



# North Dakota Department of Transportation

Grant Levi, P.E.  
*Director*

Jack Dalrymple  
*Governor*

January 24, 2014

## ADDENDUM 1 – JOB 16

TO: All prospective bidders on project PM-5-999(013), Job No. 16 scheduled for the February 7, 2014 bid opening.

The following proposal revision shall be made:

Proposal Revision:

**Add Special Provision 1316(08) – TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS.**

This addendum is to be incorporated into the bidder's proposal for this project.

A handwritten signature in black ink, appearing to read "Cal J. Gendreau".

CAL J. GENDREAU – CONSTRUCTION SERVICES ENGINEER

80:plm

Enclosure

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**  
**SPECIAL PROVISION**  
**TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS**  
**PM-5-999(013) – PCN 20577**

This Special provision defines the core crew, TERO fees, and the Indian preference requirements for the Project listed above. This project consists of approximately 810 miles of pavement markings, a portion of which is within the exterior boundaries of the Standing Rock Reservation.

The Contractor and Subcontractors must comply with Tribal laws as long as the Tribal laws are in compliance with state and federal requirements.

**CORE CREW**

The Contractor and Subcontractor shall choose a core crew and utilize it on the Project listed above. The core crew will consist of the following operators and key personnel for the pavement marking operations:

**Pavement Marking Operations:**

- 1 Painter
- 1 Follow Vehicle Driver
- 1 Truck Driver

The successful Bidder will be allowed to fill these key positions with personnel of his/her choosing.

**WORK FORCE**

The Contractor and all Subcontractors doing work on this Project shall extend preferential employment to Indians. The Contractor and all Subcontractors shall hire at least 75% of all positions (over and above the Core Crew) and 100% of their Group 1-4 Laborers through the Standing Rock Reservation TERO office.

Each Contractor and Subcontractor shall prepare a list of workers needed to complete the labor force as defined above. This list shall be submitted to the TERO office at least 72 hours (not including Saturday and Sunday) prior to commencement of construction activities. The TERO office shall then see that the qualified employees are available for work at the time and date indicated by the Contractor. The term qualified employees cannot be used to eliminate or discriminate against any potential Indian employees.

If any of the employees have not reported for work within 24 hours of start-up time, the Contractor shall be free to hire by his/her own methods. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers.

After construction activities have commenced, requests for additional and replacement workers shall be made to the TERO office. The TERO office shall have 24 hours to furnish such employees. If the employees are not provided within this time, the Contractor will be at liberty to do his/her own hiring. The Contractor must abide by the Indian preference requirements when hiring additional and replacement workers. After the Contractor has hired an additional or replacement employee or subcontractor, the Contractor will be permitted to retain this employee or subcontractor through completion of the Project. The Contractor will not be required to displace workers or subcontractors on the Project.

**FEES**

The established Tribal Employment Rights (TERO) fee is two percent (2%) of and the established TERO Training fee is one-half percent ( $\frac{1}{2}\%$ ) of the Contract amount associated with work inside the exterior boundaries of the Standing Rock Reservation, resulting in a total of two and one-half percent ( $2\frac{1}{2}\%$ ) in taxes and fees to be assessed to the applicable portions of the Contract.

For project **PM-5-999(013)**, nine tenths percent (0.9%) of this project lies within the boundaries of the Standing Rock Reservation. However, NDDOT policy is to use a minimum of ten percent (10%) for TERO calculations. Therefore, the Contractor shall pay a TERO fee in the amount of 10% of the established  $2\frac{1}{2}\%$  rate, or 0.250% of the total contract amount. **The fee shall be paid at a rate of 0.250% of each progressive estimate.** Payment shall be made within two weeks of receipt of progress payment.

The TERO fee and training fee shall be bid as incidental to the Contract as a whole.

The Contractor shall make payment to:

TERO Office  
Standing Rock Sioux Tribe  
P.O. Box D  
Fort Yates, ND 58538

**TERO COMPLIANCE**

Contract compliance is the responsibility of the North Dakota Department of Transportation, and the Department has the exclusive right to suspend construction operation on this Project for any instances of noncompliance, including TERO issues. If there is reason to believe that the Contractor or Subcontractors are violating the requirements of the Special Provision, the TERO office will notify the Department. The Department, working with the TERO Office, will resolve those issues with the Contractor or Subcontractor.

Contractor will be required to provide proof of payment to the Engineer before final acceptance of the project.

MEMORANDUM OF UNDERSTANDING

PM-5-999(013) – PCN 20577

Be it understood that the Standing Rock Sioux Tribe and the North Dakota Department of Transportation (NDDOT) mutually agree in the award of the above-mentioned project contract to the contractor determined by the North Dakota Department of Transportation (NDDOT) to be the successful bidder. This memorandum is consistent with and does not supersede or eliminate any requirements specified in SP 1316(08), which is part of the bidding proposal for this contract.

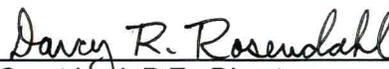
Conditions are as follows:

1. Employment by the prime contractor of residents and subcontractors of the Standing Rock Indian Reservation will be as outlined in SP 1316(08).
2. Core crew of the contractor will be as outlined in SP 1316(08).
3. The only fees on the contract will be a TERO fee and training fee as outlined in SP 1316(08).
4. No contractor or subcontractor shall be required to pay any tribal tax or license fee, other than those set forth above.
5. Employees of the NDDOT or its agents, hired to perform professional engineering services for the NDDOT, (e.g. consulting engineers, testing firms, etc.) will not be subject to reservation taxes, fees, permits, or TERO provisions.

NDDOT will provide copies of the payment estimates to the Tribe.

 *PCN*  
\_\_\_\_\_  
Standing Rock Sioux Tribe  
Tribal Chair

12-27-13  
Date

*for*   
\_\_\_\_\_  
Grant Levi, P.E., Director  
North Dakota Department of Transportation

14 JAN 2014  
Date

  
\_\_\_\_\_  
Approved as to Substance by:  
Mark Gaydos, P.E.  
NDDOT, Environmental & Transportation Services

1/13/14  
Date

