SECTION 107—LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 LAWS TO BE OBSERVED—At all times, observe and comply with the following, and post as required: all Federal, State, and local laws, ordinances, and regulations that have appropriate jurisdiction over the project and affect the conduct of the work or that apply to employees on the project; and all orders or decrees that have been or may be enacted by any legal bodies or tribunals having authority or jurisdiction over the work, material, employees, or contract. Protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, including violations by Contractor employees.

107.02 PERMITS, LICENSES, AND TAX RESPONSIBILITY—

(a) Permits and Licenses. Purchase and submit copies of permits and licenses. At the job site, post notices necessary for the proper and lawful performance of the work according to such permits and licenses. Do not start work until signing and submitting all documentation required to become a transferee/co-permitee for all applicable permits required for the project.

(b) Tax Responsibility. Ascertain the possible existence, scope and coverage of any local subdivision tax, sometimes called an occupation tax, wage tax, income tax, franchise tax, or excise tax on the construction operations within the limit of the political subdivision imposing such tax. Also indemnify and save harmless the State and its agents from liability for the collection and payment of any taxes assessed and levied by the constituted authority, including upon Contractor agents, employees, and/or representatives in connection with the performance of work on the project.

(c) Vehicle Registration. Attention is directed to 75 P.S. 1302(a) and 1303(a), (b), which requires vehicles to be registered in Pennsylvania when used on a project which is being built under traffic or where the vehicles are operated on a public highway opened to traffic.

107.03 PATENTED DEVICES, MATERIAL, AND PROCESSES—If any design, device, material, or process covered by letters of patent or copyright is used, provide for use by suitable legal agreement with the patentee or owner. Indemnify and save harmless the State or political subdivision from any claims for infringement, by reason of the use of any patented design, device, material, process, or any trademark or copyright, and indemnify the State for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the performance or after the completion of the work. These provisions also apply to the surety.

107.04 RESTORATION OF SURFACE OPENED BY PERMIT—Do not allow any opening to be made within the right of way unless a valid permit is presented authorizing the opening. For such an opening, made before the date upon which the work provided for in the contract is finally accepted, repair at the time and in the manner directed in writing by the District Executive.

107.05 FEDERAL-AID PROVISIONS—If the Federal Government pays any portion of the project costs, observe the Federal laws pertaining to the project, as well as the rules and regulations made according to such laws. Work will be subject to the inspection of the appropriate Federal agency.

Such inspection will not make the Federal Government a party to the contract and will not interfere with the rights of either party to the contract.

107.06 SANITARY PROVISIONS—Provide and maintain, in a neat and clean condition, sanitary facilities for the exclusive use of personnel on the project. Dispose of all wastes, both sewage and wastewater, in a manner approved by the DEP. As required, obtain permits from local municipalities to install temporary toilet facilities.

107.08 OCCUPATIONAL SAFETY AND HEALTH—Comply at all times with applicable Federal, State, and local laws, provisions, and policies governing safety and health, including the Federal Construction Safety Act (Public Law 91-54), Federal Register, Chapter XVII, Part 1926 of Title 29 CFR, Occupational Safety and Health Regulations for Construction, and subsequent publications updating these regulations.

Take any other needed action or proceed as directed, to protect the life, health, and general occupational welfare of personnel employed on the project.

If, in the Representative's opinion, employees are exposed to extraordinary conditions which could or do constitute a hazard, modify such equipment, devices, and job procedures to ensure protection against the hazard or to reduce the risk to the employees engaged in project work.

All areas of a project will be hard hat areas. Require all persons within the project limits to wear protective headgear, including persons in cement concrete and bituminous concrete plants operated exclusively for a project, even though the plant(s) may be remotely located.

At the preconstruction conference, submit a written project safety program and procedure to document lost time due to accident for Department review. Give special emphasis to providing safeguards for any specially or unusually hazardous operations and health hazards. Include initial indoctrination and continuing instructions for all employees to enable them to perform work in a safe manner. Include in the instruction project safety practices, manner of reporting accidents, availability of medical facilities, and explanation of individual responsibility for accident-free operations.

For multi-season projects with a contract amount $\geq$ $5,000,000, provide and maintain one scoreboard safety sign 1200 mm (4 feet) wide by 900 mm (3 feet) high to identify the number of days worked on the project without a lost time accident. Imprint on the sign, the name of the Contractor and an appropriate safety message. Prominently display the following on the sign in 100 mm (4-inch) letters:

a. Contractor's name and address.
b. "(***) Days Worked Since Last Lost-Time Injury"

NOTE: "(***)"—indicates space for three removable numbers. Number displayed to include subcontractors.

Place the sign in a prominent location at the project site. Update the sign at least bi-weekly.

Immediately take corrective action, upon notification by the Representative of any noncompliance with the provisions of this section. Upon receipt of this notice, failure or refusal to promptly comply will cause a written order to be issued, stopping all or part of the work until the corrective action has been taken. Claim for an extension of time, costs, or damages because of the time lost due to any such stop orders will not be considered.

Require all persons to wear orange or strong yellow-green (or fluorescent versions of these colors) vest, shirt, or jacket while in work zones adjacent to traffic.

107.09 RAILWAY-HIGHWAY PROVISIONS—Conform to regulations stipulated in the Pennsylvania Public Utility Commission's order when work is indicated to be performed within, or adjacent to, the right of way or trackage belonging to, or upon which a common carrier operates. Observe strict adherence to all requirements pertaining to the work, safety, and movement of trains; to public and personal liability insurance; and to any other related matters.

If it is necessary to use crossings other than those indicated, make arrangements for the use of the crossings.

107.10 BRIDGES OVER NAVIGABLE WATERS—Conduct work on navigable waters according to the requirements of permits issued by the U.S. Army Corps of Engineers or U.S. Coast Guard, whichever is applicable.

107.12 CARE OF PUBLIC AND PRIVATE PROPERTY—Do not damage overhead and underground facilities and structures or property within or adjacent to the project. Use special care in the performance of the work in order to avoid interference or damage to operating utilities or plants; however, where there is any possibility of interference or damage, make satisfactory arrangements with responsible corporate officers of the utilities or plant, covering the necessary precautions to be used during the performance of the work. Make these arrangements, subject to review, before work is started.

Protect all land monuments and property markers which are to be affected by the construction until they have been correctly referenced by the Department. Beyond the construction area, reset monuments and markers which are disturbed by contract operations, either during the construction of the project or otherwise, when and as directed.

Promptly make restitution for or satisfactorily repair or restore damaged public or private property. Protect trees to be left standing. If these existing trees to be left standing are damaged, satisfactorily repair or replace them, at no expense to the Department, or compensate the Department for the damage by an equitable monetary amount as determined by, or agreed with, the Department.

107.13 PUBLIC USE LANDS—In performing work within or adjacent to public use lands, namely National or State Forests, State Gamelands, Wildlife or Waterfowl Refuges, recreation areas, parklands, and historic sites, comply with all applicable rules and regulations of the authority having jurisdiction.

Cooperate with the National or State Forest Officer or Supervisor and authorized subordinates in observing sanitary laws and in exercising every reasonable precaution to prevent and suppress forest fires and vandalism.

Do everything reasonable to prevent and suppress forest fires. Notify a forest supervisor, as soon as possible, of the location and extent of any fire observed. Before starting indicated work affecting stream channels, verify that the Department has the approval of the DEP and/or the DCNR.

107.14 RESPONSIBILITY FOR DAMAGE CLAIMS—Furnish insurance certificate(s), as specified in Section 103.05, to indemnify and save harmless the State, the Department, and all of its officers and employees from all suits, actions, or claims of any character, name, and description, brought for or on account of any injuries or damages received or sustained by any person, persons, or property during the performance of work by the Contractor, whether the same is due to the use of defective material, defective workmanship, neglect in safeguarding the work or public interests, or by or on account of any act, omission, neglect, or misconduct of the Contractor, or any Subcontractors, Fabricators, Manufacturers, or Vendors.

Also indemnify and save harmless the State, the Department, and all of its officers and employees from cases arising as specified in Sections 105.05 and 107.16, or from any claims for amounts arising or recovered under the Workers' Compensation Law, or any other law, bylaw, ordinance, order, or decree.

107.15 OPENING SECTIONS OF PROJECT TO TRAFFIC—The Representative will have the authority to order, in writing, any substantially completed section of the project opened to traffic when seasonal, local, or other conditions relating to the project or public convenience justify such action; however, such opening will not be held to be an acceptance or a waiver of any provisions of the specifications or the contract.

Furnish, place, and maintain necessary traffic control devices, as directed, at the Department's expense, as specified in Section 110.03. Conduct the remainder of construction operations so as to cause the least obstruction to traffic.

Any section of the project opened before project completion will be subject to the applicable requirements specified in Section 110.08(a).

After opening a section of the project to traffic, any damage to satisfactorily completed work items within the section which occurs due to vehicles, other than construction vehicles and equipment engaged on the project, and not to defective materials and/or workmanship, and which occurs despite satisfactory precaution taken, will be replaced or repaired, as directed, at the Department's expense, as specified in Section 110.03.

107.16 CONTRACTOR'S RESPONSIBILITY FOR WORK—

(a) Responsibility for Performed Work. The terms and conditions of the Contract will be in effect until the work is completed and accepted by the Department, as evidenced by the dated acceptance certificate issued by the Department. However, the Contractor will be relieved of responsibility for further physical work, maintenance, and third-party liability as specified in Section 110.08(a). The issuance of the acceptance certificate does not relieve the Contractor and Surety from continuing liability for latent defects, as specified in Section 107.16(b).

(b) Responsibility for Latent Defects. The Representative will determine if a defect is a latent defect. The Contractor and the Surety continue to be liable for all latent defects; however, the Surety is liable only until the performance bond is released. Satisfactorily repair or correct latent defects at no expense to the Department. If defects cannot be satisfactorily repaired or corrected, provide reimbursement for any expenses or damages incurred by the State because of latent defects. Failure to satisfactorily correct latent defects, or to reimburse the State for expenses or damages incurred as a result of latent defects, will be considered sufficient cause to suspend or remove prequalification, according to 67 PA Code Chapter 457, regulations governing prequalification of prospective bidders, provided that any adjudication regarding such latent defects is final.

(c) Responsibility During Temporary Suspension of Work. Should the work be temporarily suspended, wholly or in part, according to the provisions specified in Section 105.01(b), written notification will be given of the suspension and the reason(s) for the suspension.

If the work is temporarily suspended, wholly or in part, due to the fault of the Contractor, the Required Completion Date and any specified Milestone Date(s) will not be changed, unless otherwise directed by the Chief Engineer, Highway Administration.

After a whole or partial suspension, upon receipt of written notice from the Representative, actively resume work according to the detailed schedule of operations.

107.17 CONTRACTOR'S RESPONSIBILITY FOR PUBLIC OR PRIVATE FACILITIES AND STRUCTURES—Cooperate with others in the performance of corrective project work, as specified in Section 105.06.

The Department will cooperate in the issue of notices and will participate in all essential field conferences relating to the facilities and structures.

107.18 FURNISHING OF RIGHT OF WAY—The Department will be responsible for securing all necessary rights of way in advance of construction. Any exceptions will be indicated in the proposal and contract.

107.19 PERSONAL LIABILITY OF PUBLIC OFFICIALS—In carrying out any of the provisions of these specifications or in exercising any power or authority granted to them by or within the scope of the contract, no liability may be placed upon the Secretary, Engineer, or their authorized representatives, either personally or as officials of the State. In such matters, they act solely as State agents and representatives.

107.20 NO WAIVER OF LEGAL RIGHTS—The Department, the Secretary, the Engineer, or the Representative will not be prevented by an erroneous

- measurement,
- computation,
- estimate, or
- certificate

made or given by them or any agent or employee of the Department, under any provision or provisions of the contract at any time, either before or after the completion and acceptance of, and payment for the roadway, from showing at any time that any

- measurement,
- computation,
- estimate, or

- certificate

is untrue or incorrectly made in any particular or that the work or material or any part does not conform to the specifications and contract.

The Department will have the right to reject the whole or any part of the work or material, should any

- measurement,
- computation,
- estimate,
- certificate, or
- payment

be discovered or be known to be inconsistent with the contract terms or otherwise improperly given. The Department will not be prevented, notwithstanding any

- measurement,
- computation,
- estimate,
- certificate, or
- payment

from demanding and recovering from the Contractor or surety, such damages as it may sustain by the failure to comply with the terms of the specifications and contract or on account of any overpayment(s) made on any estimate or certificate.

Neither the payment on any estimate or certificate signed by the Department nor any extension or remission of contract time nor any possession taken by the Department or its employees, will operate as a waiver of any portion of the Contractor of any power herein reserved by the Department or any right to damages herein provided, nor will any waiver of any breach of contract held to be a waiver of other or subsequent breach.

The terms of this contract will not be waived or modified by any verbal communication between the Contractor and Department personnel.

107.21 WORKERS' COMPENSATION INSURANCE—Carry Workers' Compensation Insurance or file a proper Certificate of Exemption as provided for by the Workers' Compensation Act and execute a valid affidavit in accepting provisions of the Workers' Compensation Act as supplied with the contract.

107.22 MINIMUM WAGE SPECIFICATIONS AND RATES—

(a) Requirements. According to the provisions of the Pennsylvania Prevailing Wage Act 43 P.S. 165-1, and the implementing Regulations of the Pennsylvania Department of Labor and Industry, comply with the prevailing minimum wage predetermination requirements, as specified in the proposal, specifications, and contract.

(b) Responsibility for Payment of Wages. Accept responsibility for all wages paid or due to any employees engaged upon the project under contract, as mandated by the Pennsylvania Prevailing Wage Act, various applicable Federal acts, and the contract. Do not attempt to pass such responsibility elsewhere. Do not require employees to refund, directly or indirectly, any part of such wage(s). Where classification, reclassification, or additional classifications of workers are made according to the Pennsylvania Prevailing Wage Act and its regulations, make no

claim against the Department for additional compensation for such classification, reclassification, or additional classification.

If after a contract has been awarded, it is decided, because of unforeseen construction development, to list an additional classification and wage rate, the Department, with or without application by the Contractor, will make written request for a wage determination by the Secretary of Labor and Industry.

No person may be employed on the project under contract, except according to the classification set forth in the decision of the Secretary of Labor and Industry.

(c) Certification and Payment of Rate of Wage. According to the provisions of the Pennsylvania Prevailing Wage Act and various applicable Federal acts, including their implementing regulations, file with the Department a weekly statement and a final statement at the conclusion of project work under contract, certifying that all employees have been paid wages in conformity with the provisions of the contract, as prescribed by the regulations of the Pennsylvania Department of Labor and Industry, implementing the Pennsylvania Prevailing Wage Act. If any wages remain unpaid, list on the statement the amount of wages due to each employee. Certify that, directly or indirectly, no refunds are received from any employee of any such minimum wage(s), other than deductions authorized by the Pennsylvania Wage Payment and Collection Law, 43 P.S. 260.1. Use forms furnished by the Department and submit the forms to the District Executive within 7 days after the regular payment date of the payroll period. Payment of the current and semifinal estimates and final settlement certificate will be withheld if such certification is not submitted, using the proper form, within the prescribed time limit.

(d) Posting. Post a notice(s) in the manner and form prescribed by the current regulations of the State Department of Labor and Industry. This notice is to be clearly legible and to be placed in a prominent and easily accessible place at the project site under contract, as well as at places where employees are paid their wages.

(e) Records and Inspection. Keep accurate records of employment and wage payments, including all the information required by the regulations of the State Department of Labor and Industry implementing the State Prevailing Wage Act, as amended. Keep time cards of employees, as required by the cited regulations and act. In addition, keep the original signed indentures for each apprentice and the approvals of the Pennsylvania Apprenticeship and Training Council. Preserve the records for 2 years from the date of payment and keep open at all reasonable hours, for inspection by the Department and by the State Secretary of Labor and Industry. Make these records easily accessible within the State within a period of 7 days from the date on which the State Secretary of Labor and Industry requests in writing that such records be made available. For the purpose of such inspection, furnish the authorized inspectors of the Department every assistance in determining the wages paid in compliance with the regulations.

(f) Penalties. Failure to comply with the Pennsylvania Prevailing Wage Act and its regulations will result in withholding money due or to become due on the project contract. It will also result in termination of the right to proceed with the project work under contract and/or other penalties prescribed by law.

(g) Federal-Aid Projects. All Federal-Aid Projects are subject to the implementing rules and regulations of the various Federal departments. Accordingly, the contract provisions and the penalties prescribed for their violations, both of which are required to be incorporated verbatim in all contracts for such Federal-Aid Projects, will be set forth in the proposal and the contract applicable to each project.

107.23 HAULING RESTRICTIONS—

(a) General. Accept responsibility for all hauling done on the project and on adjacent highways, in connection with the contract. Hauling restrictions on highways will be according to the applicable sections of the Pennsylvania Vehicle Code, Act of 1976, No. 81.

Before submission of the bid, if truck delivery of long bridge members (in excess of 21 m (70 feet)) is contemplated, obtain, in writing, a determination if a Department's hauling permit can be issued for the routing from the proposed source(s) of supply to the project.

Without written permission, do not move and/or operate heavy-duty construction grading and hauling equipment over existing or new pavements, subbase, base and surface courses, and structures which will remain in service.

No special permits will be required for the transfer of oversize or overweight equipment or vehicles from one work area to another work area within the project limits. However, correct any damage caused by the transfer of equipment or vehicles.

If, in special cases, further restrictions are necessary, such restrictions will be indicated and/or specified in the proposal.

(b) Mass (Weight) Limits and Weighing.

1. Do not operate on public highways any vehicles which are in excess of the registered, gross, and/or axle mass (weight) limits established in Chapter 49 of the Vehicle Code, 75 PA C.S. Chapter 49, or as posted by the Department.

2. Submit to weighing by Department weigh teams when requested. If, as a result of such a weighing, it is determined that a vehicle owned or leased by the Contractor or any Subcontractor has been operated on public highways carrying a mass (weight) in excess of the above registered, gross or axle mass (weight) limits, the sum of $50 for each 225 kg (500 pounds) or part thereof of such excess mass (weight) will be deducted as liquidated damages from money due or to become due. These liquidated damages are attributable to inherent damage to the highway which is not readily ascertainable and do not relieve the Contractor of responsibility to pay ascertainable damage as may be required in other sections of these Specifications.

3. When a weight slip shows that a vehicle delivering material to the project exceeds limits specified in Section 107.23(b), the Contractor will be assessed liquidated damages as specified in Section 107.23(b)2. Weighing by a Department Weigh Team will not be required.

107.24 ACCESSIBILITY OF FIRE HYDRANTS—Make necessary arrangements with the local authorities to provide fire protection at all times. Keep the fire hydrants adjacent to the work readily accessible to fire apparatus and do not place material or other obstructions within 5 m (15 feet) of any hydrant.

107.25 DISCRIMINATION ON ACCOUNT OF RACE, COLOR, RELIGIOUS CREED, ANCESTRY, SEX, AGE, OR NATIONAL ORIGIN PROHIBITED IN CONNECTION WITH EMPLOYMENT—

(a) General. Do not discriminate against any individual, who is qualified and available to perform the work to which the employment relates, by reason of race, color, religious creed, ancestry, sex, age, or national origin.

(b) Penalties. Failure to comply with the above provisions, prescribed in greater detail in 15 P.S. 7306, and modified by Pennsylvania Human Relations Act 43 P.S. 951, may result in the deduction of money due or to become due for each violation. A second or subsequent violation will result in cancellation or termination of the contract upon which the violation occurred, and forfeiture of all money due or to become due, and other penalties prescribed by law.

(c) Federal-Aid Projects. In addition to the above, the requirements specified in Section 107.22(g) also apply.

107.26 SELECTION OF LABORERS AND MECHANICS—This Section does not apply to projects which are partially or totally financed with Federal funds.

(a) Veteran Preference. In employment on public works, provisions of 51 P.S. 492.1 require a preferential rating, similar to that given to State employees, to any soldier making application for employment and on intended discharge for reduction in force. The word "soldier," as used in the cited act, means a person who served in the armed forces of the United States or in any official women's organization, during any war or armed conflict in which the United States was engaged, and who has an honorable discharge from such service.

107.27 WATERWAY REGULATIONS AND WATER POLLUTION CONTROL—

(a) Waterway Regulations. Conduct indicated work in waterways, flood plains or their hydrologically connected wetlands according to the requirements of permits or approvals issued by the U.S. Army Corps of Engineers, the U.S. Coast Guard, the DEP, the DCNR, and/or the Pennsylvania Fish and Boat Commission, whichever is applicable. Do not conduct work, including borrowing or wasting material other than indicated, in waterways, floodplains or their hydrologically connected wetlands before obtaining the required permits or approvals.

(b) Water Pollution Control. Comply with all applicable State and Federal laws and regulations preventing the pollution of surface water and ground water resources.

(c) Act 247. According to Act 247, enacted by the General Assembly of the Commonwealth of Pennsylvania and approved by the Governor on October 26, 1972, the statutes, rules, and regulations concerning anti-pollution measures have been enumerated in Appendix C, Designated Special Provision 9. Include in the bid price all costs of complying with the terms of the listed statutes, rules, and regulations. No separate or additional payment will be made for such compliance. In the event that the listed statutes, rules, and regulations are amended, or if new statutes, rules, or regulations become effective, perform all additional and/or extra work deemed necessary, as ordered in writing and directed by the Representative, as specified in Section 110.03.

Determine what local ordinances, if any, will affect the project work. Check for any county, city, borough, or township rules or regulations applicable to the area in which the project is being constructed, and, in addition, for any rules or regulations of other organizations having jurisdiction, such as chambers-of-commerce, planning commissions, industries, or utility companies who have jurisdiction over lands which the project occupies. Include any costs of compliance with local controls in the prices bid, even though documents of such local controlling agencies are not listed herein. No separate or additional payments will be made for complying with existing, amended or new local ordinances, directives, or controls.

107.28 EROSION AND SEDIMENT POLLUTION CONTROL PLANS AND PERMITS—Install and maintain erosion and sediment pollution control devices as indicated or submit an alternate plan for accomplishing equal or better temporary and permanent erosion and water pollution control. If an alternate plan is submitted, do not start work until the plan is approved by the County Conservation District and the Department. If a National Pollutant Discharge Elimination System Permit is involved, do not start work until the plan is approved by the DEP and/or the DCNR or their designee and the Department.

107.29 THIRD-PARTY LIABILITY—Contracts covered by these specifications are not to be construed for the benefit of any person or political subdivision not a party to this contract, nor will this contract be construed to authorize any person or political subdivision not a party to this contract to maintain a lawsuit on or under this contract.

107.30 SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES—This Section only applies to projects which are partially or totally financed with Federal funds.

(a) General.

1. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Executive Order 11246 and Executive Order 11375, are set forth in Required Contract Provisions (Form FHWA-1273) and these requirements; imposed pursuant to 23 U.S.C. 140, as established by Section 22 of the Federal-Aid Highway Act of 1968. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-43 and the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. The requirements set forth herein constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

2. Work with the Department and the Federal Government in carrying out equal employment opportunity obligations and in their review of contract activities.

3. Comply with and have subcontractors (not including material suppliers) comply with the following minimum specific requirement activities of equal employment opportunity. The Equal Employment Opportunity Requirements of Executive Order 11246, as set forth in 23 CFR 633, are applicable to material suppliers as well as contractors and subcontractors. Include these requirements in every subcontract of $10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

(b) Equal Employment Opportunity Policy. Accept as operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through positive continuing programs:

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

(c) Equal Employment Opportunity Officer. Designate and make known to the Department contracting officers an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who has the responsibility for and is capable of effectively administering and promoting an active company program of equal employment opportunity and who has been assigned adequate authority and responsibility to do so.

(d) Dissemination of Policy.

1. Make all company staff members related to the project who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, fully cognizant of, and have them implement, the company's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement is met, take the following actions as a minimum:

1.a Conduct periodic meetings of supervisory and personnel office employees before the start of work and then not less often than once every 6 months, at which time the contract equal employment opportunity policy and its implementation will be reviewed and explained. Have the meetings conducted by the EEO Officer or another knowledgeable company official.

1.b Give all new company supervisory or personnel office employees a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the company's equal employment opportunity obligations within 30 days following their reporting for duty on the project.

1.c Instruct all company personnel who are engaged in direct recruitment for the project by the EEO Officer or appropriate company official in the company procedures for locating and hiring minority group employees.

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

2.a Place notices and posters setting forth the equal employment opportunity policy in areas readily accessible to company employees, applicants for employment, and potential employees.

2.b Bring the equal employment opportunity policy and the procedures to implement such policy to the attention of company employees by means of meetings, employee handbooks, or other appropriate means.

(e) Recruitment.

1. When advertising for employees, include in all advertisements for employees the notation: "An Equal Opportunity Employer." Publish all such advertisements in newspapers or other publications having a large circulation among minority groups in areas from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, through the company EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to for company employment consideration.

In the event a valid bargaining agreement exists providing for exclusive hiring hall referrals, observe the provisions of that agreement to the extent that the system permits compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

3. Encourage present company employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, discuss information and procedures with regard to referring minority group applicants with employees.

(f) Personnel Actions. Establish and administer wages, working conditions, and employee benefits and take personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, without regard to race, color, religion, sex, or national origin. Follow the following procedures:

1. Conduct periodic inspections of the project site to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

2. Periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. Periodically review selected personnel actions in depth to determine where there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, take corrective action to include all affected persons.

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

(g) Training and Promotion.

1. Assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

2. Consistent with company work force requirements and as permissible under Federal and State regulations, make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, provide 25% of apprentices or trainees in each occupation in their first year of apprenticeship or training. In the event the Special Provision for Trainees is provided under this contract, this subparagraph will be superseded.

3. Advise employees and applicants for employment of available training programs and entrance requirements for each.

4. Periodically review the training and promotion potential of minority group and women employees and encourage eligible employees to apply for such training and promotion.

(h) Unions. If reliance is made in whole or in part upon unions as a source of employees, use maximum effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

2. Use maximum efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union is contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

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

4. In the event the union is unable to provide a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it is no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents meeting obligations pursuant to Executive Order 11246, as amended, and these requirements, immediately notify the Department.

(i) Subcontracting.

1. Use maximum efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Obtain lists of minority-owned construction firms from Department personnel.

2. Use maximum efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

(j) Records and Reports.

1. Keep such records as are necessary to determine compliance with the company's equal employment opportunity obligations. Design the records kept to indicate:

1.a The number of minority and non-minority group members and women employed in each work classification on the project.

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

1.c The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

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

2. Retain all such records for a period of 3 years following completion of the contract work and make them available at reasonable times and places for inspection by authorized representatives of the Department and the FHWA.

3. Submit to the Department a report each month after construction begins for the duration of the project, indicating the work hours, number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form EO-400, and according to the instructions included thereon. Form PR-1391 is to be submitted annually for the month of July, reflecting manpower figures for the project work force, for the last payroll period preceding the 31st of the month. If on-the-job training is being required by Special Provision for trainees, furnish Form EO-365 for each trainee employed, on a monthly basis, and Form FHWA-1409 semi-annually.