



# **TITLE VI**

TECHNICAL ASSISTANCE GUIDE  
FOR LOCAL PUBLIC AGENCIES

September 19, 2011



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## Overview

The Texas Department of Transportation (TxDOT) is a recipient of federal financial assistance. All recipients are required to comply with various nondiscrimination laws and regulations, including Title VI of the Civil Rights Act of 1964 (Title VI). Title VI of the Civil Rights Act of 1964 forbids discrimination against anyone in the United States because of race, color, or national origin by any agency receiving federal funds. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination on the grounds of sex. Additionally, the Civil Rights Restoration Act of 1987 defined the word “program” to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance.

TxDOT and its subrecipients of federal-aid funds must ensure that all of its programs and activities are operated in a nondiscriminatory manner. TxDOT’s Office of Civil Rights provides technical assistance and conducts compliance reviews of cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and other subrecipients of federal financial assistance.

The *Title VI Technical Assistance Guide* provides guidance for Local Public Agencies (LPA) to understand and comply with the requirements of Title VI and related nondiscrimination laws and regulations that are applicable to federal funding assistance that is passed through TxDOT. The *Title VI Technical Assistance Guide* serves as a resource document to ensure compliance with Title VI.

An LPA’s self monitoring activities are critical to ensuring compliance with Title VI. Self monitoring requires LPAs to track, regulate, and observe their processes to ensure compliance with Title VI. Documentation is a critical element of the compliance monitoring process. It is relied upon to provide evidence, proof, and support of historical facts during monitoring and compliance review activities. It is recommended that policy decisions, procedures, analysis, actions, and outcomes be routinely documented.



## Selected Nondiscrimination Laws and Executive Orders

TxDOT's Title VI practices and reviews are governed by a wide range of requirements, including federal laws, regulations, and executive orders. Title VI requirements include, but are not limited to:

**Title VI of the Civil Rights Act of 1964** is a federal law that protects individuals, groups and organizations from discrimination on the basis of race, color or national origin in federally assisted programs and activities. Since other nondiscrimination authorities have expanded the scope and range of Title VI application and reach, reference to Title VI includes other provisions of federal statutes and related authorities to the extent that they prohibit discrimination in programs and activities receiving federal financial assistance.

**The 1970 Uniform Act (42 U.S.C. 4601)** prohibits unfair and inequitable treatment of persons displaced or whose property will be acquired as a result of federally assisted programs or activities.

**Section 162(a) of the Federal-Aid Highway Act of 1973** (Section 324, Title 23 U.S.C.) prohibits discrimination based on sex (gender).

**Section 504 of the Rehabilitation Act of 1973** prohibits discrimination based on a handicap/disability.

**The Age Discrimination Act of 1975** (Section 6101-6107, Title 42 U.S.C.) prohibits discrimination based on age.

**The Civil Rights Restoration Act of 1987, P.L. 100-209** further clarified the intent of Title VI to include all programs and activities of entities whether those programs and activities are federally funded or not.

**23 Code of Federal Regulations (CFR) Part 200**, the Federal Highway Administration's Title VI Program Implementation and Review Procedures

**49 CFR Part 21**, the U.S. Department of Transportation's Implementing Regulations of Title VI of the Civil Rights Act of 1964

**Executive Order 12898** (issued February 11, 1994) addresses disproportionate adverse environmental, social and economic impacts that may exist in communities, specifically minority and low-income populations.

**Executive Order 13166** (issued August 16, 2000) addresses access to services for persons whose primary language is not English and who have limited ability to read, write, speak or understand English.



## **Texas Department of Transportation's Office of Civil Rights – Title VI Program**

The Department's Title VI program has been established in accordance with federal rules under 49 CFR Part 21 and 23 CFR Part 200, and falls within the scope of responsibilities of the Office of Civil Rights (OCR).

The OCR's mission is to serve through information, education, audits, and investigations. The OCR is able to conduct its business effectively through the collaborative efforts of the Title VI Coordinator, Title VI Specialists, and program emphasis area personnel in TxDOT's Divisions and Offices.

### **Responsibilities of the Office of Civil Rights – Contract Compliance Section (OCR-CCS)**

The Department's OCR-CCS is responsible for the effective execution of nondiscrimination laws and regulations related to programs receiving federal financial assistance. In order to function appropriately, OCR-CCS is staffed with Title VI Specialists.

Title VI specialists are knowledgeable on the Title VI Program, applicable regulations, and;

- Provide technical assistance to program personnel and subrecipients
- Review documents as needed for compliance with Title VI to ensure that procedures used have safeguards to prevent discrimination
- Conduct Title VI compliance reviews of program areas and subrecipients
- Assist program personnel and subrecipients to correct discriminatory practices or policies and advise the Title VI Coordinator of Title VI issues
- Develop Title VI training material, conduct training sessions, and workshops
- Develop Title VI information for dissemination to the public, and where appropriate, in languages other than English
- Process Title VI external complaints of discrimination in accordance with the FHWA external discrimination complaint handling procedures




## **Local Public Agency Title VI Requirements**

As recipients of federal financial assistance, LPA's must implement a system of procedures and actions prohibiting discrimination, including:

- Developing Title VI Assurances and a Title VI Policy Statement
- Identifying a Title VI Liaison
- Developing procedures for processing external discrimination complaints
- Providing TxDOT with a list of external discrimination complaints and lawsuits
- Providing accommodations for limited English proficient persons
- Ensuring nondiscrimination in the LPA's public participation process
- Collecting and analyzing data to ensure nondiscrimination in the LPA's programs and activities
- Ensuring that contracts contain the appropriate Title VI contract provisions
- Ensuring nondiscrimination in the award of contracts

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**TITLE VI REQUIREMENT #1**  
Assurances

Does the agency have a signed assurance to establish full and affirmative compliance with Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities?

*Examples that demonstrate compliance:*

- Signed Standard DOT Title VI Assurances
- Annual certification and assurances for the Federal Transit Administration

*Note: The U.S. DOT Standard Title VI Assurances template has been included in Appendix B.*



**TITLE VI REQUIREMENT #2**

Title VI Policy Statement


Has the agency developed a Title VI Policy Statement that expresses the agency's commitment to Title VI nondiscrimination obligations?

*Examples that demonstrate compliance:*

- Policy statement signed by the head of the LPA, which indicates:
  - The LPA's commitment to assure nondiscrimination in its programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability, or income status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded program or activity administered by the LPA or its contractors
- Policy is circulated internally and to the general public

*Note: TxDOT's Nondiscrimination Statement is included in Appendix C.*

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**TITLE VI REQUIREMENT #3**  
Title VI Coordinator

Has the agency designated a Title VI Coordinator who has a responsible position in the organization and has easy access to the head of the agency?  
Is this person responsible for initiating and monitoring Title VI activities?

*Examples that demonstrate compliance:*

- Organizational chart or other literature identifying the Title VI Coordinator
- Meeting agendas or minutes demonstrating that civil rights requirements are being addressed at agency meetings by the Title VI Coordinator
- Demonstration of the Title VI Coordinator's responsibilities, which should include:
  - a. Assisting program personnel to correct Title VI problems or discriminatory practices or policies found through self monitoring and review activities
  - b. Being the focal point for Title VI implementation and monitoring of programs and/or activities receiving federal financial assistance
  - c. Ensuring that Title VI requirements are included in policy directives and that the procedures used have built in safeguards to prevent discrimination
  - d. Implementation of procedures for the prompt processing of Title VI external discrimination complaints
  - e. Attendance at training on Title VI and other nondiscrimination authorities
  - f. Efforts to coordinate the development and implementation of a Title VI and related statutes training program
  - g. Developing Title VI information for public dissemination, and where appropriate, in languages other than English



**TITLE VI REQUIREMENT #4**

Procedures for Processing External Discrimination Complaints


Has the agency developed procedures for prompt processing and disposition of external discrimination complaints?

*Examples that demonstrate compliance:*

- Written procedures for processing and investigating external discrimination complaints
- External discrimination complaints filed under Title VI against the LPA in which the LPA or its subrecipient is named as the respondent should be forwarded to TxDOT for investigation within 10 calendar days
- Complaint log or method to track complaints that identifies:
  - a. Each complainant by race, color, sex, or national origin
  - b. The recipient
  - c. The nature of the complaint
  - d. The dates the complaint was filed and the investigation completed
  - e. The disposition
  - f. The date of the disposition
  - g. Other pertinent information
- Methods to distribute external discrimination complaint handling procedures to agency personnel
- List of personnel trained in handling external discrimination complaint investigations and the training they attended
- Methods for making the public aware of the procedures for filing a discrimination complaint, such as information on an external Web site or brochure
- External discrimination complaint form

*Note: TxDOT's Title VI brochure and external discrimination complaint form have been included in Appendices A and D.*

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**TITLE VI REQUIREMENT #5**  
List of External Discrimination Complaints and Lawsuits

Has the agency been named in any external discrimination complaints or lawsuits in the past three years? If so, provide the dates, basis, issues, and disposition of such complaints or lawsuits.

*Examples that demonstrate compliance:*

- Written log of Title VI discrimination complaints or lawsuits against the LPA which includes:
  - a. Identification of each complainant by race, color, sex, or national origin
  - b. The recipient
  - c. The nature of the complaint
  - d. The dates the complaint was filed and the investigation completed
  - e. The disposition and date of disposition
  - f. Other pertinent information such as age or disability
  - g. The status of the complaint investigation or lawsuit
- Corrective actions taken in response to the allegations
- Correspondence




**TITLE VI REQUIREMENT #6**  
Accommodations for Limited English Proficient Persons

How does the agency accommodate people that are not proficient in English?

*Examples that demonstrate compliance:*

- Written translation of the agency's documents
- A list of bilingual staff and they languages they translate
- Language Implementation Plan
- Results of language needs assessments or efforts to consider the following factors:
  - a. The number or proportion of LEP persons in the eligible service population
  - b. The frequency with which LEP individuals come in contact with the LPA's programs or activities
  - c. The nature of the importance of the program, activity, or services provided by the LPA
  - d. The resources available to the LPA and the costs
- Translated external Web site
- Methods to provide oral interpretation either in person or via telephone interpretation services and the procedures used by staff to access those services
- Training attended by staff that focused on helping staff better communicate with LEP persons
- Notices detailing the LPA's Title VI obligations and complaint procedures that have been translated into languages other than English
- Notification to LEP customers of the availability of language services
- Monitoring and evaluation of efforts to provide language access

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**TITLE VI REQUIREMENT #7**  
Public Participation

How does the agency promote full and fair participation by all segments of the population, including minority or low-income communities and populations who are not proficient in English?

*Examples that demonstrate compliance:*

- Agency Public Participation Plan
- Early and continuous public involvement
- Use of innovative tools and media
- Timely information
- Adequate public notice
- Reasonable public access
- Efforts to seek out and consider the needs of minority, low-income, or other non-traditional stakeholders
- The use of a database to maintain contact information for stakeholder organizations and individuals
- Periodic review and evaluation of the public participation process
- Documented efforts to utilize demographic data or knowledge of the community to perform outreach to specific populations
- Methods to ensure and demonstrate explicit consideration of comments



**TITLE VI REQUIREMENT #8**


Data Collection

Has the agency developed procedures for the collection and analysis of statistical data (race, color, national origin) of participants in, and beneficiaries of the agency's programs and activities?

*Examples that demonstrate compliance:*

- Procedures for the collection and analysis of statistical demographic data (e.g. race, color, national origin) of the participants in, and beneficiaries of the agency's programs and activities (e.g. relocates, affected populations, and participants)
- Community profiles
- Demographic data on public meeting participants
- Forms, surveys, and other data collection methods designed to obtain a description of community boundaries, racial/ethnic makeup, income levels, tax base, or access to community services, schools, hospitals, shopping, or public safety
- Efforts to use demographic information and other tools for Title VI and environmental justice compliance with regard to future mobility projects
- Trend analysis documents
- Correspondence to community leaders, community-based organizations, or local data-collecting agencies requesting their assistance in identifying the demographics of the population affected by the agency's programs and activities
- Methods to analyze data to determine transportation investment benefits and burdens to the eligible population, including minority and low-income populations

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**TITLE VI REQUIREMENT #9**  
Title VI Contract Provisions

Does the agency physically include the appropriate civil rights special provisions in all subcontracts and ensure they are included in all third tier contracts as well?

*Examples that demonstrate compliance:*

- Sample contracts
- Methods to ensure that the clauses of Appendix A of the Standard Title VI Assurances are inserted in every contract subject to the Act and the Regulations.
- Efforts to ensure that every federally assisted contract will physically include Form PR-1273, "Federal Requirements for Federal-Aid Construction Contracts," which ensures nondiscrimination in the selection of employees and subcontractors.
- Efforts to monitor contracts and grants to ensure that Title VI language has been included

*Note: The U.S. DOT Standard Title VI Assurances template has been included in Appendix B. Form PR-1273 has been included in Appendix E.*



**TITLE VI REQUIREMENT #10**  
Affirmative Action Program

How does the agency ensure that it is not discriminating in the award of contracts?

*Examples that demonstrate compliance:*

- Participation in TxDOT's Disadvantaged Business Enterprise Program
- Providing technical assistance to your DBEs on compliance matters
- Participating in forums through public and private organizations to increase small business participation in federal aid contracts
- Methods used to distribute information related to the LPA's contracts through various media outlets to provide all bidders with access to contracting information and opportunities
- Examples of past advertisements or media releases
- In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, notification to each potential subcontractor or supplier by the agency of the agency's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, or national origin
- Efforts to ensure that the bidding and contract award procedures are consistent with the nondiscrimination and affirmative action requirements of Title VI
- Periodic review of outreach activities to ensure small, disadvantaged, minority, and women businesses are invited to participate



## **Title VI Compliance Review Process**

TxDOT's OCR conducts compliance reviews of LPAs to:

1. Ensure compliance with Title VI
2. Provide technical assistance in the implementation of the Title VI program
3. Correct deficiencies, when found to exist

### **Notification**

OCR will notify LPAs of upcoming Title VI reviews by correspondence.

### **Itemized Listing and Response to the Office of Civil Rights**

An itemized listing will accompany the notification letter and will inform the LPA of the information and documents needed by the OCR.

LPAs have 30 days from receipt of the initial notification to return documents and information to OCR in response to the itemized listing.

### **Desk Audit and Onsite Review**

The OCR Title VI Specialist will review the documents and information submitted by the LPA during a desk audit. The OCR Title VI Specialist will prepare a report of findings which may include recommendations to strengthen the LPA's Title VI program.

The findings OCR makes during the desk audit generally determine whether an onsite review will be necessary. If an onsite review is necessary, the LPA will be notified.

### **Deficiencies**

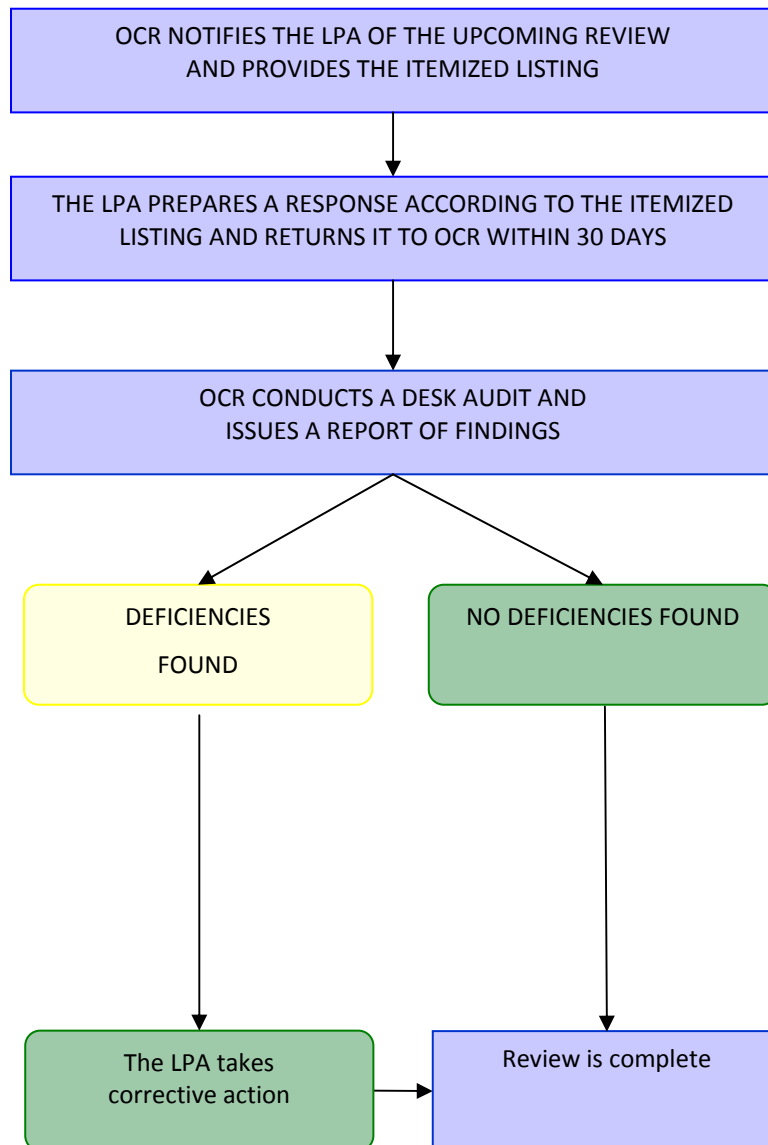
Deficiencies will be documented in the report and should be corrected by the LPA. If there are no deficiencies, the report may still provide recommendations for strengthening the LPA's Title VI Program.

### **Follow-up Monitoring**

OCR will determine if additional monitoring is needed to obtain a compliant status and ensure ongoing compliance with Title VI requirements.

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## Title VI Compliance Review Process Flow Chart



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## Resources

### **Training Resources**

#### ***Fundamentals of Title VI/ Environmental Justice***

Presents a framework for using a variety of approaches and tools for accomplishing environmental justice goals in Federal-aid programs and other transportation projects.

National Highway Institute (NHI)

<http://www.nhi.fhwa.dot.gov>

#### ***Preventing Discrimination in the Federal-Aid Program***

Participants learn how to apply Title VI, as well as how to integrate law and regulation implementation in each Federal-aid highway project from an interdisciplinary approach.

Federal Highway Administration (FHWA) Resource Center

<http://www.fhwa.dot.gov>

### **Publications**

#### ***Overview of Transportation and Environmental Justice (English and Spanish)***

Texas Department of Transportation Publications

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

#### ***Complying with Limited English Proficiency Requirements in the Federal-aid Highway Program (English and Spanish)***

Texas Department of Transportation Publications

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

#### ***Title VI and You (English and Spanish)***

Texas Department of Transportation Publications

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

#### ***External Discrimination Complaint Form***

Texas Department of Transportation Publications

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

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***Title VI Non-discrimination in the Federal Aid Highway Program***

Federal Highway Administration

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

***Limited English Proficiency Program in the Federal Aid Highway Program***

Federal Highway Administration

[http://www.txdot.gov/txdot\\_library/publications/civil\\_rights.htm](http://www.txdot.gov/txdot_library/publications/civil_rights.htm)

***Title VI and Title VI Dependent Guidelines for FTA Recipients, Circular 4702.1A***

Federal Transit Administration

[http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_5956.html](http://www.fta.dot.gov/laws/circulars/leg_reg_5956.html)

## Contacts

Texas Department of Transportation  
Office of Civil Rights—Contract Compliance Section  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701

Phone: (512) 416-4750 or (866) 480-2518

E-mail: [TitleVI@txdot.gov](mailto:TitleVI@txdot.gov)



## **Appendices**



## Appendix A



# Title VI

*Protecting Your Civil Rights  
is Good Business*

*It is our policy to ensure that no person in the United States of America shall on the grounds of race, color, national origin, sex, age or disability be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of our programs and activities.*



The Texas Department of Transportation (TxDOT) hereby gives public notice that it is the policy of the Department to assure full compliance with Title VI of the Civil Rights Acts of 1964, the Civil Rights Restoration Act of 1987 and related statutes and regulations in all programs and activities.

Any person who believes they have been subjected to unlawful discriminatory practices under Title VI has the right to file a formal complaint. Any such complaint must be filed in writing or in person with the Texas Department of Transportation, Office of Civil Rights, 125 East 11th Street, Austin, Texas 78701-2483 within 180 days following the date of the alleged discriminatory action.



[www.txdot.gov](http://www.txdot.gov)

# Título VI

*Protegiendo Sus Derechos  
Civiles es Buen Negocio*

*Es nuestra política de que ninguna persona en los Estados Unidos, en base a su raza, color, nacionalidad, sexo, edad o incapacidad, se excluirá de participar en, negar los beneficios de, o someter a discriminación bajo de nuestros programas y actividades.*



Departamento de Transporte del Estado de Texas (TxDOT), por este medio, da este aviso público asegurando que la política del Departamento está conforme a y completamente de acuerdo con el Título VI del Acta de los Derechos Civiles de 1964, el Acta de Restauración de los Derechos Civiles de 1987 y de estatutos y regulaciones relacionados con todos los programas y las actividades.

Cualquier persona que crea que haya sido sujeta a una práctica discriminatoria e ilegal bajo del Título VI tiene el derecho de registrar una queja formal. Cualquier queja se debe presentar por escrito ó en persona en la Oficina de Derechos Civiles de TxDOT (Office of Civil Rights), 125 East 11th Street, Austin, Texas 78701-2483 dentro de 180 días despues de la fecha de la supuesta acción discriminatoria.



[www.txdot.gov](http://www.txdot.gov)



## What information is included in a Title VI complaint?

A signed, written Title VI complaint must be filed within 180 days of the date of the alleged act of discrimination. The complaint must include the following information:

- Your name, address and telephone number. If you are filing on behalf of another person, include their name, address, telephone number and your relation to the complainant (e.g., friend, attorney, parent, etc.).
- The name and address of the agency, program or organization that you believe discriminated against you.
- A description of how, why and when you believe you were discriminated against. Include as much background information as possible about the alleged acts of discrimination.
- Your signature.

## What will TxDOT do with my complaint?

Upon receipt, the TxDOT Office of Civil Rights will determine which agency has jurisdiction to handle the complaint. If TxDOT does not have jurisdiction to handle the complaint, it will be forwarded to the appropriate agency. The allegations will be investigated and an attempt will be made to resolve any violations if found. If efforts to resolve any violations are unsuccessful, enforcement proceedings may be initiated to bring the recipient into compliance.

## Is there speech or hearing impairment assistance for filing a complaint?

Upon request, assistance will be provided if you are limited English proficient or disabled. Any complaint may be filed using an alternate format, e.g., computer disk, audio tape or in Braille. If you have a speech or hearing impairment, dial Texas Relay at 1-800/735-2988 or 711.

To file a Title VI complaint, you may obtain the necessary forms online by visiting:

[www.TxDOT.gov](http://www.TxDOT.gov)

or by contacting the Office of Civil Rights at the phone number listed below.

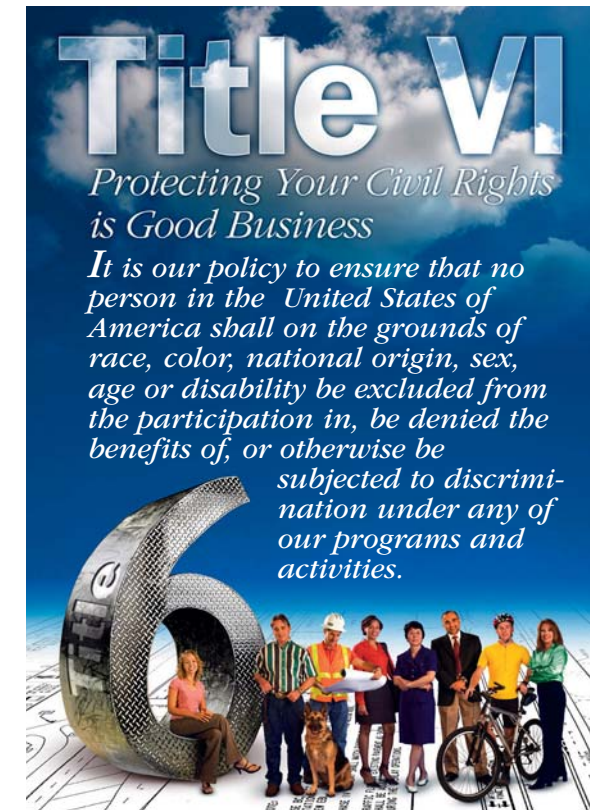
Mail the Title VI Complaint Form and Discrimination Complaint Consent/Release Form to:

**Texas Department of Transportation  
Office of Civil Rights  
125 E. 11th Street  
Austin, TX 78701**

**Phone: 1-866/480-2518  
Fax: 512/416-4751**



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**"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."**

President John F. Kennedy,  
in his message calling for the enactment  
of Title VI, 1963

# Title VI and you...

**This brochure is designed to help you understand your rights under Title VI of the Civil Rights Act of 1964.**

## What is Title VI?

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals and groups from discrimination on the basis of their race, color and national origin in programs and activities that receive federal financial assistance. However, the Federal Highway Administration's (FHWA) reference to Title VI includes other civil rights provisions of federal statutes and related authorities to the extent that they prohibit discrimination in programs and activities receiving federal financial assistance.

## TxDOT's Title VI Policy

Pursuant to Title VI of the Civil Rights Act of 1964 as amended, the Civil Rights Restoration Act of 1987 and other nondiscrimination authorities, it is the policy of the Texas Department of Transportation (TxDOT) that discrimination based on race, color, national origin, sex, age or disability shall not occur in connection with any of its programs or activities.

TxDOT's efforts to prevent discrimination will address, but not be limited to, a program's impact upon access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigation of complaints, allocation of funds, prioritization of projects and the functions of planning, project development, design, right-of-way acquisition, construction and research.

## Authorities

The two main authorities enabling Title VI implementation, compliance and enforcement are the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987. However, other statutes, laws, regulations, executive orders and the United States Constitution provide guidance for the effective execution of the objectives of Title VI. These include:

- Federal-Aid Highway Act of 1973
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Age Discrimination Act of 1975
- Uniform Relocation Act of 1970
- Executive orders 12898 and 13166

## Title VI Compliance

Title VI compliance is a situation where TxDOT has effectively implemented all the Title VI requirements or can demonstrate that every good faith effort has been made toward achieving this end.

Pursuant to 23 USC 302, the FHWA's primary recipient is the State Highway (Transportation) Agency. In Texas, TxDOT is that primary recipient. TxDOT (and its subrecipients and contractors) irrespective of tier, is required to prevent discrimination and ensure nondiscrimination in all programs and activities whether they are federally funded or not.

Subrecipients of federal assistance include cities, counties, contractors, consultants, suppliers, universities, colleges, transit and planning agencies.



## Programs Covered

Federally assisted programs include any highway, project, program or activity for the provision of services and/or other benefits. Such programs include education or training, work opportunities, health, welfare, rehabilitation, housing or other services, whether provided directly by TxDOT or indirectly through contracts or other arrangements with other agents.

## What discrimination is prohibited under TxDOT's Title VI program?

**Discrimination under our Title VI program is an action or inaction, intentional or not, through which any intended beneficiary, solely because of race, religion, color, national origin, sex, age, disability or retaliation has been otherwise subjected to unequal treatment or impact, under any TxDOT program or activity.**

Discrimination based on the grounds referenced above limit the opportunity for individuals and groups to gain equal access to services and programs. In administering federally assisted programs and activities, TxDOT cannot discriminate either directly or through contractual or other means by:

- Denying program services, financial aids or other benefits;
- Providing different program services, financial aids or other benefits, or providing them in a manner different from that provided to others;
- Segregating or separately treating individuals or groups in any manner related to the receipt of any program service or benefit;
- Restricting in any way the enjoyment of any advantage or privilege enjoyed by others receiving any program service or other benefits;
- Denying person(s) the opportunity to participate as a member of a planning, advisory or similar body;
- Denying person(s) the opportunity to participate in the program through the provision of services, or affording the opportunity to do so differently from those afforded others.

## Who may file a Title VI complaint?

A Title VI complaint may be filed by any individual or individuals who allege they have been subjected to discrimination or adverse impact under any TxDOT program or activity based on race, religion, color, national origin, sex, age, disability or retaliation.

## ¿Qué información se incluye en una demanda Título VI?

Una queja Título VI por escrito y firmada debe presentarse dentro de los 180 días de la fecha en que se alega que la discriminación ocurrió. La demanda debe incluir la siguiente información:

- Su nombre, dirección y teléfono. Si usted esta presentando la demanda en representación de una tercera persona, incluya su nombre, dirección y teléfono y la relación que tiene usted con la persona agredida (ej. amigo, abogado, padre, etc.).
- El nombre y la dirección de la agencia, programa u organización que usted cree discriminó en su contra.
- Una descripción de cómo, porque y cuando usted cree que discriminaron en su contra. Incluya la mayor cantidad de información que pueda sobre de los actos de discriminación que alega.
- Su Firma.

## ¿Qué hará TxDOT con mi Demanda?

Al recibir su demanda, la Oficina de Derechos Civiles de TxDOT determinará que agencia tiene jurisdicción para manejar la demanda. Si TxDOT no tiene jurisdicción para manejar la demanda, se le enviará a la agencia apropiada. Las alegaciones se investigaran y se intentará resolver cualquier, si es que se encuentren. Si los esfuerzos para resolver las violaciones no resultan exitosos, se dará inicio a procedimientos disciplinarios para asegurar el cumplimiento por parte del receptor demandado.

## ¿Hay ayuda para presentar la demanda para personas con problemas de oír o de habla?

Se proveerá asistencia a personas con habilidad limitada en inglés o discapacidad si lo solicitan. Una demanda puede ser presentada usando un formato alternativo, p.ej en un disco de computadora, una cinta audio fónica o en Braille. Si usted tiene una discapacidad de oír o de habla, marque el Texas Relay al 1-800/735-2988 o al 711.

Para presentar una demanda Título VI, puede obtener las formas necesarias en el Internet en la siguiente dirección:

[www.TxDOT.gov](http://www.TxDOT.gov)

o se puede comunicar a la Oficina de Derechos Civiles al número que se menciona a continuación.

Envíe la forma de Demanda Título VI y la forma de Consentimiento a:

**Texas Department of Transportation  
Office of Civil Rights  
125 E. 11th Street  
Austin, TX 78701**

**Teléfono: 1-866/480-2518  
Fax: 512/416-4751**



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# Título VI

*Proteger sus Derechos Civiles es Buen Negocio*

*Es nuestra política de que ninguna persona en los Estados Unidos, en base a su raza, color, nacionalidad, sexo, edad o incapacidad, se excluirá de participar en, negar los beneficios de, o someter a discriminación bajo de nuestros programas y actividades.*



**“La mera justicia requiere que fondos públicos, a los cuales contribuyen todas la razas, no se utilicen en una manera que anima, arraigue o subvenciona la discriminación racial.”**

Presidente John F. Kennedy,  
en su mensaje que pide la promulgación  
de Título VI, 1963

# Título VI y tu...

**Este folleto esta diseñado a ayudarle a entender sus derechos bajo el Título VI de la Ley de Derechos Civiles de 1964.**

## ¿Qué es el Título VI?

El Título VI de la Ley de Derechos Civiles de 1964 es la ley federal que protege a los individuos y grupos de discriminación basada en raza, color y nación de origen en programas y actividades que reciben asistencia financiera federal. Sin embargo, cuando la Administración Federal de Carreteras de los Estados Unidos (FHWA, por sus siglas en inglés) hace referencia al Título VI, incluye otras provisiones de derechos civiles de estatutos federales y otras autoridades relacionadas de manera que prohíben la discriminación en programas y actividades que reciban asistencia financiera federal.

## Política del Título VI de TxDOT

Conforme al Título VI de la Ley de Derechos Civiles de 1964 enmendado, la Ley de Restauración de 1987 y otras autoridades en contra de la discriminación, es la política del Departamento de Transporte del Estado de Texas (TxDOT, por sus siglas en inglés) que discriminación basada en raza, color, nación de origen, género, edad o discapacidad no ocurrirá en ninguno de sus programas o actividades.

Los esfuerzos de TxDOT para prevenir la discriminación se dirigirán a, pero no serán limitados a, el impacto de un programa sobre el acceso, bienes, participación, trato, servicios, oportunidades de contratación, oportunidades de capacitación, investigación de quejas, disposición de fondos, priorización de proyectos y las funciones de planeación, desarrollo de proyectos, diseño, adquisición de derecho de vía, construcción e investigación.

## Autoridades

Las dos autoridades principales que hacen posible la implementación, conformidad y cumplimiento del Título VI son la Ley de Derechos Civiles de 1964 y la Ley de Restauración de 1987. Sin embargo, otros estatutos, leyes, reglamentos, Ordenes Ejecutivas y la Constitución de los EEUU proporcionan orientación para la efectiva orientación de los objetivos del Título VI. Estos incluyen:

- La Ley Federal de Asistencia Vial de 1973 (Federal-Aid Highway Act of 1973)
- Sección 504 de la Ley de Rehabilitación de 1973 (Section 504 of the Rehabilitation Act of 1973)
- Ley de ciudadanos Americanos con Discapacidades de 1990 (Americans with Disabilities Act of 1990)
- Ley de Discriminación de Edad de 1975 (Age Discrimination Act of 1975)

- Ley de Traslado Uniforme de 1970 (Uniform Relocation Act of 1970)
- Ordenes Ejecutivas 12898 y 13166 (Executive Orders 12898 and 13166)

## Cumplimiento del Título VI

TxDOT ha implementado efectivamente todos los requerimientos del Título VI o puede demostrar que ha hecho todos los esfuerzos de buena fe posibles para lograr dar cumplimiento al Título VI.

De conformidad con 23 USC 302, el receptor principal de FHWA es la Agencia Estatal de Transporte. En Texas TxDOT es el destinatario principal. TxDOT (y sus subdestinatarios y contratistas) independientemente del nivel, son responsables de prevenir discriminación y de asegurar que no exista discriminación en ningún programa o actividad, sean financiados con fondos federales o no.

Subdestinatarios de asistencia federal incluyen: ciudades, condados, contratistas, asesores, proveedores, universidades, escuelas y agencias de tránsito y planeación.



## Programas incluidos

Los programas que reciban asistencia financiera federal incluyen: cualquier proyecto vial, programa o actividad para la prestación de bienes y servicios. Tales programas incluyen educación o capacitación, oportunidades de trabajo, salud, asistencia pública, rehabilitación, viviendas y otros servicios, ya sea que hayan sido proporcionados directamente por TxDOT o indirectamente a través de contratos u otros arreglos con otros representantes.

## ¿Qué tipo de discriminación está prohibida bajo el programa Título VI de TxDOT?

**Discriminación bajo nuestro programa de Título VI es una acción o inacción, intencional o no, por medio de cualquier persona que sería beneficiada, haya sido sujeto a trato o impacto desigual bajo cualquier programa o actividad de TxDOT únicamente por su raza, religión, color, nación de origen, género, edad discapacidad o represalias.**

Discriminación basada en los términos arriba mencionados les limita a grupos e individuos la oportunidad de obtener acceso equitativo a programas y servicios. En la administración de programas y actividades que reciban asistencia financiera federal, TxDOT tampoco puede discriminar directa o indirectamente, por medio de contratos o cualquier otro medio para:

- Negar servicios del programa, apoyo financiero u otros beneficios;
- Proporcionando diferentes servicios, apoyo financiero u otros beneficios, o proporcionándolos de manera diferente a como se les proporcionó a otros;
- Segregar o tratar por separado a grupos o individuos de cualquier forma relacionada a la recepción de bienes y servicios;
- Restringir de cualquier manera el uso o goce de cualquier ventaja o privilegio de la cual otros que reciben bienes y servicios, usan o gozan;
- Negarle a alguien la oportunidad de participar como miembro de un grupo de planeación, de asesoría u otro similar;
- Negarle a alguien la oportunidad de participar en el programa mediante la proporción de servicios o dándoles la oportunidad de hacerlo de manera diferente de cómo se les proporcionó a otros.

## ¿Quién puede presentar una demanda Título VI?

Cualquier individuo(s) que alegue(n) que ha(n) sido sujeto(s) a discriminación o impactado(s) desfavorablemente bajo cualquier programa o actividad de TxDOT basados en raza, religión, color, nación de origen, género, edad, discapacidad o represalias puede presentar una demanda Título VI.

## Appendix B



## STANDARD DOT TITLE VI ASSURANCES

The \_\_\_\_\_ (hereinafter referred to as the "Recipient")  
HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Texas Department of Transportation, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to the programs administered by the Recipient.

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all programs administered by the Recipient and, in adapted form in all proposals for negotiated agreements:

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will

affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.

4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.

7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the programs administered by the Recipient; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the programs administered by the Recipient.

8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.

9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees,

contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the programs administered by the Recipient and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the programs administered by the Recipient. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

DATED \_\_\_\_\_

by \_\_\_\_\_  
Name and Title of Authorized Official

Attachments  
Appendices A, B, and C, and Attachment 1

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such

contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B

A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

### (GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon, in accordance with all applicable Department of Transportation authorities, the Regulations for the Administration of the programs administered by the Recipient and the policies and procedures prescribed by the Texas Department of Transportation, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle .A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the Recipient, its successors and assigns. The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed [,] [and]\* (2) that the Recipient shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted

programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction. \*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

### APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.] \*

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deeds] \*

### Attachment 1

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of Recipient and its assigns. The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by Recipient pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.] \*

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds] \*

That in the event of breach of any of the above nondiscrimination covenants, Recipient shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of Recipient and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



## Appendix C



January 23, 2008

**Title VI and Related Statutes  
Nondiscrimination Statement**

The Texas Department of Transportation, as a recipient of Federal financial assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.



---

Amadeo Saenz, Jr., P.E., Executive Director  
Texas Department of Transportation

23 de enero del 2008

**Título VI y Estatutos Relacionados  
Declaración de No Discriminación**

El Departamento de Transporte de Texas, como recipiente de Asistencia Financiera Federal y según el Acta de Derechos Civiles Título VI del 1964 y estatutos relacionados, asegura que ninguna persona será excluida a causa de raza, religión (donde el objetivo principal es asistencia financiera para proveer empleo según 42 U.S.C. § 2000d-3), color, origen nacional, sexo, edad o incapacidad de participación en, o negados los beneficios de, o de otra manera sea sujeto a discriminación en cualquiera de los programas o actividades del Departamento.



---

Amadeo Saenz, Jr., P.E.  
Director Ejecutivo  
Departamento de Transporte de Texas

## Appendix D



# External Discrimination Complaint Form

Mail the signed form to Texas Department of Transportation, Office of Civil Rights,  
125 East 11th Street, Austin, Texas 78701 or fax to 512/416-4751.

Last Name		First Name		
Mailing Address		City	State	Zip
Telephone	Alternate Telephone	E-mail Address		
Please indicate the basis of your complaint:				
<input type="checkbox"/> Race _____	<input type="checkbox"/> Age _____	<input type="checkbox"/> National Origin _____		
<input type="checkbox"/> Color _____	<input type="checkbox"/> Gender _____	<input type="checkbox"/> Disability _____		
Date and place of alleged discriminatory action(s). Please include the earliest date of discrimination and the most recent date of discrimination.				
How were you discriminated against? Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status (basis) was a factor in the discrimination. Include how other persons were treated differently from you. (Attach additional pages, if necessary).				
The law prohibits intimidation or retaliation against anyone because he/she has either taken action, or participated in action, to secure rights protected by these laws. If you feel that you have been retaliated against, separate from the discrimination alleged above, please explain the circumstances below. Explain what action you took which you believe was the cause for the alleged retaliation.				
Names of individuals responsible for the discriminatory action(s):				

Names of persons (witnesses, fellow employees, supervisors, or others) whom we may contact for additional information to support or clarify your complaint: (Attach additional pages, if necessary).

	<u>Name</u>	<u>Address</u>	<u>Telephone</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

Have you filed, or intend to file, a complaint regarding the matter raised with any of the following? If yes, please provide the filing dates. Check all that apply.

- U.S. Department of Transportation \_\_\_\_\_
- Federal Highway Administration \_\_\_\_\_
- Federal Transit Administration \_\_\_\_\_
- Office of Federal Contract Compliance Programs \_\_\_\_\_
- U.S. Equal Employment Opportunity Commission \_\_\_\_\_
- U.S. Department of Justice \_\_\_\_\_
- Other \_\_\_\_\_

Have you discussed the complaint with any TxDOT representative? If yes, provide the name, position, and date of discussion.

Briefly explain what remedy, or action, you are seeking for the alleged discrimination.

Please provide any additional information and/or photographs, if applicable, that you believe will assist with an investigation.

**We cannot accept an unsigned complaint. Please sign and date the complaint form below.**

\_\_\_\_\_  
**Complainant's Signature**

\_\_\_\_\_  
**Date**

**FOR OFFICE USE ONLY**

Date Complaint Received: \_\_\_\_\_

Case #: \_\_\_\_\_

Processed by: \_\_\_\_\_

Date Referred: \_\_\_\_\_

Referred to:  USDOT  FHWA  FTA  OFCCP  Other \_\_\_\_\_

## Forma Externa de Queja Discriminación

Enviar forma firmada al Departamento de Transporte del Estado de Texas - Oficina de Derechos Civiles,  
125 East 11th Street, Austin, Texas 78701 o por fax al 512/416-4751.

Apellido		Nombre		
Dirección		Ciudad	Estado	Código Postal
Teléfono	Teléfono Alternativo	Correo Electrónico		
Indica por favor la(s) base(s) de su queja.				
<input type="checkbox"/> Raza _____	<input type="checkbox"/> Edad _____	<input type="checkbox"/> Origen Nacional _____		
<input type="checkbox"/> Color _____	<input type="checkbox"/> Sexo _____	<input type="checkbox"/> Discapacidad _____		
Fecha y lugar de la(s) presunta(s) acción(es) discriminatoria(s). Favor de incluir la primera fecha de la presunta discriminación y la fecha más reciente de la presunta discriminación.				
¿Cómo se discriminó contra usted? Describa la naturaleza de la acción, decisión o las circunstancias de la presunta discriminación. Explique, de la manera mas clara posible, que sucedió y porqué cree usted que su estatus protegido fue un factor en la discriminación. Incluya como otras personas fueron tratadas de distinta manera que usted. (Adjunte hojas adicionales de ser necesario).				
La ley prohíbe intimidación o represalias contra cualquier persona ya sea por tomar acción o por participar en la toma de acción para asegurar los derechos protegidos por estas leyes. Si usted siente que se han tomado represalias en su contra, aparte de la presunta discriminación mencionada anteriormente, favor de explicar las circunstancias a continuación. Explique la acción que usted tomó que cree sea la causa de la presunta represalia.				
Nombre de los individuos responsables de la(s) acción(es) discriminatoria(s):				

Nombre de personas (testigos, compañeros de trabajo, supervisores u otros) a quienes podamos contactar para obtener información adicional para respaldar o aclarar su queja: (Adjunte hojas adicionales de ser necesario).

	<u>Nombre</u>	<u>Dirección</u>	<u>Teléfono</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

¿Alguna vez ha presentado, o tiene la intención de presentar, una queja con respecto a esta situación con cualquiera de las organizaciones que se mencionan a continuación? De ser así, favor de proporcionar las fechas en que se presentaron. Marque todas las que apliquen.

- Departamento de Transporte de los EE.UU. \_\_\_\_\_
- Administración Federal de Carreteras de los EE.UU. \_\_\_\_\_
- Administración de Transporte Federal de los EE.UU. \_\_\_\_\_
- Oficina de Programas de Cumplimiento de Contratos Federales de los EE.UU. \_\_\_\_\_
- Comisión para la Igualdad de Oportunidades en el Empleo de los EE.UU. \_\_\_\_\_
- Tribunal Federal o Estatal de los EE.UU. \_\_\_\_\_
- Otros \_\_\_\_\_

¿Ha hablado sobre la queja con algún representante de TxDOT? De ser así, favor de proporcionar el nombre y puesto de la persona y la fecha en la que tuvo la conversación.

Explique brevemente que remedio, o acción está usted buscando por la presunta discriminación.

Favor de proporcionar cualquier información adicional y/o fotografías, si son pertinentes, que usted crea ayudaran el la investigación.

No podemos aceptar una queja sin firma. Favor de incluir su firma y la fecha a continuación:

\_\_\_\_\_  
**Firma del Demandante**

\_\_\_\_\_  
**Fecha**

**UNICAMENTE PARA USO OFICIAL**

Fecha de Recibo de Queja: \_\_\_\_\_

No. de Caso: \_\_\_\_\_

Procesado por: \_\_\_\_\_

Fecha Remitida: \_\_\_\_\_

Remitida a:  USDOT  FHWA  FTA  OFCCP  Other \_\_\_\_\_

## Appendix E



**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts  
(included in Appalachian contracts only)

**I. GENERAL**

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

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

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

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

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

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

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

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

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**II. NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

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

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

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

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

#### 6. Training and Promotion:

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

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

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

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

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

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

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

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA

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

### III. NONSEGREGATED FACILITIES

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

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

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

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

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

#### 2. Classification:

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

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

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

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

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

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

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

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

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

#### 3. Payment of Fringe Benefits:

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

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

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

##### **a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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

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

##### **b. Trainees:**

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

##### **c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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

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

#### **6. Withholding:**

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

#### **7. Overtime Requirements:**

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

#### **8. Violation:**

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

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

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

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

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

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

### 2. Payrolls and Payroll Records:

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

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

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

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

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

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

## VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a subcontractor, assignee, or agent of the prime contractor.

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

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

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

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

### VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,*

*quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

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

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

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

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

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

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

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

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

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

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

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

#### 1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

transaction for cause of default.

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

\* \* \* \* \*

### **2. Instructions for Certification - Lower Tier Covered Transactions:**

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR  
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

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