

Prior partial estimates and payments shall be subject to correction in the final estimate and payment.

109.10—Payment.

Upon Department payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor. For the purposes of this provision, payment of the subcontractor's portion of the work shall mean that payment has been issued for that portion of the work that was identified on the monthly progress estimate for which the subcontractor has performed service.

The Contractor shall make payment in full for the portion of the work identified on the monthly progress estimate to the subcontractor within 7 days of the receipt of payment from the Department in accordance with the requirements of Section 109.07. If the Contractor withholds any funds as part of his contract with the subcontractor to ensure satisfactory compliance and completion and the subcontractor achieves specified work as verified by payment from the Department to the Contractor, the Contractor shall make full payment to the subcontractor within 7 days.

If the Contractor fails to make payment to the subcontractor within the time frame specified herein, the subcontractor shall contact the Engineer and the Contractor's bonding company in writing. The Bonding Company and the Department will insure payment in accordance with the requirements of Sections 107.01 and Section 109.

SECTION 110—MISCELLANEOUS PROVISIONS

110.01—Common Carrier Rates.

The common carrier rates and taxes thereon that are current on the date of the opening of bids shall be considered applicable to all items subject to transportation charges thereunder. If such rates or taxes are thereafter increased by public authority on any materials entering into and forming a part of the Contract, an amount equal to the sum of all such increases, when evidenced by receipted common carrier bills, will be paid the Contractor by the Department. Requests for such payments shall be made not later than 60 days after final acceptance. If after the date of the opening of bids such rates or taxes are reduced by public authority on any materials entering into and forming a part of the Contract, an amount equal to the sum of all such decreases, when evidenced by receipted common carrier bills, will be deducted by the Department from the monies due the Contractor on the work performed under the Contract.

The carrier rates for petroleum tank truck carriers, as defined in Sections 56-338.19 and 56-338.36 of the *Code of Virginia*, that are in effect on the date of the opening

of bids for the project shall be considered effective for at least 1 year after that date. After 1 year from that date, the Department will pay the Contractor additional compensation equal to the cost of any carrier rate increases, subject to a maximum of 8 percent of the original carrier rate for any materials ordered, delivered, and actually incorporated into the work after the 1-year period. However, the Contractor shall advise the Engineer in writing of his intent to request additional compensation attributable to carrier rate changes at the time of occurrence and shall submit receipted carrier bills and all relative information concerning the original and current carrier rates as they pertain to the project. If carrier rates are decreased after the 1-year period, the Department will deduct from monies due the Contractor an amount equal to the cost of any carrier rate decreases, subject to a maximum of 8 percent of the original carrier rate, for any materials ordered, delivered, and actually incorporated into the work, based on receipted carrier bills that shall be furnished by the Contractor. On each succeeding year of the Contract, a maximum difference of 8 percent of the original rate will be considered for increases or decreases in compensation under these terms and conditions.

Except for the aforementioned carriers, additional compensation attributable to changes in hauling rates of other contract carriers will not be allowed.

110.02—Labor and Wages.

The Contractor shall comply with the provisions and requirements of the State's workers' compensation law and public statutes that regulate hours of employment on public work. Job orders placed with a State Employment Service shall indicate that employment preference will be given to veterans referred for employment. Advertisements in newspapers or other publications for project employees shall include the notation "Employment Preference to Veterans."

- (a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Contract, shall be expressly made a part of any Contract hereunder. The Contractor and his agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Contractor shall be responsible for determining local practices with regard to the application of the various classifications.

- (b) **Labor Rate Forms:** The Contractor shall complete Form C-28, indicating by classification the total number of employees, excluding executive and administrative employees, employed on the project. The Contractor shall also indicate on the form the rate per hour for each classification. The Contractor shall submit an original and two copies of the form prior to the due

date of the second estimate for payment and for each 90-day period thereafter until the work specified in the Contract has been completed.

If at the time of final acceptance the period since the last labor report is 30 days or more, the Contractor shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

110.03—Equal Employment Opportunity.

The Contractor shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.

The Contractor shall maintain the following records and reports as required by the contract EEO provisions:

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed
- minority and nonminority employees employed in each work classification
- changes in work classifications
- employees enrolled in approved training programs and the status of each
- minority subcontractor or subcontractors with meaningful minority group representation
- copies of Form C-57 submitted by subcontractors

If the Contract has a pay item for trainees, the Contractor shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the Department. If the Contractor fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.

The Contractor shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Contract. The Contractor shall comply with the specific EEO requirements specified herein and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the subcontractor.

- (a) **EEO Policy:** The Contractor shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment without regard to their

race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

(b) **EEO Officer:** The Contractor shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active contractor EEO program and who shall be assigned adequate authority and responsibility to do so.

(c) **Dissemination of Policy:**

1. Members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action or are substantially involved in such action shall be made fully cognizant of and shall implement the Contractor's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Contractor's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
 - b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Contractor's EEO obligations within 30 days following their reporting for duty with the Contractor.
 - c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the project relative to the methods followed by the Contractor in locating and hiring minority group employees.
2. In order to make the Contractor's EEO policy known to all employees, prospective employees, and potential sources of employees such as schools, employment agencies, labor unions where appropriate, and college placement officers, the Contractor shall take the following actions:
 - a. Notices and posters setting forth the Contractor's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

- b. The Contractor's EEO policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(d) **Recruitment:**

1. When advertising for employees, the Contractor shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
2. Unless precluded by a valid bargaining agreement, the Contractor shall 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. The Contractor shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.
3. The Contractor shall encourage his employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.

(e) **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Contractor shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
2. The Contractor shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
3. The Contractor shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.

4. The Contractor shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Contractor shall inform every complainant of all avenues of appeal.

(f) **Training:**

1. The Contractor shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.
2. Consistent with work force requirements and as permissible under federal and state regulations, the Contractor shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
3. The Contractor shall advise employees and applicants for employment of available training programs and the entrance requirements for each.
4. The Contractor shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees to apply for such training and promotion.
5. If the Contract does not provide a separate pay item for trainees, the cost associated with the training specified herein shall be included in the price bid for other items in the Contract.
6. If the Contract provides a pay item for trainees, training shall be in accordance with the requirements of Section 518.

(g) **Unions:** If the Contractor relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Contractor, either directly or through his Contractor's Association acting as agent, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.

2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions will be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
 3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Contractor, the Contractor shall so certify to the Department and shall set forth what efforts he made to obtain the information.
 4. If a union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Contractor shall, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group persons and women. If union referral practice prevents the Contractor from meeting the EEO requirements, the Contractor shall immediately notify the Department.
- (h) **Subcontracting:** The Contractor shall use best efforts to use minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the proposal, the Contractor shall comply with the requirements of Section 110.04.

The Contractor shall use best efforts to ensure subcontractor compliance with his EEO obligations.

- (i) **Records and Reports:** The Contractor shall keep such records as are necessary to determine compliance with his EEO obligations. The records shall be designed to indicate the following:
1. the number of minority and nonminority group members and women employed in each work classification on the project
 2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women if unions are used as a source of the work force
 3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees
 4. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees

Records shall be retained for a period of 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first 3 months after construction begins and every month of July thereafter for the duration of the project, Form C-57 shall be completed to indicate the number of minority, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within 3 weeks after the reporting period. Failure to do so may result in delay of approval of the Contractor's monthly progress estimate for payment.

110.04—Use of Minority Business Enterprises (MBEs).

It is the policy of the Department that Minority Business Enterprises (MBEs) shall have the maximum opportunity to participate in the performance of the Contract. The Contractor is encouraged to take necessary and reasonable steps to ensure that MBEs have the maximum opportunity to compete for and perform work on the Contract, including participation in any subsequent subcontracts.

MBE shall mean a small business concern (as defined pursuant to Section 3 of the Small Business Act and implementing regulations) which is owned and controlled by one or more minorities or women. *Owned and controlled* means: at least 51 percent of the business is owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minorities or women; and the management and daily business operations are controlled by one or more such individuals.

Minority shall mean a person who is a citizen or lawful permanent resident of the United States and is a bona fide member of a minority group, so regarded by that particular minority community, and who is:

- Black (a person having origins in any of the black racial groups of Africa);
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);
- Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
- American Indian or Alaskan Native (a person having origins in any of the original peoples of North America); or
- a member of another group, or other individual, found to be economically and socially disadvantaged by the Small Business Administration under 8(a) of the Small Business Act as amended (15 U.S.C. 637[a]).

The Department will furnish, upon request, a list of certified MBEs. This list shall not be construed as an endorsement of the quality or performance of the business, but is simply a listing of firms who are certified by the Department as being MBEs.

The Contractor is encouraged to use the services of banks owned or controlled by minorities or females; however, use of such services will not be credited toward participation achievement for the Contract. The Department has on file, and will make available on request, the names and addresses of known minority and female owned banks in the State of Virginia.

The Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of actively and effectively administering, encouraging and promoting a responsive program for the use of MBEs.

The performance of the Contract for the purpose of this specification shall be interpreted to include, but not necessarily be limited to, subcontracting; furnishing materials, supplies, and services; and, leasing equipment.

If the Contractor intends to sublet a portion of the work on the project, the Contractor is encouraged to seek out and consider MBEs as potential subcontractors. The Contractor is encouraged to contact MBEs to solicit their interest, capability, and prices and shall retain on file the proper documentation to substantiate such contacts.

By signing the bid, the bidder certifies to the following:

- That on the work proposed to be sublet and shown on the form for *Contractors Proposal to Sublet*, the bidder has taken reasonable steps to seek out and consider MBEs as potential subcontractors.
- That, if awarded the project, any work proposed to be sublet and not shown on the form for *Contractors Proposal to Sublet*, the same reasonable steps certified under paragraph (1) herein will be taken.

If the Department has determined that specific opportunities for participation by MBEs are available on a particular Contract, such participation will be shown as a percentage of the Contract amount and will be indicated in the proposal on Form C-61, *Potential MBE Participation*.

If the bidder is an MBE which is owned and controlled by a minority female(s), participation achievement may be shown as either minority or female, but not both. Further, each bidder shall meet the requirements of Section 102.01.

If the apparent low bidder is a currently certified MBE firm, the MBE requirements of this provision will not be applicable except for those referring to the reporting of participation achievement.

The Department has prepared a suggested list of the types of efforts that contractors are encouraged to make in soliciting MBE participation. Other factors or types of efforts may be relevant in appropriate cases.

The Department offers the following examples of efforts that may be considered. The Contractor is encouraged to:

- (a) attend any pre-solicitation or pre-bid meetings at which MBEs could be informed of contracting and subcontracting opportunities;
- (b) advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities;
- (c) provide written notice to a reasonable number of specific MBEs that their interest in the Contract was being solicited in sufficient time to allow the MBEs to participate effectively;
- (d) follow-up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;
- (e) select portions of the work to be performed by MBEs in order to increase the likelihood of obtaining MBE participation (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);
- (f) provide interested MBEs with adequate information about the plans, specifications, and requirements of the Contract;
- (g) negotiate in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (h) make efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the Department or Contractor;
- (i) make efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or other necessary or related assistance or services; and,
- (j) effectively use the services of available minority community organizations; minority contractors' groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs.

Any agreement between a bidder and an MBE whereby the MBE agrees not to provide quotations for performance of work to other bidders is prohibited.

Within 14 days after the opening of proposals in accordance with Section 102.12, if the apparent low bidder, as read at the bid opening, is reporting participation achievement on the contract, he shall submit to the Department a fully executed Form C-61 showing the name(s) and certification number(s) of any currently certified MBEs who will perform work eligible to be reported as said participation credit.

The signatures on Form C-61 shall be those of authorized representatives of the bidder as shown on Forms C-37 and C-38A or as authorized by letter from the bidder.

If it is determined, subsequent to the bid opening, that the apparent low bidder as read at the bid opening has changed, the new apparent low bidder will be advised by letter and shall submit the information required herein within 14 days after the date of notification.

Any award made by the Board prior to receipt of the information required will be conditional, pending receipt of such information.

The Contractor shall furnish, and require each subcontractor to furnish, prior to final acceptance of the Contract, information relative to all MBE involvement on the project if such work is to be claimed as participation achievement and verification is available. The information shall be indicated on Form C-63, *D/MBE Activity Report*, and certified on Form C-63A, *DBE/WBE Payment Certification*, or by copies of canceled checks with appropriate identifying notations. If participation achievement is with an MBE whose name has not been previously furnished, an initial or revised Form C-61, whichever is appropriate, shall be submitted prior to such MBE beginning the work. Failure to provide the Department the forms by the Contractor's semi-final estimate may result in delay of approval of the Contractor's estimate for payment.

If an MBE, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If any subcontractor is relieved of the responsibility to perform work under their subcontract, the Contractor is encouraged to take steps to obtain an MBE to perform an equal or greater dollar value of the work. The substitute MBE's name, description of the work, and dollar value of the work shall be submitted to the Department on Form C-61 prior to such MBE beginning the work, if such work is to be counted for participation achievement.

110.05—Construction Safety and Health Standards.

It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Contractor and any subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with the requirements of Section 107 of the Contract Work Hours and Safety Standards Act.

The Contractor shall comply with the Virginia Occupational Safety and Health Standards adopted under Section 40.1–22 of the *Code of Virginia* and the duties imposed under Section 40.1–51.1 of the Code. Any violation of the requirements or duties that is brought to the attention of the Contractor by the Engineer or any other person shall be immediately abated.

110.06—Bulletin Boards and Posting Official Notices.

Except for maintenance contracts, the Contractor shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 36 inches in height at locations readily accessible to all personnel concerned with the project. The boards shall be erected immediately upon initiation of the contract work and shall be maintained until the completion of such work, at which time they shall be removed from the project. Each bulletin board shall be equipped with a removable glass or plastic cover that when in place will protect posters from weather or damage. The Contractor shall promptly post official notices on the bulletin boards. The costs for such work shall be included in the price bid for other contract items.

110.07—Certification of Nonsegregated Facilities.

The Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities for highway construction contracts exceeding \$10,000 that are not exempt from the provisions of the equal opportunity clause, requires that bidders neither maintain nor provide facilities for employment that are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. If the Contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause, the bidder by signing the bid will be deemed to have signed and agreed to the provisions of the certification. If the Contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause, the Contractor shall forward the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the equal opportunity clause:

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

- (a) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. This certification provides that the subcontractor or material supplier does not maintain, or provide for his employees, facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de

facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

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

