Section 1102. Proposal Requirements and Conditions

1102.01 COMPETENCY AND QUALIFICATION OF BIDDERS.

A. Prospective bidders shall meet the Department's requirements for prequalification. To prequalify, a prospective bidder shall complete the required sections of the "Contractor's Financial - Experience - Equipment Statement" (Form 650004) and submit it to the Department. The filing of this statement does not in itself constitute qualification. A prospective bidder shall receive definite approval of this statement to be placed on the qualified list before the bidder's proposals will be considered. The statement shall be filed with the Contracting Authority at least 5 calendar days before the date on which proposals are to be received.

B. In order to continuously remain on the qualified list, a prospective bidder must file Form 650004 with the Department for approval once each year and at such other times as the Department may request. Unless otherwise notified, the previously approved statement will expire 18 calendar months from the date of that statement. The prospective bidder will be dropped from the qualified list if a new statement has not been filed and approved by the expiration date.

C. The Contracting Authority will compute the Contractor's maximum prequalification amount based on the following prequalification formula:

MAXPREQ = [CURRENT+NONCURRENT+LL]×F

Where:

MAXPREQ = maximum prequalification amount

CURRENT = current assets minus current liabilities

NONCURRENT = (non-current assets minus non-current liabilities)/2 if > 0

NONCURRENT = (non-current assets minus non-current liabilities) if < 0

LL = approved authorization to loan letter

F = experience factor

D. The Contracting Authority will qualify Contractors into three categories:

1. **Individually Prepared Statement.**
   - **a.** An Individually Prepared Statement is a "Contractor's Financial -Experience - Equipment Statement" that has been completed by the prospective bidder. If the statement has been compiled by a CPA, but does not contain a CPA review or audit of the financial portion of the statement, it is still considered an Individually Prepared Statement.
   - **b.** When an Individually Prepared Statement is submitted to the Department, an experience factor (F) of 1.0 will be used in the prequalification formula. Regardless of the formula calculations, however, the maximum prequalification amount can not exceed $100,000.

2. **CPA Reviewed Statement.**
   - **a.** A CPA Reviewed Statement is a "Contractor's Financial -Experience - Equipment Statement" that includes a current CPA review of the financial portion of the statement. The review must be completed by a CPA who is either registered to practice in Iowa or registered in another state having reciprocal arrangements with Iowa.
   - **b.** When a CPA Reviewed Statement is submitted to the Department, an experience factor (F) ranging from 0.0 to ~~10.0~~ 12.5, depending on the prospective bidder's past performance with projects let by the Department, will be used in the prequalification formula. A prospective bidder, who has been qualified to submit proposals with this type of statement, shall be limited to individual proposal sizes that do not exceed the lesser of ~~$600,000~~ $1 million or the maximum prequalification amount minus the bidder's amount of uncompleted work currently under contract. Any combination of proposals, however, may total more than ~~$600,000~~ $1million - as long as that total does not exceed the maximum prequalification amount minus the currently uncompleted work.

3. **CPA Audited Statement.**
   a. A CPA Audited Statement is a "Contractor's Financial - Experience - Equipment Statement" that includes a current CPA audit of the financial portion of the statement. The audit must be completed by a CPA who is either registered to practice in Iowa or registered in another state having reciprocal arrangements with Iowa.
   b. When a CPA Audited Statement is submitted to the Department, an experience factor (F) ranging from 0.0 to ~~10.0~~ 12.5, depending on the prospective bidder's past performance with projects let by the Department, will be used in the prequalification formula. A prospective bidder, who has been qualified to submit proposals with this type of statement, shall be limited to work that does not exceed the maximum prequalification amount minus the bidder's amount of uncompleted work currently under contract. However, a prospective bidder shall be considered to have an "Unlimited" bidding capacity with the Department if they were awarded over $50 million of work (including that from other Contracting Authorities) during their past fiscal year and have a prequalification limit, by the formula, over $100 million.

E. A prospective bidder must complete contract work in the following categories in excess of the quantities listed below before qualification to submit proposals or receive awards for projects involving larger quantities than those listed. The contract work may be done as a contractor or subcontractor. All such completed contract work will be combined into one total for each category to determine the bidder's qualifications.

PCC Pavement	Square Yards (Square Meters)	100,000 (100,000)
Grading	Cubic Yards (Cubic Meters)	500,000 (400,000)
Bituminous Pavement	Tons (Megagrams)	50,000 (50,000)
Bridges	$200,000	
Culverts	$100,000	
Other classes of work	No Fixed Maximum	

F. In all cases a bidder will be restricted to a specific dollar volume of contracts within reasonable limits of the bidder's ability to properly finance, equip, and perform the work within the specified contract period.

G. The necessary forms and instructions for furnishing the "Contractor's Financial - Experience - Equipment Statement" will be supplied by the Contracting Authority upon application.

H. For proposals involving only the furnishing of materials, granular surfacing, lighting, buildings, asbestos removal, salvage and removal, wells, traffic signals, pavement marking, or mowing, the following shall apply in lieu of the above requirements of this article:

Bidders submitting proposals must be recognized contractors engaged in the class of work provided for in the contract documents, and must possess all necessary licenses, certificates and resources to complete the work. Before the contract is awarded to a bidder, the bidder may be required to furnish evidence to the satisfaction of the Contracting Authority of the bidder's ability to perform and complete the contract.

1102.02 REDUCTION IN BIDDER QUALIFICATION RESTRICTIONS.

A. The requirements and conditions for bidder qualification as contained in Article 1102.01 may be reduced by the Contracting Authority either for contractors who have well established performance records in other fields or for contractors having adequate financial responsibility and experienced supervisory personnel available for the work that is under consideration or for both the above reasons.

B. Likewise, the requirements may be modified by the Contracting Authority for newly formed or reorganized firms or corporations whose basic organization is composed of individuals who are veterans of the construction industry, with proven records of satisfactory performance in the field in

which they have elected to bid, provided, however, that they have adequate financial responsibility, equipment, and available experienced supervisory personnel.

1102.03 IMPOSITION OF INCREASE IN BIDDER QUALIFICATION REQUIREMENTS, SUSPENSION, AND DISQUALIFICATION.

A. The requirements and conditions for bidder qualification in Article 1102.01 may be imposed, reimposed, or increased, or a contractor may be suspended or disqualified.

1. The requirements and conditions for bidder qualification of a contractor may be imposed, reimposed, or increased if or when:

a. The Contractor seriously delays commencement or completion of any work within the contract period or any extension thereof under circumstances that would normally give rise to a right in the Contracting Authority for liquidated damages or declaration of default, or

b. The Contractor does any act or omits doing or performing any act which, in the judgment of the Contracts Engineer, evidences a material change in the Contractor's financial responsibility or work capability where, in the judgment of the Contracts Engineer, the same will materially prejudice the Contractor's ability to successfully prosecute such public improvement contracts, or the Contractor knowingly submits false information on the "Contractor's Financial - Experience - Equipment Statement" (Form 650004) or "Certification of Uncompleted Work Under Contract" (Form 650022) or other information concerning prequalification, or

c. The Contractor takes or fails to take any action which the Contracts Engineer deems to warrant an imposition of increase in bidder qualification requirements.

2. A contractor may be suspended from bidder qualification if or when:

a. The Contractor continually fails or refuses to remove and replace materials or work found by the Engineer not to be in reasonably close conformity with the contract documents or to correct such material or work so as to cause such materials or finished product to be reasonably acceptable work, or

b. The Contractor continually and, in the judgment of the Contracts Engineer, without good cause therefor, fails to carry on the work in an acceptable manner or refuses to comply with a written order of the Engineer within a reasonable time, or

c. The Contractor fails to perform with its own organization the work as required in Article 1108.01, or otherwise assigns or disposes of work or the contract or any part thereof without approval of the Contracting Authority, or

d. The Contractor forfeits a proposal guaranty and fails to enter into the contract upon an offer of award by the Contracting Authority in response to a prior advertisement for bids for the same project or any combination of projects involving the project for which award is currently being considered, or

e. The Contractor fails to comply with Equal Employment Opportunity/Affirmative Action requirements of the contract, or

f. The Contractor fails to pay the subcontractor progress payments and retainage as required by Article 1109.05, or

g. The Contractor continually takes actions, or continually fails to take actions, which present safety concerns for the Contracting Authority or the general public, or

h. The Contracts Engineer deems a suspension is appropriate for reasons stated in Paragraph 1 above.

A suspension is intended to be for an indefinite period of time or, in the case of Paragraph d, for a specific project. A suspension shall continue until the Contractor resolves, to the satisfaction of the Contracts Engineer, the problem for which the suspension was made.

3. A contractor may be disqualified from bidder qualification if or when:

a. The Contractor is currently debarred by some other state or Federal agency, or

b. The Contractor subcontracts, employs, or otherwise uses services, for work of the Contracting Authority, of one who is debarred by the Contracting Authority or disqualified according to Article 1102.03, A, 3, a, except to fulfill agreements for work on existing contracts, or

c. The Contractor is convicted of or pleads guilty or nolo contendere (no contest) to a charge of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any Federal court or a court of this or any other state, or

d. The Contractor has offered or given gifts or gratuities to employees of the Contracting Authority in violation of State law or has had as an employee a person who was at that time also an employee of the Contracting Authority, or

e. The Contractor has falsified documents or certifications, or has knowingly provided false information to the Department or the Contracting Authority, or

f. The Contracts Engineer deems a disqualification is appropriate for reasons stated in Paragraph 1 or 2 above.

B. A disqualification is intended to be for a specified time. A disqualification will not exceed 36 months.

C. The Contracts Engineer will issue a written notice of any intent to disqualify or suspend a contractor, except when suspended for a specific project according to Article 1102.03, A, 2, d.

D. Should the Contractor believe that the increase in bidder qualification requirements, intended suspension, or intended disqualification is based on false, biased, or incomplete information or that the increase or intended action is severe or unwarranted, the Contractor may make a written request to the Contracts Engineer for an opportunity to be heard in a contested case pursuant to Chapter 17A, Code of Iowa, and 761 IAC, Ch. 13. If notice is given, the written request for a hearing shall be filed with the Contracts Engineer within 10 calendar days of receipt of the notice of intended agency action. If the basis of the intended disqualification is a criminal violation which is reasonably related to bidding and contracting procedures, the intended disqualification may be applied to the organization, including a person, firm, association, partnership, or corporation, to an affiliate, officer, representative, or employee thereof, and to any other such organization in which the organization or affiliate or the officer, representative, or employee has an interest as either officer or owner.

E. When a notice is given or when any action is contested, the Contracts Engineer will issue a notice of the final action taken.

1102.04 CONTENTS OF PROPOSAL FORMS.

A. Bidders will be furnished with proposal forms showing the location and description of the proposed work, the approximate quantities of work to be performed or materials to be furnished, the form and amount of the required proposal guaranty, and the contract period. The proposal form will also contain a reference to any special provisions or requirements which are supplemental to the standard specifications.

B. The statement, "By virtue of statutory authority preference will be given to products and provisions grown and coal produced within the State of Iowa where applicable," which is on the bidding document shall not be applicable to contracts involving Federal-aid participation in construction.

C. If a predetermined wage is shown on the proposal form, it will apply to all labor used on the project. This will include labor used in the production of aggregate, HMA, and ready mix PCC which is not produced in a commercial plant. The rulings of the U.S. Department of Labor will be used in determining what is a "roadside plant" where the predetermined wage will apply and a commercial plant where the predetermined wage will not apply.

Do not use composite crews for bridge and culvert work. Pay applicable prevailing wage rate for the classification which the employee is performing work.

D. The following bidding and letting regulations shall apply to all proposals for which the Department receives bids (includes projects on Interstate, Primary, urban, park and institutional roads, farm-to-market, and local county systems).

1. Contractors will be permitted to bid on proposals amounting in total to three times their adjusted prequalification rating (prequalification rating minus uncompleted contracts).

The adjusted prequalification rating will be determined at each letting, taking into consideration the amount of work under contract, equipment and personnel available, and construction periods, etc.

Approvals for award of contracts will not exceed any contractor's actual adjusted prequalification rating.

2. Contracts will be recommended for approval for award on the basis of the greatest total savings in the public interest. The determination of which proposals to be awarded will be based on the approval by the Department and even if the selected bids are later rejected by other contracting agencies, other projects will not be substituted.

3. Contractors will not be permitted to tie proposals or to designate on the bidding proposal the limit of the amount they will accept. Contractors may voluntarily lower their prequalification rating provided written request is on file at the Office of Contracts, Iowa Department of Transportation, Ames, Iowa, by noon of the working day prior to the letting.

1102.05 ISSUANCE OF PROPOSALS.

Requests for proposal forms to bid construction and maintenance contracts must be filed by noon of the working day prior to the letting. These requests should be on the request form provided by the Department. Unless otherwise specified, proposal forms will be furnished to qualified bidders who have filed properly completed "Certification of Uncompleted Work Under Contract" forms (Form 650022) with their request. Any contractor knowingly submitting any false information required by Form 650022 may be suspended from bidding as provided in Article 1102.03.

1102.06 NONSEGREGATED FACILITIES NOTICE TO PROSPECTIVE FEDERAL-AID SUBCONTRACTORS AND MATERIAL SUPPLIERS.

Certain requirements concerning nonsegregated facilities may be applicable to prospective subcontractors and material suppliers for Federal-aid projects. These are in the contract documents.

1102.07 ESTIMATE OF QUANTITIES.

A. The Proposal form will contain a Schedule of Prices that lists the items of work on the project(s). The Schedule of Prices, which shall be completed and submitted by each bidder, will be used for comparing bids for award of the contract.

B. Contract items listed in the Schedule of Prices will be either Unit Price of Lump Sum.

C. The contract documents may also include a list of items that are noted as incidental. Incidental work is normally minor in scope and is clearly described in the contract documents. The cost to complete incidental items shall be included in the contract unit price bid for the item to which they are listed as incidental. Additional payment will not be made for incidental items unless there are obvious errors or changes to the quantity of the incidental item. An item of work, normally paid for separately, and not listed in the contract documents as incidental, will be paid for in accordance with Article 1109.03, B.

1102.08 EXAMINATION OF PLANS, PROPOSAL FORM, SPECIFICATIONS, AND SITE OF WORK.

It is the responsibility of the bidder to examine the plans, proposal form, Specifications, Supplemental Specifications, Developmental Specifications, Special Provisions, the site of the work, and the state of the work of other contractors on the project to assure that all requirements of the proposal form and the plans are fully understood. It is the bidder's responsibility to understand the nature of the work and all reasonably ascertainable conditions which may affect performance under the contract. The Contracting Authority does not warrant, implicity or explicitly, the nature of the work, the conditions that will be encountered by the bidder, or the adequacy of the contract documents for the Contractor to perform the work.

1102.09 PREPARATION OF PROPOSALS.

A. Only contractors who have been authorized to bid a proposal may submit a bid for a contract. For bids submitted to the Department that exceed $600,000, the bidder shall use subparagraph 2 or subparagraph 3 below. The Department may wave this requirement for unique or isolated situations.

1. Submit the signed, original Bidding Document furnished by the Contracting Authority with a Schedule of Prices from the Estimating Proposal.

2. Submit the signed, original Bidding Document furnished by the Contracting Authority with the computer printout and diskette of the Schedule of Prices from the bidding software furnished by the Department.

3. Submit an electronic bid with digital signature using the bidding software furnished by the Department and the electronic bid submittal procedures of the Department.

B. The bidder shall be familiar with the requirements of the applicable specifications. The bidder shall specify a unit price in figures of dollars and cents for all pay items, ~~the extensions for the respective unit prices and quantities in figures in the column provided for the purpose, and the total amount of the proposal obtained by adding the amounts of the several items~~ except for Lump Sum items where the proposal line item bid amount must be shown. All the unit price figures shall be in ink, typed, or computer printed. The bidder may also specify the extension for each proposal line item and or the total amount of the bid. However, ~~I~~if there is a discrepancy between the unit bid prices, extensions, or total amount of bid, the unit prices shall govern. The bidder shall not alter the quantity, unit price, or the extension which has been provided for items which have been predetermined by the Contracting Authority.

C. If the proposal is made by a partnership or corporation, the name of the partnership or corporation, its agent, and its principal place of business shall be shown. The proposal shall be signed by an authorized agent of the partnership or corporation.

D. If the proposal is made on the basis of a joint bid, the proposal shall be signed by each of the joint bidders, unless the firms submitting the joint venture have a written request on file with the Department signed by each of the bidders which states the individual(s) who are authorized to sign the bidding documents for the joint venture.

E. By signing and submitting the proposal, the bidder:

1. Acknowledges the bidding requirements included in the bidding documents,

2. Agrees to perform all work that is necessary to complete the proposed work in the time specified. Work not covered by proposal will be paid for according to Article 1109.03,

3. Certifies compliance with the provision of the Code of Iowa listed in the bidding documents,

4. Gives an unsworn declaration on behalf of each person, firm, association, partnership, or corporation submitting a proposal, certifying that such person, firm, association, partnership, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, and is not under debarment currently by the Federal government for a criminal violation which is reasonably related to bidding and contracting procedures,

5. For Federal-aid contracts, certifies acknowledgment of the limitations of lobby activities shown in the bidding documents, and

6. For Federal-aid contracts, certifies the bidder does not maintain segregated facilities.

F. Cooperation and coordination will be required of all contractors and other agencies authorized to do work in the project area.

G. The attention of the bidder, for the work covered by a proposal and referred to as this work, is directed to the fact that contracts for work other than the work covered in this proposal may have been awarded, are being advertised for letting on the same date as this work, or may be awarded in the future.

H. Completion of work covered by this proposal may be contingent upon certain work covered by other contracts being performed on the project in advance of this work; likewise, completion of work covered by other contracts may be dependent upon completion of work covered by this proposal.

I. The proposal will list types of work involving other contracts anticipated to be let on the same letting date or sometime within the contract period anticipated for this work. The contract documents will also list other governmental agencies, railroads, utilities, or other parties who will have work with which it is known that this work must be coordinated.

J. The bidder is expected to become familiar with work already in progress or previously let on this project, the contract periods, the progress being made, and any other conditions regarding that work which may affect the bid or the bidder's performance under this contract.

K. The bidder on this work acknowledges these facts and agrees that it is in the public interest to have the work of certain contracts and agencies performed concurrently rather than consecutively. The bidder further agrees to cooperate and coordinate the work with that of other contractors or agencies to the mutual interest of all parties doing work in the project area, whether by contract with the State, County, or City or necessary work being done by governmental agency or utility force.

L. By the submission of a bid on this work, the bidder acknowledges and agrees that investigation and inquiry has been made regarding the contracts for work with which this work must be coordinated.

M. In the event disputes arise between contractors or other agencies, or both, doing work on the project as to their mutual rights or obligations, the Contracting Authority or its authorized representative will, when requested to do so or the Contracting Authority's own motion, act as referee and define the rights of all interested parties with regard to the conduct of the work, which decision shall be final as provided in Article 1105.01.

N. If a prospective bidder, for a proposal for which the Department is accepting bids, is in doubt as to the true meaning of any part of the contract documents, the bidder may submit to the Contracts Engineer a request for additional information, explanations, or interpretations. Interpretations may be in the form of an addendum to the contract documents. The Contracting Authority will not be responsible for any information, explanation, or interpretation from any other source.

1102.10 IRREGULAR PROPOSALS.

Proposals will be considered irregular and may be rejected for any unauthorized changes in the proposal form or for any of the following reasons:

A. If on a form other than that furnished by the Contracting Authority, or if the form is altered or any part thereof is detached,

B. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning,

C. If the bidder adds any provisions reserving the right to accept or reject an award because of being low bidder on another proposal in the same letting,

D. If the bidder adds any provisions reserving the right to accept or reject an award or to enter into contract pursuant to an award,

E. If a bid on one proposal is tied to a bid on any other proposal, except as specifically authorized on the proposal form by the Contracting Authority,

F. If the proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items.

1102.11 PROPOSAL GUARANTY.

A. Each proposal shall be supported by a proposal guaranty in the form and amount prescribed in the proposal. Bids not so supported will not be read.

B. The proposal guaranty shall be in the form of a certified check or credit union certified share draft, cashier's check, money order, or bank draft drawn on a solvent bank or credit union. Certified checks or credit union certified share drafts shall bear an endorsement signed by a responsible

official of such bank or credit union as to the amount certified. Cashier's checks, money orders, or bank drafts shall be made payable either to the Contracting Authority or to the bidder and, where made payable to the bidder, shall contain an unqualified endorsement to the Contracting Authority signed by the bidder or the bidder's authorized agent. Certified checks and credit union share drafts shall be certified, or the cashier's check shall be drawn and endorsed, in an amount not less than prescribed in the proposal.

C. A "Contractor's Bid Bond" (Form 650001) may be used for the proposal guaranty in lieu of that specified above. Bid bonds will be declared invalid and bid proposals will not be considered if any of the following items are omitted or incorrect:

- Date of Letting
- Bid Order Number
- Name of Contractor
- Original Signature of Contractor: In case of joint venture bid, all contractors must sign.
- Name of the Surety Company
- Original Signature of Surety (if Surety's limitation is less than the amount of the bid bond, a certificate of reinsurance must be attached).

D. A Contractor's Annual Bid Bond (Form 650043) may also be used for the proposal guaranty in lieu of that specified above. The Annual Bid Bond shall contain the following items:

- Name of Contractor
- Original signature of the Contractor
- Date of signature
- Name of Surety Company
- Original signature of the Surety

1102.12 FILING OF PROPOSAL.

A. The proposal, proposal guaranty, and other supporting documents for each proposal shall be filed in an envelope, which is marked to indicate its contents. All proposals shall be filed with the Contracting Authority at the place designated in the notice to bidders, prior to the time advertised for opening of bids. Proposals received after the time of opening bids will be returned to the bidder.

B. The Contracting Authority may take bids on the same project as an individual proposal or part of an Optionally Combined Proposal. When an Optionally Combined Proposal is designated, the consideration for award of contracts will be based on which of the following gives the lowest total cost:

1. The sum of the lowest responsible bid on each of the individual proposals.

2. The lowest responsible bid on the Optionally Combined Proposal.

1102.13 WITHDRAWAL OF PROPOSAL.

The bidder will be permitted to withdraw their proposal under one of the following three conditions:

A. The bidder may withdraw a proposal unopened if such a request is made in writing and received at the Department prior to the time specified in the advertisement for receiving bids. A proposal so withdrawn may be resubmitted as long as it is resubmitted prior to the deadline for receipt of bids.

B. If, after bids are open, the low bidder should claim a serious error in the preparation of the bid, and can support such a claim with evidence satisfactory to the Department, the bidder may be permitted to withdraw the bid and the bid guarantee may be returned. In such an event, action on the remaining bids will be considered as if the withdrawn bid had not been received. Under no circumstances will the bidder be permitted to alter the bid after the bids have been opened.

The Department will keep the bidder’s proposal guarantee unless the bidder satisfies all four of the following conditions:

1. The mistake must be a clerical mistake as opposed to a mistake involving poor judgment concerning a construction process. The bidder must be able to produce bid preparation documentation to show how the clerical error occurred.

2. The bidder must immediately notify the Department as soon as the error is observed.

3. The scope of the mistake must be significant. The size of the mistake when compared to the overall project must be significant enough to cause major financial difficulties if the bidder is forced to complete the project at the price quoted.

4. The Department should not be placed in a worse position than if the bid had never been submitted.

C. The bidder may withdraw their bid from consideration if a contract has not been offered them within 30 calendar days after the letting and the bidder has not requested approval for award be deferred.

1102.14 PUBLIC OPENING OF PROPOSALS.
Proposals will be publicly opened and read at the time and place stipulated in the notice to bidders.

1102.15 FOREIGN CORPORATIONS.

A. Before entering into a contract involving construction or maintenance work, corporations organized under the laws of any other state shall file with the Contracting Authority a certificate from the Secretary of State of the State of Iowa showing that they have complied with all of the provisions of Chapter 490, Code of Iowa, governing foreign corporations. For contracts involving only the furnishing of materials, the foregoing requirement does not apply.

B. When a contract not involving Federal-aid participation for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

C. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

D. Any joint venture that includes a nonresident bidder will be considered nonresident, and the preference rule will be used.

1102.16 INCOME TAX DEDUCTION ON NONRESIDENT CONTRACTORS.
Each nonresident person or firm doing business as an individual and each nonresident co-partnership will be required, as precedent to receiving an award, to file a certificate issued by the State Tax Commission, as provided in Section 422.17, Code of Iowa, releasing the Contracting Authority from withholding any and all sums required by the provisions of Section 422.17, Code of Iowa.

1102.17 DISADVANTAGED BUSINESS ENTERPRISES.

A. General.

1. All contractors shall pursue affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises in all Federal-aid projects let by the Department, as set forth in this specification which is imposed pursuant to 49 CFR Part 26 Subpart A through F and Public Law 105-178, 112 Stat. 107 which supersedes all existing minority business enterprise regulations, orders, circulars, and administrative requirements concerning financial assistance programs that the United States Department of Transportation has issued.

2. The requirements set forth in this specification shall constitute the specific affirmative action requirements for project activities under this contract insofar as DBEs are concerned.

B. Disadvantaged Business Enterprise Policy.
The Contractor shall accept as operating policy and include in all subcontract agreements the following statement which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

"The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Contracting Authority deems appropriate."

C. Contractor's Affirmative Action Responsibilities.
The Contractor shall designate a responsible person or company official to serve as its DBE Liaison Officer. The DBE Liaison Officer shall:

1. Have the necessary statistics, funding, authority, and responsibility to carry out and enforce the intent of the firm's DBE policy and shall be responsible for developing, managing, and implementing the program on a day-to-day basis.

2. Use the current Directory of Certified DBEs to identify potential material suppliers and contractors.

3. Make every reasonable effort to involve DBEs in the performance of contracts, as suppliers and subcontractors, by soliciting quotations from the DBEs and incorporating them into the firm's bid.

4. Advise the Contracts Engineer of any known DBE not included in the current Directory of Certified DBEs.

5. Make every reasonable effort, at least 2 weeks prior to the time prices and quotations are to be submitted, to establish systematic written and/or oral contact with those DBEs that have been determined to have necessary potentials and capabilities to furnish needed materials and perform necessary work to be subcontracted.

6. Provide or arrange to assist certified DBEs with obtaining necessary bonding, analyzing plans and specifications, planning and managing work, and by providing other technical assistance.

7. Maintain complete records of negotiations with DBEs to reach agreeable prices, quotations, and work schedules.

8. Ensure that regularly scheduled progress payments are made to DBEs as required by the Iowa Code and the Standard Specifications.

9. Report to the Department all suspected instances of firms fraudulently claiming to be DBEs.

D. Counting DBE Participation Toward Meeting Goals.

1. The Contractor may count toward the goals only expenditures to DBEs that perform a commercially useful function towards the completion of a contract, including those functions as a subcontractor. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a commercially useful function. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Iowa.

2. The bidder may count the following DBE expenditures towards the DBE commitment:
   a. **Projects where the DBE is the Prime Contractor** - The portions of the contract to be completed by certified DBE firms will be counted toward meeting the goal. Items of the contract subcontracted to non-DBE firms will not be counted in the commitment.
   b. **Portions of a bid from a Joint Venture** - A bid from a joint venture, between a DBE and non-DBE Contractor shall include a "Statement of DBE Commitments" (Form 102115), which is included in the bidding documents and in the computer software provided by the Department, listing the dollar value of the contract which will be completed by the DBE partner.
   c. **DBE Subcontractors** - The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. Cost of

materials purchased from or the cost of equipment leased from the Contractor will not count toward the project DBE commitment.

d. **Manufacturers** - The Contractor may count toward the DBE commitment 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE firm produces and supplies goods manufactured from raw materials or substantially alters them before resale.

e. **Regular Dealers (e.g. Material Suppliers)** - The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the DBE firm performs a commercially useful function in the supply process. For purposes of this section, a regular dealer is a firm that owns; operates; or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates the distribution equipment. If the DBE supplier does not own the distribution equipment, an acceptable lease containing the terms of the agreement shall be available. The Department may request a copy of this lease.

f. **Brokers and Packagers** - Brokers and packagers will not be regarded as regular dealers within the meaning of this section. Only the cost of the service performed may be used towards meeting the DBE commitment.

g. **Transportation or Hauling of Materials** - If a DBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor, the commercially useful function performed is not that of a supplier, but that of a transporter of goods. Unless the DBE company is itself the manufacturer or a regular dealer in the product, credit only will be allowed for the cost of the transportation service. For transportation of materials by truck to be used toward meeting the DBE commitment, the following shall apply:

   1) The DBE shall be responsible for management and supervision of the entire trucking operation that is to count toward the commitment. The DBE shall maintain strict records to verify the amount of hauling done by each trucker. These records shall be available to the Engineer, upon request.

   2) The Office of Contracts will maintain a truck roster for each DBE that performs trucking. Each truck on the truck roster shall be either owned by the DBE or controlled by the DBE under a lease. Trucks that are leased shall be from a firm that is in the commercial leasing business; the owner of the commercial leasing business can not be a heavy-highway contractor. The DBE firm shall make available to the Department the lease agreement if requested.

   3) To meet the DBE commitment, the following conditions shall be used:

      a) At least one fully licensed, insured, and operational truck, listed on the truck roster under the DBE trucking company shown on the Form 102115, shall be hauling on the project at all times. The Contractor will receive credit for the fee paid to the DBE for these trucks.

      b) Any truck on the truck roster of another DBE may be used. There is no limitation to the number of these trucks that can be used. The Contractor will receive credit for the fee paid to the DBE for these trucks.

      c) A DBE trucker may also use trucks from a non-DBE firm, including an owner operator. The Contractor will receive credit toward the DBE commitment only for the fee or commission retained by the DBE trucker. The Contractor will not receive credit for the total amount paid for the truck because the DBE was a lessee rather than the actual provider of transportation services.

h. **Other Commercially Useful Functions** - The fees paid to certified DBE firms which is necessary for the completion of the contract and commonplace outside of the DBE program may be counted towards the commitment.

Interpretations by the Department regarding participation of DBEs will be in accordance with 49 CFR, Part 26 Public Law 105-178, 112 Stat.107.

E. Contract Award Procedures.

The proposal will specify if the proposed contract has an established DBE goal or has no established DBE goal. The established DBE goal will be shown on the proposal as a percent of the

total amount bid. The bidder may only use work on the federal aid projects on the proposal to achieve the DBE goal. The proposal may also designate the items of the federal aid project that are over utilized by DBE firms and can not be used for DBE commitments.

1. **Bidder's Responsibility.**
   It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Iowa highway construction industry. Subcontractor expenditures, which may be counted towards the DBE commitment, will include DBE trucking, purchase of materials from a DBE manufacturer or supplier, or off-site services provided by a certified DBE firm.

2. **Proposals with Established Project DBE Goals.**
   - **a.** For proposals with established project goals the bidder will be required to complete Form 102115.
   - **b.** The bidder shall list the following information on Form 102115 that is submitted with their bid:
     - **1)** Certified DBE firms contacted,
     - **2)** Date that each DBE firm was first contacted concerning quoting on the proposal to be bid,
     - **3)** Whether each DBE firm submitted a quote on the proposal to be bid,
     - **4)** If the DBE firm is being used as part of the bidder's DBE commitment,
     - **5)** If used as part of the bidder's DBE commitment, the work items on the contract for which the DBE will be used,
     - **6)** If used as part of the bidder's DBE commitment, the "Amount To DBE" which has been committed to each DBE firm which will be used on the contract,
     - **7)** If the DBE firm is being used as a supplier (in which case, only 60% of the dollars paid to the DBE firm will count toward the DBE commitment), and
     - **8)** The "DBE Commitment" of each DBE firm which will be counted towards the total DBE commitment for the contract.
   - **c.** In cases where the required information is included on the form, but where discrepancies occur, the Office of Contracts will make the following calculations to determine the Contractor's DBE commitment. The DBE dollar commitment will be the sum of the amounts listed in the "Amount to DBE" column, adjusted for suppliers as provided in the specifications. The percent of DBE participation will be the DBE dollar commitment as determined above, divided by the total contract amount as defined by Article 1102.09. Each bidder's DBE participation commitment will be calculated to the nearest 0.1%. If two or more projects are combined on one proposal, the DBE commitment will be calculated using the sum of the DBE dollar commitments and the sum of the project totals.
   - **d.** The completed form shall be filled out in ink or be computer generated and submitted with the bidding documents. Failure to attach this completed form or submitting incomplete forms will cause the bid to be rejected as irregular, in accordance with Article 1102.10. Only DBE firms listed in the Directory for the current letting may be used.

3. **Bidder Selection.**
   - **a.** The successful bidder will be selected on the basis of having submitted the lowest responsive bid. Bidders shall make a Good Faith Effort to achieve the DBE goal in order to be responsive. Contractors who meet or exceed the proposed contract goal will be assumed to have made Good Faith Effort to utilize DBE firms. DBE firms who bid as prime contractors will be considered to have met the goal.
   - **b.** The Department's process used to judge the Good Faith Effort of a bidder who has not met the established DBE goal is as follows:
     - **1) 80% of the Goal.**
       A bidder who has achieved 80% of the established goal will be assumed to have made Good Faith Effort to achieve the goal.
     - **2) 80% of the Average Commitment.**
       The Department has established the following objective measurement of Good Faith Effort. Good Faith Effort will be determined by calculating 80% of the average of the percentages of the goal and the DBE commitments submitted by all bidders satisfying Article 1103.01, and comparing the percent of DBE commitment of each bidder to that

percentage average. The following example shows how the Department will compute the average DBE participation:

a) Only that amount of a bidder's DBE commitment that does not exceed the established goal will be used.

b) The amount of the goal will be used as the DBE commitment amount from DBE bidders who are bidding the project as the prime contractor.

c) The commitments to DBE firms who are affiliates of the bidder will not be included in the calculation.

d) The project DBE Goal will be included in the computation.

Example:

80% of the Average Good Faith Effort calculation

Project Proposal has a 10% Goal for DBE participation	= 10.0%	
Contractor "A" submits a commitment of 11.8%	= 10.0%	
Contractor "B" submits a commitment of 7.0%	= 7.0%	
Contractor "C" submits a commitment of 11.4% (of which 4.0% was committed to a DBE affiliate)	= 7.4%	
Contractor "D" submits a commitment of 3.6%	= 3.6%	
Contractor "E" is a DBE	= 10.0%	
Sum of Commitments	= 48.0%	
Average DBE Commitment	= 48.0 / 6	= 8.0%
80% of the Average Commitment = 80% of 8.0	= 6.4%	

Contractors "A", "C", and "E" would all be responsive for meeting the DBE goal. Contractor "B" would be responsive for meeting 80% of the Average DBE Commitment. Contractor "D" would not be responsive for meeting 80% of the Average DBE Commitment. Should the low bidder's DBE commitment be lower than 80% of the average, with the contract goal included in the calculation, that bidder will be considered non-responsive for Good Faith Effort to meet the project DBE goal. If the lowest bid is non-responsive due to lack of Good Faith Effort, the next bidder is compared to this 80% of the average commitment until a bidder is identified as having made a Good Faith Effort to achieve the DBE goal.

4. Contractors with History of Utilizing DBEs.

a. A bidder who has demonstrated their ability to utilize DBE firms on both Federal-aid and non-Federal-aid projects let by the Department in the 24 months prior to the letting will be assumed to have made a Good Faith Effort to achieve the project goal.

b. The Department's objective evaluation of prior usage of DBE firms will include all contracts let by the Department that were awarded to the Contractor during the 24 months prior to the letting. The calculation will include the sum of the following:

1) One point for each percentage of average DBE subcontracted dollars for the 24 months prior to the letting (e.g. an average 7.5% dollars subcontracted to DBE equals 7.5 points)

2) An additional point for each percentage of usage of DBE firms who meet the emerging small business requirements during the reviewed period (e.g. 1.5 points if 1.5% of the work is subcontracted to DBE firms meeting the small business requirements)

A contractor under consideration for having a history of utilizing DBE firms must have been awarded at least two contracts during the period being reviewed. ~~Contractors who have used the same DBE firm for over 50% of their subcontract dollars with DBE firms will not be considered as having a history of utilizing DBEs.~~

A contractor under consideration for having a history of utilizing DBE firms must have been awarded a dollar amount of contracts that exceed at least twice the dollar amount of the contract under consideration. For example, to be awarded a $1,000,000 contract, the

contractor under review would have to have been awarded $2,000,000 in the Annual Good Faith Effort calculation.

The Annual Good Faith Effort points used for a letting would be based on the signed contractors and Request for Subcontract forms submitted by 5 calendar days before the letting. The number of points a contractor will need to be considered to demonstrate a history of utilizing DBE firms must exceed 67% of the Department's Annual DBE Goal (e.g. if the Department's annual DBE Goal is 7.8%, the contractor must have over 5.2 points). It is assumed that 67% of the DBE usage will be subcontract work and 33% of the dollars paid to DBE firms will be to DBE firms who have been awarded prime contracts.

5. Administrative Reconsideration of Project Specific Good Faith Effort.

a. Contractors who have not met the specified DBE goal or have not been determined to have demonstrated Good Faith Effort by the above methods can request administrative reconsideration of their Good Faith Effort.

b. Within 2 business days after the deadline for bid submittal, the Department will use the three Good Faith Effort methods to determine which bidders have made a Good Faith Effort to meet the DBE goal on each proposal for which bids were received. The Department will contact all otherwise lowest responsive bidders who have not met any of the Good Faith Effort criteria and offer that bidder an opportunity for an Administrative Reconsideration meeting with the Department's Administrative Reconsideration Committee. This committee consists of the Department's Contracts Engineer, Assistant Contracts Engineer, and EEO/AA Administrator. The bidder shall request the Administrative Reconsideration meeting within 1 business day of the Department's offer of an Administrative Reconsideration meeting.

c. Any bidder who has requested Administrative Reconsideration shall not adjust their DBE Commitment or provide any additional documentation of DBE firms contacted that were not listed on Form 102115. However, the bidder will be allowed to provide documentation on other Good Faith Efforts they did to utilize DBE firms that are listed on Form 102115. These efforts may include:

1) Efforts to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

2) Written documentation of negotiation with certified DBE firms including the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

3) Written documentation of follow-ups made after the initial solicitations to encourage DBE firms to quote.

4) Written documentation that the DBE firm's quote was not reasonable or that the DBE firm was not capable of performing the work for which they quoted. The fact that there may be some additional costs involved in finding and using DBE firms is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.

5) Written documentation of efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the specifications.

6) Written documentation of efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services needed for the project.

d. The determination made by the Administrative Reconsideration Committee shall be considered final.

F. Construction Period Requirements.

1. The Contractor shall use those DBEs for the amounts listed on Form 102115 as submitted with their bid. After adequate notice by the Contractor, if any DBE is unable to perform, the Contractor shall inform the Engineer of the reasons why a DBE will be unable to complete the work for which they were committed. The Contractor shall document their efforts to have another DBE perform the item or to have a DBE perform other items to replace the original

DBE commitment amounts. Any request for substitution of a DBE subcontractor shall be made to the Engineer and approved by the Contracts Engineer.

2. The Contractor is allowed to offer construction assistance to DBE subcontractors, but only in areas where DBEs can benefit from their expertise or in situations arising from unforeseen emergencies or natural disasters. The assistance shall be short-term and involve only equipment, or workers that function as trainers. Before offering the assistance, the Contractor shall notify the Engineer and obtain the written approval of the Contracts Engineer.

3. Brokering of work by DBEs is not allowed and is a contract violation. A DBE firm involved in brokering of work may be decertified. Any firm involved in brokering of work, that engages in willful falsification, distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 100.20.

G. Post Construction Requirements.

1. Prior to receiving final payment, the Contractor shall provide to the Engineer certification of the dollars paid to each DBE firm, using Form 102116, Certification Of DBE Accomplishment. This certificate shall be submitted on all Federal-aid contracts where ~~a DBE performed work~~ and shall list the dollar amounts paid to all DBE firms on the contract. The certification shall be dated and signed by a responsible official legally representing the Contractor. Falsification of this certification will result in suspension of bidder qualifications according to Article 1102.03.

2. If the contract contained a DBE commitment, the Engineer will verify that the Contractor has attained the DBE commitment specified on Form 102115. If the commitment is not met and was less than the goal, the price adjustment is the difference between the actual dollars paid and the commitment. If the commitment is not met and was greater than the goal the price adjustment is the difference between the actual dollars paid and the goal.

3. The penalty for failure to meet DBE commitments will then be reduced by the following amount:

a. Underruns or deletion of contract items which were subcontracted to DBE firms.

b. Designated work that the DBE failed to perform and concurrence to waive this work was received from the Department.

4. Failure to meet the specified DBE commitment to each DBE firm will result in a price adjustment of an amount equal to the difference between the actual DBE dollars paid and the Contractor's adjusted DBE commitment to that DBE firm.

H. Required Records.

The Contractor and subcontractors shall retain, for a period of not less than 3 years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and Federal Agencies.

I. Sanctions for Failing to Comply with the Intent of the DBE Regulations.

1. DBE Firms.

The ability to be eligible to receive DBE goal work is a privilege made available to a select group of firms. Firms that abuse this privilege may have their ability to be counted towards the DBE goal restricted if the firm fails to perform their work consistent with common industry practices. Examples of not performing work consistent with common industry practice include, but are not limited to:

a. Patterns of failing to perform a commercially useful function for work quoted to meet a DBE goal.

b. Patterns of failing to complete the work with their own organization for work quoted to meet a DBE goal.

c. Patterns of failing to pay for all labor and materials for the work they have subcontracted to meet a DBE goal.

d. Patterns of failing to perform the work they have subcontracted.

e. Patterns of failing to notify the prime contractor in a timely manner when their work schedule makes it impossible for them to begin subcontract work at the requested time.

f. Patterns of failure to furnish documents (e.g. certified payrolls, material test reports, etc.) within the timeframes allowed by the specifications.

The Department will provide written notice to the DBE firm, informing them of any proposed sanction. The DBE firm will have 14 calendar days, from the receipt of the certified notification, to make a written request for a hearing. The appeal hearing will be held with a three-person committee consisting of representatives from the Office of Contracts, Office of Construction, and a district office. If the Department does not receive a written request for a hearing, or if the DBE firm does not provide sufficient evidence at the hearing to refute the violations, the Department may suspend the DBE firm from the ability to be counted towards the commitment on projects with DBE goals. The duration of the suspension will be determined based on the severity of the violation and the number of prior suspensions of the DBE firm.

2. Prime Contractors.

Contractors who show a pattern of non-compliance with the DBE requirements of the contract may be suspended from bidding on contracts that have DBE goals. Examples that would indicate a lack of good faith effort to comply with the DBE requirements include, but are not limited, to:

a. Patterns of performing work with their own organization, or having another company perform work, which was committed to a DBE firm to meet a DBE goal.

b. Patterns of not keeping the DBE firms posted on the status of their projects, and not providing advance notification to the DBE when their subcontract work will be available to the DBE firm.

c. Patterns of not promptly paying DBE firms for completed work in accord with Article 1109.05.

d. Not treating DBE firms as they would any other subcontractor on the project.

The Department will provide written notice to the Contractor, informing them of any proposed sanction for failure to comply in good faith with the intent of the DBE regulations. The Contractor will have 14 calendar days, from the receipt of the certified notification, to make a written request for a hearing. The appeal hearing will be held with a three-person committee consisting of representatives from the Office of Contracts, Office of Construction, and a district office. If the Department does not receive a written request for a hearing, or if the contractor does not provide sufficient evidence at the hearing to refute the violations, the Department may suspend the Contractor from bidding on projects that have DBE goals. The duration of the suspension will be determined based on the severity of the violation and the number of prior suspensions of the Contractor for DBE sanctions. The sanctions may be extended beyond contracts with DBE goals if the Contractor's treatment of DBE firms has extended beyond contracts assigned DBE goals.

1102.18 SPECIFIC AFFIRMATIVE ACTION RESPONSIBILITIES ON NON-FEDERAL-AID PROJECTS (TARGETED SMALL BUSINESS PROJECT PARTICIPATION).

A. General.

1. AA requirements are to encourage and increase participation of disadvantaged individuals in business enterprises in all state projects involving funds made available through the Department. This is required by Iowa Code Section 19B.7 and 541 Iowa Administrative Code Chapter 4. On projects let by the Department, funded in whole or in part by state funds, these requirements supersede all existing TSB enterprise regulations, orders, circulars, and administrative requirements.

2. TSB Directory information is available from:

Office of Contracts
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010
Telephone 515.239.1422

B. Targeted Small Business.
A TSB is a small business, defined by Iowa Code Section 15.102(4), which is 51% or more owned, operated, and actively managed by one or more women or minority persons. Generally this is a for-profit small business enterprise under single management, which is located in Iowa.

C. Contractor's TSB Policy.
The Contractor is expected to promote participation of disadvantaged individuals in business enterprises as suppliers, manufacturers, and subcontractors through a continuous, positive result oriented program. The following statement should be included in the Contractor's operating policy:

It is the policy of this firm that TSB concerns, as defined in Iowa Code Section 19B.7 and 541 Iowa Administrative Code Chapter 4, shall have the maximum practical opportunity to participate in contracts funded in whole or in part by state funds through this firm (e.g. suppliers, manufacturers, and subcontractors).

The purpose of the Contractor's policy is to encourage and increase participation by TSBs in contracting opportunities made available by this firm in the performance of contracts let by the Department.

D. Positive TSB Effort Documentation.

1. Contractors are required to make positive efforts in utilizing TSBs on all non-Federal- aid projects let by the Department. The Contractor shall document all efforts made to include TSB participation in these projects. The documentation shall remain in the Contractor's project files for a period of 3 years after the completion of the project and be available, upon request, for examination by the Department.

2. On proposals where a specific TSB goal has been established, the Contractor will be required to submit the TSB form with their bid. The TSB form will be provided by the Contracting Authority and used to document the TSB participation that shall be attained. The Contracting Authority will determine if the bidder has made adequate Good Faith Effort to meet the established goal. Bidders who fail to make such Good Faith Effort may have their bid rejected on the basis of being non-responsive to meeting the established TSB goal.

1102.19 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

A. General.

1. EEO and AA requirements will apply to all contracts let by the Department that equal or exceed $10,000.00. The requirements will also apply to any subcontracts that equal or exceed $10,000 if the subcontract involves a contract let by the Department.

2. On Federal-aid projects 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 this specification and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO/AA standards for the Contractor's company-wide activities for contracts let by the Department and for subcontracts involved in such contracts. 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 both incorporated by reference in contracts and subcontracts utilized by the Department.

3. On non-Federal-aid projects the Iowa Civil Rights Act of 1965, as amended; current Iowa Administrative Rules; and Iowa Executive Order 15 shall constitute the specific EEO/AA standards for the Contractor's company-wide activities for contracts let by the Department and for subcontracts involved in such contracts.

B. Definitions.

1. Affirmative Action.
a. The efforts exerted toward achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include,

but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training.

b. Women and minorities are both considered disadvantaged persons. They are however considered distinct and separate groups in regard to employer's good faith recruitment efforts.

2. Equal Employment Opportunity.
In hiring and employment practices, the absence of discrimination on the basis of race, religion, sex, color, national origin, age, disability, or other protected classification under Federal, state, or local law.

3. Journey-Worker.
A trained worker who is capable of performing all duties within a given job classification or craft.

4. Minority.
A citizen or lawful permanent resident of the United States and who is a member of one of the following racial groups:

a. **Black:** All persons having origins in any of the Black racial groups not of Hispanic origin.

b. **Hispanic:** All persons of Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish culture or origin, regardless of race.

c. **Asian or Pacific Islanders:** All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

d. **American Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America.

5. New Hire.
A new hire is not a recall or a rehire, and was originally hired within the previous 12 months. It is not required that the new hire was originally hired for a contract let by the Department, but they shall have worked on a contract let by the Department within the previous 12 months.

6. Recall.
A person who, after being involuntarily laid off by a contractor, is re-employed by that same contractor when the layoff is no longer necessary. In addition, to be defined as a recall, at least one of the following two criteria must have been met during the layoff period:

a. The former employee must have had no employment with other heavy highway contractors.

b. The former employee's health insurance or pension plan must have been maintained by the re-employing contractor.

7. Rehire.
A person who, after voluntarily terminating employment with a contractor because of a change in working conditions or circumstances, returns to employment with the same contractor. In addition, to be defined as a rehire, at least one of the following two criteria must have been met during the period of severed employment:

a. The former employee must have had no employment with other heavy highway contractors.

b. The former employee's health insurance or pension plan must have been maintained by the re-employing contractor.

8. Segregated Facilities.
Employee facilities that are separated on the basis of race, religion, color, national origin, age, or disability either by explicit directive or by fact because of habit, local custom, or any other reason. Examples of such facilities include, but are not limited to, the following: waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities. The only exception to this definition is the provision of special accommodations, such as handicapped parking spaces, to make the workplace more accessible for those who are disabled.

9. **Trainee/Apprentice.**
   A person receiving on-the-job training through a program approved or accepted by the United States Department of Labor, the FHWA, or the Department.

C. **Contractor's/Subcontractor's EEO/AA Policy.**
The Contractor/subcontractor, with the exception of manufacturers, suppliers, and hauling firms, shall have an EEO/AA policy approved by the Department prior to being awarded a contract or subcontract that equals or exceeds $10,000.00. The Contractor's/subcontractor's EEO/AA policy shall be re-approved on an annual basis through either the preparation or completion of a new EEO/AA policy or the review of an existing policy. When requesting re-approval under the latter option, the Contractor/subcontractor shall submit a written statement indicating that the existing policy has been reviewed. It shall further state that the policy is current with no revisions or, if revisions have been made, the revisions shall be signed and dated by their EEO/AA Officer and another company officer. The Contractor's/subcontractor's EEO/AA policy shall also include the following items:

1. **The EEO/AA Operating Statement.**
   "It is the policy of this Company to ensure 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, pre-apprenticeship, and/or on-the-job training."

2. **Designation and Job Responsibilities of the Company's EEO/AA Officer.**
   The Contractor/subcontractor shall designate an EEO/AA Officer to be responsible for and capable of effectively administering and promoting the Contractor's/subcontractor's EEO/AA program. Adequate authority and responsibility shall also be assigned to the EEO/AA Officer in order to perform these duties.
3. **Affirmative Action Recruitment Plan.**
   The Contractor's/subcontractor's Affirmative Action Recruitment Plan shall be designed to seek out and obtain applications from women and minorities for all job openings and promotions. The plan shall also include the following provisions:
   a. At a minimum, the Contractor/subcontractor shall utilize one or more Iowa Workforce Development Centers or State Employment Services. When feasible, the Contractor/subcontractor shall commence a recruitment effort no later than 1 month prior to the date on which a hiring decision will be made.
   b. All solicitations and advertisements for employees, placed by or on behalf of the Contractor/subcontractor, shall include the notation: "An Equal Opportunity Employer."

4. **Identification of Recruitment Methods.**
   When the Contractor/subcontractor is unable to obtain a reasonable flow of applications from women and minorities, the Affirmative Action Recruitment Plan shall identify specific methods used to exhaust all possible avenues of recruitment. Such methods may include:
   a. Maintaining a list of the names and locations of publications that have a large circulation among minority groups in the area from which the workforce would normally be derived, and placing recruiting advertisements in these publications.
   b. Utilizing public and private employee referral sources likely to yield applications from qualified women and minorities.
   c. If unionized, a strategy for obtaining union referrals of women and minorities through the Contractor's/subcontractor's collective bargaining agreement. If the union is unable to provide the Contractor/subcontractor with a reasonable flow of referrals of women and minorities within the time limit set forth in the collective bargaining agreement or other contract or understanding, the Contractor/subcontractor will go through independent recruitment efforts. As part of those efforts, the Contractor/subcontractor will attempt to obtain qualified, qualifiable, and/or trainable women and minorities, and will fill employment vacancies without regard to race, religion, sex, color, national origin, age, or disability.
   d. A plan for encouraging present employees to recruit women and minorities.
   e. Other specific actions the Contractor/subcontractor will take to ensure that a pool of woman and minority candidates is available from which to hire.

5. **Facility Certification.**
The Contractor/subcontractor shall certify that nonsegregated facilities are provided for their employees. In addition, certification shall state that no employee will be denied access to adequate facilities on the basis of sex or disability. If the Contractor/subcontractor provides employees with any facility that is segregated, work at the site with the segregated facility may be suspended.

D. Training and Promotion Plan.

1. **General.**
If the Contractor/subcontractor is planning to provide any training, the Contractor/subcontractor shall have a training and promotion plan. If the Contractor/subcontractor does not have a training and promotion plan, the Contractor's/subcontractor's EEO/AA policy shall state there is no plan. The Contractor/subcontractor shall have a plan, however, if they later decide to provide training for new or existing employees. Any training and promotion plan that is required shall include the following:
   - **a.** This training specification supplements subparagraph 7e of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification (Executive Order 11246)" and is in implementation of 23 U.S.C. 140(a).
   - **b.** The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.
   - **c.** As part of the Contractor's EEO/AA program, the Contractor shall provide training to a prescribed number of trainees. Training new and existing employees for the purpose of promotion is to be considered a part of doing business with the Department. No reimbursement payment will be made to the Contractor.
   - **d.** The number of trainees required shall be determined by the Contractor. The number of trainees will be determined by using the previous 3 year average of work actually performed by the Contractor including all prime and sub contract work with the Department. The Contractor shall provide the following number of trainees while under contract with the Department:

Under $4,999,999	No trainee requirement
$5,000,000 to $9,999,999	1 trainee
$10,000,000 to $19,999,9992	2 trainees
$20,000,000 to $29,999,9993	3 trainees
$30,000,000 or more	4 trainees

   - **e.** These training requirements are minimums and the Contractor is encouraged to have more than the minimum.
   - **f.** Completion of this required training shall be the responsibility of the Contractor and shall not be assigned to a Subcontractor.
   - **g.** This information may be verified by the Department.

2. **Work Classifications.**
The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. The Contractor will be credited for each trainee employed on the contract work who is currently enrolled or becomes enrolled in an approved program.

3. **Minorities and Women.**
Training and upgrading of minorities and women toward journeymen status is a primary objective of this training specification. Accordingly, the Contractor shall make every effort to enroll minority trainees and women by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that these persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps taken in pursuance of recruitment, prior to a determination of the Contractor being in compliance with this training specification.

4. **Training.**
   - **a.** An employee shall not be employed as a trainee in any classification in which an employee has successfully completed a training course leading to journeyman status or in which an employee has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other

suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

b. The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the Department. The Department will approve a program, if it is determined to meet the equal employment opportunity and affirmative action obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, or Bureau of Apprenticeship and Training, will also be considered acceptable provided it is being administered in a manner consistent with the equal employment and affirmative action obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the Department prior to commencing work on the classification covered by the program.

c. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions, such as office engineers, estimators, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and is approved by the division office of the Federal Highway Administration. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

5. Payment of Trainees.

On contracts with a predetermined wage rate, trainees must be paid at least the journeyman's wage unless the trainee is enrolled in an approved U.S. Department of Labor (DOL) training program. Trainees in approved U.S. DOL training programs shall be paid the appropriate rates approved by the U. S. DOL or Iowa DOT.

6. Compliance.

a. A Contractor's compliance will be based on the number of trainees completing a training program during the construction season.

b. A Contractor that fails to meet the determined number of trainees will be allowed the opportunity to show that a Good Faith Effort was made trying to meet the training requirement. If the Contractor fails to show that a Good Faith Effort was made in meeting the training requirement, the Contractor may be suspended from bidding projects with the Department.

7. Records.

a. General.

1) The Contractor shall furnish the trainee a copy of the program the trainee will follow during the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

2) The Contractor shall provide for the maintenance of records and furnish a report once per construction year documenting their performance under this training specification. The report shall be submitted to the Office of Contacts with the Annual Company Wide Report of Total Employment on All Federal and Non-Federal Projects Let By the Iowa Department of Transportation. This report shall include but is not limited to, names of trainees, job classifications, gender, ethnic background, future status with the company and hours of training received. The Office of Contracts may verify this information with the trainee.

b. Designation of Trainee and Promotional Job Classifications.

For each designated classification, the plan shall identify benchmarks specifying the types of work an employee will be doing after various intervals of time. For example, the plan might describe increasingly skilled levels of work to be performed after every 100 hours of training.

c. Notice of On-the-Job Training Programs and Training Entrance Requirements.

Methods to advise employees and job applicants of training programs and training entrance requirements.

d. Review of Training and Promotion Potential.
Methods to periodically review the training and promotion potential of women and minority employees, thus ensuring they have the opportunity to be upgraded.

e. Training Progress Review.
A method to routinely review the progress of each employee enrolled in training.

f. Maximum Trainee/Journey-Worker Ratio.
The maximum trainee/journey-worker ratio, by craft, that the Contractor/subcontractor intends to utilize; a maximum ratio of 1:3 is suggested.

E. Dissemination of Policy.
All members of the Contractor's/subcontractor's staff who are involved in the hiring, supervision, promotion, and discharge of employees shall be made knowledgeable of the Contractor's/subcontractor's EEO/AA policy. The following actions shall be taken as a minimum:

1. Periodic Review of Contractor's/Subcontractor's EEO/AA Policy.
Periodic meetings of supervisory and personnel office employees shall be conducted at least once every 6 months, at which time the Contractor's/subcontractor's EEO/AA policy and its implementation will be reviewed and explained. The meetings shall be conducted by the EEO/AA Officer.

2. Instruction of New Supervisory and Personnel Office Employees.
The EEO/AA Officer shall provide all new supervisory and personnel office employees with thorough instruction, covering all major aspects of the Contractor's/subcontractor's EEO/AA obligations, within 30 calendar days following the date they first reported for duty with the Contractor/subcontractor.

3. Instruction in Recruitment Procedures.
All personnel directly engaged in recruiting shall be instructed, by the EEO/AA Officer, in the Contractor's/subcontractor's procedures for locating and hiring women and minorities.

4. Employee Notification of EEO/AA Policies and Procedures.
The Contractor's/subcontractor's EEO/AA policy, as well as the procedures for its implementation, shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Placement of EEO/AA Notices and Posters.

a. The Contractor shall place the following notices and posters on a bulletin board at the project site in areas readily accessible to employees and potential employees.

1) Notice provided by the Iowa DOT listing the names, addresses, and phone numbers of the Contractor and all approved subcontractors.
2) Publication OFCCP 1420, stating "Equal Employment Opportunity is THE LAW".
3) Form FHWA-1022, regarding any false statement, false representation, false report, or false claim made in connection with any Federal or Federal-aid highway or related project.
4) Form FHWA-1495, regarding wage rate information for a Federal-aid highway project, required only if Davis/Bacon predetermined wage rates apply to the project.
5) Current Iowa Predetermined Wage Rate Decision, identifying Davis/Bacon predetermined wage rates for the State of Iowa. The wage rate decision shall be arranged on a bulletin board so that all wage rate and classification information is visible.
6) IOSH 30 Safety and Health Protection on the Job.
7) WH-1420 Your Rights Under the FMLA Act of 1993.
8) WH-1462 Notice: Employee Polygraph Protection Act.
9) Form FHWA-1495A (Spanish version of form FHWA-1495), stating "Informacion Sobre Escalas De Salarios Proyecto De Carretera Con Ayuda Federal", required only if Davis/Bacon predetermined wage rates apply to the project.*
10) Form EEOC-P/S-1 (Spanish version of form EEOC-P/E-1), stating "La Igualdad de Oportunidades De Empleo Es LA LEY".*

* These forms are not required, but it is strongly recommended that these two Spanish notices be posted whenever the company employs and/or anticipates receiving applications from those who speak Spanish.

b. All required postings shall be in place when work commences on a project and shall remain in place through completion of the project.

c. Progress payments to the Contractor will not be made until these notices and posters are displayed at the required site.

F. Personnel Actions.

Wages, working conditions, employee benefits, and personnel actions of every type including hiring, upgrading, promotion, transfer, demotion, layoff, and termination shall be made without regard to race, color, religion, sex, national origin, age, or disability. The following procedures shall be followed by the Contractor/subcontractors. The EEO/AA Officer may appoint a designee to perform these functions.

1. Periodic Inspection of Project Sites.

Project sites shall be periodically inspected by the EEO/AA Officer to ensure that there is no discriminatory treatment of project site personnel with regard to employee facilities and working conditions. The EEO/AA Officer shall document the dates of these inspections and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

2. Periodic Evaluation of Wage Differentials.

Wage differentials within each job classification shall be periodically evaluated by the EEO/AA Officer to determine whether there are any discriminatory wage practices. The EEO/AA Officer shall document the dates of these evaluations and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

3. Periodic Review of Selected Personnel Actions.

Selected personnel actions shall be periodically reviewed by the EEO/AA Officer to determine whether there is evidence of discrimination. The EEO/AA Officer shall document the dates of these reviews and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

4. Review of Supervisors.

An annual review shall be conducted to discuss each supervisor's performance with regard to the Contractor's/subcontractor's EEO/AA policy. The review shall include a discussion of each supervisor's adherence to the provisions of that policy.

5. Investigation of Each Complaint, with Corrective Action if Necessary.

An investigation of each discrimination complaint shall be initiated within 14 calendar days following receipt of the complaint. If the investigation indicates that discrimination exists, which may affect persons other than the complainant, corrective action shall include the other persons in addition to the complainant. Upon completion of the investigation, the Contractor/subcontractor shall inform the complainant and each affected person of all their avenues of appeal.

G. Records and Reports.

A Contractor/subcontractor shall keep records to document compliance with the EEO/AA requirements. The records shall be retained for a period of 3 years following completion of the contract work, and shall be available for inspection, at reasonable times and places, by authorized representatives of the Department and the FHWA.

1. The Contractor/subcontractor shall keep records to document the following:

a. All of the Contractor's/subcontractor's efforts and progress toward locating, hiring, training, qualifying, and upgrading women and minorities. A detailed summary of these efforts and progress shall include a list providing the name, address, phone number, date of contact, and contact person of each referral source and each publication in which job vacancies were posted. In addition, dated copies shall be kept of all job orders, tear sheets, and newspaper ads, along with the specific job classification that was posted in each of these employment notices.

b. All company efforts and progress toward cooperating with unions, community organizations, and other recruitment sources for the purpose of increasing employment opportunities for women and minorities. A current file, providing the following information, shall also be maintained:

1) Name, address, and phone number of each woman and minority off-the-street applicant.

2) Name, address, and phone number of each woman and minority referred from a union, community organization, or other recruitment source.

3) The date on which action was taken with respect to each of the above individuals. If an individual was referred to the Contractor/subcontractor, but not employed by the Contractor/subcontractor, the reason(s) for not hiring the individual shall be documented. Similarly, if an individual was sent by the Contractor/subcontractor to a union hiring hall for referral, but not referred back to the Contractor/subcontractor by the union, the reason(s) for not making the referral shall be documented. Any additional actions taken with regard to either of these referrals shall also be documented.

c. Employment data, arranged both by race and sex within each race, for each of the following:

1) The number of individuals employed within each of the Contractor's/subcontractor's job categories.

2) The number of individuals employed as apprentices in all of the Contractor's/subcontractor's job categories combined.

3) The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined. The data shall be provided for any employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department during the week of peak employment for the previous 12 months. A grid of these required kinds of data is illustrated on Form 650037 7-99 (Iowa PR-1391); see Article 1102.19, G, 2, b. The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined. The data shall be provided for any employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department during the week of peak employment for the previous 12 months. A grid of these required kinds of data is illustrated on Form 650037 7-99 (Iowa PR-1391); see Article 1102.19, G.

d. The name, race, sex, job classification, date of employment, and specific referral source(s) of each new employee utilized on any project let by the Department during the previous 12 months.

e. The name, race, sex, job classification, date of employment, date of last job change, hours worked during the previous 12 months, and current rate of pay of each employee utilized on any project let by the Department during the previous 12 months.

f. The name, race, and sex of each trainee and each employee who was terminated, transferred, demoted, or promoted while utilized on any project let by the Department during the previous 12 months. Records shall also include the dates for each of these actions, the previous and/or new job classifications, and the wage rates corresponding to those classifications.

g. The maximum trainee/journey-worker ratio, by craft, that was utilized on all projects let by the Department during the previous 12 months.

h. All meetings of supervisory employees that include a discussion, during the previous 12 months, of EEO/AA topics and requirements. Records shall also document the thoroughness of instruction explaining the company's EEO/AA obligations to new supervisory employees within 30 calendar days of their hiring or promotion date. Documentation of all meetings and training sessions shall be dated and signed by those in attendance. It shall also identify the specific EEO/AA topics that were discussed.

i. The provision, for all personnel directly engaged in recruitment, of thorough instruction on the company's procedures for locating and hiring women and minorities. The instruction shall be given by the EEO/AA Officer within the past 12 months. Documentation of the instruction shall be dated and signed by those in attendance, and shall also include the specific EEO/AA topics that were discussed.

j. The provision of information regarding the Contractor's/subcontractor's EEO/AA policy and the company's procedures for implementing the policy. The information shall be provided to all employees. Documentation should include the name of each employee receiving the information, along with the method and date of its distribution.

k. All EEO/AA on-site inspections by the EEO/AA Officer, or designee, on projects let by the Department during the previous 12 months. Observations made during the inspection shall include the following: poster reviews; identification of segregated and non-segregated facilities; stated, observed, or overheard employee EEO/AA concerns; and the method(s) of addressing those concerns.

l. Periodic evaluation of wage differentials within each job classification utilized on projects let by the Department during the previous 12 months.

m. Periodic review of selected personnel actions(s) to determine whether there is evidence of discrimination on projects let by the Department during the previous 12 months.

n. All pending Equal Employment Opportunity Commission, Department of Justice, and local and state Human/Civil Rights Agency cases, including a copy of each complaint and a summary of the Contractor's/subcontractor's investigation into each complaint.

o. Initiation of an investigation into each complaint of discrimination within 14 calendar days of the receipt of each complaint.

2. The Contractor/subcontractor shall submit the following documentation to the Office of Contracts:

a. The Contractor's/subcontractor's EEO/AA policy, shall be submitted annually and include the following:

1) Age of the firm.

2) Annual gross receipts of the firm may be reported by designating the appropriate bracket below:

Less than $500,000
$500,000 - $1,000,000
$1 million - $2 million
$2 million - $5 million
$5 million - $10 million
$10 million - $20 million
$20 million - $50 million
over $50 million

b. Two annual reports, submitted in July of each year, which are titled "Federal-Aid Contractor's Annual Employment Report" and "Annual Company Wide Report of Total Employment on All Federal and Non-Federal Projects Let by the Iowa Department of Transportation." Report form numbers are 650038 7-97 (Iowa PR-1391) and 650039 5-97 (Iowa PR-1391), respectively. The reports shall provide employment data, arranged both by race and sex within each race, for each of the following:

1) The number of individuals employed within each of the Contractor's/subcontractor's job categories.

2) The number of individuals employed as apprentices in all of the Contractor's/subcontractor's job categories combined.

3) The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined.

The annual data shall be provided during the last week in July for any employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department. A grid of these required kinds of data is illustrated on both of the required report forms.

c. Immediate notification that a union having a collective bargaining agreement, contract, or other understanding with the Contractor/subcontractor, has failed to refer to the Contractor/subcontractor a minority or woman who had been sent to the union hall by the Contractor/subcontractor for help in obtaining employment. The Office of Contracts shall also be notified if the Contractor's/subcontractor's efforts to meet EEO/AA obligations have been impeded in any other way by a union referral process.

H. Non-compliance with EEO/AA Requirements.

Compliance with the Department's EEO/AA specifications and/or the Contractor's/subcontractor's EEO/AA policy will be enforced as follows:

1. Compliance through Informal Means, Including Conciliation and Persuasion.

If a Contractor/subcontractor is found to have violated the Department's EEO/AA specifications and/or the Contractor's/subcontractor's EEO/AA policy, reasonable efforts will be made, whenever possible, to secure the Contractor's/subcontractor's compliance through informal means, including conciliation and persuasion. Such efforts may require a written commitment

by the Contractor/subcontractor to correct violations through a plan of specified remedial actions.

a. Violations are considered to be either deficiencies or minor deficiencies. Any of the following is considered to be a deficiency, all other violations are considered to be minor deficiencies:

1) Hiring employees from another company.
2) Failure to engage in a good faith recruitment effort.
3) Failure to use training hours assigned to a project.
4) A finding of probable cause with regard to a civil rights complaint.
5) Failure to utilize project assigned training hours on contracts.
6) Refusal to submit an EEO/AA policy.
7) Refusal to allow access to premises for an on-site compliance review.

b. The form of written agreement utilized for correcting deficiencies is called a conciliation agreement, whereas the form of agreement for resolving minor deficiencies is called a letter of commitment. If a letter of commitment is violated, the violation may be corrected through either a conciliation agreement or an enforcement proceeding. Violation of a conciliation agreement may lead to either a notice to show cause or an enforcement proceeding.

2. Compliance through Enforcement Proceedings or a Notice to Show Cause.

If conciliation efforts are unsuccessful, administrative enforcement proceedings may be initiated or the Contractor/subcontractor may be issued a show cause notice. The show cause notice will require the Contractor/subcontractor to show, within 30 calendar days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. Enforcement proceedings may lead to a written notice prohibiting the violations, requiring the Contractor/subcontractor to provide whatever remedies are appropriate, and/or imposing sanctions. Such sanctions may include withholding progress payments; termination of a contract, in whole or in part; or suspension for an indefinite or specified period of time.

3. Compliance with Executive Order 11246.

The Office of Federal Contract Compliance Programs, within the United States Department of Labor, is the only party having authority to determine enforcement of and compliance with Executive Order 11246 requirements incorporated in contracts and subcontracts utilized by the Department. Included among these requirements are the equal opportunity clause, contained in 41 CFR 60-1.4; the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, contained in 41 CFR 60-4.2; and (3) the Standard Federal Equal Employment Opportunity Construction Contract Specifications, contained in 41 CFR 60-4.3.