101.04 of FP-92 as: *The point at which the project is complete such that it can be safely and effectively used by the public without further delays, disruption, or other impediments. For conventional bridge and highway work, the point at which all bridge deck, parapet, pavement structure, shoulder, permanent signing and markings, traffic barrier, and safety appurtenance work is complete.*

Liquidated damages at a reduced rate will then be charged beginning with the day after substantial completion and ending with the date of final completion and acceptance (See FP-96 Subsection 108.04).

7-6.2 Methods of Adjusting Time Allowance

Adjustments in contract time are permitted under the following clauses:

-*FAR 52.211-10, Commencement, Prosecution, and Completion of Work*
-*FAR 52.211-18, Variation in Estimated Quantity*
-*FAR 52.242-14, Suspension of Work*
-*FAR 52.236-2, Differing Site Conditions*
-*FAR 52.243-4, Changes*
-*FAR 52.249-10, Default (Fixed Price-Construction)*

In addition to these standard FAR clauses, most FLH contracts contain provisions under Section 108 for a time extension as an incentive under the DBE Subcontract Compensation Clause.

General information regarding time extensions is included in *FP Subsection 108.03, Determination and Extension of Contract Time*.

Increases in contract time may be authorized as follows:

- By supplemental agreement which includes a revised fixed completion date.

- By change order providing a unilateral revised fixed completion date for performing work for which there has been no agreement.

- By supplemental agreement issued in settlement of a claim.

- By Contracting Officer's decision in accordance with *FAR Clause 52.249-10, Default, and FAR Clause 52.233.1, Disputes*.

7-6.3 Consideration of Time Adjustments

When contract modifications are issued, consideration must be given to the modification's effect on overall contract time. Failure to grant a time extension for increased work or changed work with a definite bearing on time for performance may result in an acceleration claim. If it is critical that the original contract completion date be maintained, it may be in the Government's interest to compensate the Contractor for accelerating the work to meet the original completion date. Generally, time adjustments will not be made unless the modification or change in work is on the critical path items.

When an adjustment in contract time is negotiated, it must be ensured that the proposed adjustment is in accordance with the Contract

provisions and is fair to both the Contractor and the Government. The actual time allowed should be tailored to the particular *change* situation along with consideration of the *effect on non-changed work* as to total Contract performance time. Consider the time of performance of the changed work and the need to acquire and mobilize/demobilize equipment to perform the work.

Unusual weather patterns impacting the work should be considered as appropriate. The Project Engineer should obtain rainfall information from local weather data centers for the past 10 year period to provide a base for any adjustments. Rainfall and other weather conditions should be documented throughout the life of the project.

Ideally, contract time should be determined by the effect of the change on the construction schedule which is current at the time of the change. Each modification should be clear and specific as to its effect on contract time such that all parties recognize and agree to the impact of the changed work.

A reduction in performance time to less than the original number of days allowed in the contract is rarely necessary, but is provided for under the Contract where early delivery of the facility is in the public interest. When a decrease in performance time is contemplated, the contract modification should be negotiated (a unilateral order is inappropriate) and an equitable adjustment is normally required.

The Contract permits the Contractor to request a time extension if it is impossible, for reasons beyond its control, to complete the work on time. Such a request should be made prior to the expiration of the contract time. The request must be made in writing and it must outline the reasons and justification for the time extension, citing the contract clause(s) which provides the basis for granting the extension. The Project Engineer should evaluate such a request and forward it, along with his/her recommendation, to the COE for a determination. Any resultant change in contract time shall be made by contract modification.

7-7 WORK SUSPENSIONS AND STOP ORDERS

7-7.1 Definitions

Note that the word *suspension* is commonly used in the FAR as meaning a suspension for the convenience of the Government pursuant to *FAR Clause 52.242-14, Suspension of Work*, i.e. a suspension which implies liability or potential liability to the Government. In Federal Lands, on the other hand, the word *suspension* has been most often used to describe directives to suspend due to unsuitable weather or failure of the Contractor to comply with contract requirements, neither of which implies liability to the Government. To resolve this inconsistency the following terms are defined to distinguish between these conditions.

Suspension: An interruption, delay, or halting of all or any part of the work by, and for the convenience of the Government, or resulting from an act (or failure to act) of the Contracting Officer. (See FAR 52.242-14, Suspension of Work).

Stop Order: An interruption, delay, or halting by the Government, of all or any part of the work resulting from unsuitable weather or soil conditions, an act of the Contractor, or the failure of the Contractor to act. (See FP Subsection 108.05)

7-7.2 Suspension of Contractor Operations

FAR 52.242-14 permits work to be suspended for the convenience of the Government. If a suspension is for longer than a *reasonable* time the Contractor may be entitled to an equitable adjustment. What is *reasonable* depends on the circumstances, and the liability of the Government for not suspending should be considered.

For example if the Contractor begins excavating from a Government designated borrow source, and it becomes apparent that the material may be unsuitable for its intended use, a suspension for one day to decide if it is in fact unsuitable would probably be reasonable. If the Government decided after one day that the source was acceptable, it could argue that no liability was incurred.

Authority to issue emergency or urgent suspensions within the window of *reasonableness* may be delegated to the Project Engineer. Once it is recognized that the suspension will result in liability to the Government, the letter or notice ordering the suspension of work, or documenting the suspension after the fact, shall be issued by the COE or the Construction Engineer depending on Division delegations.

Constructive suspensions of work can occur by failure of the Government to act. For example:

- Failure to approve shop drawings or mix designs within the time period specified in the Contract, or within a reasonable time if not specified
- Failure to perform timely inspections
- Delays due to defective specifications

7-7.3 Stoppage of Contractor Operations

The Standard Specifications permit the Contracting Officer to stop the work wholly or in part due to the following:

1. Weather or soil conditions considered unsuitable for prosecution of the work;

When the Contractor fails to act responsibly by voluntarily stopping operations when weather or soil conditions are unsuitable, the Project Engineer may issue a letter ordering work to stop. Normally this would be done only if the Contractor's continued work was causing damage to previously completed work, adjacent public or private property, or otherwise causing a potential liability to the Government.

In the letter, describe the problem which makes conditions unsuitable for work and the condition(s) which must exist before work can be resumed.

No order is required when the Contractor elects to stop work because of unsuitable conditions, which are usually of short duration and expected during the project duration. However, the project records should document and indicate such periods of no work.

For completion date contracts, there is no *counting* of contract time; therefore, normal unsuitable weather or soil conditions have no effect on the completion date. However, a time extension and new completion date may be established if the Contractor can demonstrate the amount of unsuitable weather is extraordinary or unusually severe. Such a demonstration will require careful review and documentation of weather history in the project area. In the event the Government agrees the weather is unusually severe, the completion date may be adjusted by contract modification. Such an adjustment is not dependent on a stop order having been issued by the Government, but only on the weather being demonstrated as unusually severe, and adversely impacting the Contractor's progress.

2. Failure of the Contractor to:

(a) Correct conditions unsafe for the workers or the general public.

(b) Carry out orders given by the Contracting Officer.

(c) Perform any provision of the contract.

In cases where these conditions exist, the Project Engineer should issue the Contractor a written notice covering the deficiencies that require correction. The notice should include a statement that failure to immediately take corrective action may result in the issuance of a stop order covering the work in question. At the same time, the Project Engineer should notify the COE by telephone and request instructions.

If the Contractor refuses or fails to correct the identified deficiencies, the Project Engineer may issue a stop order for periods of short duration due to reasons **1.** and **2.(a)** above. Stop orders for long durations or those due to reasons **2.(b)** or **2.(c)** shall be issued by, or have the concurrence of, the COE or the Construction Engineer.

Stop orders should cover only those items of work which are deficient. Stopping other work may be construed as punitive; stop orders or suspensions are not to be punitive.

7-7.4 Content of Suspensions and Stop Orders

Use a letter format for suspensions and stop orders, and include the following information:

1. Date, Contractor's name and address, contract number, and project designation.

2. Reason for suspension or stop order and whether the order pertains to all work underway or only part of the work. If the suspension or stop order affects only part of the work, describe that work which is affected.

   For stop orders covered by Subsection 108.05 of the FP, cite that provision.

   For suspensions of work for the convenience of the Government, cite *FAR Clause 52.242-14, Suspension of Work.*

3. Effective date of suspension or stop order.

4. Statement that work will not be resumed until directed in writing. For work stopped under Section 108.05, include a description of what conditions must exist before the Contractor can resume work.

5. A statement regarding the effect of the suspension or stop order on the contract time

and amount. If an unusually severe weather related delay is recognized by the Government, note that a contract modification may be requested adjusting contract time.

For other stop orders covered by Subsection 108.05 include a statement which says there will be no change in contract completion date or contract amount.

For suspensions of work for the convenience of the Government, state that any adjustment(s) to the contract completion date or amount as a result of the suspension will be made by contract modification.

The Contractor should be requested to acknowledge receipt of all suspensions and stop orders. If the Contractor's superintendent is absent, or due to strained relations, refuses to acknowledge the letter, its delivery should be noted in the diary and a copy sent to the Contractor's main office.

Examples of suspensions and stop orders are included in Figures 7-7.4a through 7-7.4c.

7-7.5 Content of Resumption Orders

After the reasons for a suspension or stop order have been resolved, FLH should provide a written resumption order to the Contractor to rescind the suspension or stop order. The resumption order should be signed by, or have the concurrence of the the official who signed the suspension or stop order. The order should include the following:

1. Date, Contractor's name and address, contract number, and project designation.

2. Reference the suspension or stop order, and identification of the item(s) of work affected by the resumption.

3. Effective date of resumption.

4. A statement regarding the effect of the suspension or stop order on the Contract time and amount (See 7-7.4 above).

Resumption orders after periods of short duration, may be made effective immediately if conditions permit normal resumption of the work. After long suspension periods, resumption orders should be issued sufficiently in advance of the effective date to permit the Contractor to coordinate the start-up of work. The Contractor should be requested to acknowledge receipt of all letters to resume work.

STATEMENT AND ACKNOWLEDGMENT

FORM APPROVED OMB NO. 9000-0014

Public reporting burden for this collection of information is estimated to average .15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, D.C. 20503.

PART I – STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR (Name, address and ZIP code)	5. SUBCONTRACTOR (Name, address and ZIP code)

6. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on date shown in Item 2 by (Name of Awarding Firm) _____

to the subcontractor identified in Item 5, for the following work:

7. PROJECT	8. LOCATION

9. NAME AND TITLE OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED

PART II – ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

Contract Work Hours and Safety Standards Act – Overtime Compensation – Construction	Davis-Bacon Act
Payrolls and Basic Records	Apprentices and Trainees
Withholding of Funds	Compliance with Copeland Regulations
Disputes Concerning Labor Standards	Subcontracts
	Contract Termination-Debarment
	Certification of Eligibility

13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

14. NAME AND TITLE OF PERSON SIGNING	15. BY (Signature)	16. DATE SIGNED

NSN 7540-01-151-4297 Previous edition is usable — EXPIRATION DATE: 3-31-92 — 1413-102 — STANDARD FORM 1413 (REV. 8-89) Prescribed by GSA - FAR (48 CFR) 53.228(e)

SF 1413 Statement and Acknowledgement
Figure 7-1.1a

NOTICE OF SUBCONTRACT AWARD - SUPPLEMENTAL INFORMATION
(Attach to SF 1413)

PART I - STATEMENT OF PRIME CONTRACTOR

A. PRIME CONTRACT NO.	B. DATE SUBCONTRACT AWARDED	C. PROJECT NAME AND NUMBER

D. PRIME CONTRACTOR (Name, address and ZIP code)	E. SUBCONTRACTOR (Name, address and ZIP code)

F. PERCENT SUBCONTRACTED - APPLICABLE ONLY TO FIRST TIER SUBCONTRACTS PERFORMED WHOLLY OR PARTLY ONSITE AND INCLUDING DAVIS-BACON LABOR

TOTAL DOLLAR AMOUNT OF ALL ONSITE SUBCONTRACTS PREVIOUSLY AWARDED - $_____

ESTIMATED DOLLAR AMOUNT OF THIS SUBCONTRACT - $_____

TOTAL DOLLAR AMOUNT OF ALL ONSITE SUBCONTRACTS AWARDED TO DATE - $_____

ORIGINAL CONTRACT AMOUNT - $_____

PERCENT OF ORIGINAL CONTRACT AMOUNT SUBCONTRACTED - _____%

G. NAME AND TITLE OF PERSON SIGNING	H. BY (Signature)	J. DATE SIGNED

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

A. The subcontractor acknowledges that it ☐is ☐is not a Small Business Concern as defined by Contract Clause 52.219-8. Check applicable blocks if the subcontractor is a Small Business Concern.

Average Number of Employees	Average Annual Gross Receipts (Last Three Years)	
☐ Less than 100	☐ Less than $2.5 Million	☐ $7.0 to $12.5 Million
☐ 100 to 500	☐ $2.5 to $3.5 Million	☐ $12.5 to $17.0 Million
☐ More than 500	☐ $3.5 to $7.0 Million	☐ More than $17.0 Million

B.Standard Industrial Classification (SIC) code and description which best describes this subcontract. Example: SIC 1741 Masonry, Stone Setting and Other Stonework.

SIC_____ Description_____

C. [Answer only if subcontractor is a Small Business Concern] The subcontractor acknowledges that it ☐is ☐is not a Small Disadvantaged Business Concern as defined by Contract Clause 52.219-8. If subcontractor is a disadvantaged business concern check one or more of the following as applicable:

☐ Small Business Act Section 8(a) Certified	☐ Black American	☐ Hispanic American
☐ Asian-Pacific American	☐ Subcontinent Asian American	☐ Native American

D. [Answer only if subcontractor is a Small Business Concern] The subcontractor acknowledges that it ☐is ☐is not a Woman Owned Small Business Concern as defined by Contract Clause 52.219-13.

E. NAME AND TITLE OF PERSON SIGNING	F. BY (Signature)	G. DATE SIGNED

FHWA 1775 (4/93)

Notice of Subcontract Award - Supplemental Information
Figure 7-1.1b

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(Whole dollar amounts should be indicated. See instructions on reverse)

FORM APPROVED OMB NUMBER 9000-0006

Public reporting burden for this collection of information is estimated to average 5.73 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0006), Washington, D.C. 20503.

IMPORTANT: DOD contractors--complete all items. Civilian contractors--do not complete shaded items unless required by the agency.

1. REPORTING PERIOD:
☐ OCT 1 - MAR 31 FY _____
☐ APR 1 - SEP 30

2. TYPE OF REPORT
☐ REGULAR
☐ FINAL
☐ REVISED

3. DATE SUBMITTED

4. REPORT NO.

5. REPORT SUBMITTED AS:
☐ PRIME CONTRACTOR
☐ SUBCONTRACTOR

6. AGENCY OR CONTRACTOR AWARDING CONTRACT (Name, address and ZIP Code)

7. REPORTING CONTRACTOR (Name, address, and ZIP Code)

8. DATES OF CONTRACT PERIOD OF PERFORMANCE (MM/DD/YY)
FROM: TO:

9. PRIME CONTRACT AND SUBCONTRACT NO. (If applicable)

10. ADMINISTERING AGENCY (If other than Awarding Agency)

11A. ORIGINAL CONTRACT AMOUNT
$

11B. REVISED CONTRACT AMOUNT (If applicable)
$

12A. EST. AMT. OF SUBCONTRACT AWDS. UNDER ORIG. CONTRACT
$

12B. REV. AMT. OF SUBCONTRACT AWDS. UNDER MOD. CONTRACT (If applicable)
$

13A. ORIGINAL GOALS	DOLLARS	PERCENT
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		
13B. REVISED GOALS (If applicable)		
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		

14. GOAL AMOUNTS IN 13A. AND 13B. ☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

DIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD		CUMULATIVE (From beginning of Subcontract Plan)	
	DOLLARS	PERCENT	DOLLARS	PERCENT
15A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 15C.)				
15B. LARGE BUSINESS CONCERNS ($ amt. and % of 15C.)				
15C. TOTAL (Sum of 15A. and 15B.)		100		100
16. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 15C)				

INDIRECT SUBCONTRACT AWARDS	DOLLARS	
	THIS REPORTING PERIOD	CUMULATIVE (From beginning of Subcontract Plan)
17A. SMALL BUSINESS CONCERNS (Not Disadvantaged)		
17B. LARGE BUSINESS CONCERNS		
17C. SMALL DISADVANTAGED BUSINESS CONCERNS		

18. REMARKS (Enter a short narrative explanation if: (a) Small Business or Small Disadvantaged Business accomplishments fall below that which would be expected using a straight line projection of goals through the period of contract performances or (b) either goal is not met if this is the final report.)

19. TYPED NAME AND TITLE OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	SIGNATURE	TELEPHONE NO. ( )
20. TYPED NAME AND TITLE OF APPROVING OFFICER	SIGNATURE	DATE

NSN 7540-01-152-8078 EXPIRATION DATE: 8-31-92 294-103 STANDARD FORM 294 (REV. 1-90)
Previous edition is not usable Prescribed by GSA - FAR (48 CFR) 53.219(a)

SF 294 Subcontracting Report for Individual Contracts
Figure 7-1.1c

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

FORM APPROVED OMB NUMBER 9000-0007

Public reporting burden for this collection of information is estimated to average 16.21 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0007), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.

1. REPORTING PERIOD (check one):
- A. DOD FEDERAL FY 19___ QUARTER ENDING: ☐ DEC 31 ☐ JUN 30 ☐ MAR 31 ☐ SEP 30
- B. CIVILIAN FEDERAL FY 19___ ☐ ANNUAL (OCT 1 – SEP 30) (except commercial product)
- C. DOD & CIVILIAN FEDERAL FY 19___ ☐ ANNUAL (OCT 1 – SEP 30) (commercial product)

2. TYPE OF REPORT: ☐ REGULAR ☐ FINAL ☐ REVISED

3. CONTRACTING AGENCY

4. ADMINISTERING AGENCY (If different from Item 3)

5. DATE OF LAST GOV. REVIEW

6. REVIEWING AGENCY

7. CONTRACTOR ESTABLISHMENT CODE (If available)

8. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH

9. CORPORATION, COMPANY OR SUBDIVISION COVERED (Name, address, ZIP Code)

10. MAJOR PRODUCTS OR SERVICE LINES

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report in whole dollars)

SUBCONTRACT AWARDS	CURRENT FY (Through Reporting Qtr.)		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
11A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 11C.)				
11B. LARGE BUSINESS CONCERNS ($ amt. and % of 11C.)				
11C. TOTAL (Sum of 11A. and 11B.)		100		100
12. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 11C.)				
13. WOMEN-OWNED SMALL BUSINESS CONCERNS				
14. LABOR SURPLUS AREA CONCERNS ($ amt. and % of 11C.)				
15. HIST. BLACK COLLEGES & UNIV/MINORITY INST.				

16. REMARKS (Enter a short narrative explanation if: (a) zero is entered in Blocks 11A or 12 for the current fiscal year, (b) the percent entry in Block 11A for current fiscal year is more than 5 percentage points below the percent reported for the same period last year, or (c) the percent entry in Block 12 for the current fiscal year is lower than the percent reported for the same period last year.)

SUBCONTRACT GOAL ACHIEVEMENT
(Report in whole dollars)

CONTRACTS			NO. OF CONTRACTS WITH GOALS	TOTAL $ VALUE OF SUBCONTRACTS AWARDED	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT	
						DOLLARS	PERCENT
17. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					
18. CONTRACTS WITH SMALL DISADV. BUSINESS SUB-CONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					

19. NAME AND TITLE OF LIAISON OFFICER	SIGNATURE	DATE	TELEPHONE NO.
			( )

20. NAME AND TITLE OF THE APPROVING OFFICER	SIGNATURE	DATE

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is not usable — EXPIRATION DATE: 9-30-92 — 295-102 — STANDARD FORM 295 (REV. 1-90) Prescribed by GSA - FAR (48 CFR) 53.219(b)

SF 295 Summary Subcontracting Report
Figure 7-1.1d

Subcontracting Guidelines
Computing Percent Subcontracted, DBE/WBE Threshold & DBE/WBE Compensation

If the first tier subcontractor is a:	Counts For?		
	% Subcontracted	DBE/WBE Threshold	DBE/WBE Compensation
A. Non DBE/WBE who is doing:			
1. Onsite work and the..	Yes	No	No
Second tier subcontractor is a:			
a. Non DBE/WBE who is doing:			
i. Onsite Work	Yes(1)	No	No
ii. Offsite, Supplier or Equipment Rental	Yes(1)	No	No
iii. Onsite or Offsite Hauling	Yes(1)	No	No
b. DBE/WBE who is doing:			
i. Onsite Work	Yes(1)	Yes	No(2)
ii. Offsite, Supplier or Equipment Rental	Yes(1)	Yes	No
iii. Onsite or Offsite Hauling	Yes(1)	Yes	No
2. Offsite, Supplier or Equipment Rental	No	No	No
B. DBE/WBE who is doing:			
1. Onsite work and the..	Yes	Yes	Yes
Second tier subcontractor is a:			
a. Non DBE/WBE who is doing:			
i. Onsite Work	Yes(1)	Yes(4)	No(3)
ii. Materials Supply	Yes(1)	Yes(1)	No(3)
iii. Equipment Rental	Yes(1)	Yes(1)	Yes(1)
iv. Offsite Hauling	Yes(1)	Yes(1)	Yes(1)
v. Owner-Operator Hauling	Yes(1)	Yes(1)	Yes(5)
b. DBE/WBE who is doing:			
i. Onsite Work	Yes(1)	Yes(6)	Yes(1)
ii. Materials Supply	Yes(1)	Yes(6)	Yes(1)
iii. Equipment Rental	Yes(1)	Yes(6)	Yes(1)
iv. Offsite Hauling	Yes(1)	Yes(6)	Yes(1)
2. Offsite, Supplier or Equipment Rental	No	Yes	No

Notes:
(1) No Deduction
(2) No compensation since payment to second tier subcontractor would not be made by prime.
(3) Deduct from higher tier subcontract
(4) Deduct amounts exceeding 50% of higher tier subcontract.
(5) No deduction unless the owner-operator is in effect a subcontractor getting paid by the amount hauled.
(6) Included in higher tier subcontract and counted again for this subcontract.

Figure 7-1.2a

EXAMPLE CONTRACT

Prime Contractor - ACE Construction, $2,000,000 - Grade, drainage, base, pave and one prestressed concrete girder bridge.

Subcontract (1st tier) - Malibu Culvert, $55,000, Corrugated culvert supply. Non DBE/WBE

Subcontract #2 (1st tier) - Richardson Drainage Contracting, $ 50,000, Installation of culverts. Certified DBE

Subcontract #3 (1st tier) - Quality Testing, $20,000, Quality control and testing, Certified DBE

Subcontract #4 (1st tier) - Williams Bridge Construction, $480,000, One prestressed concrete girder bridge. Non DBE/WBE

Subcontract #4A (2nd tier) - Maypole Piling - $90,000, Furnish and drive steel piling. Certified WBE

Subcontract #4Aa (3rd tier) - Bingo Steel - $36,000, Furnish steel piling, Non DBE/WBE

Subcontract #4B (2nd tier) - Bartlett Resteel - $75,000, Resteel supply. Non DBE/WBE

Subcontract #4C (2nd tier) - Altlen Resteel - $50,000, Resteel installation, Certified DBE

Subcontract #4D (2nd tier) - Burt's Ready Mix - $110,000, Concrete Supply. Non DBE/WBE

Subcontract #4E (2nd tier) - Millville Prestress - $82,000, Furnish & deliver prestressed girders, Non DBE/WBE

Subcontract #4F (2nd tier) - Central Equipment - $16,000, Crane Rental, Certified DBE

Subcontract #5 (1st tier) - Allan Aggregates - $91,000, Furnish and deliver base course materials, Certified WBE

Subcontract #6 (1st tier) - Quality Paving, Inc., $180,000, Furnish and place paving materials, Non DBE/WBE

Subcontract #6A (2nd tier) - Gotham Asphalt - $61,000, Furnish asphalt cement, Non DBE/WBE

Subcontract #6B (2nd tier) - Allan Aggregates - $82,000, Furnish asphaltic concrete aggregates, Certified WBE

Subcontract #6C (2nd tier) - Packer Hauling - $26,000, Hauling asphaltic concrete from commercial plant, Certified DBE

Subcontract #7 (1st tier) - Centerline, Inc. - $28,000, Striping, Certified DBE

Subcontract #7A (2nd tier) - 3M Company - $10,000, Thermoplastic materials, Non DBE/WBE

Subcontract #8 (1st tier) - Greenthumb Landscaping - $31,000, Seeding and mulching, Certified DBE

Subcontract #9 (1st tier) - Central Equipment - $71,000, Equipment rental, Certified DBE

Figure 1.2b

Typical Standard Industrial Classification (SIC) Codes

for Highway Construction

Code	Description	Maximum Size*
1611	Highway & Street Construction**	$17.0 Million
1622	Bridge, Tunnel and Elevated Highway Construction	$17.0 Million
1741	Masonry, Stone Setting & Other Stonework	$ 7.0 Million
1771	Concrete Work***	$ 7.0 Million
1791	Structural Steel Erection	$ 7.0 Million
2951	Paving Mixtures & Blocks	500 Employees
3272	Concrete Products, Except Block & Brick	500 Employees
3273	Ready Mixed Concrete	500 Employees
3441	Fabricated Structural Metal	500 Employees
4212	Local Trucking, Without Storage	$12.5 Million
8713	Surveying Services	$2.5 Million
8711	Other Engineering Services	$2.5 Million
8734	Testing Laboratories	$3.5 Million

* Maximum size to qualify as a Small Business Concern, Disadvantaged Business Enterprise or Woman Owned Business Enterprise. Where the standard is expressed in dollars, that is the maximum average gross receipts over the last three years. When it is expressed in numbers of employees, it is the maximum average (including temporary and part time employees over the preceding 12 months.

** Includes concrete work, guardrail, and signing associated with highway and street construction.

*** Is generally limited to private sector work. Public sector concrete work is classified under SIC 1611 or 1622

Figure 7-1.4

Disadvantaged Business Enterprise (DBE)
Women Owned Business Enterprise (WBE)
AD HOC CERTIFICATION APPLICATION

Application is hereby made by the individual (organization) identified below for certification as disadvantaged business enterprise (DBE), or a Women Owned Business Enterprise (WBE) under the Federal Lands Highway Program's administration of the requirements of Federal Acquisition Regulation (FAR) Clauses 52.219-8 and 52.219-13 as well as the Subcontract Compensation Clause contained in Section 108 of the Contract. This application must be completed by any individual (organization) which is (1) not certified as a DBE or WBE by a State or local agency using criteria equivalent to the above referenced FAR criteria; and (2) desires to participate in the Subcontract Compensation Clause with respect to establishing eligibility for compensation (questions 1 through 14 only), or computing compensation (all questions).

Firms claiming DBE status must be owned (51% minimum) and controlled by one or more socially and economically disadvantaged persons. Members of the following groups are presumed to be socially and economically disadvantaged:

	DBE Code
Black American	B
Hispanic American	H
Native American	NA
Asian-Pacific American	AP
Subcontinent-Asian American	AS
Other Approved by SBA	SBA

A copy of one of the following documents must be submitted to prove membership in the ethnic group claimed:

Membership letter or certificate of ethnic organization
Tribal Certificate or Bureau of Indian Affairs Card
Birth Certificate/Record (Including those of natural parents)
U. S. Passport
Armed Services Discharge Papers
Alien Registration Number
Other document providing evidence of ethnicity

Firms claiming WBE status must be owned (51% minimum) and controlled by one or more women.

Applications for Ad Hoc Certifications must address each of the following items as applicable. Attach additional sheets as needed.

1. Name and Address of Organization
2. Mailing Address (If Different)
3. Contract Person and Title
4. Telephone No.
5. Federal Identification Number
6. Other Identification Number Used

Figure 7-1.5a

7. Has this organization be certified under Section 8(a) by the Small Business Administration? Yes/No If certified, attach a copy of the certification.

8. Nature of the organization's business. Identify only those areas for which you can provide a commercially useful function and still be competitive with other firms in those areas. You may be requested to provide evidence of your firm's experience or ability to perform in these areas.

___Construction ___Supplier ___Manufacturer ___Professional/Technical Service

9. Standard Industrial Classification (SIC) Code, description, applicable size standard and actual size of the organization with respect to that code; for each code applicable to the organization. (Refer to the small business size standard at 13 CFR 121)

Example:	SIC 2951
Description	Paving Mixtures and Blocks
Size Standard	500 Employees
Actual Size	31 Employees

10. List States in which the organization is authorized to do business.

11. Licenses required to conduct business. Attach copies of any required local, county or State active business licenses and permits, i.e. contractor, PUC, A&E registration, etc. For each license/permit indicate:

Name of licensee
Name of qualifying individual
Type of license
Expiration Date
DBE Code
Gender (M/F)

If the qualifying individual is not one of the DBE or women owners listed below, please explain.

12. Ownership information

___Sole Proprietor ___Partnership ___Corporation ___Joint Venture*

Date established/incorporated_____State_____

*For joint ventures, complete this application for each party to the venture and attach a copy of the joint venture agreement.

13. List owners/investors who have a 5% or more interest:

Name
DBE Code
Gender (M/F)
Date of Ownership
Number of Shares
Voting %
U.S. Citizen? (Y/N)

14. Board of Directors (in the last three years). For each:

Name
Title
DBE Code
Gender (M/F)
Expiration of Term (Date)

Figure 7-1.5a (Continued)

For offsite, supply and other DBE/WBE subcontracts which will be used only to establish compliance with the threshold requirement, but not to compute entitlement, no further questions need be completed except the affidavit at the end of this form. The remaining questions must be completed by any onsite subcontractor when any or all of the amount of the subcontract will be used by the prime to compute entitlement under the Subcontract Compensation Clause.

15. Firms with less than 100% DBE/WBE ownership, list the contribution of money, equipment, real estate, or expertise of each of the owners/investors. Attach a tabulation of the initial investment in the firm (dollars, real estate, equipment, etc.) on behalf of each owner.

16. Management. List organization officials by name and title primarily responsible for the management areas listed below. For each individual show the organization official to which the individual reports and the individual's DBE code and/or gender.

Preparation and presentation of estimates and bids
Hiring and firing management personnel
Final determination of what jobs the company will undertake
Control of day to day operations
Negotiations and approval of contracts
Overall administration of organization contracts
Overall supervision of marketing and sales activities
Negotiating and signing for surety bonds
Overall supervision of field operations
Approving payroll and signing checks
Approving major purchases

17. Identify any owner or management official of the firm who is, or has been, an employee of another firm that has an ownership interest in, or a present business relationship with the organization. Provide details of the arrangement and relationship. Present business relationships include shared space, equipment, financing or employees, as well as both firms having the same owners. This response should include any person who is currently working for any other business which has a relationship with the organization, whether on a full time or part time basis as an owner, partner, shareholder, advisor, consultant, or employee.

18. List the three largest projects performed by the company in the last 3 years. Briefly describe the project, the dollar amount of the DBE/WBE's portion of the work, status or date completed, and a contact person associated with the owner. If performed as a subcontractor, indicate the name of the prime contractor in addition to a contact person.

19. Tabulate the firm's gross receipts for each of the last three tax years.

20. Name of surety company, bonding limit, agent, and agent's telephone number.

21. Tabulate all money and equipment loaned to the company, include name of the lender, amount or value, date of loan and terms.

22. Workforce information

Total personnel in the past calendar year:

___Highest weekly total ___Lowest weekly total ___Average

Figure 7-1.5a (Continued)

22. Workforce Information (Continued)

Tabulate numbers of part-time, full-time and total personnel currently on payroll in each of the following categories.

Administrative
Clerical
Supervisory
Skilled Hourly
Laborer or Unskilled Hourly

To your knowledge are any of the personnel on another firm's payroll? (Y/N) If yes, identify the firm and number of employees.

23. Provide a listing of owned equipment. Do not include leases. If ownership is in the name of an individual or business other than the DBE/WBE organization, indicate the owner and explain relationship to DBE/WBE.

24. Indicate if the organization or other organization with any of the same officers has previously received or has been denied certification to participate as a DBE, MBE or WBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

25. Provide copies of the following:

Resumés of principals of organization showing education, training and employment with dates
Article of incorporation including date approved by State (Corporations only)
Corporate bylaws (Corporations only)
Copies of third-party agreements, such as rental or management service agreements
Lease/rental agreement for business site
Partnership agreement, buy-out rights agreement and profit sharing agreement (Partnerships only)
Brochure or descriptive information on firm

AFFIDAVIT

The Undersigned swears that the foregoing statements are true, correct and complete; and include all material information necessary to be responsive to each of items listed. Further, the undersigned agrees to provide any additional information requested by FHWA to clarify any item, and if requested by FHWA to permit an onsite review of the organizations operation as well as the audit examination of books, records and files of the organization. Further the undersigned agrees to immediately notify FHWA if there are changes in the information provided which might alter the organization's status as a DBE or WBE. Any material misrepresentation will be grounds for terminating eligibility, and for initiating action under Federal law concerning false statements.

_____

Name of Organization

_____

Name Title

_____

Signature Date

Figure 7-1.5a (Continued)

DBE/WBE SCC EXAMPLE COMPUTATIONS

Refer to Figure 7-1.2a for basic contracting and subcontracting data.

Part A. What is the percentage of work which the prime contractor is performing with its own forces in response to FAR Clause 52.236-1*

Prime Contract -	$2,000,000
Onsite Davis-Bacon Subcontracts -	
Richardson Drainage Contracting -	($ 50,000)
Williams Bridge Construction -	($480,000)
Quality Paving, Inc. -	($180,000)
Centerline, Inc. -	($ 28,000)
Greenthumb Landscaping -	($ 31,000)
Net -	$1,231,000
Percentage -	61.6%

Part B. What is the percentage of work subcontracted to DBE/WBE's for the purpose of determining entitlement (threshold) under the Subcontract Compensation Clause.

Prime Contract -	$2,000,000	
DBE/WBE Subcontracts -		
Richardson Drainage Contracting -		50,000
Quality Testing -	20,000	
Maypole Piling -	90,000	
Altlen Resteel -	50,000	
Central Equipment -	16,000	
Allan Aggregates -		91,000
Allan Aggregates -		82,000
Packer Hauling -	26,000	
Greenthumb Landscaping -		31,000
Central Equipment -		71,000
Total DBE/WBE Subcontracts -	$ 527,000	
Percent -	26.4%	

Threshold Requirement is Satisfied - Assuming the standard 10% minimum is used in the contract.

Figure 7-1.5b

Part C. What is the estimated* amount of entitlement under the DBE/WBE Subcontract Compensation Clause?

Qualifying Subcontracts -		
Richardson Drainage Contracting -	$ 50,000	
Quality Testing -	20,000	
Centerline, Inc.-	28,000	
Thermoplastic Materials	(10,000)	
Greenthumb Landscaping -	31,000	
Total Qualifying Amounts -		$ 119,000
Approximate* Incentive Payment -		$ 11,900

* Subject to final certification of amounts paid.

Part D. What is the amount of the time extension associated with the DBE/WBE subcontracting?

Original Contract Amount -	$2,000,000
Date of Notice to Proceed -	April 1, 1991
Contract Completion Date -	September 30, 1992
Qualifying DBE/WBE Amounts -	$119,000
Convert contract time to days -	547
Maximum contract time increase (10%) =	55 days
Percentage increase = 119,000/2,000,000 =	5.95%
Contract time increase -	33 days
Revised completion date -	November 2, 1992

Figure 7-1.5b (Continued)

U.S. Department
of Transportation

Federal Highway Administration

Richbourg's Sales and Rentals
1500 W. Lucas St.
Florence, SC 29501

August 24, 1992

Dear Sirs:

This is to acknowledge your notice of nonpayment related to materials provided on Project OCMU 14(1), Ocmulgee National Monument (Contract DTFH71-91-C-0002) which is being administered by this office of the Federal Highway Administration.

In accordance with the Miller Act (Title 40, United States Code, Section 270), the prime contractor, Randolph Construction, submitted a payment bond, under which it bound itself through its bonding company (surety) to pay all legitimate claims of its subcontractors and suppliers under the contract. A copy of the pertinent sections of the Act [and the Payment Bond for the contract*] are enclosed. [You may wish to contact the surety to requested intervention in your nonpayment dispute.*]

*[Providing a copy of the bond is optional. Division policy may provide that the complainant make this request directly to the Division office, or it may provide that a copy of the bond or the name and address of the bonding company and/or agent be furnished by the Project Engineer.]

If you do not have a direct contractual relationship with the prime contractor, you must notify the prime contractor in writing of your request for payment within ninety days of the last day you performed the labor or furnished the supplies. You have the right, after failing to receive a response to your request for payment from the prime contractor, to file a claim under the Miller Act. [This paragraph may be omitted if the complainant obviously does have a contractual relationship with the prime.]

In addition, this contract is subject to the terms of the Prompt Payment Act. This law obligates the contractor to make payment on any work performed by subcontractors and which it invoices to, and is paid by the Government. If you provide this office with a detailed accounting of the work you have performed on the contracts, and the date/amounts you have been paid for the work, we will evaluate if there has been an apparent violation of the Prompt Payment Act.

If you choose to file a claim under the Miller Act, please contact [FLH Division, P&C], and a certified copy of the Bond will be provided to you for this purpose. Please note that neither the Miller Act, the contract, nor any other Federal or State laws or regulations creates any right for you to bring this type of claim directly against the Federal Highway Administration, or the United States Government; or permits payment by the Government directly to you. Your exclusive recourse under the law is against the prime contractor and its surety. If you have any further questions on this matter please contact this office.

Sincerely,

Wyland Rimrock, Jr.
Project Engineer

Enclosures

Example Miller Act Letter

Figure 1.6a

§ 270b. Rights of persons furnishing labor or material

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d of this title and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: *Provided, however,* That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelop addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(Aug. 24, 1935, ch. 642, § 2, 49 Stat. 794; Aug. 4, 1959, Pub. L. 86-135, § 1, 73 Stat. 279.)

AMENDMENTS

1959—Subsec. (b). Pub. L. 86-135 substituted "day on which the last of the labor was performed or material was supplied by him" for "date of final settlement of such contract".

EFFECTIVE DATE

Section effective upon the expiration of sixty days after Aug. 24, 1935, but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 5 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Section 3 of Pub. L. 86-135 provided that: "The rights of laborers and material men under contracts entered into before the effective date [Aug. 4, 1959] of this amendment [amending subsec. (b) of this section and section 270c of this title] shall not be affected."

FEDERAL RULES OF CIVIL PROCEDURE

Parties, see rule 17, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270d, 270e, 270f of this title; title 15 section 636; title 25 sections 47a, 450j, 1656; title 31 sections 3905, 9303; title 39 section 410; title 42 section 11705.

§ 270c. Right of person furnishing labor or material to copy of bond

The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

(Aug. 24, 1935, ch. 642, § 3, 49 Stat. 794; Aug. 4, 1959, Pub. L. 86-135, § 2, 73 Stat. 279; Apr. 18, 1984, Pub. L. 98-269, 98 Stat. 156.)

AMENDMENTS

1984—Pub. L. 98-269 substituted "department secretary or agency head of the contracting agency" for "Comptroller General" in two places.

1959—Pub. L. 86-135 struck out ", and, in case final settlement of such contract, has been made, a certified statement of the date of such settlement, which shall be conclusive as to such date upon the parties" and "and certified statements" after "original" and "certified copies", respectively.

EFFECTIVE DATE

Section effective upon the expiration of sixty days after Aug. 24, 1935, but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 5 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Rights of laborers and material men under contracts entered into before Aug. 4, 1959, unaffected, see section 3 of Pub. L. 86-135, set out as a note under section 270b of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 44 on this section, see note by Advisory Committee under that rule.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270e, 270f of this title; title 15 section 636; title 25 sections 47a, 450j, 1656; title 31 section 9303; title 39 section 410; title 42 section 11705.

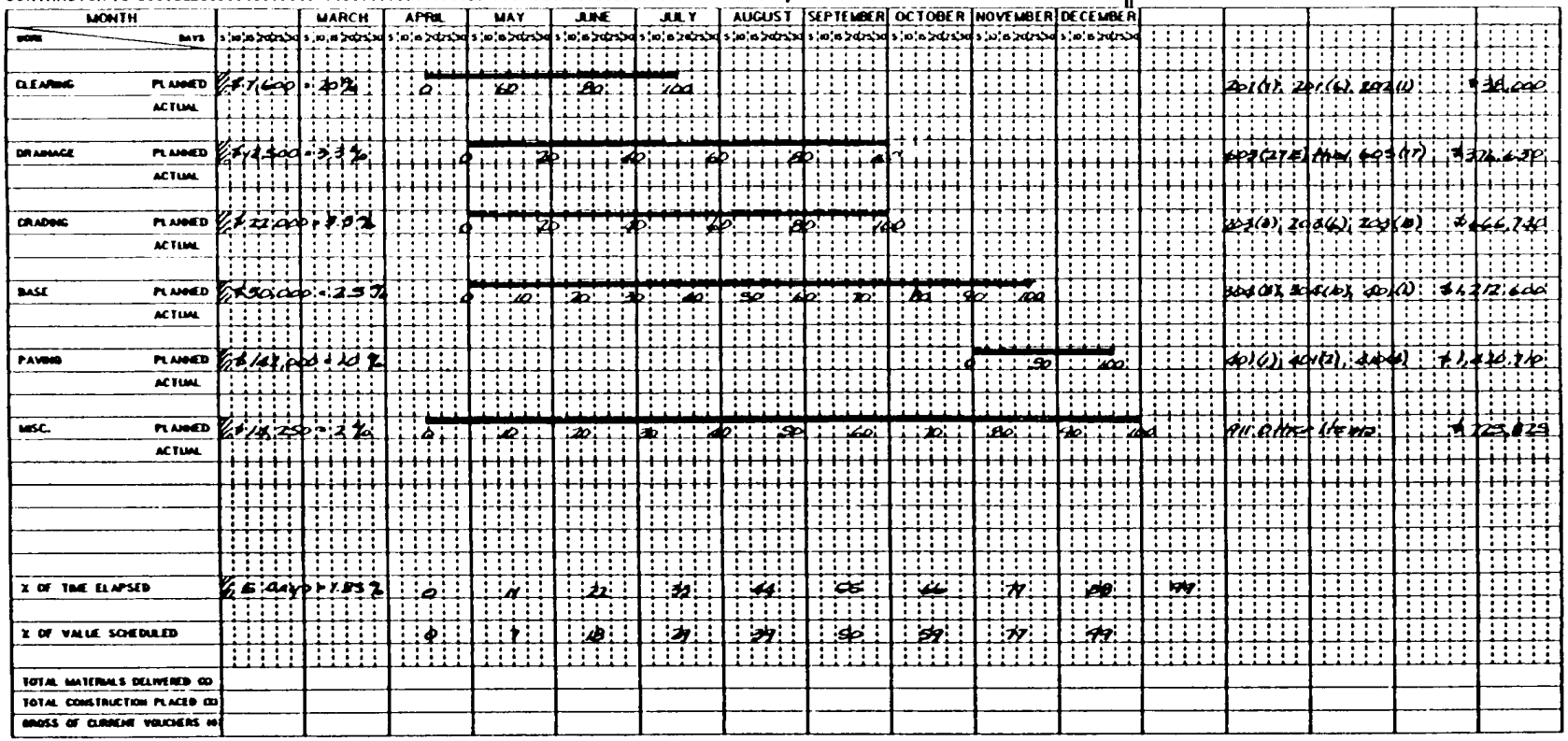
Miller Act Provisions

Figure 7-1.6b

PROGRESS SCHEDULE AND RECORD

PROJECT Arizona FH 89-1(2), Blue Mountain Pass CONTRACT NO. DTFH68-85-C-00000
CONTRACT AMOUNT $4,440,505.00 DATE OF CONTRACT 3/5/86 TIME 270 Calendar Days
AWARDED 3/5/86 NOTICE TO PROCEED EFFECTIVE 4/15/86 LIQUIDATED DAMAGES $700/Day
CONTRACTOR ABC Construction Co. ADDRESS P.O. Box 1234, Anywhere, USA 13579

SIGNED: ..... DATE .....
CONTRACTOR
APPROVED: ..... DATE .....
PROJECT ENGINEER



Example Bar Chart Schedule
Figure 7-3.3

Example Critical Path Method (CPM) Schedule

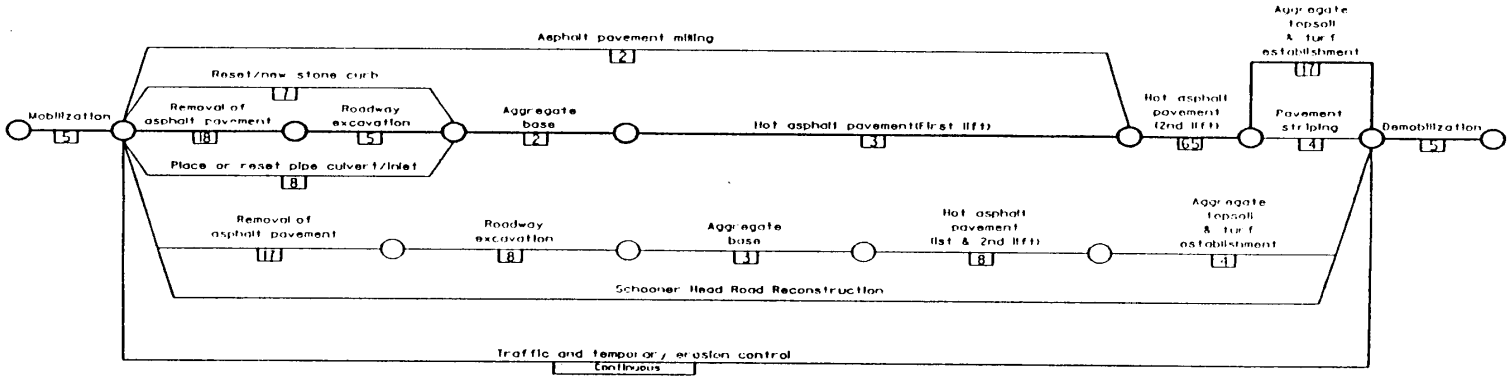


Figure 7-3.4

U.S. Department
of Transportation

Federal Highway Administration

November 19, 1996

Mr. Jim Jones
Project Manager
ABC Construction Company
P.O. Box 10
Denver, CO 80225

Dear Mr. Jones:

Subject: Project CO FH 59-1(2), Cottonwood Pass
Contract No. DTFH68-96-C-90016

Due to safety hazards to the public, aggravated by your hauling operations on Mountain Road in the rain and fog, you are hereby directed to discontinue this operation during periods when visibility is less than 300 meters. If there is doubt as to the evaluation of this criterion, FLH's on-site inspector is empowered to make determinations as to when hauling may take place.

This order is issued pursuant to FP-96, Section 108.05(a). Since these weather condition are normal this time of the year, and you are obligated to accommodate normal weather conditions in safely constructing the project, no adjustment will be made to the contract amount or the contract completion date of September 1, 1997.

Sincerely yours,

Charles R. Houser
Project Engineer

cc: COE/CE

Example Stop Order

Figure 7-7.4a

U.S. Department
of Transportation
Federal Highway Administration

SEP 9 1993

Mr. Jim Jones
Project Manager
ABC Contracting Company
P.O. Box 10
Denver, CO 80225

Dear Mr. Jones:

Subject: Project CO FH 59-1(2), Cottonwood Pass
Contract No. DTFH68-89-C-90016

This confirms the September 1 telephone conversation in which you were verbally ordered to cease grading operations between Stations 115+00 and 130+00 because of the anticipated repair of a main gas line adjacent to the project by CP&L Gas Company. This suspension is for the convenience of the Government, FAR Clause 52.212-12.

You may resume work in the above vicinity effective September 10, 1993.

Since Item 102(1), Unclassified Excavation, is a critical path item, the contract completion date will be extended by 8 days. A contract modification will be prepared and issued reflecting this adjustment. If you believe that you incurred an increased in the cost of performance of the Contract as a result of this suspension, you may submit a cost proposal for the consideration of the Government.

Sincerely yours,

Jane Clem

Jane Clem
Construction Operations Engineer

cc: Project Engineer
Construction Engineer

Example Suspension

Figure 7-7.4b

U.S. Department
of Transportation
Federal Highway Administration

SEP 14 1993

Mr. Jim Jones
Project Manager
ABC Contracting Company
P.O. Box 10
Denver, CO 80225

Dear Mr. Jones:

Subject: Project CO FH 59-1(2), Cottonwood Pass
Contract No. DTFH68-89-C-90016

By letter dated September 1, you were instructed to clear Stations 210+00 to 215+00 of remaining timber slash and vegetation in accordance with Subsection 204.04, of the Contract, prior to initiating excavation in this area. Your forces have started excavating cut material in this area several times over the last two weeks. However, as we have discussed on several occasions, the clearing and grubbing has not been completed.

Since you have failed to perform the work require by the Contract, stop all excavation operations within the above noted limits effective September 15. This stop order is issued is in accordance with Subsection 108.05(b) of the FP-92.

Work may resume at such time the area is cleared of all slash, debris, and vegetation.

No adjustments to the contract completion date or the contract amount will be made as a result of this order.

Sincerely yours,

Charles R. Houser

Charles R. Houser
Project Engineer

cc: COE/CE

Example Stop Order

Figure 7-7.4c

FORM FHWA9-482
(Rev. 4-76)

No. 8 – 14316

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Region Eight – Denver, Colorado

DAILY RECORD OF MISCELLANEOUS ITEMS

Project_____ Date_____

Item No._____

DESCRIPTION, LOCATION, ETC.	QUANTITY
TOTAL ▶	

I certify that the above quantity was performed and/or used in the construction of this project.

Contractor _____ Project Engineer _____

ORIGINAL TO PROJECT ENGINEER

☆ GPO 1981 - 780-491

FORM FHWA9-482
(Rev. 4-76)

No. 8 – 14316

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Region Eight – Denver, Colorado

DAILY RECORD OF MISCELLANEOUS ITEMS

Project_____ Date_____

Item No._____

DESCRIPTION, LOCATION, ETC.	QUANTITY
TOTAL ▶	

I certify that the above quantity was performed and/or used in the construction of this project.

Contractor _____ Project Engineer _____

DUPLICATE TO CONTRACTOR

☆ GPO: 1981 - 780-491

Daily Record of Miscellaneous Items
Figure 8-1.1a

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161844

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) ORIGINAL (For FHWA Records)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161844

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) DUPLICATE TO CONTRACTOR (Truck Driver)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161844

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) TRIPLICATE (For FHWA Records)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161843

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) ORIGINAL (For FHWA Records)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161843

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) DUPLICATE TO CONTRACTOR (Truck Driver)

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MATERIALS RECEIPT
A 161843

Date . . . . . Truck No. . . . . .
Time . . . . . Load No. . . . . .

Project . . . . . .
Station . . . . . .
(From) (To)

ITEM . . . . . Gross . . . . . Tare . . . . . Net . . . . . Other . . . . . .

Weighed By . . . . . .
Received By . . . . . .
Form FHWA-1416 (Rev. 6-72) TRIPLICATE (For FHWA Records)

Materials Receipt Form
Figure 8-1.1b

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DAILY RECORD OF ACTUAL COST LABOR AND EQUIPMENT

Project_____ Date: _____ Contract Modification No.: _____Contractor/Subcontractor _____

Work Description: _____

_____ Station: _____ Sheet ____of ____

Line No.	LABOR (Classification, Code No., Group No.)	HOURS		RATES($)				TOTAL AMOUNT($)		
		S.T.	O.T.	S.T.	O.T.	F.B.	TRVL/SUB	WAGES	F.B.	TRVL/SUB
1										
2										
3										
4										
5										
6										
7										
8										
9										
							TOTAL DIRECT LABOR			
	LABOR BURDEN RATE ____% APPLY TO TOTAL WAGES						LABOR BURDEN			
							TOTAL LABOR			

Line No.	EQUIPMENT (Description)	CODE NO.	HOURS		RATES			TOTAL AMOUNT($)
			OPER.	S.B.	A/S*	OPR.	S.B.	
10								
11								
12								
13								
14								
* A = Average, S = Severe		TOTAL EQUIPMENT						

It is agreed that the above listed labor and equipment costs were expended in the preformance of the work indicated.

Int. Date

Comp. By _____ _____

Checked By _____ _____

Ent. Summ. Bk. _____ _____

_____ Project Engineer

_____ Contractor

Form FHWA 1478A (7-96)

Daily Record of Actual Cost Labor and Equipment
Figure 8-2.2a

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DAILY RECORD OF ACTUAL COST MATERIALS

Project_____ Date: _____ Contract Modification No.: _____Contractor/Subcontractor _____
Work Description: _____
_____ Station: _____ Sheet _____of _____

Line No.	DESCRIPTION OF MATERIAL	QUANTIITY	UNIT	UNIT PRICE	AMOUNT	SALES TAX	FREIGHT	TOTAL AMOUNT
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
							TOTAL MATERIALS	

It is agreed that the above Imaterials wre used in the preformance of the work indicated.

_____ Project Engineer

_____ Contractor

Int. Date
Comp. By _____ _____
Checked By _____ _____
Ent. Summ. Bk. _____ _____

Form FHWA 1478B (7-96)

Daily Record of Actual Cost Materials
Figure 8-2.2b

Project:
NE PLH 34-1(4)
Prairie Road
Contract No. DTFH68-91-C-00053

Sheet 1 of 2

Contractor:
Malcom Contracting, Inc.
661 Fourth St.
North Platte, NE 67901

Project Engineer's
Receiving Report
No. 11
July 25, 1992

Amount Previously Earned	$ 1,547,969.10
Aount Earned this Report	108,908.76
Amount Earned to Date	1,656,877.86
Recommended Adjustments	
10% Retent Reports No. 10 & No. 11	(26,751.26)
Not Invoiced by Contractor	(5,000.00)
Subtotal Payments to Date	1,625,126.60
Previous Payments	(1,532,108.80)
Net Recommended Payment	$ 93,017.88

Recommended:

Wyland R. Rimrock, Jr., Project Engineer — Date 7/27/92

Concurred:

Ralph Jumpers, COE — Date 7/30/92

Approved:

B. C. Wadsworth, Construction Engineer — Date 8/2/92

Example Project Engineer's Receiving Report
Figure 8-3.4

ject Engineer's Receiving Report No. 11 Closing Date: July 25, 1992 Project: NE PLH 34-1(4), Prairie Road
eet 2 of 2 Contractor: Malcom Contracting, Inc.; 661 Fourth St,; North Platte, NE 67901

em No	Item	Con Unit Pr	Con Quan	Unit	Pay Fac	Adj Unit Pr	Prev Quan	Curr Quan	Quan to Date	Prev Earn	Curr Earn	Earn to Date	Prob Quant	Prob Earn
ntract Items														
101	Mobilization	$89,000.00	1.00	LS	1.00	$89,000.00	1.00	0.00	1.00	$89,000.00	$0.00	$89,000.00	1.00	$89,000.
201	Constr survey and staking	$24,000.00	1.00	LS	1.00	$24,000.00	0.90	0.05	0.95	$21,600.00	$1,200.00	$22,800.00	1.00	$24,000.
401	Contractor testing	$36,000.00	1.00	LS	1.00	$36,000.00	0.90	0.05	0.95	$32,400.00	$1,800.00	$34,200.00	1.00	$36,000.
703	Silt fence	$6.00	2,400.00	m	1.00	$6.00	2,341.10	768.20	3,109.30	$14,046.60	$4,609.20	$18,655.80	3,109.30	$18,655.
711	Sediment traps	$350.00	6.00	EA	1.00	$350.00	5.00	0.00	5.00	$1,750.00	$0.00	$1,750.00	5.00	$1,750.
716	Equip for eros control	$41.50	250.00	HR	1.00	$41.50	138.00	17.00	155.00	$5,727.00	$705.50	$6,432.50	175.00	$7,262.
101	Clearing & grubbing	$10,800.00	17.40	ha	1.00	$10,800.00	17.40	0.00	17.40	$187,920.00	$0.00	$187,920.00	17.40	$187,920.
204	Rem of indiv trees	$10.50	200.00	m2	1.00	$10.50	181.20	0.00	181.20	$1,902.60	$0.00	$1,902.60	181.20	$1,902.
401	Roadway excavation	$3.10	182,000.00	m3	1.00	$3.10	191,000.30	384.90	191,385.20	$592,100.93	$1,193.19	$593,294.12	192,000.00	$595,200.
101	Agg base, grdng C	$7.50	38,000.00	t	0.99	$7.43	37,456.90	871.20	38,328.10	$278,117.48	$6,468.66	$284,586.14	38,400.00	$285,120.
101	Hot AC pav, cl B, grdg D	$27.50	17,500.00	t	0.95	$26.13 *	9,456.32	3,265.10	12,721.42	$247,046.36	$85,300.74	$332,347.10	17,500.00	$457,187.
102	Prime ct, grd MC-70	$1.55	480.00	l	1.00	$1.55	320.20	81.40	401.60	$496.31	$126.17	$622.48	480.00	$744.
201	600 mm pipe culvert	$7.50	1,240.00	m	1.00	$7.50	1,180.00	0.00	1,180.00	$8,850.00	$0.00	$8,850.00	1,180.00	$8,850.
206	End section for 600 mm cul	$57.75	8.00	EA	1.00	$57.75	8.00	0.00	8.00	$462.00	$0.00	$462.00	8.00	$462.
901	PCC crb & gttr, 400 mm	$12.50	860.00	m	1.00	$12.50	Deleted by CM #3		0.00	$0.00	$0.00	$0.00	0.00	$0.
701	Grdrl G4, type II, cl B	$9.80	2,200.00	m	1.00	$9.80	1,080.40	422.50	1,502.90	$10,587.92	$4,140.50	$14,728.42	2,200.00	$21,560.
702	Term section, typ A	$248.00	6.00	EA	1.00	$248.00	2.00	1.00	3.00	$496.00	$248.00	$744.00	6.00	$1,488.
406	Placing con topsoil	$2.50	2,500.00	m3	1.00	$2.50	2,684.00	0.00	2,684.00	$6,710.00	$0.00	$6,710.00	2,684.00	$6,710.
501	Seeding, hyd meth	$300.00	18.00	ha	1.00	$300.00	6.60	0.00	6.60	$1,980.00	$0.00	$1,980.00	18.00	$5,400.
507	Constr sign	$40.00	280.00	m2	1.00	$40.00	244.00	43.00	287.00	$9,760.00	$1,720.00	$11,480.00	287.00	$11,480.
508	Drum	$65.00	50.00	EA	1.00	$65.00	40.00	0.00	40.00	$2,600.00	$0.00	$2,600.00	40.00	$2,600.
509	Flagger	$28.00	580.00	HR	1.00	$28.00	310.00	168.00	478.00	$8,680.00	$4,704.00	$13,384.00	580.00	$16,240.
ntract Modifications														
801	CM #1, DBE/WBE incentive	$12,500.00	1.00	LS	1.00	$12,500.00	0.50	0.00	0.50	$6,250.00	$0.00	$6,250.00	1.00	$12,500.
401A	CM #2, Rdwy excavation	$3.50	900.00	m3	1.00	$3.50	887.40	0.00	887.40	$3,105.90	$0.00	$3,105.90	887.40	$3,105.
901A	CM #3, PCC crb & gttr, 400 mm	$10.00	860.00	m	1.00	$10.00	780.00	0.00	780.00	$7,800.00	$0.00	$7,800.00	780.00	$7,800.
nporary Items														
201T	Stkpld 600 mm culvert	$4.25	1,180.00	m	1.00	$4.25	0.00	0.00	0.00	$0.00	$0.00	$0.00	0.00	$0.
701A	Stkpld grdrl, G4	$7.80	2,140.00	m	1.00	$7.80	1,100.00	(424.00)	676.00	$8,580.00	($3,307.20)	$5,272.80	0.00	$0.
Interim pay factor, subject to further adjustment.						Totals				$1,547,969.10	$108,908.76	$1,656,877.86		$1,802,938.

Example Project Engineer's Receiving Report (Continued)
Figure 8-3.4

Malcom Contracting, Inc.
661 Fourth Street
North Platte, NE 67901

Mr. Wyland R. Rimrock, Project Engineer
P. O. Box 735
Winsome, NE 67747

Dear Mr. Rimrock:

I. Invoice Quantities

The following is our invoice for NE PLH 34-1(4), Prairie Road, Contract No. DTFH68-91-00053. The items listed are those on which there was work or changes during this invoice period.

Item	Description	Unit Price	Quantity to Date	Note
15201	Construction survey & staking	$24,000.00	0.85	(1)
15401	Contractor testing	36,000.00	0.95	
15703	Silt fence	6.00	3,109.30	
15716	Equip for eros control	41.50	155.00	
20401	Roadway excavation	3.10	191,385.20	
30101	Agg base, grdg C	7.43	38,328.10	(2)
40101	Hot AC pav, cl B, grdg D	26.13	12,721.42	(3)
41102	Prime ct, grd MC-70	1.55	401.60	
61701	Grdrl G4, type II, cl B	9.80	1,502.90	
61702	Term section, type A	248.00	3.00	
63507	Construction sign	40.00	287.00	
63509	Flagger	28.00	478.00	
61701A	Stockpiled grdrl, G4	7.80	676.00	

Notes:

(1) Quantity reflects 10% ($2,400) being withheld from subcontractor as a condition of subcontract.
(2) Unit price reflects reduced pay factor (0.99) per Subsection 106.05.
(3) Unit price reflects reduced pay factor (0.95) per Subsection 106.05.

II. Status of Subcontractors

Name	Total	Previous	This Period	Note
1. A-1 Testing Service	$ 24,000	$ 20,400	$ 1,200	(1)
2. Blacktop Paving, Inc.	$450,000	247,542.67	85,426.91	(2), (3)
3. Quality Guardrail	$ 23,048	11,083.92	4,388.50	(3)

Notes:

(1) Condition of subcontract is 10 retent until acceptance by Government of all work.
(2) Subcontract amount has been reduced to reflect reduced pay factor in accordance with Subsection 106.05.
(3) Payment will be reduced to reflect subcontractors share of any retent assessed by the Government.

III. Certification (FAR Clause 52.232-5)

I certify, to the best of my knowledge and belief, that -

(1) The amounts requested are only for performance in accordance with specification, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Arnold L. Malcom
Vice President
Malcom Contracting

Example Contractor's Invoice
Figure 8-3.5

U.S. Department of Transportation
Federal Highway Administration
Federal Lands Highway Program

Big Shovel Construction Co.
4153 West Apple Way
North Fork, VA 22567

January 16, 1994

Re: VA Tobacco Road Parkway, TOBA 17-1(4)

Gentlemen:

We have been advised by your subcontractor Acme Steel Supply, that payment for structural steel furnished on the above referenced project is past due. According to Acme, $25,000 on the $219,000 subcontract was paid on October 14, 1993, and no further payments have been received. Your invoice dated December 1, 1993 billed the Government for 90% ($315,000) of the $350,000 bid for Item 55501. The Government paid you this amount on December 12, 1993.

Acme has been advised of their rights under the Miller Act. In addition, Acme's allegation indicates a possible violation of the Prompt Payment Act, which obligates the prime contractor to pay subcontractor's within 7 days of receipt of payment by the Government, any amounts, associated with the subcontractor's work, which have been invoiced by the contractor and paid by the Government. You are therefore requested to provide within 30 days, a written response to Acme's allegation.

If Acme has been underpaid as indicated by the allegations you must make payment in full, including any interest due the subcontractor, prior to your next invoice to the Government, and provide the Government with documentation to that effect. If you choose not to make payment to Acme, the amounts of all overpayments by the Government must be rescinded and credited to the Government on your next invoice.

In addition, if Acme's allegation is valid, you are obligated to credit the Government with interest on the amount of all overpayments for the period of time from when they were due to be paid the subcontractor (December 19), until they were paid, or until they were rescinded and credited to the Government. The Treasury Department interest rate for the six months ending December 31, 1993 was 6.52%, and the rate for the first six months of 1994 is 6.34%.

Your failure to resolve this apparent violation of the Prompt Payment by the due date of your next invoice and progress payment may result in the invoice being deemed defective and returned to you for correction. If the Government cannot determine from your response, whether a violation of the Prompt Payment Act has occurred, the issue may be referred to the Department of Transportation, Office of Inspector General for investigation.

R. McEntyre

R. McEntyre
Project Engineer

Example Prompt Payment Letter
Figure 8-3.6a

Guidelines for Handling Subcontractor/Supplier Complaints of Nonpayment

Action	FLH Response
Verbal complaint from subcontractor or supplier of nonpayment.	Verbally advise subcontractor/supplier that no action can be taken unless a written complaint is provided.
	Verbally advise subcontractor/supplier that in order to ascertain a violation of the Prompt Payment Act, the Government needs a detailed statement of payments under the subcontract, dates payments made, and amounts subcontractor/supplier believes were due on those dates.
	Verbally advise contractor superintendent of complaint and remind him/her of Prompt Payment Act requirements.
	Document all exchanges in diary. No further action in absence of written statement/complaint.
Written complaint from subcontractor/supplier of nonpayment, but without detailed accounting of amounts paid and dates.	Furnish copy of bond and Miller Act information to subcontractor/supplier. See Section 7-1.6.
	Request a statement of payments under the subcontract, dates payments made, and amounts subcontractor/supplier believes were due on those dates.
	No further action unless statement of payments is provided.
Written complaint from subcontractor/supplier of nonpayment, including detailed accounting of amounts paid and dates.	Furnish copy of bond and Miller Act information to subcontractor/supplier. See Section 7-1.6.
	Compare subcontractor/supplier's detailed statement of payments, Contractor accounting of subcontractor payments, and Government's payments for contract items known to be part of the subcontract.
Subcontractor statement of payments generally agrees with Contractor's accounting and amounts paid by Government for subcontracted work.	No further action. Subcontractor may have recourse under Miller Act, but no apparent Prompt Payment Act violation.
Subcontractor statement indicates payments less than corresponding invoiced percentages of contract items associated with the subcontract.	Write letter to Contractor requesting resolution of payment discrepancies. See Section 8-3.6.
Contractor fails to respond to letter requesting resolution of alleged underpayment.	Notify Contractor in writing that without an adequate response to nonpayment allegations, further invoices including the payment in question must be presumed to be defective.
	Refer file to Regional Counsel for possible referral to DOT Office of Inspector General as false claim.
Contractor responds that payment information provided by subcontractor/supplier is in error and that all payments have been made in accordance with the Prompt Payment Act, but does not provide credible evidence that this is the case.	Refer file to Regional Counsel for advice on possible nonpayment of invoices and referral to DOT Office of Inspector General as false claim.
Contractor responds in a way that confirms that payments made to subcontractor/supplier have been less than those invoiced the Government for the contract items associated with the subcontract.	On next invoice, require Contractor to debit appropriate interest from next progress payment. Require debit of overpayment unless Contractor pays subcontractor/supplier by then.

Figure 8-3.6b

Guidelines for Percentage Payments for Partially Complete Work

Description	Allowance (Cumulative)
Clearing and Grubbing	
Felled and slashed	35
Bucked and piled (slashings, brush and logs)	60
Grubbed	75
Burned or chipped and removed	98
Substantially complete including cleanup	100
Excavation and Embankment	
Pioneered	5
Drilled	20
Blasted	35
Roughed out to grade	85
Roadbed finished to grade	90
Slopes seeded	98
Substantially complete including cleanup	100
Structural Excavation	
Excavation complete	85
Backfill complete	9
Substantially complete including cleanup	100
Aggregate Courses	
Crushed and stockpiled onsite	50
Placed on roadway	80
Spread, compacted and tested	98
Substantially complete including cleanup	100
Asphalt Pavements	
Aggregates crushed and stockpiled onsite	50
Placed, compacted and tested	98
Substantially complete including cleanup	100
PCC Pavement	
Forms set	35
Concrete in place	90
Forms removed and testing complete	98
Substantially complete including cleanup	100

Figure 8-3.7

Guidelines for Percentage Payments for Partially Complete Work

Description	Allowance (Cumulative)
Concrete Structures	
Falsework erected	10
Forming complete	20
Concrete in place	80
Forms removed	90
Concrete tested and finished	98
Substantially complete including cleanup	100
Steel Structures	
Falsework erected	10
Steel in place	80
Bolting and welding complete	90
Painting complete	98
Substantially complete including cleanup	100

Notes:

(1) These percentages are typical. They may be adjusted based on a detailed analysis of circumstances on a given project.

(2) Whenever partially complete work entails continuing maintenance, an appropriate percentage should be retained to cover those costs.

Figure 8-3.7 (Continued)

Standard Form 1034
Revised October 1987
Department of the Treasury
1 TFM 4-2000
1034-122

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

U.S. Department of Transportation
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street
Lakewood, CO 80228

DATE VOUCHER PREPARED: September 12, 1985

CONTRACT NUMBER AND DATE: DTFH68-83-C-90004 1/6/83

REQUISITION NUMBER AND DATE

SCHEDULE NO.

PAID BY

PAYEE'S NAME AND ADDRESS
Crystal Creek Construction, Inc.
P.O. Box 3699
Redding, CA 96049

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT | GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
	COMPLETED 8/13/85	PAYMENT No. 10 -- FINAL PAYMENT (FINAL SETTLEMENT) In final settlement, for construction of California Forest Highway Project 111-1(1), Ridge Road. Payment of the amount provided herein is specifically conditioned upon the execution of the Contractor's Release attached hereto and incorporated herein. Agreed: [illegible] Title: Vice Pres. Date: 8/16/85				
				TOTAL		$47,921.79*

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below)

PAYMENT:
- ☐ PROVISIONAL
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

APPROVED FOR = $

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE Construction Engineer

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) (Authorized Certifying Officer) [2] (Title)

ACCOUNTING CLASSIFICATION

*Amount from attached receiving report. 19A-16-06-54-1111-001

PAID BY

CHECK NUMBER | ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER | ON (Name of bank)

CASH $ | DATE | PAYEE [3]

PER

TITLE

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

Previous edition usable

PRIVACY ACT STATEMENT
The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Example Final Voucher (No Exceptions)
Figure 8-4.4a

Standard Form 1034
Revised October 1987
Department of the Treasury
I TFM 4-2000
1034-122

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

U.S. Department of Transportation
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street
Lakewood, CO 80228

DATE VOUCHER PREPARED: October 12, 1985

CONTRACT NUMBER AND DATE: DTFH68-83-C-90004 1/6/83

REQUISITION NUMBER AND DATE

SCHEDULE NO.

PAID BY

PAYEE'S NAME AND ADDRESS
Crystal Creek Construction, Inc.
P.O. Box 3699
Redding, CA 96049

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT | GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
	COMPLETED 8/13/85	PAYMENT No. 10 -- FINAL PAYMENT (EXCEPTION) For construction of California Forest Highway Project 111-1(1), Ridge Road. Payment of the amount provided herein will completely discharge all obligations of the Government under the contract with the following exception: Request for equitable adjustment of $17,095.42 and 28 days of additional contract time as set forth in the Contractor's letter dated September 29, 1985. Agreed: [signature] Title: U. Rep Date: 8/16/85				
					TOTAL	$47,921.79*

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below)

PAYMENT:
- [ ] PROVISIONAL
- [ ] COMPLETE
- [ ] PARTIAL
- [ ] FINAL
- [ ] PROGRESS
- [ ] ADVANCE

APPROVED FOR = $

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE Construction Engineer

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) (Authorized Certifying Officer) [2] (Title)

ACCOUNTING CLASSIFICATION

*Amount from attached receiving report. 19A-16-06-54-1111-001

PAID BY

CHECK NUMBER | ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER | ON (Name of bank)

CASH $ | DATE | PAYEE [3]

PER

TITLE

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

Previous edition usable

PRIVACY ACT STATEMENT
The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Example Final Voucher (With Exception for Pending Dispute)
Figure 8-4.4b

DEPARTMENT OF TRANSPORTATION CONTRACTOR'S RELEASE	CONTRACT NO. DTFH68-83-C-90004
CONTRACTOR *(Name and address)* Crystal Creek Construction, Inc. P.O. Box 3699 Redding, CA 96049	SUM OF Forty seven thousand, nine hundred twenty one dollars and seventy-nine cents DOLLARS ($ 47,921.79

In consideration of the sum stated above, which has been paid or is to be paid to the Contractor, or his assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

   Request for equitable adjustment of $17,095.42 and 28 days of additional contract time as set forth in Contractor's letter dated September 29, 1985

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract; and

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been executed this 21st day of October, 19 85.

WITNESSES

_____

_____

Crystal Creek Construction, Inc.
(Contractor)

BY Myron Whipple

TITLE Vice President

NOTE: *In the case of a corporation, witnesses are not required, but the certification below must be completed.*

CERTIFICATE

I, Leon Sniggle, certify that I am the official secretary of the corporation named as Contractor in the foregoing release; that Myron Whipple who signed said release on behalf of the Contractor was then Vice President of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

Leon Sniggle

Form DOT F 4220.4 (2-71)

Example Contractor's Release (With Pending Dispute)
Figure 8-4.4c

Standard Form 1034
Revised October 1987
Department of the Treasury
1 TFM 4-2000
1034-122

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

U.S. Department of Transportation
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street
Lakewood, CO 80228

DATE VOUCHER PREPARED: October 12, 1985

CONTRACT NUMBER AND DATE: DTFH68-83-C-90004 1/6/83

REQUISITION NUMBER AND DATE

SCHEDULE NO.

PAID BY

PAYEE'S NAME AND ADDRESS

Crystal Creek Construction, Inc.
P.O. Box 3699
Redding, CA 96049

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT | GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
	COMPLETED 8/13/85	PAYMENT No. 10 -- FINAL PAYMENT (EXCEPTION) For construction of California Forest Highway Project 111-1(1), Ridge Road. Payment of the amount provided herein will completely discharge all obligations of the Government under the contract with the following exception: In accordance with Subsection 626.16 payment of $3,240.70 is withheld pending completion of the plant establishment period. This payment and any other issues related to the plant establishment period will be addressed at final settlement. Agreed: Maggie Wright Title: V. Pres Date: 8/16/85				

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** **TOTAL** $47,921.79*

PAYMENT:
- ☐ PROVISIONAL
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

APPROVED FOR = $

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE Construction Engineer

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) (Authorized Certifying Officer) [2] (Title)

ACCOUNTING CLASSIFICATION

*Amount from attached receiving report. 19A-16-06-54-1111-001

PAID BY

CHECK NUMBER | ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER | ON (Name of bank)

CASH $ | DATE | PAYEE [3]

PER

TITLE

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

Previous edition usable

PRIVACY ACT STATEMENT
The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Example Final Voucher (With Exception for Plant Establishment)
Figure 8-4.4d

Standard Form 1034
Revised October 1987
Department of the Treasury
I TFM 4-2000
1034-122

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

U.S. Department of Transportation
Federal Highway Administration
Central Federal Lands Highway Division
555 Zang Street
Lakewood, CO 80228

DATE VOUCHER PREPARED: October 12, 1986

CONTRACT NUMBER AND DATE: DTFH68-83-C-90004 1/6/83

REQUISITION NUMBER AND DATE

SCHEDULE NO.

PAID BY

PAYEE'S NAME AND ADDRESS

Crystal Creek Construction, Inc.
P.O. Box 3699
Redding, CA 96049

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT | GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT
	COMPLETED 8/13/85	PAYMENT No. 11 -- FINAL PAYMENT (FINAL SETTLEMENT) In final settlement for construction of California Forest Highway Project 111-1(1), Ridge Road. Agreement to the amount provided also indicates agreement to consideration provided by Contract Modification No.23 [attached] in settement of Contractor's claim dated February 14, 1986. Payment of the amount provided herein is specifically conditioned upon execution of the attached Contractor's Release and will completely discharge all obligations of the Government under the contract. Agreed: Myron Whipple Title: V. Pres Date: 8/16/85				

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below) TOTAL $47,921.79*

PAYMENT:
- [ ] PROVISIONAL
- [ ] COMPLETE
- [ ] PARTIAL
- [ ] FINAL
- [ ] PROGRESS
- [ ] ADVANCE

APPROVED FOR = $

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE Construction Engineer

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) (Authorized Certifying Officer) [2] (Title)

ACCOUNTING CLASSIFICATION

*Amount from attached receiving report. 19A-16-06-54-1111-001

PAID BY

CHECK NUMBER ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER ON (Name of bank)

CASH $ DATE | PAYEE [3]

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

PER

TITLE

Previous edition usable

PRIVACY ACT STATEMENT
The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Example Final Voucher (Claim Settlement - No Exceptions)
Figure 8-4.4e

U.S. Department
of Transportation
Federal Highway Administration

July 12, 1985

Humbolt County Commission
2386 Utopia Street
Mountain View, CA 97854

Gentlemen:

On July 10, 1985, the final inspection of California Forest Highway Project 111-1(1), Ridge Road, was made with Mr. R.L. Lattimore of your organization in attendance. Several minor punchlist items were identified at the inspection. All work including the punchlist work was completed on July 11, 1985.

Final acceptance of the project is contingent upon the concurrence of the maintaining agency, Humbolt County California. Please indicate your approval and acceptance of the project by signing and returning the orginal of this letter. Your prompt attention to this matter will facilitate final payment and closeout of this contract.

Sincerely yours,

S. Twain
Project Engineer

Project Accepted:

Humbolt County California

By:_____

Title:_____

Date:_____

Example Letter Requesting Final Acceptance by Cooperating Agency
Figure 8-4.6

U.S. Department
of Transportation

**Federal Highway
Administration**

July 22, 1985

Crystal Lake Construction, Inc.
P.O. Box 3699
Redding, CA 96049

Gentlemen:

We are pleased to advise you that the work performed on California Forest Highway Project 111-1(1), Ridge Road, has been satisfactorily completed in substantial conformity with plans and specfications. Final acceptance is effective on July 11, 1985; and as of that date you are relieved of further maintenance obligations.

The final payment voucher in final settlement of the contract will be forwarded to you as soon as final quantities are verified.

Sincerely yours,

C. X. Homer

Charles X. Homer
Construction Engineer

cc: Humbolt County Commission

Example Letter of Final Acceptance
Figure 8-4.7