North Dakota Department of Transportation

Grant Levi, P.E.
Director

Jack Dalrymple
Governor

March 30, 2016

ADDENDUM 1 – JOB 39

TO: All prospective bidders on project SS-9-999(366), Job No. 39 scheduled for the April 8, 2016 bid opening.

The following request for proposal revision shall be made:

Request for Proposal Revisions:

Add Special Provision 260(14) TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

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

For CAL J. GENDREAU – CONSTRUCTION SERVICES ENGINEER
80:dch
Enclosure

608 East Boulevard Avenue • Bismarck, North Dakota 58505-0700
Information: 1-855-NDROADS (1-855-637-6237) • FAX: (701) 328-0310 • TTY: 711 • www.dot.nd.gov

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) REQUIREMENTS

Project SS-9-999(366) – PCN 21392

This Special Provision defines the core crew, TERO fees, and the Indian preference requirements for the Project listed above. This project consists of striping highways within the exterior boundaries of the Fort Berthold 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 striping operations:

Pavement Marking Operations:

1	Painter
1	Grooving Machine Operator
1	Follow Vehicle Driver
1	Truck Driver

Traffic Control Operations:

1	Foreman
1	Traffic Control Supervisor
1	Watch Person

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

WORK FORCE

The Contractor and all Subcontractors performing 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 Fort Berthold 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 AND LICENSES

The established Tribal Employment Rights (TERO) fee is two percent (2%) of and the established TERO Training fee is one-half percent (½%) of the Contract amount associated with work inside the exterior boundaries of the Fort Berthold Reservation, resulting in a total of two and one-half percent (2½%) in taxes and fees to be assessed to the applicable portions of the Contract.

For project SS-9-999(366), forty percent (40.0%) of this project lies within the boundaries of the Fort Berthold Reservation. Therefore, the Contractor shall pay a TERO fee in the amount of 40.0% of the established 2½% rate, or 1% of the total contract amount. The fee shall be paid at a rate of 1% of each progressive estimate. Payment shall be made within two weeks of receipt of progress payment.

The Contractor shall obtain a construction TERO License at a cost of $5,000 per year.
The Subcontractor shall obtain a construction TERO License at a cost of $1,000 per year.

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

The Contractor shall make payment to:

TERO Office
Three Affiliated Tribes
P.O. Box 488
New Town ND 58763

MHA DOT will not require the Contractors or Subcontractors to obtain any permits for work performed on project SS-9-999(366).

If the Contractors or Subcontractors perform work not associated with the contract for project SS-9-999(366), the Contractors or Subcontractors will need to contact the MHA DOT at:

MHA DOT
Three Affiliated Tribes
PO Box 1693
New Town, ND 58763

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.

NDDOT
ORIGINAL

MEMORANDUM OF UNDERSTANDING

Project SS-9-999(366) – PCN 21392

Be it understood that the Three Affiliated Tribes 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 NDDOT to be the successful bidder. This memorandum is consistent with and does not supersede or eliminate any requirements specified in SP 260(14), which is part of the contract for this project.

Conditions are as follows:

1. Employment by the prime contractor of residents and subcontractors of the Three Affiliated Tribes will be as outlined in SP 260(14).

2. Core crew of the contractor will be as outlined in SP 260(14).

3. The only fees on the contract will be a TERO fee, training fee and license fees as outlined in SP 260(14).

5. No contractor or subcontractor shall be required to pay any tribal tax or license fee, other than those set forth above.

6. 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.

Mark N Fox
Three Affiliated Tribes
Chairperson

3/22/16
Date

Grant Levi
Grant Levi, P.E., Director
North Dakota Department of Transportation

3/29/16
Date

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

12/14/15
Date

APPROVED as to execution this
28 day of March 20 16
ATTORNEY GENERAL
By: [illegible]
SPECIAL ASST. ATTORNEY GENERAL