**NO. 1**

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

# REQUEST FOR PROPOSAL

**COUNTY FEDERAL AID PROJECT NO. SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)**

6.053 Miles

CEMETERY ROAD RECONSTRUCTION

CMC 0119 FROM HETTINGER, NORTH 6 MILES

ADAMS COUNTY

DBE Race Conscious Goal - 15.00%

**BID OPENING:** The bidder's proposal will be accepted via the Bid Express on-line bidding exchange at www.bidx.com until **09:30AM Central Time on May 13, 2016.**

Prior to submitting a Proposal, the Bidder shall complete all applicable sections and properly execute the Proposal Form in accordance with the specifications.

**Proposal Form of:**

_____
(Firm Name)

_____
(Address, City, State, Zipcode)

(For official use only)

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**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

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The company, firm, corporation, or individual hereby acknowledges that it has designated a responsible person or persons as having the authority to obligate the company, firm, or individual, through electronic or paper submittal, to the terms and conditions described herein and in the contract documents. The designated responsible person submitting this proposal shall be hereafter known as the bidder. By submitting this proposal, the bidder fully accepts and agrees to all the provisions of the proposal. The bidder also certifies that the information given in this proposal is true and the certifications made in this proposal are correct.

The bidder acknowledges that they have thoroughly examined the plans, proposal form, specifications, supplemental specifications, special provisions and agrees that they constitute essential parts of this proposal.

The bidder acknowledges that all line items which contain a quantity shall have a unit price bid. Any line item which is bid lump sum shall contain a lump sum bid price.

The bidder acknowledges that they understand that the quantities of work required by the plans and specifications are approximate only and are subject to increases and decreases; the bidder understands that all quantities of work actually required must be performed and that payment therefore shall be at the prices stipulated herein; that the bidder proposes to timely furnish the specified materials in the quantities required and to furnish the machinery, equipment, labor and expertise necessary to competently complete the proposed work in the time specified.

**NON-COLLUSION AND DEBARMENT CERTIFICATION**

The bidder certifies that neither he/she, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid.

By submitting this proposal, the bidder certifies to the best of his/her knowledge and belief that he/she and his/her principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property

**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

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c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph b. of the certification; and
d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or Local) terminated for cause or default

Where the prospective bidder is unable to certify to any of the statements in this certification, the bidder shall submit an explanation in the blanks provided herein. The explanation will not necessarily result in denial of participation in a contract:

Explanation:_____
_____
_____
_____

If the prequalified bidder's status changes, he/she shall immediately submit a new fully executed non-collusion affidavit and debarment certification with an explanation of the change to the Contract Office prior to submitting the bid.

Failure to furnish a certification or an explanation will be grounds for rejection of a bid.

**BID LIMITATION (Optional)**

The bidder who desires to bid on more than one project on which bids are to be opened on the same date, and who also desires to avoid receiving an award of more projects than the bidder is equipped to handle, may bid on multiple projects and limit the total amount of work awarded to the bidder on selected projects by completing the "Bid Limitation".

The Bid Limitation must be filled in on each proposal form for which the Bidder desires protection. Each such proposal must be covered by a proposal guaranty.

The bid limitation can be made by declaring the total dollar value of work OR total number of projects a bidder is willing to perform.

The Bidder desires to disqualify all of his/her bids on this bid opening that exceed a total dollar value of

$_____

OR

that exceed a total number of _____ projects.

The Bidder hereby authorizes the Department to determine which bids shall be disqualified.

**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

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**PERMISSIBLE DISCOUNT (optional)**

Only when invited to do so in the Request for Proposal by Special Provision, Bidders are permitted to offer a discount on a specific project (discount project) if they are awarded the contract on one or more additional projects bid at the same bid opening time and date. The bidder must present the proposal so that it can be considered with or without the discount. The bid or discount offered on the "discount project" will not affect the determination of the low bid of any other project.

When discounts are offered, they must be presented as a reduction in the unit price for one or more items of work in the specified proposal (discount project).

Space for Offering Discounts:
_____
_____
_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

Item No:_____

Description:_____

Unit:_____

Proposal Quantity:_____ Unit Price Reduction: $_____ Discount: $_____

TOTAL DISCOUNT_____

It is understood that the discount will only apply if awarded under the conditions as listed above and signed by the bidder.

**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

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**RECEIPT OF ADDENDA ACKNOWLEDGEMENT**

We hereby acknowledge receipt of the following addenda:

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

Addendum #_____ Dated_____

**PROPOSAL GUARANTY**

A proposal guaranty is required. The proposal guaranty must comply with Section 102.09, "Proposal Guarantee" of the Standard Specifications.

TYPE OF PROPOSAL GUARANTY APPLIED TO THIS PROJECT (Check one):

_____ Annual Bid Bond*

_____ Single Project Bid Bond

_____ Certified or Cashier's Check

*Annual Bid Bond is required when submitting proposals electronically

# DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RGC)

North Dakota Department of Transportation, Civil Rights Division
SFN 52750 (Rev. 01-2015)

## FORM A

| Revision Date |
|---|
| |

| Contractor | | Phone |
|---|---|---|
| Job No. | Project No. | Bid Opening Date |

**NOTE:** This revised Form A represents a change in the bidders original Form A which was submitted electronically at the time of bid. Nevertheless, the bidder is bound by the proposal submitted at the time of bid, under NDDOT provisions, and thus the bidders proposal, the hard copy proposal, addenda, plans, standard specifications, supplemental specifications, and special provisions are part of the bid and contract.

For the life of the project, any changes in work listed here to be self-performed, to be performed by a DBE, or to be completed by a non-DBE subcontractor approved at the time of award must be approved in writing by the Civil Rights Division prior to commencement of any work. No payment will be made without written approval.

**PRINT ALL NUMBERS CLEARLY AND LEGIBLY.**

**LIST ALL DBE FIRMS WHO QUOTED YOUR FIRM ON THIS PROJECT IN SECTION 1, SECTION 2, and/or SECTION 3.**

## Section 1.

List **DBE** firms to be used on the project.

1. List DBE Firms to be used by the bidder toward the projects goal achievement.
2. List the DBEs to be used by subcontractors toward the project goal.
   - Include the subcontractor's Form A listing the DBEs to be used by the subcontractor.
3. List the spec & code item numbers to be performed by DBEs and the total dollar value of the contract.
   - Note whether the DBE firm is to perform only a portion of a spec & code item (supply, haul, place, etc.) and state the reason(s) the DBE is not being used for the entire item.
   - State the name of the contractor who will perform the remaining portion.
4. DBE bidders: List the work to be performed with “own forces and equipment.”
   - Separately list any work to be subcontracted to DBEs and any materials to be purchased from DBEs.

| DBE Firm | | |
|---|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = | |

| DBE Firm | | |
|---|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = | |

| DBE Firm | | |
|---|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = | |

Continued

FORM A (continued)

| DBE Firm | | |
|---|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = | |

| DBE Firm | | |
|---|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = | |

## Section 2:

List DBE firms not used because the bidder will self-perform or procure specific spec/code item numbers.

| DBE Firms not used; Bidder Self-Performing | Spec. & code item numbers or products to be supplied by the bidder |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

## Section 3.

List DBE firms not used due to bid differential and indicate which firm will be performing the work instead.

| DBE Firms not used, bid differential | Firms to be used instead of DBE |
|---|---|
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |

See DBE Race/Gender Conscious Special Provision for additional information. Email this form to

Subquotes@nd.gov or Fax to (701)328-0343

## BID ITEMS

**Project: SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)**

**Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.**

| Item No. | Spec No. | Code No. | Description | Unit | Approx. Quantity | Unit Price $$$$$ | Unit Price 000 | Amount $$$$$ | Amount 00 |
|---|---|---|---|---|---|---|---|---|---|
| 001 | 103 | 0100 | CONTRACT BOND | L SUM | 1. | | | | |
| 002 | 202 | 0135 | REMOVAL OF BITUMINOUS SURFACING | TON | 26,636. | | | | |
| 003 | 202 | 0169 | REMOVAL OF END SECTION-ALL TYPES & SIZES | EA | 1. | | | | |
| 004 | 203 | 0102 | COMMON EXCAVATION-TYPE B | CY | 27,355. | | | | |
| 005 | 203 | 0109 | TOPSOIL | CY | 13,628. | | | | |
| 006 | 216 | 0100 | WATER | M GAL | 1,803. | | | | |
| 007 | 251 | 0200 | SEEDING CLASS II | ACRE | 88. | | | | |
| 008 | 251 | 2000 | TEMPORARY COVER CROP | ACRE | 88. | | | | |
| 009 | 253 | 0101 | STRAW MULCH | ACRE | 176. | | | | |
| 010 | 261 | 0112 | FIBER ROLLS 12IN | LF | 6,370. | | | | |
| 011 | 261 | 0113 | REMOVE FIBER ROLLS 12IN | LF | 3,185. | | | | |
| 012 | 302 | 0100 | SALVAGED BASE COURSE | TON | 45,855. | | | | |
| 013 | 302 | 0244 | GRANULAR MATERIAL FOR SUBGRADE REPAIR | TON | 64,762. | | | | |
| 014 | 420 | 0090 | MC800 LIQUID ASPHALT | GAL | 52,765. | | | | |
| 015 | 420 | 0111 | CRS2P EMULSIFIED ASPHALT | GAL | 48,546. | | | | |
| 016 | 420 | 0143 | COVER COAT MATERIAL CL 42-MODIFIED | TON | 1,583. | | | | |

**BID ITEMS**

**Project: SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)**

**Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.**

| Item No. | Spec No. | Code No. | Description | Unit | Approx. Quantity | Unit Price $$$$$ | Unit Price 000 | Amount $$$$$ | Amount 00 |
|---|---|---|---|---|---|---|---|---|---|
| 017 | 420 | 0144 | COVER COAT MATERIAL CL 43-MODIFIED | TON | 1,217. | | | | |
| 018 | 420 | 0160 | BLOTTER MATERIAL CL 44 | TON | 426. | | | | |
| 019 | 702 | 0100 | MOBILIZATION | L SUM | 1. | | | | |
| 020 | 704 | 0100 | FLAGGING | MHR | 1,300. | | | | |
| 021 | 704 | 1000 | TRAFFIC CONTROL SIGNS | UNIT | 1,522. | | | | |
| 022 | 704 | 1052 | TYPE III BARRICADE | EA | 10. | | | | |
| 023 | 704 | 1060 | DELINEATOR DRUMS | EA | 10. | | | | |
| 024 | 704 | 1067 | TUBULAR MARKERS | EA | 100. | | | | |
| 025 | 704 | 1080 | STACKABLE VERTICAL PANELS | EA | 100. | | | | |
| 026 | 704 | 1185 | PILOT CAR | HR | 650. | | | | |
| 027 | 709 | 0151 | GEOSYNTHETIC MATERIAL TYPE R1 | SY | 52,252. | | | | |
| 028 | 714 | 5040 | PIPE CORR STEEL .064IN 30IN | LF | 10. | | | | |
| 029 | 714 | 5045 | PIPE CORR STEEL .064IN 36IN | LF | 5. | | | | |
| 030 | 752 | 0911 | TEMPORARY SAFETY FENCE | LF | 2,279. | | | | |
| 031 | 762 | 1104 | PVMT MK PAINTED 4IN LINE | LF | 85,088. | | | | |
| 032 | 766 | 0100 | MAILBOX-ALL TYPES | EA | 9. | | | | |

## BID ITEMS

**Project: SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)**

**Bidder must type or neatly print unit prices in numerals, make extensions for each item, and total. Do not carry unit prices further than three (3) decimal places.**

| Item No. | Spec No. | Code No. | Description | Unit | Approx. Quantity | Unit Price | | Amount | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | $$$$$ | 000 | $$$$$ | 00 |
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| | | | **TOTAL SUM BID** | | | | | | |

**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

**Type of Work:** CEMETERY ROAD RECONSTRUCTION

**County:** ADAMS

**Length:** 6.0530 Miles

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**TIME FOR COMPLETION:**

The undersigned Bidder agrees, if awarded the contract, to prosecute the work with sufficient forces and equipment to complete the contract work within the allowable time specified as follows:

**WORKING DAY CONTRACT:** **NA** working days are provided. The Department will begin charging working days beginning **NA** or the date work begins on the project site, whichever is earlier.

**CALENDAR DAY CONTRACT:** **NA** calendar days are provided. The completion date will be determined by adding **NA** calendar days to **NA** or the date work begins on the project site, whichever is earlier.

**COMPLETION DATE CONTRACT** The project completion date is **09/01/2016 *** . The Department provides a minimum of **NA** working days. The Department will begin charging working days beginning **NA** or the date work begins on the project site, whichever is earlier.

***THIS DATE IS FOR THE CRS2P SEAL COAT APPLICATION.**

**SEAL COAT MAINTENANCE SHALL BE PERFORMED FOR FIVE CALENDAR DAYS AFTER COMPLETION OF THE SEAL COATS WITH FINAL BROOMING TO BE COMPLETED AT THE END OF THE FIVE DAY MAINTENANCE PERIOD. THE CONTRACTOR SHALL COMPLETE THE PERMANENT PAVEMENT MARKINGS WITHIN 10 WORKING DAYS AFTER THE SEAL COAT APPLICATION.**

**LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE THE SEAL COAT APPLICATION BY THE COMPLETION DATE WILL BE CHARGED AT A RATE OF $1600.00 PER CALENDER DAY UNTIL COMPLETED. LIQUIDATED DAMAGES FOR FAILURE TO PERFORM MAINTENANCE OF THE SEAL COAT FOR FIVE CALENDAR DAYS AFTER COMPLETION OF THE SEAL COAT APPLICATION SHALL BE CHARGED AT A RATE OF $250 PER CALENDER DAY UNTIL COMPLETED. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE THE PERMANENT PAVEMENT MARKINGS WITHIN 10 WORKING DAYS AFTER THE SEAL COAT APPLICATION WILL BE CHARGED AT A RATE OF $400.00 PER WORKING DAY UNTIL COMPLETED.**

**ALL OTHER WORK SHALL BE COMPLETED BY OCTOBER 1, 2016. LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE ALL OTHER WORK BY OCTOBER 1, 2016 SHALL BE CHARGED IN ACCORDANCE WITH SECTION 108.07 B OF THE STANDARD SPECIFICATIONS.**

**Project:** SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)

**Type of Work:** CEMETERY ROAD RECONSTRUCTION

**County:** ADAMS

**Length:** 6.0530 Miles

**UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE (M/WBE):**
The undersigned Bidder certifies that the information given on behalf of the Bidder in Special Provision, "Utilization of Disadvantaged Business Enterprise" (M/WBE), is true and correct and that the bidder has met the assigned goals or has met the good faith effort requirements of the Special Provision.

**CONTRACT EXECUTION:**
The undersigned Bidder agrees, if awarded the contract, to execute the contract form and furnish a contract bond within fifteen calendar days, as determined by NDCC Section 1-02-15, after date of notice of award, in accordance with the provisions of Sections 103.05 and 103.06 of the Standard Specifications.

**AFFIDAVIT:**

**STATE OF _____ )**
**) ss.**
**COUNTY OF _____ )**

The undersigned bidder, being duly sworn, does depose and say that they are an authorized representative of _____
CONTRACTOR NAME
of _____ , a
MAILING ADDRESS

☐ Individual ☐ Partnership ☐ Joint Venture ☐ Corporation

and that they have read, understand, acknowledge, and accept the entire proposal form; and that all statements made by said bidder are true and correct.

_____ , TITLE _____
BIDDER MUST SIGN ON THIS LINE

_____
TYPE OR PRINT SIGNATURE ON THIS LINE

Subscribed and sworn to before me this day.

_____
COUNTY

(Seal)

_____ _____
STATE DATE

_____
NOTARY PUBLIC

My commission expires _____

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Job #1, Project No. SC-CNOA-CNOB-CNOC-0119(057)

Cemetery Road Reconstruction

## INDEX OF PROVISIONS


Road Restriction Permits

Hot Line Notice

NDDOT Supplemental Specifications dated October 1, 2015

Price Schedule for Miscellaneous Items dated October 1, 2014 (PS-1)

SP DBE Program - Race Conscious dated February 8, 2016

E.E.O. Affirmative Action Requirements dated March 15, 2014

Appendix A of the Title VI Assurances dated October 1, 2014

Appendix E of the Title VI Assurances dated October 1, 2014

SP Cargo Preference Act

Required Contract Provisions Federal Aid Construction Contracts
(Form FHWA 1273 Rev. May 1, 2012)

SP Certified Payrolls, revised 10-24-2015

Labor Rates from U.S. Department of Labor dated January 8, 2016

On-The-Job Training Program dated October 1, 2015

SP 40(14) Local Agency Contracts

SP 281(14) Buy America

SP 282(14) Certificate of Compliance

SP 5108(14) Permits and Environmental Considerations

SP Fuel Cost Adjustment Clause dated September 8, 2006

# NOTICE

**TO: All prospective bidders on all North Dakota Department of Transportation Highway Construction Projects.**

Contractors moving construction equipment to NDDOT highway construction projects are subject to the Road Restriction Policy with the following modifications:

A. The contractor may purchase up to 10 single trip permits for each NDDOT highway construction project at a cost ranging from $20 to $70 each. These permits must be purchased from the Motor Carrier Division of the Highway Patrol at the central office of the NDDOT in Bismarck, North Dakota.

B. The $1 per mile fee will not be charged for Gross Vehicle Weights (GVW) exceeding 105,500 pounds, 105,500 pounds, and 105,000 pounds for highways Restricted by Legal Weights, 8 Ton, and 7 Ton highways respectively.

C. The $5 per ton per mile fee will be charged only for loads exceeding a GVW of 130,000 pounds, 120,000 pounds, 110,000 pounds and 80,000 pounds for highways Restricted by Legal Weights, 8 Ton, 7 Ton, and 6 Ton highways respectively.

D. The maximum weights per axle for each of the class restrictions still apply. If it is shown that more axles cannot be added, movement may be authorized; however, a $1 per ton per mile fee will be charged for all weight in excess of the restricted axle limits.

E. These construction equipment single trip permits apply to State and US Highways only.

F. The District Engineers and Highway Patrol will select the route of travel.

G. Contractors moving equipment to other than NDDOT highway construction projects are subject to all fees as shown in the Road Restriction Permit Policy.

H. Contractors must call the Highway Patrol prior to movement of all overweight loads on all State and US Highways.

NDDOT ROAD AND VEHICLE RESTRICTIONS Date Revised 05-22-10

ROAD RESTRICTION PERMITS

Permits shall be issued for the movement of non-divisible vehicles and loads on state highways which exceed the weight limits during spring road restrictions. The issuance of permits may be stopped or posted weights changed at any time based on the varying conditions of the roadways. Permits can be obtained from the Highway Patrol.

| RESTRUCTION CLASSIFICATIONS WITH ALLOWABLE AXLE WEIGHTS AND GROSS VEHICLE WEIGHTS | PERMIT AND TON/MILE FEES |
|---|---|
| Highways Restricted by Legal Weight<br><br>Single Axle -- 20,000 lbs.<br>Tandem Axle -- 34,000 lbs.<br>Triple Axle -- 48,000 lbs.<br>4 Axles or more -- 15,000 lbs. per axle<br><br>Gross Vehicle Weight -- 105,500 lbs.<br><br>Note: The above weights apply to state highways restricted by legal weights, other than interstate highways, in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the $1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle. | Permit Fee: $20-$70 per trip<br><br>Ton Mile Fee:<br><br>105,501 lbs. to 130,000 lbs. GVW -- $1 per mile<br><br>Over 130,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceeding 130,000 lbs. GVW<br><br>Exceeding axle limits -- $1 per ton per mile |
| 8-Ton:<br><br>Single Axle -- 16,000 lbs.<br>Tandem Axle -- 32,000 lbs.<br>3 Axles or more -- 14,000 lbs. per axle<br><br>Gross Vehicle Weight -- 105,500 lbs. | Permit Fee: $20-$70 per trip<br><br>Ton Mile Fee:<br><br>105,501 lbs. to 120,000 lbs. GVW -- $1 per mile<br><br>Over 120,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceeding 120,000 lbs. GVW<br><br>Exceeding restricted axle limits -- $1 per ton per mile |
| 7-Ton:<br><br>Single Axle -- 14,000 lbs.<br>Tandem Axle -- 28,000 lbs.<br>3 Axles or more -- 12,000 lbs. per axle<br><br>Gross Vehicle Weight -- 105,500 lbs. | Permit Fee: $20-$70 per trip<br><br>Ton Mile Fee:<br><br>105,500 lbs. to 110,000 lbs. GVW -- $1 per mile<br><br>Over 110,000 lbs. GVW – $1 per mile **plus** $5 per ton per mile for that weight exceedi ng 110,000 lbs. GVW<br><br>Exceeding restricted axle limits -- $1 per ton per mile |
| 6-Ton:<br><br>Single Axle -- 12,000 lbs.<br>Tandem Axle -- 24,000 lbs.<br>3 Axles or more -- 10,000 lbs. per axle<br><br>Gross Vehicle Weight -- 80,000 lbs. | Permit Fee: $20-$70 per trip<br><br>Ton Mile Fee:<br><br>$5 per ton per mile for all weight exceeding 80,000 lbs. GVW<br><br>Exceeding restricted axle limits -- $1 per ton per mile |
| 5-Ton:<br><br>Single Axle -- 10,000 lbs.<br>Tandem Axle -- 20,000 lbs.<br>3 Axles or more -- 10,000 lbs. per axle<br><br>Gross Vehicle Weight -- 80,000 lbs. | No overweight movement allowed |

## SINGLE UNIT FIXED LOAD VEHICLES SUCH AS TRUCK CRANES AND WORKOVER RIGS

A. Permit Fee and Ton Mile Fee for Self-Propelled Fixed Load Vehicles.

1. Permit Fee: $25 per trip

2. $1 per ton per mile for all weight in excess of restricted axle limits or in excess of legal limits on state highways in areas where road restrictions are in force. When the gross weight of an axle grouping exceeds 48,000 pounds, the $1 per ton per mile shall apply to all weight in excess of 15,000 pounds per axle (see weight classification chart in section C.)

3. $5 **per ton per mile** for all movements exceeding the following gross vehicle weight limits:

   a. 105,500 lbs. GVW on unrestricted state highways, other than interstate highways, in areas where road restrictions are in force.
   b. 105,500 lbs. GVW on 8-ton highways.
   c. 105,500 lbs. GVW on 7-ton highways.
   d. 80,000 lbs. GVW on 6-ton highways.
   e. No overweight movement allowed on 5-ton highways

B. Permit Fees for Work-Over Rigs and Special Mobile Equipment Exceeding 650 but not 670 Pounds Per Inch Width of Tire.

1. Permit Fee:
   a. $50 per trip on work-over rigs up to 650 pounds per inch width.
   b. $75 per trip on work-over rigs that exceed 650 but not 670 pounds per inch width of tire.
2. The work-over rig shall be stripped to the most minimum weights.
3. A minimal number of state highway miles shall be used.
4. District engineer approval shall be obtained prior to movement when vehicle exceeds restricted axle weights by more than 5,000 pounds.
5. A validation number ending in TM must be obtained from the Highway Patrol prior to using a self-issue single trip movement approval form.
6. The ton mile shall be waived.

# NOTICE

## U.S. DEPARTMENT OF TRANSPORTATION

## "HOT LINE"

As part of its continuing investigation into Highway Construction Contract Bid Rigging and abuses in the Disadvantaged Business Enterprise Program, the Inspector General for the Department of Transportation (DOT) has established a "HOT LINE" to receive information from contractors, suppliers, or anyone with knowledge of such activities.

The toll-free "HOT LINE' telephone number is 1-800-424-9071 and will be manned during normal working hours (8 a.m. to 5 p.m. EST). This operation is under the direction of DOT's Inspector General. All information will be treated confidentially and anonymity will be respected.

**CALL**
**Inspector General's 'HOT LINE'**
**Toll Free 1-800-424-9071**
**Washington, DC Area:**
**202-366-1461**
**Fax: 202-366-7749**

**WRITE**
**Inspector General**
**Post Office Box 23178**
**Washington, DC 20026-0178**

**Email:** hotline@oig.dot.gov

**The field office address and telephone number for NORTH DAKOTA is:**

**CHICAGO REGIONAL OFFICE**

**Special Agent-in-Charge**
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**111 N. Canal St., Suite 677**
**Chicago, Illinois 60606**

# *CERTIFICATION*

I hereby certify the attached supplemental specifications effective on October 1, 2015.

/S/ 6/1/15

Bob Fode, P.E., Director
Office of Project Development

Date

North Dakota
Department of Transportation

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
# SUPPLEMENTAL SPECIFICATION
# REVISIONS

**Effective Date: 10/01/2015**

**The following specifications are supplementary to the 2014 Edition of the *Standard Specifications for Road and Bridge Construction* as they apply to this Contract. Page references in this document apply to the hard bound, printed edition of the specifications (the "blue book") and the "as printed" version of the specifications on the Department's website.**

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**101.03 ABBREVIATIONS** **PAGE 8** **10/01/15**

Delete the line for "ACPA American Concrete Precast Association" and replace it with the following:

ACPA American Concrete Pipe Association

Add the following item to Section 101.03:

NPCA National Precast Concrete Association
SWPPP Storm Water Pollution Prevention Plan

---

**101.04 DEFINITIONS** **PAGE 10** **10/01/15**

Delete the definition for "Sieve" and replace it with the following:

**Sieve.** U.S.A. Standard Sieve, as defined in ASTM E 11. The specified percent passing for each sieve is measured by weight.

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**104.02 C Significant Changes to the Character of Work** **PAGE 34** **10/01/15**

Delete the following paragraph in its entirety:

If the Contractor believes an alteration in the work is a significant change that necessitates a contract revision, the Contractor shall notify the Engineer in accordance with Section 104.03, "Contractor Requested Contract Revisions".

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**104.05 A Submission of the Claim** **PAGE 37** **10/01/15**

Replace the fourth paragraph of Section 104.05 with the following:

Provide a claim submittal to the Engineer that contains, at a minimum, the following information for each claim issue included on the *Notice of Intention to File a Claim* (SFN 16743). Failure to supply the following information for each claim issue constitutes a waiver of claim for addional compensation for each submitted claim item.

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**105.03 B Scheduling** **PAGE 45** **10/01/15**

Replace Section 105.03 B with the following:

**B. Scheduling.**

**1. General.**
In order to minimize interference with traffic operations, the Contractor, Engineer, and utility owner shall agree to a detailed schedule before starting work.

**2. Utility Coordination Meeting.**
If the contract requires a utility coordination meeting, arrange the meeting with the utility owners and the Engineer to occur no later than two weeks after the notice to proceed. At the meeting, provide an agenda and a tentative construction schedule for planning utility relocations and adjustments; after the meeting, publish minutes and distribute a copy to all meeting attendees.

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**106.02 D Aggregate Source Limitations** **PAGE 58** **10/01/15**

Delete number 8 and replace it with the following:

8. In Stark County, within the 2-mile radius from the center of Section 30-137-92;

Delete number 11 and replace it with the following:

11. In Hettinger County, within the 1-mile radius from the center of Section 28-135-91;

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**107.17 REMOVED MATERIAL** **PAGE 80** **10/01/15**

Replace Section 107.17 with the following:

**107.17 REMOVED MATERIAL**
Unless otherwise designated in the contract, removed material becomes the property of the Contractor.

If the Contractor determines that the material will be disposed of, the material must be disposed in one of the following ways:

A. Dispose of the material through a beneficial use. Apply for a beneficial use permit from the NDDoH by completing an *NDDOT Projects-Inert Waste Beneficial Use Application* (SFN 58981). Provide the Engineer with copies of all documents submitted to the NDDoH.

B. Dispose of the material at an approved permanent waste management facility.

C. If waste cannot be reasonably managed at a permanent waste management facility, obtain approval from the NDDoH for a variance to dispose of the inert waste at another site. Apply for a variance by completing an *NDDOT Projects-Inert Waste Disposal Variance Application* (SFN 54344). Provide the Engineer with copies of all documents submitted to the NDDoH.

   Obtain locations of permanent waste facilities, applications, and guidelines from the NDDoH, Division of Waste Management. View a list of municipal and inert waste landfills and review guidance on the NDDoH website: http://www.ndhealth.gov.

Include the cost of material disposal in the contract unit price of the relevant contract item.

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**108.03 D Measurement and Payment** **PAGE 91** **10/01/15**

Replace Table 108-01 with the following:

**Table 108-01**
**CPM Schedule Price Reductions**

| Days Late Submitting Update Schedule | Percentage Price Reduction to the Prorated Amount[1] |
|---|---|
| 1 | 20 |
| 2 | 40 |
| 3 | 60 |
| 4 | 80 |
| 5 | 100 |

[1] The "prorated amount" is equivalent to the amount calculated for each update schedule submission in Section 108.03 D, Item 2.

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**108.06 B.1 General** **PAGE 93** **10/01/15**

Replace the 6th paragraph of Section 108.06 B.1 with the following:

The Contractor's plea that the contract time was insufficient is not a valid reason for an extension of time. For calendar day and completion date contracts, the Department will not extend the contract time for delays encountered on holidays and during the period from November 15 to April 15. When the time as extended by the Department falls on a date that is a holiday, the Engineer will extend the contract time to the next business day.

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**109.01 J.2.b Computerized Loader Bucket Scales** **PAGE 103** **10/01/15**

Delete the first paragraph and replace with the following:

Loader bucket scales may be used to weigh materials when the quantity of material included in the bid item list is less than 10,000 tons and for aggregates specified under Sections 420 "Bituminous Seal Coat", 421 "Microsurfacing", and 422 "Slurry Seal" regardless of quantity.

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**109.01 J.4.b(2) Hopper or Batch Scales** **PAGE 105** **10/01/15**

Replace Section 109.01 J.4.b(2) with the following:

After the material has been weighed on the project scale and placed in a truck, weigh the loaded truck on a certified scale owned and operated by an entity other than the Contractor. Provide the tare weight of the truck along with the comparison weigh ticket.

---

**109.01 J.6.a General** **PAGE 106** **10/01/15**

Delete the second paragraph and replace with the following:

Document the weight of each load on a separate, sequentially numbered weigh ticket that has a maximum size of 5.5 × 8.5 inches. Provide one copy to the driver of the truck. The truck driver shall deliver the weigh ticket to the Engineer at the location where the material is incorporated into the work. The Engineer will reject loads that are not accompanied by a legible weigh ticket.

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**155.03 A.3 Water Measuring** **PAGE 143** **10/01/15**

Replace the second paragraph in Section 155.03 A.3 with the following:

Use a water measuring system that:

- Delivers the designated quantity of water for each batch within the tolerance specified in Section 802.03 B.4, “Batching Water”;
- Automatically stops the water flow when the designated quantity has been delivered; and
- Is adjustable and has a calibrated indicator showing the quantity of water measured for each batch.

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**155.07 D Bridge Deck Overlay Finishing Machines** **PAGE 147** **10/01/15**

Replace Section 155.07 D with the following:

**D. Bridge Deck Overlays Finishing Equipment.**

Use a finishing machine that is:

- Equipped with an oscillating screed or screeds with an effective weight of at least 75 pounds for each square foot of bottom face area, and provided with positive control of vertical position, the angle of tilt, and the shape of the crown. At least one oscillating screed shall be capable of consolidating the concrete to the specified density;
- Long enough to uniformly strike off and consolidate the width of lane to be paved
- Capable of forward and reverse motion under positive control;
- Travelling on rails with fully-adjustable and stable supports;
- Supported without the use of shims; and
- Not anchored to the concrete using powder actuated fasteners, unless that concrete will be subsequently overlaid.

---

**203.02 EQUIPMENT** **PAGE 163** **10/01/15**

Replace the equipment list in Section 203.02 with the following:

| Equipment | Section |
|---|---|
| Vibratory Sheepsfoot/Pad Foot/Extended Pad Foot Rollers | 151.01 E |

---

**203.04 B.1 Topsoil - Wetland** **PAGE 165** **10/01/15**

Replace the second paragraph of Section 203.04 B.1 with the following:

Spread a minimum of 6 inches of wetland topsoil at mitigation sites and temporary wetland impact areas.

**203.04 C Subcut** **PAGE 165** **10/01/15**

Add the following paragraph to the end of Section 203.04 C:

Dispose of material removed from the subcut area as specified in Section 107.17, “Removed Material”.

---

**216.06 Basis of Payment** **PAGE 175** **10/01/15**

Replace Section 216.06 with the following:

| Pay Item | Pay Unit |
|---|---|
| Water | M Gal |

An “M Gal” is equivalent to 1,000 gallons.

Such payment is full compensation for furnishing all materials, equipment, labor, and incidentals to complete the work as specified.

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**251.03 D Seed Class** **PAGE 182** **10/01/15**

Add the following footnote to Table 251-01:

[1] Substitute Thickspike or Stream bank Wheatgrass of the Critana, Banstock, Sodar, AC Polar or Elbee variety if Sideoats Grama is unavailable.

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**253.03 C Straw Mulch** **PAGE 188** **10/01/15**

Delete the following sentence from this section:

At least 50 percent of the mulch by weight must be at least 8 inches in length.

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**262.04 A Installation** **PAGE 201** **10/01/15**

Replace the first paragraph of Section 262.04 A with the following:

Attach anchor lines to the flotation device.

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**265.06 Basis of Payment** **PAGE 204** **10/01/15**

Replace the first paragraph after the list of pay items with the following:

Include the cost for pipe, geosynthetic material, topsoil, and seed in the price bid for “Stabilized Construction Access”.

---

**302.03 MATERIALS** **PAGE 209** **10/01/15**

Replace table in Section 302.03 with the following:

| Material | Section |
|---|---|
| Aggregates | 816 |
| Salvaged Base Course | 817 |
| Traffic Service Aggregate | 816 Class 5; or 817 |

---

**302.04 A.2 Gradation** **PAGE 209** **10/01/15**

Replace the first paragraph in Section 302.04 A.2 with the following:

The Engineer will collect three samples for each 1,000 tons of material placed, except when more than 1,000 tons are placed in a day. If more than 1,000 tons are placed in a day, the Engineer will collect three samples for that day's placement. If the aggregate fails to meet the specified gradation, the Engineer will apply a price reduction as specified in Section 302.06 B, "Contract Price Adjustments".

---

**302.04 C Surface Tolerance** **PAGE 210** **10/01/15**

Replace Section 302.04 C with the following:

**C. Surface Tolerance.**
Unless one of the following surface tolerances is specified, construct the surface to within 0.08 feet of the proposed elevation.

**1. Surface Tolerance Type B.**
Use trimming equipment, including motor graders, equipped with automatic grade control to adjust for the cross slope and longitudinal profile. Construct the finished surface to within 0.04 feet of the proposed elevation.

Reincorporate material removed from high points during trimming into other portions of the base.

**2. Surface Tolerance Type C.**
Use roadbed planers to construct the finished surface. The Engineer will allow the base or surface course to be used as the grade reference when trimming shoulders. Construct the finished surface to within 0.04 feet of the proposed elevation.

Reincorporate material removed from high points during trimming into other portions of the base.

---

**306.04 A.1 Gradation** **PAGE 213** **10/01/15**

Replace the first paragraph in Section 306.04 A.1 with the following:

The Engineer will collect three samples for each 1,000 tons of material placed, except when more than 1,000 tons are placed in a day. If more than 1,000 tons are placed in a day, the Engineer will collect three samples for that day's placement. If the aggregate fails to meet the specified gradation, the Engineer will apply a price reduction as specified in Section 302.06 B, "Contract Price Adjustments".

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**401.03 B Tack Coat and Fog Seal.** **PAGE 221** **10/01/15**

Delete Section 401.03 B and add the following:

**B. Tack Coat.**
Use a material from Table 401-01.

**Table 401-01**

| Material | Section |
|---|---|
| SS-1h | 818.02 F |
| MS-1 | 818.02 F |
| CSS-1h | 818.02 E.1 |

When MS-1 is used it may be diluted by the supplier or the Contractor.

**C. Fog Seal.**
Use a material from Table 401-02.

**Table 401-02**

| Material | Section |
|---|---|
| SS-1h | 818.02 F |
| CSS-1h | 818.02 E.1 |

---

**401.04 A Application of Bitumen** **PAGE 221** **10/01/15**

Delete Section 401.04 A and add the following:

**A. Application of Bitumen.**

**1. General.**
Prepare the surface by removing loose dirt and deleterious material.

Provide the Engineer with the manufacturer recommended application temperature ranges. During application, maintain the temperature of bitumen within the ranges recommended by the manufacturer.

Apply bitumen with a distributor on a compacted and stable surface. Use hand sprayers to cover irregular areas. Completely cover the area receiving the bitumen application.

If applying bitumen in multiple passes, overlap the bitumen along adjoining edges of the passes.

Protect the surfaces of structures and other roadway appurtenances against tracking and splattering.

**2. Prime Coat.**
Apply prime coat when the ambient air temperature is at least 40°F.

Allow the prime coat to cure a minimum of 48 hours before placing pavement.

**3. Tack Coat.**
Apply tack coat when the air temperature and existing mat temperature are at least 35°F.

Apply tack coat to a dry surface.

Allow tack coat to cure before applying surfacing material.

**4. Fog Coat.**
Apply fog coat when the ambient air temperature is at least 40°F.

Apply fog coat to a dry surface.

---

**420.04 A General** **PAGE 224** **10/01/15**

Replace Section 420.04 A with the following:

**A. General.**
Do not start seal work after September 1.

Allow material to cure as shown in Table 420-01 before applying seal coat materials.

| **Table 420-01 Curing Period** | |
|---|---|
| **Material Type** | **Curing Period** |
| Prime Coat | 4 days |
| Asphalt Cement Pavements | 7 days |
| Emulsion Pavements | 15 days |

Schedule the work so that the last bitumen application of the day is sufficiently cured to allow installation of the short-term pavement marking before sunset.

---

**420.04 D Cover Coat Material Application** **PAGE 225** **10/01/15**

Replace the third paragraph with the following:

Within one minute following the application of the bitumen, spread the cover coat material uniformly over the bituminous material with an aggregate spreader. Apply cover material by hand to areas that are inaccessible to the aggregate spreader.

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**420.04 D Cover Coat Material Application** **PAGE 225** **10/01/15**

Delete the eighth paragraph in its entirety.

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**430.03 F Commercial Grade Asphalt** **PAGE 238** **10/01/15**

Replace the second paragraph of Section 430.03 F with the following:

The requirements of the following sections will not be applied to commercial grade asphalt:
- Section 430.04 A, “Contractor Quality Control Plan”;
- Section 430.04 B, “Engineer’s Quality Assurance Plan”;
- Section 430.04 C.2, “Determination of Specific Gravity”;
- Section 430.04 E, “QC Testing”; and
- Section 430.04 M, “Acceptance”.

---

**430.04 D.1 General** **PAGE 241** **10/01/15**

Replace the third paragraph of Section 430.04 D.1 with the following:

Submit the mix design a minimum of 10 calendar days before beginning paving operations. The Engineer will review the mix design. If the Engineer does not approve the mix design, revise the mix design and submit the revised mix design. Allow 10 calendar days for the Engineer to review a revised mix design before beginning paving operations.

---

**430.04 D.2 Items to be Submitted** **PAGE 242** **10/01/15**

Add the following item to Section 430.04 D.2:

e. If the mix contains RAP, submit a 50 pound sample of the milled material.

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**430.04 F Surface Preparation** **PAGE 246** **10/01/15**

Replace the second paragraph of Section 430.04 F with the following:

Correct local irregularities in the existing surface before placing the first lift of bituminous material. If milling is specified, correct local irregularities after milling. Apply a tack coat to the surface before correcting the irregularities. Use the same type of mix that is required for the subsequent lift Use a pneumatic roller as specified in Section 151.01 A.3. “Self-Propelled Pnuematic-Tired Roller” to compact the mix.

---

**430.04 G Patching** **PAGE 247** **10/01/15**

Replace Section 430.04 G with the following:

**G. Patching.**
Remove existing broken or unstable surface material and replace that material with the same mixture specified for the next course.

Place the bituminous material in lifts not to exceed 3 inches and compact the material. Allow the patch material to cool to 130°F before placing additional material. If patching is required during the paving operation, allow the patch material to cool to 185°F before placing additional material.

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**430.04 H.1 General** **PAGE 248** **10/01/15**

Delete the ninth paragraph of Section 430.04 H.1

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**430.04 I.3.c Intermediate Rolling** **PAGE 250** **10/01/15**

Replace the second paragraph of Section 430.04 I.3.c with the following:

If roller tires pick up the bituminous material or there are excessive roller marks in the mat, the Engineer may allow the removal of the intermediate rolling operation if it appears to the Engineer that compaction is being achieved.

---

**430.04 J Joints** **PAGE 250** **10/01/15**

Replace Section 430.04 J with the following:

**J. Joints.**

**1. General.**
Place pavement against the surface of curbing, gutters, manholes, and similar structures uniformly near the contact surfaces so the pavement is slightly higher than the edge of the structure after compaction. Do not construct a joint on top of a joint from a previous lift.

**2. Longitudinal Joints.**
Construct longitudinal joints on successive lifts between 6 and 12 inches from the previous longitudinal joint.

Place and follow markings to guide the paver. Construct joints in a uniform line. Correct pavement edges that deviate from the uniform line and correct areas of the joint that vary from the intended location of the joint by more than 2 inches. Construct joints with tight seams and no visible segregation.

**3. Transverse Joints.**
Construct transverse joints on successive lifts a minimum of 12 feet from the previous transverse joint.

---

**550.03 Materials** **PAGE 261** **10/01/15**

Add the following to Section 550.03:

Develop a mix design with a maximum water-cement ratio of 0.40 when placing concrete with a slip form paving machine. Use the water-cement ratio shown in Section 802.01 B.2, “Concrete Class Designation” for all other paving methods.

---

**550.04 H.1.d Final Surface Finish** **PAGE 268** **10/01/15**

Replace Section 550.04 H.1.d with the following:

**d. Final Surface Finish.**

**(1) General.**
Uniformly texture the surface by dragging a seamless strip of stiff-fiber artificial grass carpet longitudinally along the full width of the pavement in a single pass.

Use and maintain a taut string line for operating the carpet drag. Attach the leading edge of the carpet drag to a bridge. If the Engineer determines it is not feasible to use a bridge or string line, other texturing methods will be allowed.

Maintain a clean carpet free of encrusted concrete.

Provide a minimum texture depth of 0.031 inches.

**(2) Roadways with Speed Limits Less than 45 MPH.**
The Engineer will test the texture achieved by the carpet drag in accordance with ASTM E 965 and the Field Sampling and Testing Manual. The Engineer will determine the test location.

If three or more lots have texture depths less than 0.031 inches but greater than or equal to 0.025 inches, perform diamond grinding on those lots.

Perform diamond grinding any lot having a texture depth of less than 0.025 inches.

Perform grinding as specified in Section 550.04 M.4, “Grinding.”

The Engineer will determine the limits of any failing test by running additional tests at 100 foot intervals before and after the failing test. The Engineer will determine the location of the additional tests.

**(3) Roadways with Speed Limits 45 MPH or Greater.**
Run a clean, metal tine longitudinally along the surface immediately following the carpet drag. Exclude areas within 3 inches of the edge of the slab and longitudinal joints. Run the tine continuously across transverse joints.

Use a tine that provides:
- 1/8 inch ±1/64 inch groove width;
- 3/16 inch ±1/16 inch groove depth; and
- 3/4 inch spacing of between grooves.

If the concrete has becomes too stiff to receive the metal tine finish, use diamond bladed equipment to produce the longitudinal grooves.

---

**550.04 I.3 Impervious Membrane Cure** **PAGE 271** **10/01/15**

Replace the first paragraph of Section 550.04 I.3 with the following:

Use a curing compound that meets the requirements of Section 810.01 B.2, “Type 2, Class B”.

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**570.03 A General** **PAGE 281** **10/01/15**

Add the following item to the table:

| | |
|---|---|
| Impervious Membrane Cure | 810.01 B.1 |

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**570.03 B.2.a Concrete** **PAGE 281** **10/01/15**

Replace Section 570.03 B.2.a with the following:

**a. Concrete.**
Use Class AE concrete with cement that meets the requirements of AASHTO M 85, Type I or Type IA for spall repairs.

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**570.03 D Curing Compound** **PAGE 281** **10/01/15**

Delete Section 570.03 D.

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**570.04 A.1.b Full Depth Repairs** **PAGE 282** **10/01/15**

Replace Section 570.04 A.1.b with the following:

**b. Full Depth Repairs.**
Use the lift out method to remove concrete in full depth repair areas with minimal disruption to the subgrade and without damage to the remaining concrete. Do not operate equipment, other than compaction equipment, in areas where concrete has been removed. Fill voids deeper than 1 inch with aggregate and compact the material to the level of the existing subgrade.

Place concrete for repairs less than 100 feet long the same day that removals are initiated. Place concrete for repairs longer than 100 feet within 48 hours of initiating removals. Dampen the faces of existing concrete before placing new concrete.

Place, consolidate, finish, and cure concrete according to the following portions of Section 550.04, "Construction Requirements":

- 550.04 C, "Roadbed Condition";
- 550.04 D, "Placing and Spreading Concrete";
- 550.04 E, "Placing Reinforcing Steel and Tie Bars";
- 550.04 F, "Uncontrolled Cracking";
- 550.04 G, "Joints";
- 550.04 H, "Finishing Concrete", except parts 1.d, "Final Surface Finish" and 1.e, "Imprinting Pavement";
- 550.04 J, "Removing Forms";
- 550.04 K, "Sealing Joints"; and
- 550.04 L, "Opening to Traffic".

Provide finished concrete that is flush with all adjacent pavement surfaces. Before the concrete sets, check the repair utilizing a 10 foot straight edge and correct areas that deviate by 1/8 inch or greater.

Texture the repair by dragging a carpet of artificial grass longitudinally over the repaired area.

If repairs involve multiple lanes, fill the gap between the lane under repair and the existing concrete with cold bituminous material. Remove this material before making the repair to the adjacent lane.

**(1) Repairs One Lane Wide.**
Use a bond breaker along the centerline joint. Tie bars are not required on repairs that are one lane wide.

When the repair falls in a ramp, restore the longitudinal joints crossing the repair, but do not use tie bars.

**(2) Repairs Wider Than One Lane.**
Before placing the concrete in the second lane, install 30 inch #5 tie bars in the longitudianl joint using the original tie bar pattern. Drill holes for the bars and secure the bars in the holes using epoxy.

**(3) Impervious Membrane Cure.**
Use a curing compound that meets the requirements of Section 810.01 B.1, “Type 2”.

Apply the cure at a minimum rate of 1 gallon per 150 square feet of pavement in one or two applications. If applying two coats, apply the second application within 30 minutes of the first application.

Protect joints that require sealing from infiltration of the curing compound.

Immediately cover the exposed sides of the concrete pavement with curing compound if removing forms exposes curing concrete before the expiration of the curing period.

Immediately reapply curing compound to damaged areas within the curing period.

---

**570.04 A.2.c Dowel Bars** **PAGE 284** **10/01/15**

Replace the first paragraph of Section 570.04 A.2.c with the following:

Drill 1-3/8 inch diameter holes using a rigid frame-mounted drill. Clean the hole, inject epoxy into the hole, and insert dowels.

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**570.04 A.3.a Concrete Removal** **PAGE 285** **10/01/15**

Replace the third paragraph of Section 570.04 A.3.a with the following:

If existing reinforcing steel is damaged or bent within the 18 inch lap area, replace the damaged reinforcing steel.

---

**570.04 C Grinding** **PAGE 285** **10/01/15**

Replace the first paragraph of Section 570.04 C with the following:

Allow new concrete and dowel bar retrofit patch material to cure for a minimum of 24 hours before grinding.

---

**570.04 C.6 Slurry Removal** **PAGE 286** **10/01/15**

Replace Section 570.04 C.6 with the following:

**6. Slurry Removal.**
Continuously collect all slurry or residue resulting from the grinding operation.

In areas with speed limits of 45 mph or less and in areas with curb and gutter, dispose of slurry as specified in Section 107.17, “Removed Material”.

In areas with speeds greater than 45 mph and without curb and gutter, slurry may be place on the foreslope of the roadway. Prevent slurry from entering pipes, culverts, storm drains, ravines, streams, waterways, wetlands, and all other water conveyances. Install erosion control features as necessary to prevent contamination, or dispose of slurry as specified in Section 107.17, “Removed Material”.

---

**570.06 BASIS OF PAYMENT** **PAGE 289** **10/01/15**

Delete the following paragraph from Section 570.06:

Include all costs for saw cuts, steel reinforcing, bar supports, tie bars, and joint sealing in the unit price bid for "__Inch Concrete Pavement Repair - Full-Depth _____".

---

**602.04 J Penetrating Water Repellent Treatment of Concrete Surfaces** **PAGE 307**
**10/01/15**

Replace section 602.04 J with the following:

**J. Penetrating Water Repellent Treatment.**
Apply penetrating water repellant to the driving surface of the bridge deck after barrier forms have been removed.

Before treating the deck, use sandblasting or water washing equipment to clean the surfaces of material that might inhibit the coverage and penetration of the solution.

Prepare the deck by applying pre-treatment cleaning agents before the use of water washing cleansing methods. Add detergent to the cleansing water, if necessary. After washing, rinse with clear water.

Use solvents and hand tools to remove bonded foreign materials.

Use a cleaning process that does not remove or alter the existing deck finish and does not expose the coarse aggregate.

Before treatment, allow the deck to dry to meet the requirements of the repellent manufacturer.

Apply penetrating water repellent treatment solution when the air or concrete surface temperature is 40°F and rising. Use airless application equipment with 15 to 40 psi application pressure. Apply treatment solution at the rate recommended by the solution manufacturer.

---

**602.04 K.1 General** **PAGE 307** **10/01/15**

Replace Section 602.04 K.1 with the following:

**1. General.**
When shown in the plans, apply membrane and primer in dry weather and when the air temperature is above 40°F. Apply to surfaces that are dry, clean, free of sharp protrusions and above 40°F.

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**604.03 B.3 Trial Mix** **PAGE 310** **10/01/15**

Replace the "AASHTO T 23" test requirement with "ND T 23:

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**604.03 E.1 Concrete** **PAGE 310** **10/01/15**

Replace the "AASHTO T 23" test requirement with "ND T 23:

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**606.04 A Design and Manufacture** **PAGE 314** **10/01/15**

Replace the second paragraph in Section 602.04 A with the following:

Use an ACPA or NPCA certified plant in the construction.

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**702.06 Basis of Payment** **PAGE 355** **10/01/15**

Replace the Table 702-01 with the following:

**Table 702-01**

**Payment for Mobilization**

| Original Contract Amount Earned | Payment will be the Lesser of: | |
|---|---|---|
| | Mobilization Bid Amount | Original Contract Amount |
| 5% | 25% | 2.5% |
| 10% | 50% | 5.0% |
| 50% | 100% | 7.5% |
| 75% | 100% | 10.0% |

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**704.04 B Traffic Control Device Condition Classifications** **PAGE 359** **10/01/15**

Replace all instances of “ATSAA” in Section 704.04 B with “ATSSA”.

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**704.04 M Protection Vehicle with Truck Mounted Attenuation Device (TMA)** **PAGE 366** **10/01/15**

Replace the last paragraph of 704.04 M with the following:

Equip the protection vehicle with an advance warning flashing or sequencing arrow panel conforming to Section 704.03 M, “Advance Warning Flasher or Sequencing Arrow Panel” and the MUTCD.

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**704.04 O Traffic Control for Uneven Pavement** **PAGE 367** **10/01/15**

Replace all instances of “Sign W20-52-24” in Section 704.04 O with “W20-52-54”.

Change the title of Section 704.04 O.3.b to “Uneven Pavement Greater Than 2 Inches.”

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**706.02 B Aggregate Laboratory** **PAGE 372** **10/01/15**

Replace Section 706.02 B with the following:

**B. Aggregate Laboratory.**
Place the laboratory at a location acceptable to the Engineer. The Engineer will have the full control and the exclusive use of the laboratory.

Provide a laboratory with a minimum floor area of 230 square feet, minimum exterior width of 8 feet, and a minimum ceiling height of 7 feet.

Partition the building into a minimum of two rooms, a smaller room having a floor area of approximately 70 square feet.

Provide a workbench with a length of 7 feet in the smaller room:

Provide the following equipment in the larger room:

1. Mechanical shaker capable of receiving 6 trays that have a screen size of 14 inches by 14 inches and the following compatible sieves:
   - 1-1/2 inch;
   - 1-1/4 inch;
   - 1 inch;
   - 3/4 inch;
   - 1/2 inch;
   - 3/8 inch;
   - No. 4; and
   - An enclosed dust pan.
2. Mary Ann shaker capable of being adjusted to receive 8 and 12 inch diameter sieves;
3. Splitter with a maximum hopper capacity of 0.6 cubic feet;
4. Splitter with a minimum hopper capacity of 1.0 cubic feet; and
5. An exhaust fan capable of changing the air in the room every minute.

---

**709.04 C Geosynthetic Geogrid (Type G)** **PAGE 376** **10/01/15**

Replace Section 709.04 C with the following:

**C. Geosynthetic Geogrid (Type G).**

Unroll geogrid parallel to the centerline of the road. Do not drag the geogrid across the underlying material. Use geogrid widths that produce overlaps of parallel rolls at the centerline and at the shoulders and so that no overlaps are required along wheel paths.

Overlap geogrid a minimum of 30 inches at all splices and joints when placing on subgrade. Overlap geogrid a minimum of 12 inches at all splices and joints when placing on base.

Construct overlaps at the end of a roll so the previous roll laps over the subsequent roll in the direction of the cover material placement. Mechanically tie transverse joints to maintain the minimum overlap. Place pins, staples, or small piles of aggregate to maintain the geogrid position before placement of cover material.

Stagger end overlaps at least 10 feet from other end overlaps in parallel rolls. Cut or increase overlaps to conform to curves.

Patch damaged areas of geogrid. Place a patch that overlaps the damaged area by 36 inches on all sides. Mechanically tie the patch to the underlying grid.

Place the first lift of material over geogrid installed on subgrade to a depth of 10 inches of loose material. Place the first lift of material over geogrid installed on base to a depth of 6 inches of loose material.

Use low ground pressure equipment to spread the initial lift of material. If rutting occurs, fill the ruts with additional material before placing the subsequent lift. Do not blade out ruts. Do not turn construction equipment on the first layer of material.

---

**714.04 A.1 Bedding** **PAGE 379** **10/01/15**

Delete the first paragraph from Section 714.04 A.1.

---

**714.04 A.6 Connection to Manholes, Inlets, and Pipes** **PAGE 380** **10/01/15**

Replace Section 714.04 A.6 with the following:

**6. Connection to Manholes, Inlets, and Pipes.**
If connections are required to a manhole, inlet barrel, or pipe entrance, connect pipe by cutting the opening and grouting in the connecting pipe.

---

**714.04 A.7 Compaction Control for Aggregate** **PAGE 380** **10/01/15**

Replace Section 714.04 A.7 with the following:

**7. Compaction Control for Aggregate.**
Compact aggregate according to Section 203.04 E.2, “Compaction Control, Type A” The moisture content of the aggregate at the time of compaction shall be not less than 2.0 percentage points below, nor more than 3.0 percentage points above the optimum moisture content.

Compact aggregate for approach pipes according to the conduit manufacturer’s recommendation

Use a maximum lift thickness of 6 inches.

---

**714.04 A.8 Compaction Control for Non-Aggregate Material** **PAGE 380** **10/01/15**

Replace Section 714.04 A.8 with the following:

**8. Compaction Control for Non-Aggregate Material.**
If Common Excavation Type A is specified, follow the compaction requirements in Section 203.04 E.2, “Compaction Control, Type A”. If Common Excavation Type B is specified, follow the compaction requirements in Section 203.04 E.3, “Compaction Control, Type B”.

Compact material for approach pipes according to the conduit manufacturer’s recommendations.

---

**748.03 MATERIALS** **PAGE 393** **10/01/15**

Add the following item to the table:

| | |
|---|---|
| Impervious Membrane Cure | 810.01 B.1 or<br>810.01 B.2 |

---

**750.03 MATERIALS** **PAGE 395** **10/01/15**

Add the following item to the table:

| | |
|---|---|
| Impervious Membrane Cure | 810.01 B |

Replace the paragraph directly after the table with the following:

For imprinted concrete use any size coarse aggregate specified in Section 802.01 C.2, “Coarse Aggregate”. Produce a mix that consists of 60 percent fine aggregate and 40 percent coarse aggregate.

---

**754.04 D.2 Anchor for Telescoping Perforated Tubes Supports** **PAGE 403** **10/01/15**

Replace the last two paragraphs in Section 754.04 D.2 with the following:

If installation is in either concrete or bituminous material, omit the soil plate or use a surface mount anchor base.

Core concrete and bituminous surfacing before installing the anchor unit and fill the cored area with like material that matches the surrounding surfacing.

---

**754.04 F Removing and Resetting Signs and Supports** **PAGE 407** **10/01/15**

Replace the Section 754.04 F with the following:

**F. Removing and Resetting Signs and Supports.**

**1. General.**
Remove and reset existing signs and supports as specified. Stockpile all signs and supports not to be reset at designated locations within the project limits. The Engineer will arrange to have stockpiled signs removed from the project limits and delivered to the Department’s facility.

Replace removed or reset signs and supports that are damaged during removing, resetting, or stockpiling at no additional cost to the Department.

Remove existing signs and supports as construction progresses, and immediately reset or install new signs.

The Engineer will allow the temporary reset of existing signs, or the temporary installation of new signs. Include the cost of installing and resetting signs temporarily in the price bid for other items.

**2. Reset Sign Panel.**
Remove sign panels from existing supports. Reinstall sign panels, angles, stringers, and steel channels on new supports.

Provide all necessary brackets and hardware to attach sign panels, angles, stringers, and steel channels on new supports.

---

**754.04 I Overlay Panel Sign Refacing** **PAGE 407** **10/01/15**

Replace the second paragraph of Section 754.04 I with the following:

Remove the legend, border, and symbol on those signs that have demountable copy and remove any existing sign overlays and place overlay panels on the signs. Do not remove direct applied sheeting legends, borders, and symbols. Direct apply the new legends, borders, and symbols to the overlay panels and install on the existing signs.

---

**754.04 J Auxiliary Signs** **PAGE 408** **10/01/15**

Replace the Section 754.04 J with the following:

**J. Auxiliary Signs.**
Install auxiliary signs used with route markers with the same background color as the route markers:

- Interstate, Blue;
- Interstate Business Loop, Green;
- State, White;
- US, White; and
- County, Blue.

---

**754.05 METHOD OF MEASUREMENT** **PAGE 408** **10/01/15**

Add the following to Section 754.05:

**D. Reset Sign Panel.**
The Engineer will measure the item “Reset Sign Panel” by the number of locations a sign or sign assembly has been reset.

**E. Reset Sign Support.**
The Engineer will measure the item “Reset Sign Support” by each leg of a sign support that has been reset.

---

**760.03 Materials** **PAGE 410** **10/01/15**

Replace Section 760.03 with the following:

**760.03 MATERIALS**
Use one of the following materials when applying a fog coat to rumple strips:

- SS-1h, Section 818.02 F, “Anionic Emulsified Asphalt”;
- MS-1 Section 818.02 F, “Anionic Emulsified Asphalt”; or
- CSS-1h Section 818.02 E.1 “Cationic Emulsified Asphalt”.

When MS-1 is used it may be diluted by the supplier or the Contractor.

---

**760.04 F Traffic Control** **PAGE 411** **10/01/15**

Replace Section 760.04 F with the following:

**F. Traffic Control.**

1. **General.**
   Use a TMA as specified in Section 704.04 M, “Protection Vehicle with Truck Mounted Attenuation Device (TMA)”.

2. **Centerline Rumble Strip Installation.**
   Provide flaggers and 2 sets of the required flagger signing for each direction of travel. Ensure that at least one set of the required flagger signing is in place in each direct of travel whenever work centerline installation is performed. Limit the work area to a maximum of 3 miles.

---

**760.05 METHOD OF MEASUREMENT** **PAGE 411** **10/01/15**

Add the following paragraph to the end of Section 760.05:

The Engineer will measure flagging and traffic control signs as specified in Section 704.05, “Method of Measurement”.

---

**760.06 BASIS OF PAYMENT** **PAGE 411** **10/01/15**

Add the following paragraph after the list of pay items in Section 760.05:

Flagging and traffic control signs will be paid for as specified in Section 704.06, “Basis of Payment”.

---

**762.04 A.4.c Grooves for Epoxy Paint** **PAGE 414** **10/01/15**

Replace the “Depth” row of Table 762-02 with the following:

| | |
|---|---|
| Depth | 45 to 55 mils |

---

**762.04 D.2 Short-Term Pavement Marking – Type NR (Non-Removable)** **PAGE 418** **10/01/15**

Replace the second paragraph of Section 762.04 D.2 with the following:

Place the short term pavement markings at the rate specified in Section 762.04 C.2.b, “Rate of Application” with the following exception:

**Exception:** When the permanent pavement marking is specified as epoxy paint, apply the short term pavement marking at a thickness of 10 mils.

---

**762.04 D.3 Short-Term Pavement Marking – Type R (Removable) PAGE 419 10/01/15**

Replace Section 762.04 D.3 with the following:

3. **Short-Term Pavement Marking – Type R (Removable).**
   Install Type R markings when the air and pavement temperatures are at a minimum of 50°F and expected to remain above 50°F.

   If the air or pavement temperature falls below 50°F during installation, Type NR markings may be installed as specified in Section 762.04 D.2, "Short-Term Pavement Markings – Type NR (Non-Removable)". Install Type R markings once the specified temperatures exist.

Remove Type R markings once they are no longer necessary for traffic control operations. If Type NR markings were substituted for Type R markings, remove the Type NR markings using a method that does not leave a scar on the pavement.

---

**762.06 Basis of Payment PAGE 419 10/01/15**

Add the following to the end of the first paragraph:

If Type NR markings are substituted for Type R markings due to temperature requirements, the markings will be paid for at the contract unit price for Type R markings.

---

**766.04 CONSTRUCTION REQUIREMENTS PAGE 425 10/01/15**

Replace Section 766.04 with the following:

**766.04 CONSTRUCTION REQUIREMENTS**

**A. General.**
The mailbox owner will furnish a postal service approved mailbox. Install the furnished mailbox on the new support system.

**B. Temporary Relocation.**
If construction activities require the removal of the support system and delayed installation of the new support system, reset the existing support system at a location approved by the Engineer and postal service.

If construction activities require the removal of the support system and delayed installation of the new support system, relocate mailboxes to a location approved by the Engineer and postal service.

If existing mailboxes meet NCHRP 350 or MASH requirements, they may be reset adjacent to the roadway. If existing mailboxes do not meet NCHRP 350 or MASH requirements perform one of the following actions:

- Place them outside the clear zone;
- Place them on a 4 × 4 inch post; or
- Reset them using assemblies shown in the plans.

After construction has progressed to allow permanent installation, install the mailbox assemblies and mailboxes at the specified locations.

---

**770.04 D.1 General** **PAGE 428** **10/01/15**

Add the following to the end of Section 770.04 D.1:

Install duct seal on all conduits containing cables at controller cabinets, traffic signal bases, and pull boxes.

---

**772.03 D Wiring Diagrams** **PAGE 434** **10/01/15**

Replace the first paragraph with the following:

At the time the cabinet and control equipment is accepted, furnish a traffic signal cabinet wiring diagrams showing all circuits and parts in detail. Place the wiring diagram in the signal cabinet and submit one PDF copy to the Engineer.

---

**772.04 A General** **PAGE 435** **10/01/15**

Replace the second paragraph with the following:

Provide and bear all costs for the electrical service necessary to operate and maintain the traffic signal system until the system is accepted as specified in Section 772.04 N.3, “Supplemental Inspections and Final Acceptance”.

---

**772.04 E.8 Final Testing** **PAGE 439** **10/01/15**

Replace Section 772.04 E.8 with the following:

After installing sealer, perform the tests specified in Section 772.04 E.6, “Initial Testing”. Record the test results on SFN 60844 *Traffic Signal Loop Detector Test Report* and submit the form to the Engineer.

---

**772.04 G Traffic Signal Standards and Combination Signal and Light Standards** **PAGE 439**
**10/01/15**

Replace number 3 with the following:

Install and tighten the anchor bolts as specified in Section 754.04 D.5, “Overhead Sign Structures”.

---

**772.04 N Tests and Acceptance** **PAGE 442** **10/01/15**

Replace 772.04 N with the following:

1. **General.**
   Furnish all instruments and personnel required for testing and record test results. If a subcontractor performed electrical work, ensure the subcontractor is present during testing and inspection.

   The Engineer will perform the initial and final inspections when:
   - Winds are 30 mph or less;
   - Ambient temperature is 15°F or greater; and

– It is not raining or snowing.

**a. Malfunction Management Unit Test.**
Before uncovering the signal heads, perform a malfunction management unit test. Record the test results on SFN 60836 *Traffic Signal Malfunction Management Unit Test* and submit the results to the Engineer.

**b. Ground Test.**
Before opening to traffic, perform a ground test. The maximum allowable resistance at the controller cabinet is 10 Ohms. The maximum allowable resistance at each traffic signal standard is 25 Ohms. Record and submit the test results on SFN 60834, *Traffic Signal Ground Test*.

**2. Initial Inspection.**
After the signal system is operational and open to traffic, submit a request to schedule the initial inspection. The system must be fully operational for a minimum of 15 days before the Engineer will perform the initial inspection. The Engineer will record the inspection results on form SFN 59867, *Traffic Signal Inspection* Checklist or SFN 60845 *Flashing Beacon Inspection Checklist*. Copies of completed forms will be sent to the Contractor.

**3. Supplemental Inspections and Final Acceptance.**
After performing corrections, submit a request for a supplemental inspection. The Engineer will perform a supplemental inspection within 30 days of receiving the request.

If this inspection discloses any unsatisfactory items, the Engineer will provide the Contractor with a written list of items that require correction. After correcting the items, request another supplemental inspection.

If the Engineer determines that the work is complete, the signal system must operate for 14 consecutive days without interruption from defective equipment or improper workmanship.

If the signal system fails within the 14 days, make necessary repairs. After repairs are complete, request another supplemental inspection.

If the signal system operates for 14 consecutive days without interruption from defective equipment or improper workmanship, the Engineer will consider the last supplemental inspection as the final inspection and will accept the signal system.

---

**802.01 A.1 Development** **PAGE 453** **10/01/15**

Replace the second paragraph with the following:

Design a mix that will attain a compressive strength of 3,000 psi after 7 days or a flexural strength of 450 psi after 7 days. Measure compressive strength according to AASHTO T 22 and flexural strength according to AASHTO T 97. Apply a correction factor of 0.92 when using 4 inch by 8 inch concrete cylinders.

---

**802.01 C.2 Coarse Aggregate** **PAGE 454** **10/01/15**

Replace Table 802-02 with the following:

**Table 802-02**
**Miscellaneous Coarse Aggregate Properties**

| Test | Method | Max. Percent by Weight of the Plus No. 4 fraction |
|---|---|---|
| Shale | NDDOT 3 | 0.7 |
| Iron oxide particles | NDDOT 3 | 4.0[1] |
| Lignite and other coal | NDDOT 3 | 0.5 |
| Soft Particles (Excluding Shale, Iron oxide particles and Lignite and other coal) | NDDOT 3 | 2.5 |
| Thin or Elongated Pieces | NDDOT 3 | 15 |
| L.A. Abrasion | AASHTO T 96 | 40.0 |
| Soundness (Sodium Sulfate) | AASHTO T 104 | 12 |

[1] For concrete for spall repairs and bridge deck overlays, the maximum iron oxide particles shall be 2.0 percent.

---

**802.01 C.3 Fine Aggregate** **PAGE 454** **10/01/15**

Replace the second paragraph of Section 802.01 C.3 with the following:

Test fine aggregates in accordance with AASHTO T 21. If the results of the analysis are darker than the standard color, determine the compressive strength of mortar mixed using the aggregate in accordance with AASHTO T 71. If the results of the AASHTO T 71 test result in a relative strength less than 95 percent, do not use the fine aggregate.

---

**810.01 B Liquid-Membrane-Forming Compounds** **PAGE 464** **10/01/15**

Add the following to the end of Section 810.01 B:

3. **Curing Compound for Pigmented Concrete.**
   Use a curing compound when curing pigmented concrete that meets the requirements of ASTM C 309 Type 1-D.

---

**816.04 AGGREGATE FOR MICRO SURFACING** **PAGE 467** **10/01/15**

Replace Section 816.04 with the following:

**816.04 AGGREGATE FOR MICRO SURFACING**

**A. General.**
Use aggregate that is manufactured crushed stone such as granite, slag, limestone, or other high quality aggregate or combination thereof.

Before stockpiling aggregate, perform the tests specified in Table 816-03.

**Table 816-03**

| Test | Test Method | Requirement |
|---|---|---|
| Soundness of Aggregates by Use of Sodium Sulfate | AASHTO T 104 | 15% Max |
| Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine[1] | AASHTO T 96 | 30% Max |
| Deleterious Substances | ND T 176 | 60 or Higher |

[1] Perform the AASHTO T 96 test on the parent aggregate

**B. Mix Design.**

Develop a mix design using aggregate that meets the requirements of Table 816-04. Establish mix design target values for each sieve and submit the mix design before beginning placement operations.

**Table 816-04**
**Aggregate Gradation for Development of Mix Design**

| SIEVE SIZE | TYPE II %PASSING | TYPE III %PASSING |
|---|---|---|
| 3/8” | 100 | 100 |
| #4 | 90 – 100 | 70 – 90 |
| #8 | 65 – 90 | 45 – 70 |
| #16 | 45 – 70 | 28 – 50 |
| #30 | 30 – 50 | 19 – 34 |
| #50 | 18 – 30 | 12 – 25 |
| #100 | 10 – 21 | 7 – 18 |
| #200 | 5 – 15 | 5 – 15 |

**C. Stockpile Tolerances.**

The mix design target values will be used for acceptance of material. Gradation tests may vary from the mix design target values based on the stockpile tolerance shown in Table 816-05. The percent passing each sieve for gradation tests may not fall outside the gradation limits specified in Table 816-04.

**Table 816-05**

| SIEVE SIZE | STOCKPILE TOLERANCE |
|---|---|
| 3/8” | - |
| #4 | ± 5% |
| #8 | ±5% |
| #16 | ±5% |
| #30 | ±5% |
| #50 | ±4% |
| #100 | ±3% |
| #200 | ±2% |

**D. Acceptance.**

**1. Stockpile Testing.**

Perform a gradation test in accordance with ND T 11 and ND T 27 for every 500 tons of material produced and placed in the stockpile. Also perform test ND T 176 when performing gradation tests. Submit the test results to the Engineer.

The Engineer will perform acceptance testing. If the result of the Engineer’s testing lead to rejection of the stockpile, additional material may be blended with the stockpiled material so that

the stockpile meets the requirements. The Engineer will resample and retest for both gradation and deleterious substances to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-06. After blending, develop and submit a new mix design.

**2. Gradation.**
The Engineer will obtain 5 independent samples from the stockpile and perform a gradation analysis in accordance with ND T 11 and ND T 27. If the average gradation for each sieve is within the stockpile tolerance of the mix design target values, the Engineer will accept the material.

If the stockpile is rejected, additional material may be blended with the stockpiled material to obtain the required gradation. The Engineer will resample and retest to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-03. After blending, develop and submit a new mix design.

**3. Deleterious Substances.**
The Engineer will determine the amount of deleterious substances in the aggregate using the same samples obtained in Section 816.05 D.2, "Gradation". If the average of the test results is 60 or higher, the Engineer will accept the material.

---

**816.05 AGGREGATE FOR SLURRY SEAL PAGE 469 10/01/15**

Replace Section 816.05 with the following:

**816.05 AGGREGATE FOR SLURRY SEAL**

**A. General.**
Use aggregate that is manufactured crushed stone such as granite, slag, limestone, or other high quality aggregate or combination thereof. Use aggregate with 100 percent of the parent aggregate larger than the largest stone in the specified gradation.

Before stockpiling aggregate, perform the tests specified in Table 816-06.

**Table 816-06**

| Test | Test Method | Requirement |
|---|---|---|
| Soundness of Aggregates by Use of Sodium Sulfate | AASHTO T 104 | 15% Max |
| Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine[1] | AASHTO T 96 | 35% Max |
| Deleterious Substances | ND T 176 | 60 or Higher |

[1] Perform the AASHTO T 96 test on the parent aggregate

**B. Mix Design.**
Develop a mix design using aggregate that meets the requirements of Table 816-07. Establish mix design target values for each sieve and submit the mix design before beginning placement operations.

**Table 816-07**
**Aggregate Gradation for Development of Mix Design**

| SIEVE SIZE | TYPE II %PASSING | TYPE III %PASSING |
|---|---|---|
| 3/8” | 100 | 100 |
| #4 | 90 – 100 | 70 – 90 |
| #8 | 65 – 90 | 45 – 70 |
| #16 | 45 – 70 | 28 – 50 |
| #30 | 30 – 50 | 19 – 34 |
| #50 | 18 – 30 | 12 – 25 |
| #100 | 10 – 21 | 7 – 18 |
| #200 | 5 – 15 | 5 – 15 |

**C. Stockpile Tolerances.**

The mix design target values will be used for acceptance of material. Gradation tests may vary from the mix design target values based on the stockpile tolerance shown in Table 816-08. The percent passing each sieve for gradation tests may not fall outside the gradation limits specified in Table 816-07.

**Table 816-08**

| SIEVE SIZE | STOCKPILE TOLERANCE |
|---|---|
| 3/8” | - |
| #4 | ± 5% |
| #8 | ±5% |
| #16 | ±5% |
| #30 | ±5% |
| #50 | ±4% |
| #100 | ±3% |
| #200 | ±2% |

**D. Acceptance.**

**1. Stockpile Testing.**

Perform a gradation test in accordance with ND T 11 and ND T 27 for every 500 tons of material produced and placed in the stockpile. Also perform test ND T 176 when performing gradation tests. Submit the test results to the Engineer.

The Engineer will perform acceptance testing. If the result of the Engineer’s testing lead to rejection of the stockpile, additional material may be blended with the stockpiled material so that the stockpile meets the requirements. The Engineer will resample and retest for both gradation and deleterious substances to determine if the stockpiled material will be accepted.

If choosing to blend additional material into the stockpile, use additional material that meets the requirements of Table 816-06. After blending, develop and submit a new mix design.

**2. Gradation.**

The Engineer will obtain 5 independent samples from the stockpile and perform a gradation analysis in accordance with ND T 11 and ND T 27. If the average gradation for each sieve is within the stockpile tolerance of the mix design target values, the Engineer will accept the material.

3. **Deleterious Substances.**
The Engineer will determine the amount of deleterious substances in the aggregate using the same samples obtained in Section 816.05 D.2, “Gradation”. If the average of the test results is 60 or higher, the Engineer will accept the material.

---

**817.01 D.2.a Extraction Test Method** **PAGE 472** **10/01/15**

Replace the second paragraph of Section 817.01 D.2.a with the following:

The Engineer will determine the percentage of asphalt binder in the stockpile in accordance with AASHTO T 164 and average the results obtained from the three samples. The material will be rejected if any single sample has a value greater than 4.0 percent or the average extraction is greater than 3.5 percent. If the stockpile is rejected, the stockpiled material may be blended with other material.

---

**818.03 Bituminous Materials for Micro Surfacing** **PAGE 475** **10/01/15**

Replace Table 818-01 with the following:

**Table 818-01**

| Test | Specification | Requirement |
|---|---|---|
| Settlement and Storage Stability of Emulsified Asphalts, 24-h | AASHTO T 59 | 1% Minimum |
| Distillation of Emulsified Asphalt[1] | AASHTO T 59 | 62% Minimum |
| **Tests on Emulsified Asphalt Residue** | | |
| Softening Point of Bitumen (Ring and Ball Apparatus) | AASHTO T 53 | 135°F Minimum |

[1] Hold the temperature for this test at 350°F for 20 minutes.

---

**830.01 CONCRETE PIPE AND DRAINAGE STRUCTURES** **PAGE 480** **10/01/15**

Replace the second paragraph of Section 830.01 with the following:

Use an ACPA or NPCA certified plant in the construction.

---

**856.01 A General** **PAGE 495** **10/01/15**

Replace the “Slope Gradient” row in Table 856-01 with the following:

| | | | | |
|---|---|---|---|---|
| Slope Gradient Application | ≤ 3H:1V | < 3H:1V - 2H:1V | ≤ 2H:1V | < 2H:1 - 1.5H:1V |

---

**860.02 A Barbed Wire** **PAGE 501** **10/01/15**

Replace Section 860.02 A with the following:

**A. Barbed Wire.**
Provide barbed wire that meets the requirements of AASHTO M 280. Provide wire that has a minimum gage of 12½ and at least 2 point barbs.

---

**860.02 B Woven Wire** **PAGE 501** **10/01/15**

Replace Section 860.02 B with the following:

Provide woven wire that meets the requirement of AASHTO M 279, Design Number 939-6-12½.

---

**862.04 C 3-Cable** **PAGE 505** **10/01/15**

Replace the Section 862.04 C with the following:

**C. 3-Cable.**
Provide round treated timber posts used for three-cable guardrail that are between 4.5 and 6.5 inches in diameter.

---

**880.02 B.2 Epoxy Resin Material** **PAGE 509** **10/01/15**

Replace Section 880.02 B.2 with the following:

**2. Color.**
Provide material that meets the requirements of Table 880-03 and 880-04 when tested in accordance with ASTM D 2805.

**Table 880-03**
**CIE Chromaticity limits using illuminant "C" for Yellow Epoxy**

| | | | | |
|---|---|---|---|---|
| x | 0.470 | 0.485 | 0.520 | 0.048 |
| y | 0.440 | 0.460 | 0.450 | 0.420 |

**Table 880-04**
**Daylight Directional Reflectance (Y)**

| Color | Minimum Value |
|---|---|
| White | 83 |
| Yellow | 50 |

---

**896.10 Controller Cabinet** **PAGE 557** **10/01/15**

Replace the 3 with the following:

3. Provide a metal weatherproof cover that blocks air flow in cold weather, and adequately covers the fan vent assembly and the louver on the door. Install a gasket to the cover and attach the cover to the inside of the cabinet. Construct the cover of the same material as the cabinet.

   Provide a weep hole in the bottom loop on each end of the cabinet full-size door.

Build the cabinet to contain the following items:

- All items of control equipment specified in these Specifications.

- Provide a thermostatically-controlled minimum 250 watt strip-type heater mounted on the full-size door cover with a protective wire-mesh shield installed around the heater. Use a heavy-duty thermostat capable of being set within a temperature range of 30°F to 90°F. Activate the power to the fan and to the heater using a three-position toggle switch located on the auxiliary switch panel.

  Use a switch that operates vertically up and down with the:

  - Up position being FAN (power to the fan on and power to the heater off);
  - Center position being OFF (power to both the fan and the heater off); and
  - Down position being HEATER (power to the heater on and power to the fan off).

  Provide an electrical three-prong twist lock-type plug between the switch and the heater. Mount the heater thermostat on the auxiliary switch panel. Make the connection to the heater with stranded copper wire having 200°C insulation and noninsulated, solderless terminals.

- Provide three duplex receptacles with ground fault interrupter. Fuse the receptacles ahead of the main circuit breaker.

- Provide a switched lamp socket, fuse the lamp socket ahead of the main circuit breaker.

- Include the following in the maintenance switches inside the cabinet:

  - Stop time control.
  - Timer power.
  - Flash.
  - Vehicle detector input for each phase in use and all future phases.
  - Pedestrian input for each phase in use and all future phases.

**10/1/2014**

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**
**PRICE SCHEDULE FOR MISCELLANEOUS ITEMS (PS-1)**

The Contractor agrees to accept the following unit prices for each listed item of work and or material when no project contract unit price exists for that item. Each price listed will be full compensation for the cost of labor, material and equipment necessary to provide the item of work and/or material, complete in place, including (but not limited to) royalty, disposal of unsuitable material, equipment rental, sales tax, use tax, overhead, profit, and incidentals.

Each listed item is referenced to the Standard Specifications by Section number and Section name.

| SECTION NO. | SECTION NAME | ITEM NAME | PRICE PER ITEM |
|---|---|---|---|
| 107.08 | Haul Roads | Water | $27 per M Gal |
| 107.08 | Haul Roads | Bitumen for Mix | Invoice Price [1] + 10% |
| 107.08 | Haul Roads | Bituminous Mix | $42 per Ton [2] |
| 107.08 | Haul Roads | Aggregate Base | $17 per Ton [2] |
| 203.01 B | Rock Excavation | Rock Excavation | $11 per CY |
| 203.01 C | Shale Excavation | Shale Excavation | Common Excavation Price + $1.00 per CY |
| 203.01 D | Muck Excavation | Muck Excavation | $9 per CY |
| 203.05 H.3 | Embankment | Overhaul | $1.40 per CY - Mile |
| 260 | Silt Fence | Mucking Silt Fence | $3.90 per LF |
| 260 | Silt Fence | Removal of Silt Fence [3] | $4.25 per LF |
| 261 | Fiber Rolls | Mucking of Fiber Rolls | $3.90 per LF |
| 261 | Fiber Rolls | Removal of Fiber Rolls [3] | $4.25 per LF |
| 420.04 E | Bituminous Seal Coat | Blotter Sand | $27 per Ton [2] |
| 430.04 G | Hot Mix Asphalt (Exc. Material Hauled to Disposal Area) | Bituminous Mixture | Machine Placed: Bid or Invoice Price + $31 per ton Hand Placed: Bid or Invoice Price + $48 per Ton |
| 704 | Temporary Traffic Control | Flagging | $32 per MHR |

[1] Price paid for bituminous material will be invoice price plus freight costs.

[2] Price Includes haul up to 10 miles. Payment for haul exceeding 10 miles will be according to Section 109.03 E, “Force Account.” The haul distance for aggregate base and bituminous mix will be based on the average haul. The haul distance for blotter sand will be from the point where the haul begins to the point where it enters the project.

[3] This is only for pre-existing items that were not installed under the Contract.

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

**PROJECT SC-CNOA-CNOB-CNOC-0119(057) (PCN-21357)**

**RACE/GENDER CONSCIOUS GOAL** The DBE goal for this project is: **15.00%**

| **NDDOT Contact Information** | |
|---|---|
| Civil Rights Division<br>3rd Floor – Transportation Building | General inquiries:<br>701-328-2637 - or - civilrights@nd.gov |
| Submit advertisements at:<br>https://apps.nd.gov/dot/cr/csi/login.htm | Denise G. Spanjer, DBE Program Administrator<br>701-328-3116 - or - dgspanjer@nd.gov |
| Submit quotes to: subquotes@nd.gov<br>or Fax: 701-328-0343 | Ramona Bernard, Civil Rights Division Director<br>701-328-2576 - or - rbernard@nd.gov |
| DBE Directory<br>https://dotnd.diversitycompliance.com/ | All times are stated in Central Time.<br>"Days" refers to calendar days, unless otherwise stated. |

## PURPOSE

These provisions:

1. Provide an explanation of the federal law and information regarding compliance with the DBE requirements applicable to this contract,
2. Explain the process NDDOT will follow to evaluate bidders' efforts to obtain DBE participation
3. Provide the standards NDDOT will use to measure compliance with the requirements
4. Identify sanctions

## FEDERAL AUTHORITY

The following paragraph must be included in all subcontracts of all tiers in accordance with 49 CFR § 26.13(b):

> "The contactor or all tiers of subcontractors shall not discriminate on the basis of race, color, sex, sexual orientation, gender identity, national origin, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR § 26.13 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate which may include, but is not limited to:
>
> (1) Withholding monthly progress payments;
> (2) Assessing sanctions;
> (3) Liquidated damages; and/or
> (4) Disqualifying the contractor from future bidding as non-responsible"

It is the prime contractors' responsibility to ensure all tiers of subcontractors, brokers, manufacturers, suppliers, vendors, and regular dealers comply with the requirements of this special provision. In addition, the prime contractor has the responsibility to monitor DBE performance on the project, and to ensure that the DBE performs a commercially useful function (CUF).

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# REQUIREMENTS

- ☐ **I, II, III, V - REQUIRED - ALL BIDDERS**
- ☐ **I, II, III, IV, V - REQUIRED - ALL SUBCONTRACTORS OVER $500,000**
- ☐ **III, IV - REQUIRED - ALL PROVIDING QUOTES OVER/UNDER $500,000**
- ☐ **I, II - WAIVED IF THE BIDDER MEETS THE PROJECT DBE GOAL**

***Contract award will be made to the lowest responsible bidder whose proposal substantially complies with the requirements prescribed herein and who has met the goal for DBE participation, or has demonstrated, to the satisfaction of the Department, adequate good faith efforts to do so.***

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## I. ADVERTISE

**All bidders and subcontractors over $500,000 must advertise using one of the following two options:**

**OPTION 1:** Place an advertisement soliciting DBE participation using the electronic **DBE Advertisement System**.

- Submit the required information online at https://apps.nd.gov/dot/cr/csi/login.htm no later than noon, 15 calendar days before the bid opening. This system has been added to the Bid Opening Sign-In System and replaces the DBE Newsletter advertisement requirement.

**OPTION 2:** Directly contact by email or fax, all DBEs certified in the specific NAICS (work type) required.

- Contact with DBEs must be made no later than 5 p.m. seven days before the bid opening.
- Use the DBE Directory to determine the DBE firms certified in the work to be subcontracted.

Either method of advertisement must:

- Provide the name, email address, telephone, and fax number of the company contact who will be available to discuss and/or receive quotes.
- Offer assistance to DBEs in interpreting plans; quantities; expected overtime; project scheduling;

pit and batch plan locations, length of haul, type of road; method of measurement (seeding by the mile or acre, hauling by hour or by ton-mile) or other issues that may affect a price quote.

BidEx ads do not count as having advertised.

## II. SIGN IN

**All bidders and subcontractors over $500,000 must indicate their intention to bid and/or receive quotes on specific jobs by using the Department's Bid Opening Sign-In System.**

To indicate their intention to quote or receive quotes, all subcontractors, brokers, manufacturers, suppliers, vendors, and regular dealers are strongly encouraged to use the Bid Opening Sign-In System. When signing in subcontractors should select the type of work, i.e., grading, trucking, or other work they wish to perform.

The **Bid Opening Sign-In** web application is located at https://apps.nd.gov/dot/cr/csi/login.htm.

- Sign-In opens at 8 a.m. seven days prior to the bid opening and closes at 11 a.m. the day before the bid opening.
- Fill in the online form as required.
  - Name of company, contact person, address, email, telephone, and/or fax number
  - Company contact who will be available to receive and discuss quotes/proposals
  - Preferred method of contact - email, telephone, and/or fax number
  - Job number(s)
- The "**Bid Opening Contact Report**" is available for download at any time during the Bid Opening Sign-In period.
- Log in to download the **"Bid Opening Contact Report"** at https://apps.nd.gov/dot/cr/csi/public/listBidOpenings.htm

## III. RECEIVE & EVALUATE ALL QUOTES GIVEN

All bidders and all subcontractors over $500,000 must receive and evaluate all quotes offered, whether the quotes are calculated by ton-mile, hour, acre or square mile, and whether work elements are intended to be subcontracted. It is the responsibility of any person receiving quotes to convert the quotes to an acceptable format.

All subcontractors quoting over $500,000 must attach a completed copy of Form A to their quote when submitting it to the bidder.

All quotes given for each job should be faxed or emailed to bidders or subcontractors the day before the bid opening by the times listed below. Subcontractors interested in work on the advertised jobs are encouraged to quote all contractors on the Sign-In report.

| DBE AND NON-DBE | PROVIDE QUOTES BY |
|---|---|
| Suppliers (brokers/regular dealers), vendors, & manufacturers | 2 p.m. Central |
| Subcontractors **under** $500,000 | 5 p.m. Central |
| Subcontractors **over** $500,000 | 8 p.m. Central |

**NECESSARY QUOTE INFORMATION**
SFN 60211, Price Quotation, contains all pertinent information fields required for communicating clear and accurate quotes on NDDOT projects. SFN 60211 may be accessed at Department's website http://www.dot.nd.gov/forms/sfn60211.pdf

SFN 60211 is not required; however, if this form is not used, include all of the information listed on the form to assure clear and accurate quotes.

## IV. SUBMIT QUOTES TO NDDOT

All subcontractors, suppliers, manufacturers, regular dealers, vendors, and brokers must fax or email quotes to the Department the day before the bid opening. Quotes received at or before 8 p.m. **may be used** in a bid differential between a DBE and non-DBE. Quotes submitted after 8 p.m. **may not be considered in the bid differential analysis.**

## V. SUBMIT BY 4 P.M. 7 CALENDAR DAYS AFTER THE BID OPENING

### SFN 52750 – FORM A

All bidders and subcontractors over $500,000 must submit Form A as part of the electronic bid proposal and address all DBE quotes received. A revised Form A (SFN 52750) must be submitted before the deadline if any of the following conditions are present.
http://www.dot.nd.gov/forms/sfn52750.pdf

- Additional DBE Participation is achieved after the time of bid,
- Electronic Form A was incorrectly completed, or
- By request of the Department.

The bidder must also include Form A information for all subcontractors over $500,000. Bidders are strongly encouraged to account for any intended use of DBEs by their subcontractors in order to more accurately reflect their goal achievement.

### SFN 52013 – FORM B OR QUOTE COPIES

All bidders and subcontractors over $500,000 must submit one of the following:

- Copies of all quotes from all tiers of subcontracting or,
- SFN 52013, Form B - List of Businesses Submitting Quotes with a list of all businesses that submitted quotes from all tiers of subcontracting. When submitting Form B, copies of all quotes must be retained, by each bidder, until the job is awarded.

Regardless of whether submitting quotes or Form B, bidders must indicate which subcontractor(s), suppliers, regular dealers, vendors, manufacturers, or brokers will be used on the job.

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# APPARENT LOW BIDDER - PRE-AWARD REQUIREMENTS

To be awarded this contract, the apparent low bidder (ALB) must either:

1. Meet the DBE Goal on the project within 7 calendar days of the bid opening
2. Demonstrate adequate Good Faith Efforts (GFE) (see SFN 60829)

The project may be awarded only after the ALB submits all documentation to the Department by 4 p.m. seven (7) calendar days after the Bid Opening (as required by 49 CFR § 26.53(b)(3)(i)(B)). The earlier the documentation is submitted, the greater the possibility of having an early award.

## ***WHEN THE PROJECT DBE GOAL IS MET:***

The ALB must submit SFN 52160, Form C **-** Notification of Intent to Use, **in addition to the previously submitted** Form A or SFN 52750, and quote copies or SFN 52013 Form B - List of Businesses Submitting Quotes.

## ***WHEN THE DBE GOAL IS NOT MET:***

The ALB has seven (7) calendar days to meet the project goal if it has not been met at the time of the bid opening.

If the project goal is not met within 7 calendar days of the bid opening, the bidder must have advertised, signed in, and shown good faith efforts to achieve the goal.

**In addition to the previously submitted** Form A or SFN 52750 and quote copies or SFN 52013 Form B - List of Businesses Submitting Quotes, the bidder must also submit the following:

- SFN 52160, Form C Notification of Intent to Use
- SFN 60829, Contractor Good Faith Efforts Documentation (SFN 60829 is located at the end of this Special Provision)

Contractor Good Faith Efforts Documentation http://www.dot.nd.gov/forms/sfn60829.pdf provides the basis of the ALB's written account of its efforts in good faith which were employed to achieve the goal.

SFN 60829 lists the documentation necessary to demonstrate the ALB's good faith efforts to achieve the goal. The ALB must specifically demonstrate through SFN 60829 that it took all necessary and reasonable actions to achieve a DBE goal. The Department's evaluation of the efforts will be based on the ALB's submitted documentation. *Failure to meet the goal may cause the DBE Participation Committee to recommend "Not Award".*

The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. (Appendix A to 49 CFR § 26 IV D (2))

If the ALB indicates that it intends to self-perform and/or use a non-DBE to perform work quoted by a DBE, a written comparison between the DBE's quote and the prime's and/or non-DBE's cost of performing the specific spec/code item must accompany SFN 60829. The ALB also must fully detail the methodology applied in calculating the cost of their self-performed work items.

It is not acceptable to limit the use of DBEs because a larger amount of work is intended to be subcontracted to a Non-DBE.

## **EVALUATION OF GOOD FAITH EFFORTS**

Proposals may be considered irregular and may be rejected by the Department if there is a substantial and material non-compliance with the DBE requirements. The Department reserves the right to waive minor irregularities and/or certain elements of this special provision.

Federal regulations require the Department to scrutinize a bidder's documented good faith efforts. When the ALB fails to meet the contract goal, but others meet it, it is reasonable to question whether the ALB made good faith efforts to meet the goal. (Appendix A to 49 CFR § 26 V.)

> If the ALB fails to achieve the project goal and fails to submit adequate GFE documentation by the deadline, the DBE Participation Review Committee (Committee) will notify the Director's designee that the bidder failed to demonstrate GFE. The Department may reject the proposal.

If the ALB fails to submit good faith efforts (GFE) on a project in question, the Department may reject the proposal.

If the ALB has not met the project goal and provides the required documentation, the Committee will evaluate the ALB's GFE and DBE participation. The Committee will notify the Director's designee(s) of its determination.

1. **Award:** If the Committee determines the ALB has adequately demonstrated GFE, the committee will recommend "Award".
2. **Award Subject To Using DBE:** If the committee determines the ALB has not adequately demonstrated GFE by selecting a non-DBE used in a Bid Differential (non-DBE/BD), the committee may recommend "Award Subject To" using the DBE(s).

   The Director's designee(s) will consider whether the DBE quote not used due to bid differential was reasonable and whether the ALB should have in good faith used the DBE quote. If the DBE quote is determined to be reasonable, the Director's designee(s) will provide the ALB an opportunity to increase participation by using the DBE or a DBE performing another type of work.

   If the Department determines that a non-DBE's quote is reasonable, the non-DBE/BD may be used.

   If the ALB commits to additional participation, an updated/corrected Form A and a completed Form C with the DBE must be submitted prior to award. Faxed or photocopied signatures are acceptable. The ALB is responsible for all additional costs incurred.

   If the ALB does not commit to additional participation, administrative reconsideration is available.
3. **Not Award:** If the Committee determines the ALB has not adequately demonstrated GFE, the committee may recommend "Not Award".

   Upon notification of a recommendation for a Not Award determination, the Director's designee(s) will consider the Committee's recommendation. If the Designee(s) agrees with the Committee's recommendation, the Designee(s) will contact the ALB to inform them of the determination, the reasons for it, and that administrative reconsideration is available.

**Administrative Reconsideration** 49 CFR § 26.53 (d)

- The ALB has two calendar days to respond with documentation or argument(s) concerning whether its good faith efforts to meet the goal were adequate.
  - An in-person reconsideration meeting is available at the ALB's request.
- The Director's designee(s) will consider any information submitted.
- The NDDOT reconsideration decision will be made by the Director's designee(s), who will not have taken part in the original determination.
  - If the Director's designee(s) determines the ALB made adequate good faith efforts to meet the goal, the job will be recommended for award.
  - If the Director's designee(s) determines that the ALB has failed to sway the decision from "Not Award", the ALB will receive written notice of the decision.
- The Director will make the final decision and may exercise such discretion as deemed appropriate.
- The result of the reconsideration process is not administratively appealable to the US Department of Transportation.

# POST-AWARD REQUIREMENTS

## PRIME CONTRACTOR'S MONITORING, RESPONSIBILITIES, REPORTING

For the life of the project, the prime contractor is responsible for the DBEs listed on Form C and for the specific spec/code items or products that the prime committed to during the award process.

The prime is responsible to:

- Invite and encourage all subcontractors and all DBEs listed on Form C to the pre-construction conference.
- Provide minutes to any DBE not in attendance at the pre-construction conference.
- Ensure their company as well as any subcontractors, manufacturers, and regular dealers/suppliers comply with the requirements of this special provision.
- Provide all subcontractors with Proposed Project Schedules and any necessary updates.
- Monitor DBE performance on the project.
    - Submit SFN 60597, DBE Performance – Commercially Useful Function (CUF) Certification to the project engineer with SFN 5682, Prime Contractor's Request to Sublet. Project engineers will not approve Requests to Sublet without the CUF Certification.
    - Submit SFN 60638, Monthly Record of DBE Project Payments for each DBE on the project, by the 15th calendar day of every month while payments are made to the DBE.
- Maintain project records and documentation of payments to DBEs for three years following acceptance of the final payment from NDDOT (per FHWA-1273, Section II Nondiscrimination #11).
    - Submit SFN 14268, DBE Participation Certification for each DBE, to the project engineer within 4 weeks of the DBE contract work completion. Each certification must be signed by the prime contractor and DBE used on the project.
        - This reporting requirement also applies to any certified DBE.
        - NDDOT may perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.
        - Make these records available for inspection, upon request, by an authorized representative of the NDDOT or USDOT.

If SFN 60597, SFN 60638, and/or SFN 14268 are not received in a timely manner, progress payments will be withheld until submitted.

## GFE RESPONSIBILITIES FOR THE LIFE OF THE CONTRACT

If award of the contract is made based on the contractor's good faith efforts, the goal will not be waived; the contractor must make good faith efforts throughout the duration of the project.

The prime contractor shall not terminate or replace a DBE subcontractor without the Department's prior written consent. 49 CFR 26.53(f)(1)i.

The Department's contract includes a provision stating:

> (A) That the contractor shall utilize the specific DBEs listed to perform the work and/or supply the materials unless the contractor obtains written consent; and
> (B) That, unless the Department's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

SFN 60595 - Replacement Approval Request must be submitted and approved prior to replacement of each DBE firm(s), or Non-DBE/BD(s), or any work the prime originally intended to self-perform prior to the

commencement of any replacement work. No payment will be made if work commences without written approval. The form may be accessed at the Department's website:
http://www.dot.nd.gov/forms/sfn60595.pdf

If the prime has not achieved the goal and additional work becomes available, the prime must follow the replacement approval request process using SFN 60595.

## EXCEPTION FOR REPLACEMENTS DUE TO PUBLIC NECESSITY

When replacement work is required as a matter of public necessity, (e.g., safety, storm water issues), the contractor must immediately notify the project engineer and the DBE or Non-DBE/BD intended at the time of award. If the DBE or Non-DBE/BD is unable to perform the work within the time specified by permit or administrative rule, the DBE or Non-DBE/BD must notify the prime immediately; and, within one business day, a written explanation must be submitted to the prime with a copy to the project engineer. The project engineer refers all replacement approval requests to the Assistant District Engineer (ADE). In a case of public necessity, the ADE has the authority to allow the contractor to self-perform the replacement work or to find another contractor to complete it.

## TERMINATION FOR CAUSE

A DBE or Non-DBE/BD may not be terminated without the Department's prior written consent. (49 CFR 26.53(f)(1)(i))

The Department will provide such written consent if the Department agrees that the contractor or subcontractor has good cause to terminate the DBE firm or Non-DBE/BD.

Circumstances which may be considered good cause for termination include when the listed DBE or Non-DBE/BD:

- Fails or refuses to execute a written contract
- Fails or refuses to perform the work of its subcontract in a way consistent with the contract and/or with normal industry standards, provided, that good cause does not exist if the failure or refusal of the listed DBE or Non-DBE/BD to perform its work on the subcontract results from the bad faith or discriminatory action of the prime or subcontractor
- Fails or refuses to meet the prime contractor's reasonable nondiscriminatory bond requirements
- Becomes bankrupt, insolvent, or exhibits credit unworthiness
- Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215, and 1,200 or applicable state law
- Is ineligible to receive DBE credit for the type of work required
- Dies or becomes disabled with the result that the listed DBE or Non-DBE/BD is unable to complete its work on the contract
- Other documented good cause that the Department determines compels the termination of the listed DBE or Non-DBE/BD

Good cause does not exist if the prime contractor or subcontractor seeks to terminate a DBE or Non-DBE/BD which was relied upon to obtain the contract so that the contractor can self-perform the work for which the DBE or Non-DBE/BD was engaged or so that the contractor can substitute another DBE or Non-DBE contractor after contract award.

The contractor must immediately give written termination notice to DBE or the Non-DBE/BD. At the same time, SFN 60595 and its supporting documentation must be provided to the project engineer for review and analysis of the reasons for the intended termination.

The contractor must give the DBE or Non-DBE/BD five calendar days to respond to the termination notice. Within that time, the DBE or Non-DBE/BD should respond with a written explanation of their reasons

and/or objections to the proposed termination and specifically address why the Department should deny the contractor's request. This explanation should be submitted in reply to the contractor with a copy to the project engineer.

The project engineer will send the contractor's SFN 60595, the DBE or Non-DBE/BD's written response(s) and any other accompanying documentation to the Civil Rights Division (CRD). If the CRD concurs that a termination is warranted, the contractor must seek a DBE to perform the work.

All DBEs currently certified in the specific area of work to be performed, must be contacted in writing or by phone, and quotes solicited. If available, a DBE will be selected to perform a dollar value of work, equal to the value of the commitment not achieved, unless the contractor can demonstrate the DBE quote is unreasonable, using the same comparison in section "Good Faith Efforts Documentation."

Upon receipt of appropriate written GFE documentation, and prior to commencement of any replacement work, CRD will consider the contractor's efforts and provide a final written decision to the project engineer.

In instances where trucking replacements are sought, DBEs and/or Non-DBEs as allowed by regulation must be selected to cover all the trucking required until sufficient participation is met.

## UNFULFILLED OBLIGATIONS

The Department requires SFN 60595 and its supporting documentation when a contractor, DBE, or Non-DBE/BD does not fulfill her or his obligations in any of the following situations:

- The prime contractor is unable to perform the full amount of work committed to be completed, by the prime's workforce and equipment, at the time of award, or
- The Non-DBE/BD to which the prime contractor committed using at the time of award, is unable to perform the full amount of work, or
- The DBE or Non-DBE/BD withdraws voluntarily from the project and provides to the prime written notice of its withdrawal.

SFN 60595 and its supporting documentation must be provided to the project engineer for review and analysis. If the DBE or Non-DBE/BD is not able to perform, the prime contractor must provide written documentation from the DBE or Non-DBE/BD as to the reasons. The project engineer refers all replacement approval requests to the ADE. The Civil Rights Division will provide a written final determination to the project engineer.

If the Department concurs that a substitution is warranted, the prime contractor will seek a DBE to perform the work. All DBEs currently certified in the specific area of work to be performed, must be contacted in writing or by phone, and quotes solicited. If available, a DBE will be selected to perform a dollar value of work, equal to the value of the commitment not achieved, unless the contractor can demonstrate the DBE quote is unreasonable, using the same bid differential comparison in section "Good Faith Efforts Documentation."

In instances where trucking replacements are sought, DBEs and/or Non-DBEs as allowed by regulation must be selected to cover all the trucking required until sufficient participation is met.

The prime contractor is responsible for any additional costs incurred as a result of the prime contractor's failure or the subcontractor quoting over $500,000 to fulfill the original commitment or the DBE or Non-DBE/BD's failure to perform.

## NON-COMPLIANCE, FAILURE TO PERFORM, AND SANCTIONS

If the Department determines that a contractor should be sanctioned, the Department will provide written notice to the contractor informing them of the sanction for the following:

- Not submitting required documentation in a timely manner
- Not paying a DBE in a timely manner
- Not having a DBE perform the specified dollar amount of work (subject to plan quantity changes) tasks or bid items
- For otherwise not fulfilling the requirements of this DBE special provision

If the Department determines that a DBE should be sanctioned, the Department will provide written notice to the DBE informing them of the sanction for the following:

- Failure to perform work as specified in the contract
- Failure to pay contract-related bills in a timely manner
- Failure to perform a commercially useful function
- Failure to notify the prime contractor orally and in writing if they are unable to perform a commercially useful function
- Otherwise not fulfilling the requirements of this DBE special provision

Other grounds for sanctions may include, but are not limited to: repeated instances of failure to perform the contract requirements, repeated instances of late contract-related payments, or documented fraudulent practices.

If sanctions are applied, the contractor or the DBE may make a written request to the Department for reconsideration. The contractor or the DBE must provide a written statement defending their actions within 3 calendar days.

If the Department does not receive a written request for reconsideration, or if the contractor or DBE does not provide sufficient evidence that the provisions have been met, the Department may suspend the contractor or the DBE bidding or quoting privileges and not allow the contractor or the DBE to participate in one or more scheduled bid openings after the date the sanction is imposed.

Further sanctions which may be imposed by the Department for failure on the part of the contractor may include, but are not limited to:

- Withhold the contractor's progress payment until the contractor complies with all DBE contract provisions
- Deduct, from the contractor's progress payments, the dollar amount of DBE participation committed to but not achieved by the contractor
- Find the contractor in default
- Liquidated damages
- Disqualifying the contractor from future bidding
- Take other corrective action determined by the Department to be appropriate
- Any combination of the above.

## NDDOT MONITORING AND ENFORCEMENT MECHANISMS

The Department will bring any false, fraudulent, or dishonest conduct in connection with the DBE program to the attention of USDOT. USDOT may pursue action as provided in 49 CFR § 26.107. Actions include referral to the Department of Justice for criminal prosecution or referral to the USDOT Office of Inspector General for action under suspension and debarment, or Program Fraud and Civil Remedies rules. The Department will also consider similar action under its own legal authority, including responsibility determination in future contracts.

## COMMERCIALLY USEFUL FUNCTION

DBEs are required to perform a commercially useful function (CUF). CUF refers to those services the DBE is certified to perform. Certified services for each DBE are listed in the online DBE Directory. It is a DBE's responsibility to immediately notify the prime contractor in writing if the DBE is unable to perform a CUF or the services indicated on Form C.

The contractor must certify that DBEs working on the prime's contract are performing a commercially useful function. Submit SFN 60597, DBE Performance – Commercially Useful Function Certification to the project engineer with SFN 5682, Prime Contractor's Request to Sublet. Project engineers will not approve the Requests to Sublet without the CUF Certification. A review of the certification must be performed by the project engineer to determine whether the contract dollar value of the DBE's work may be counted toward the project goal.

The Department counts participation to a DBE contractor toward DBE goals only if the DBE is performing a CUF on that contract.

A. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installation and paying for the material itself. 49 CFR § 26.55(c)(1)

B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. 49 CFR § 26.55(c)(2)

C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, the Department must presume that it is not performing a CUF. 49 CFR § 26.55(c)(3)

D. When a DBE is presumed not to be performing a CUF as provided in paragraph C (above), the DBE may present evidence to rebut this presumption. 49 CFR § 26.55(c)(4)

E. The Department's decisions on CUF matters are subject to review by Federal Highway Administration, but are not administratively appealable to USDOT. 49 CFR § 26.55(c)(5)

## COUNTING RACE/GENDER CONSCIOUS DBE PARTICIPATION - 49 CFR § 26.55

The Department does not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. 49 CFR § 26.55 (h)

The Department will count DBE participation toward our overall annual goal as provided in 49 CFR § 26.55 as noted below.

1. The Department will use the following factors in counting DBE trucking participation.

   A. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. 49 § 26.55(d)(7)

   B. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. 49 CFR § 26.55(d)(1)

   C. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract and receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it

employs. 49 CFR § 26.55(d)(2-3)

D. The DBE may lease trucks and drivers from another DBE firm and receives credit for the total value of the transportation services the lessee DBE provides. 49 CFR § 26.55(d)(4)

E. The DBE may also lease trucks with drivers and is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the services under items 1C and 1D. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. 49 CFR § 26.55(d)(5)

Example to 1D: DBE Firm X uses two of its own trucks on a contract. It leases two trucks with drivers from DBE Firm Y and six trucks **with drivers** from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

F. The DBE may lease trucks without drivers from a non-DBE truck leasing company and if the DBE uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph 1F: DBE Firm X uses two of its own trucks and drivers on a contract. It leases two additional trucks and drivers from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks. 49 § 26.55(d)(6)

2. Only the value of the work actually performed by the DBE counts toward the project goal when a DBE participates in a contract provided the DBE is certified in this work.

A. The Department counts the entire amount of that portion of a construction contract, or other contract not covered by item 2. B, that is performed by the DBE's own forces. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). 49 CFR § 26.55 (a)(1)

B. The Department counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service for which they are certified, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, if the Department determines the fee to be reasonable and not excessive. 49 CFR § 26.55 (a)(2)

C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is also a DBE. 49 CFR § 26.55 (a)(3)

3. The Department counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

A. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. 49 CFR § 26.55 (e)(1)(i)

B. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. 49 CFR § 26.55 (e)(2)(i)

C. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 3B (above) 49 CFR § 26.55 (e) (2) (ii) (C)

D. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, if the Department determines the fees to be reasonable and not excessive. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however. 49 CFR § 26.55 (e) (3)

E. The Department determines the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis. 49 CFR § 26.55 (e)(4)

4. If a firm is not currently certified in ND at the time of the execution of the contract, the Department does not count the firm's participation toward any DBE goal. 49 CFR § 26.55 (f)

5. The Department does not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the Department's overall annual goal. 49 CFR § 26.55 (g)

# DEFINITIONS

The definitions specified below apply only to this Special Provision and may contain differences from NDDOT Standard Specifications.

**Achievement** means any DBE certified service dollar amount committed to at the time of award. Any achievement must be supported by a request to sublet and Monthly DBE Payment Records for each DBE.

**Aggregate providers** are considered subcontractors rather than regular dealers/suppliers, regardless of the amount of their quote.

**Apparent low bidder (ALB)** means the bidder whose bid is read as low bid at the bid opening.

**Bid differential** means written documentation provided by the low bidder comparing a Non-DBE quote to a DBE quote.

**Bid Opening Sign-In System** means the Department's online system to which all prime contractors and subcontractors must register to indicate their interest in quoting or bidding prior to each bid opening.

**Bidder/prime contractor** means bidders who are submitting proposals on this project, regardless of the size of the highway construction projects; a contractor intending to serve as the prime contractor.

**Blanket quote** means when a business provides the same quote, for all projects, at a bid opening, using the same price, at one rate, not project specific. Blanket quotes for the construction season are not allowed, i.e. trucking, striping, signing, construction supplies, etc.

**Commercially Useful Function** describes a DBE's responsibilities and involvement in a project, see section Commercially Useful Function of this SP.

**Commitment** means the dollar amount of work the DBE will complete according to the bidder's submitted proposal.

**Contractor** means all DBE and Non-DBE firms, including prime contractors, subcontractors (under/over $500,000), brokers, vendors, regular dealers/suppliers, and manufacturers at any tier.

**DBE Goal** means a percentage of the total contract targeted for the hiring of DBE subcontractors to do specific bid items for which the DBE has been certified to perform. Project goals are set by assessing the project's bid items, location, whether DBEs are available to do the work.

**DBE Participation** means the percentage achieved when the dollar amount committed to the DBE is divided by the dollar amount of all contract items.

**DBE Participation Review** summarizes the prime's participation at the time of award. A replacement approval request must be submitted to substitute a firm for any DBEs reported as being used at the time of award.

**Department** means the project owner regardless of whether the owner is NDDOT, a city or a county

project.

**Disadvantaged business enterprise or DBE** means a for-profit small business concern that is certified by the Department and listed in the DBE Directory available on the Department's web site. DBEs must first be certified in the work intended before any DBE achievement may be counted toward the project goal.

**Equipment supplier** is a firm which provides equipment for sale or lease, without operators, and whose primary business function is equipment sales or leasing.

**Good Faith Efforts (GFE)** means efforts made by the prime contractor to achieve a DBE goal. This includes but is not limited to providing assistance to DBEs in preparing their quotes, advertise, sign in, etc.

**Manufacturer** means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. 49 CFR § 26.55 (e) (1) (ii)

**Materials** means aggregate, steel, petroleum products, concrete, asphalt, and other construction supplies.

**NAICS Codes** means industry codes assigned by North American Industry Classification System. When certified, DBE businesses are assigned NAICS codes which are identified in the DBE Directory.

**NDDOT Civil Rights Certification & Compliance System (CRCCS)** refers to the online compliance reporting system whereby contractors report/submit job related payments, commitments, and Utilization Plan documentation.

**Non-DBE** means a contractor, subcontractor, supplier (broker or regular dealer), vendor, or manufacturer that has not been certified as a DBE by the NDDOT Uniform Certification Program.

**Non-DBE used in bid differential (Non-DBE/BD)** means a Non-DBE which, at the time of award, was approved for use due to a price comparison with a DBE. A Form C with the Non-DBE/BD is included in the DBE Participation Review documentation. A replacement approval request must be submitted when the Non-DBE/BD is unable to complete the work.

**Positive Contact** means active and documented solicitation of DBE and other subcontractors. Advertising the prime's intention to bid or contacting individual DBEs is deemed a positive contact.

**Project owner** means any political subdivision such as a city or county which provides match to federal highway funds and uses NDDOT's electronic bidding system to let their projects to bid. The Department "owns" state projects.

**Quoter** means a DBE or a Non-DBE subcontractor (under/over $500,000), brokers, vendors, regular dealers/suppliers, and manufacturers at any tier who submits quotes to another contractor.

**Race/Gender Conscious (RGC)** goals are those focused specifically on assisting DBEs. The RGC portion of NDDOT's 2016 overall 6.22 percent DBE goal is 2.75 percent.

**Responsible Bid Proposal** means a bidder's proposal in which the project goal has been achieved, or the bidder demonstrates Good Faith Efforts (GFE) as outlined in this Special Provision.

**Subcontractor** means any firm intending to perform work, or intending to perform work and supply the materials, which were intended for their work on the project. All subcontractors must attach a list of DBE subcontractors intended for use to their quote when submitting it to the prime contractor.

**Subcontractor quoting over $500,000** means a subcontractor whose quote is over $500,000 on any project and who is not a supplier, broker, vendor, regular dealer, or manufacturer. All aggregate providers are considered subcontractors, regardless of the amount of their quote.

**Supplier** means a party providing goods, services, and supplies on the project.

> **Broker** means an agent who, without having custody of the property, a) negotiates contracts of purchase, work, lease, or sale; b) buys and sells goods; or c) negotiates between buyers and sellers. See Counting DBE Participation section.
>
> **Regular Dealer** means a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. See Counting DBE

Participation section.

**Tier** means various levels of contractors on the job. For example a prime contractor's subcontractor (B) is referred to as the second tier. When B subcontracts with C, C becomes the third tier, etc.

**Tied quote** means the quote will be considered only if all of the bid items are included.

**Untied quote** means that any item or group of items quoted may be used for price noted on the quote whether one or all are used.

**Utilization Plan** is the prime's documented plan to achieve DBE participation on a given project.

**Download approved form needed at: http://www.dot.nd.gov/forms/SFN52750.pdf**

## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RGC)

North Dakota Department of Transportation, Civil Rights Division
SFN 52750 (Rev. 01-2015)

**FORM A**

| Revision Date |
|---|
| |

| Contractor | | Phone |
|---|---|---|
| Job No. | Project No. | Bid Opening Date |

**NOTE:** This revised Form A represents a change in the bidders original Form A which was submitted electronically at the time of bid. Nevertheless, the bidder is bound by the proposal submitted at the time of bid, under NDDOT provisions, and thus the bidders proposal, the hard copy proposal, addenda, plans, standard specifications, supplemental specifications, and special provisions are part of the bid and contract.

For the life of the project, any changes in work listed here to be self-perfo[illegible] to be [illegible]rform[illegible] by a DBE, or to be completed by a non-DBE subcontractor approved at the time of award mus[illegible] appr[illegible] writ[illegible] by the Civil Rights Division prior to commencement of any work. No payment will be made with[illegible] writte[illegible] prov[illegible]

**PRINT ALL NUMBERS CLEARLY AND LEGIBLY.**

**LIST ALL DBE FIRMS WHO QUOTED YOUR FIRM ON THIS [illegible]JECT [illegible]EC[illegible] 1, SECTION 2, and/or SECTION 3.**

### Section 1.

List **DBE** firms to be used on the project.

1. List DBE Firms to be used by the bidd[illegible]ard t[illegible]rojects [illegible]al ac[illegible]ement.
2. List the DBEs to be used by subcontrac[illegible]oward [illegible]project goal.
   - Include the subcontractor's [illegible] listin[illegible] DBE[illegible] be used by the subcontractor.
3. List the spec & code item n[illegible]bers [illegible]e pe[illegible]ed by DBEs and the total dollar value of the contract.
   - Note whet[illegible]BE fi[illegible] is t[illegible] on[illegible] a portion of a spec & code item (supply, haul, place, etc.) and state the reas[illegible]) the DBE is not [illegible]ing [illegible]or the entire item.
   - State th[illegible]ame [illegible]ntra[illegible] will perform the remaining portion.
4. DBE bidde[illegible] be performed with "own forces and equipment."
   - Separately list any wor[illegible] be subcontracted to DBEs and any materials to be purchased from DBEs.

| DBE Firm | |
|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = |

| DBE Firm | |
|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = |

| DBE Firm | |
|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= % | |
| Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = |

Continued

Sample

**Download approved form at: http://www.dot.nd.gov/forms/SFN52013.pdf**

**FORM A (continued)**

| DBE Firm | |
|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | Total Contract Dollar Value |
| Percent DBE will do with own equipment/forces= %<br>Percent Non-DBE trucker will perform = % | If Regular Dealer, X 60% = |

| DBE Firm | |
|---|---|
| List Specific Spec & Code Item Numbers or Products to be Supplied | al C[illegible]r Value |
| Percent DBE will do with own equipment/forces= %<br>Percent Non-DBE trucker will perform = % | If Regular [illegible]r, X 60% |

**Section 2:**
List DBE firms not used because the bidder will self-[illegible]rm [illegible]ocure s[illegible]fic sp[illegible]de item numbers.

| DBE Firms not used; Bidder Self-Performin[illegible] | S[illegible] & code item numbers or products to be supplied by [illegible]idder |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

**Section 3.**
List DBE firms not used due to bid differential and indicate which firm will be performing the work instead.

| DBE Firms not used, bid differential | Firms to be used instead of DBE |
|---|---|
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |
| DBE Firm | |

See DBE Race/Gender Special Provision for additional information.

Email this form to Subquotes@nd.gov or Fax to (701)328-0343

Sample

**Download approved form at: http://www.dot.nd.gov/forms/SFN52013.pdf**

**LIST OF BUSINESSES THAT SUBMITTED QUOTES (RGN & RGC)**
North Dakota Department of Transportation, Civil Rights Division
SFN 52013 (Rev. 01-2016)

Page 1 of _____

**FORM B**
**DUE BY 4 P.M. (CENTRAL) 7 CALENDAR DAYS AFTER THE BID OPENING**

All bidders must submit one of the following by email to Subquotes@nd.gov or by fax to (701)328-0343.

1. Copies of all quotes received from all tiers of subcontracting on the project.
   - Prime contractors intending to use DBEs quoting to subcontractors must supply the subcontractor's Form A and Form B; and identify the subcontractors intended for use.
2. Form B, SFN 52013: List all firms that submitted quotes from all tiers of subcontracting.
   - At the same time, bidders must supply subcontractor's Form As received with subcontractor quotes and use the check box to indicate which subcontractor will be used on the job.
     When submitting Form B, copies of all DBE and non-DBE quotes must be retained until the project is awarded.

| | | | |
|---|---|---|---|
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
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| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |
| ☐ | Business | Contact Person | Telephone Number |
| | Mailing or Email Address | | Spec & Code Quoted |

Sample

**Use additional pages, following the same format, if necessary.**

**Download approved form at: http://www.dot.nd.gov/forms/SFN52160.pdf**

## NOTIFICATION OF INTENT TO USE (RGN & RGC)

North Dakota Department of Transportation, Civil Rights
SFN 52160 (Rev. 01-2016)

### FORM C - DUE BY 4 P.M. 7 WORKING DAYS AFTER THE BID OPENING

1. The apparent low bidder shall submit an individual Form C for each DBE (or approved Non-DBE) to be used on the project to subquotes@nd.gov or fax to (701)328-0343.
2. The contractor and DBE shall both sign the form. Faxed or photocopied signatures are acceptable. Form C applies to all tiers of subcontractors for DBE achievement credit to be given.
3. If Form C contains additional pages or attachments, both parties must sign each page or attachment.
4. Explain any difference between the information on Form A and Form C in the comments section below.

**This form is not a contract and does not take the place of any contract.** This form indicates to the NDDOT that all DBEs listed on Form A will be used on the project.

| Prime Contractor or Subcontractor | Project Number |
|---|---|
| Intended DBE/ Non-DBE | Bid Opening Date |

| | Spec & Code # | Work Description | (DBE) Percent of w to be done with ow for | Appr Quan | Unit Costs | Amount |
|---|---|---|---|---|---|---|
| X | | | | | | |

ADD EXPENSE

| Total: | $.00 |
|---|---|

Are there any agreements not d in y qu ☐ Ye ☐ No If yes, explain:

Comments: Use this space to ex any differ s between the amounts, units, work descriptions, spec/code items, quantities, and totals between those indicated on Form submitted with the bid proposal and this Form C.

| Prime Contractor/Subcontractor Signature | Title | Date |
|---|---|---|
| Intended DBE/Non-DBE Signature | Title | Date |

Sample

**Download approved form at: http://www.dot.nd.gov/forms/SFN60829.pdf**

## CONTRACTOR GOOD FAITH EFFORTS DOCUMENTATION



North Dakota Department of Transportation, Civil Rights Division
SFN 60829 (Rev. 10-2015)

Submit this form and the required attachments to document the contractor's good faith efforts to meet the project goal. All supporting documentation and evidence of good faith efforts must be clearly labeled and submitted as specified in PART A through Part I. Submit by email to Subquotes@nd.gov or by fax at (701)328-0343 by the deadlines within 7 calendar days of the bid opening.

### PART A - PRIME CONTRACTOR INFORMATION

| | | | |
|---|---|---|---|
| Prime Contractor | | | |
| Address | City | State | ZIP Code |
| Telephone Number | FAX Number | Email Address | |
| Contact Person | Title | | |

### PART B - PROJECT DESCRIPTION

| | | | |
|---|---|---|---|
| Bid Opening Date | Job Number | PCN | Project Number |

### PART C - CONTRACTOR PARTICIPATION ACHIEVEMENT DATA

| | |
|---|---|
| Project DBE Goal Percent | Total DBE PARTICIPATION DOLLAR[illegible] to [illegible] DBE GOAL (Total prime Bid dollar amount X [illegible] % Goa[illegible] |
| Contractor's DBE Participation Percent | |

### PART D - PROJECT SUMMARY AMOUNTS

| | |
|---|---|
| 1. Total Prime Bid | $ |
| 2. Total Dollars Committed to DBEs - incl[illegible]ers (From Part E line 13) | $ 0.00 |
| 3. Total Dollars Commit[illegible]-DBE[illegible] (From Part F line 24) | $ 0.00 |
| 4. Total DBE Suppli[illegible]ollar[illegible]ted [illegible]mitted (Total committed to DB[illegible]de a[illegible]s) | $ |
| 5. Work to be Performed by Prime (Add Part D lines 2, 3, and 4 s[illegible]act f[illegible]t D line 1) | $ 0.00 |
| 6. Percent of Work Perform[illegible]rime (Divide Part D line 5 by Part D line 1) | 0.00 % |
| 7. Total DBE Participation (Add Part D lines 2 and 4) | $ 0.00 |

### PART E - DBE COMMITMENTS Attach additional sheet if necessary.

| COMMITTED DOLLARS | DBEs WITH A COMPLETED FORM C to be used on the project | SPEC/CODES QUOTED |
|---|---|---|
| 8. $ | | |
| 9. $ | | |
| 10. $ | | |
| 11. $ | | |
| 12. $ | | |
| 13. $ 0.00 | Total Dollars committed to DBEs | |

Sample

SFN 60829 (10-2015)



**PART F - NON-DBE COMMITMENTS** Attach additional sheet if necessary.

| COMMITTED DOLLARS | ALL NON-DBE SUBCONTRACTORS, TRUCKERS, MATERIALS/SUPPLIERS & OTHER SERVICES PROVIDERS to be used on the project | SPEC/CODES QUOTED |
|---|---|---|
| 14.$ | | |
| 15.$ | | |
| 16.$ | | |
| 17.$ | | |
| 18.$ | | |
| 19.$ | | |
| 20.$ | | |
| 21.$ | | |
| 22.$ | | |
| 23.$ | | |
| 24.$ 0.00 | Total Dollars committed to non-DBEs | |

**PART G - DBEs QUOTED BUT NOT SELECTED** Attach additional sheet if necessary.

| QUOTED DOLLARS | DBEs WHO QUOTED, BUT NOT SELECTED | SPEC/CODES QUOTED | REASON NOT SELECTED |
|---|---|---|---|
| 25.$ | | | |
| 26.$ | | | |
| 27.$ | | | |
| 28.$ | | | |
| 29.$ | | | |
| 30.$ | | | |

**PART H - REQUIRED ATTACHMENTS - SUPPORTING DOCUMENTS**

Submit complete documentation to support SFN 60829 as instructed on page 3.

**PART I - CERTIFICATION**

| Prime Contractor Signature | Title | Date Submitted |
|---|---|---|
| | | |

Sample

**Download approved form needed at: http://www.dot.nd.gov/forms/SFN60829.pdf**

SFN 60829 (10-2015)

Page 3 of 3

**PART H - SUPPORTING DOCUMENTS:**

1. **Use a cover letter to recount the relevant issues which your firm wants NDDOT to consider in determining whether to award.**

2. **Explain the efforts your firm made in attempting to meet the project DBE goal.**
   a. Did your firm ask subcontractor to obtain DBE participation as a lower tier subcontractor, and what was the outcome of these efforts?
   b. Did your firm use the DBE Directory located at: https://dotnd.diversitycompliance.com/ to identify DBEs certified in the work being used to meet the goal?
   c. Did your firm review the plans to determine whether DBE participation was available in other areas of work on the project?

3. **On a separate sheet, provide a copy of any solicitation email or fax used to gather additional participation after the time of bid.**
   a. Another format may be used provided all information requested is included.
   b. Include the following information (see below on a separate sheet).

| DBE Firm Contacted | Person Contacted | Date & Time Contacted | Phone, Email | Specific Responses, Number of Contacts |
|---|---|---|---|---|
| | | | | |
| | | | | |

4. **Provide written Bid Differential - Apples to Apples Comparisons- like items must be compared to like items**
   a. If a **non-DBE was selected over a DBE**, provide the quotes compared, detailed comparison between the specific spec/code items quoted by the non-DBE and the DBE and the specific reasons for your selection.
   b. If the **prime contractor intends to self-perform the work quoted by a DBE**, provide a Detailed comparison between the prime's costs for the specific spec/code items quoted by the DBE along with an explanation of the method of valuation of the prime's costs.
   c. Another format may be used provided all information requested is included.

**BID DIFFERENTIAL ANALYSIS EXAMPLE**

| | | | | | | DBE XYZ Contracting | Non-DBE ABC Construction | Prime General Construction | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Spec No. | Code No. | Description | Units | Quantity | Unit Price | DBE Quoted Price | Non-DBE Quoted Price | Self-Performed Price | Percentage Difference | Dollar Difference |
| 202 | 0112 | REMOVAL OF CONCRETE | SY | 838 | | | | | | |
| 202 | 0119 | SAW CONCRETE | LF | 54 | | | | | | |
| 203 | 0101 | COMMON EXCAVATION-TYPE A | CY | 107,262 | | | | | | |
| 203 | 0108 | TOPSOIL-BORROW AREA | CY | 31,269 | | | | | | |
| 203 | 0109 | TOPSOIL | CY | 83,126 | | | | | | |
| | | | | | TOTALS | | | | | |

Sample

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
# EEO AFFIRMATIVE ACTION REQUIREMENTS

**March 15, 2014**

Bidders shall become familiar with the following requirements and be prepared to comply in good faith with all of them:

## APPENDIX A

Notice or Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

   a. Goals for Female Participation in Each Trade – Statewide . . . . . .6.9%

   b. Goals for Minority Participation in Each Trade by County:
      Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan,
      McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill . . . . . .0.7%

      Grand Forks . . . . . .1.2%

      Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh . . . . . .2.0%

      Burleigh, Morton . . . . . .0.4%

      Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant,
      Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells . . .1.3%

      Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail,
      Pierce, Renville, Rolette, Ward, Williams . . . . . .4.4%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a),

and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall notify the Office of Federal Contract Compliance Programs, in writing, within ten working days of award of any subcontract in excess of $10,000. The notification shall include the name, address, and telephone number of the subcontractor and their employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

   Notification should be sent to:

   U.S. Department of Labor/ESA
   OFCCP
   Denver District Office
   1244 Speer Boulevard
   Denver, Colorado 80202
   Phone: 720-264-3200
   Fax: 720-264-3211

4. As used in this "Notice" and in the contract for this project, the "covered area" is the State of North Dakota.

## APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the proposal from which this contract resulted.

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups, not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the proposal from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted

in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor. (Training programs approved by the North Dakota Department of Transportation are recognized by the U.S. Department of Labor.)

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

    c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

    d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

    e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to

the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the Company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on- site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing it with the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minorities and women, and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring

all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and Company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all Supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor- union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minorities, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termina-

tion, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**Effective October 1, 2014**

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**
**APPENDIX A OF THE TITLE VI ASSURANCES**

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

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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

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

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Effective October 1, 2014**

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**
**APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION

# CARGO PREFERENCE ACT (CPA)

## DESCRIPTION

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration (MARAD) has mandated the implementation of 46 CFR 381 making the cargo preference requirements applicable to the Federal Aid Highway Program.

The requirements of this Special Provision apply to items transported by ocean vessel.

## CONTRACT REQUIREMENTS

**A. General**

Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. Gross tonnage is computed separately for dry bulk carriers, dry cargo liners, and tankers.

Furnish a legible, English language copy of a rated ‘on-board’ commercial ocean bill-of-lading for each shipment of cargo described in the previous paragraph. Furnish the bill-of-lading within 20 days following the date of loading for shipments originating in the United States and within 30 working days following the date of loading from shipments originating outside the United States.

Furnish bills-of-lading to the Engineer and to the following:

Division of National Cargo
Office of Market Development
Maritime Administration
Washington, DC 20590

**B. Subcontracts**

Include the language in Section “A, General” of this Special Provision in all subcontracts issued pursuant to this contract.

# REQUIRED CONTRACT PROVISIONS
# FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

## I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

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

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

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

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

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

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

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

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

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

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

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

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

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

## III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

## IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

**2. Withholding**

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

**3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

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

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

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

Shall be fined under this title or imprisoned not more than 5 years or both."

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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

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

* * * * *

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

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

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

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

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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

REVISED 10/24/2015

CONTRACT SPECIAL PROVISION

AUTOMATED CERTIFIED PAYROLL

All Contractors on NDDOT federal-aid projects must file weekly Certified Payroll, as required by the Davis-Bacon Act and Related Acts (DBRA). NDDOT is moving to LCP Tracker, which is a paperless, online system for entering certified payrolls. Use of LCP Tracker will eliminate certified payroll in paper form, and contractors will only need access to a computer and an internet connection.
**NDDOT encourages all contractors to file their payroll electronically, but at this time both paper and electronic submissions will be accepted.**

As the option for electronic filings of Certified Payroll is offered, the responsibilities of the parties will be as follows:

**Prime Contractor**: After award, the Prime Contractor will receive an email and will be asked to set up a log-in and password with LCP Tracker. Whether or not the prime contractor chooses to file electronically, they must set up a Prime Approver account which will allow subcontractors to file electronically. The Prime Contractor will input information on all subcontractors and will be responsible for the review of any payrolls filed electronically. After Prime contractor approval, all electronic payrolls will automatically be forwarded to the NDDOT. The Prime Contractor will continue to be responsible for review of payrolls filed in paper form by subcontractors, and to forward these paper payrolls to the NDDOT as required under Davis-Bacon and Related Acts (DBRA).

**Subcontractor:** If a subcontractor chooses to file electronically, they will set up an account and receive a password and log-in. This will allow electronic filing of the certified payrolls with the Prime Approver (Prime Contractor). Alternatively, the subcontractor may file the Certified Payrolls in paper form.

**NDDOT:** The Project Engineer and staff will review the payrolls and will work through the Prime Contractor to address any issues with subcontractors, whether filed electronically or by paper. Access to LCP Tracker will be provided free of charge to contractors.

Information on LCP Tracker is available at www.lcptracker.com. Once a contractor is set up with an account, they may take advantage of self-guided online tutorials at www.lcptracker.net.

For further information on certified payroll, go to the NDDOT Labor Compliance page at https://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm.

# LABOR RATES FROM U.S. DEPARTMENT OF LABOR



NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:
www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

## U.S. DEPARTMENT OF LABOR

| STATE | COUNTY | DECISION NO. | PAGE |
|---|---|---|---|
| NORTH DAKOTA | STATEWIDE | ND160002 | 1 |
| | | DATE OF DECISION 1-8-16 | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W/Pensions | Vacation | App. Tr | Others |
| **CARPENTERS** | $27.10 | $ 5.60 | | | |
| **CEMENT MASONS/FINISHERS** | 27.10 | 5.60 | | | |
| **LINE CONSTRUCTION:** | | | | | |
| Lineman | 36.30 | 5.00 + 29.5% | | | |
| Cable Splicer | 34.15 | 5.00 + 29.5% | | | |
| Line Equipment Operator | 32.67 | 5.00 + 29.5% | | | |
| Groundman | 21.78 | 5.00 + 29.5% | | | |
| **ELECTRICIANS:** | | | | | |
| Electrician | 33.29 | 8.62 + 10.5% | | | |
| Cable Splicer | 32.89 | 8.62 + 10.5% | | | |
| (Adams, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, and Williams Counties) | | | | | |
| Electrician | 27.59 | 11.37 | | | |
| Cable Splicer | 28.30 | 11.26 | | | |
| (Barnes, Benson, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La-Moure, Logan, McIntosh, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells Counties) | | | | | |
| Electrician (Cass County) | 14.72 | 3.40 | | | |
| **WELDERS:** Receive rate prescribed for craft performing operation to which welding is incidental | | | | | |
| **LABORERS:** | | | | | |
| **Group 1** Drill Runner Tender; Flaggers and Pilot Car Drivers; General Construction Laborer; Light Truck and Pickup Driver; Pipe Handler; Sack Shaker (cement and mineral filler); Salamander Heater and Blower Tender | 19.50 | 1.70 | | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W/Pensions | Vacation | App. Tr. | Others |
| **LABORERS: (CONT.)** | | | | | |
| **Group 2**<br>Bituminous Worker (Shoveler, Dumper, Raker, and Floater); Brick and Mason Tender; Bulk Cement Handler; Carpenter Tender; Chain Saw Operator; Chipping Hammer, Grinders, and Paving Brakers (tamper-dirt); Concrete Bucket Signalman; Concrete Curing Man (not water); Concrete Saw Operator; Concrete Vibrator Operator; Conduit Layer, telephone or electrical; Culvert Pipe Layer; Form Setter (pavement); Gas, Electric, or Pneumatic Tool Operator; Kettleman (bitum. or lead); Multiplate Pipe Layer; Power Buggy Operator; Semi Skilled Laborer | $19.75 | $ 1.70 | | | |
| **Group 3**<br>Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Caisson Worker; Concrete Mixer Operator (one bag capacity); Mortar Mixer | 19.90 | 1.70 | | | |
| **Group 4**<br>Drill Runner (includes Wagon Churn or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman, gunite and sandblast; Nozzleman; Reinforcing Steel Setters/Tiers: Concrete Finisher Tender | 20.65 | 1.70 | | | |
| **POWER EQUIPMENT OPERATORS:** | | | | | |
| **Group 1**<br>All Cranes, 60 tons and over; Cranes doing piling, sheeting, dragline/clam work; Derrick (Guy and Stiff);Gentry Crane Operator; Helicopter Operator; Mole Operator or Tunnel Mucking Machine; Power Shovel, 3-1/2 cy and over; Traveling Tower Crane | 27.25 | 14.85 | | | |
| **Group 2**<br>All Cranes, 21 tons and up to 59 tons; Backhoe Operator, 3 cy and over; Creter Crane; Dredge Operator, 12” and over; Equipment Dispatcher; Finish Motor Grader; Front End Loader Operator, 8 cy and over; Master Mechanic (when super-vising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat | 26.35 | 14.85 | | | |

**ND160002** Page 3

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W/Pensions | Vacation | App. Tr. | Others |
| **POWER EQUIP. OPERATORS: (CONT.)** | | | | | |
| **Group 3**<br>All Cranes, 20 tons and under; Asphalt Paving Machine Operator; Asphalt Plant Operator; Automated Grade Trimmer; Backhoe Operator, 1 cy up to and including 2-1/2 cy; Boom Truck, Hydraulic, 8 tons and over; Cableway Operator; Concrete Batch Plant Operator (electronic or manual); Concrete Mixer Paving Machine Operator; Concrete Paver, Bridge Decks; Concrete Pump; Concrete Spreader Operator and Belt Placer; Crushing Plant Operator; Dozer Operator; Dredge Operator or Engineer, 11” and under; Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 3-1/2 cy up to and including 7-1/2 cy; Gravel Washing and Screening Plant Operator; Locomotive, all types; Mechanic or Welder, Heavy Duty; Motor Grader Operator; Pavement Breaker, Non-Hydro Hammer Type: Pipeline Wrapping, Cleaning, and Bending Machine Operator; Power Actuated Auger and Horizontal Boring Machine Operator, 6” and over; Refrigeration Plant Engineer; Roto Milling Machine (Surface Planer), 43” and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator, 100 H.P. and over | $26.10 | $14.85 | | | |
| **Group 4**<br>Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Boring Machine Locator: Con-sole Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42”; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot | | | | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W/Pensions | Vacation | App. Tr. | Others |
| **POWER EQUIP. OPERATORS: (CONT.)** | | | | | |
| **Group 4 (cont.)** | | | | | |
| Packer with Dozer Attachment, 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Slurry Seal Machine; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points; Fuel/Lube Operator | $25.95 | $14.85 | | | |
| **Group 5** | | | | | |
| Boom Truck, A-Frame or Hydraulic, 2 tons up to and including 7 tons; Broom, Self-Propelled; Concrete Saw (power operated); Cure Bridge Operator; Front End Loader Operator, less than 1-1/2 cy; Mobile Cement Mixer; Oiler; Power Actuated Auger and Horizontal Boring Machine Operator, up to and including 5"; Roller (on other than hot mix asphalt paving); Vibrating Packer Operator (Pad Type) (Self-Propelled); Water Spraying Equipment, Self-Propelled; Skidsteer Operator with attachments | 25.10 | 14.85 | | | |
| **Group 6** | | | | | |
| Brakeman or Switchman; Curb Machine Operator (Manual); Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); Gunite Operator Gunall; Paint Machine Striping Operator; Pick-up Sweeper, 1 cy and over Hopper Capacity; Scissor Jack (Self-Propelled) Platform Lift; Straw Mulcher and Blower; Stump Chipper Operator; Tractor Pulling Compaction or Areating Equipment; Trenching Machine Operator, up to and including 45 H.P.; Assistant/Apprentice Operator | 23.80 | 14.85 | | | |
| **TRUCK DRIVERS:** | | | | | |
| Single-Axle Truck | 26.67 | 11.60 | | | |
| Tandem- and Tri-Axle Truck | 26.79 | 11.60 | | | |
| Tandem- and Tri-Axle Semi | 27.10 | 11.60 | | | |
| Lowboy | 27.10 | 11.60 | | | |
| Off Road Heavy Duty End Dumps, 20 Yards and Under | 27.10 | 11.60 | | | |
| Euclid, Over 20 Yards | 28.62 | 11.60 | | | |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses [29 CFR, 5.5 (a) (1) (ii)].

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

## 2016 ON-THE-JOB TRAINING SPECIAL PROVISION

The bidder's signature on the proposal sheet indicates the bidder agrees to take part in the On-the-Job Training (OJT) Program and to follow this OJT Special Provision. Contractors that fail to follow this special provision will be subject to suspension of progress payments or sanctions up to and including revocation of bidding privileges.

## I. POLICY STATEMENT

The purpose of the OJT Program is to provide training in the highway construction industry for minority, female, and economically disadvantaged individuals, hereafter known as the targeted group. Pursuant to 23 Code of Federal Regulations Part 230, Subpart A, Appendix B - Training Special Provisions, this program provides for on-the-job training aimed at developing full journeyworkers in the type of trade or job classification involved. Training and upgrading minorities and women in highway construction trades is the primary goal of the program.

The Contractor shall take all necessary and reasonable steps to ensure that minorities and women have the opportunity to compete for and participate as trainees or apprentices and to develop as journey-level workers in the type of trade or job classification employed. Contractors may use the NDDOT OJT preapproved training programs, apprentices in approved Bureau of Apprenticeship and Training (BAT) programs, or submit their own on-the job training curriculum for approval by NDDOT and Federal Highway Administration (FHWA).

## II. ASSIGNED OJT POSITIONS

A. Contractors are assigned trainee positions based on federal highway dollars awarded by NDDOT to a contractor from October 1 to September 30. Trainee assignments are not project specific. The number of trainee positions assigned will be determined by formula outlined in the OJT Program Manual. https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf.

B. Contractors will receive the number of positions assigned and links to resources necessary for completion of program requirements via email.

C. The number of trainee positions assigned to each contractor will increase proportionately, as shown in the OJT Program Manual, for any applicable federally funded projects awarded to them.

Failure to follow this OJT Special Provision and the accompanying OJT Program Manual may result in suspension of progress payments or sanctions up to and including revocation of bidding privileges.

## III. ONLINE RESOURCES

*OJT Program Manual:* Includes program requirements, wage rates, and curriculum: https://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf

*SFN 9762 Request for On-the-Job Training Program Approval*: http://www.dot.nd.gov/forms/sfn09762.pdf

*SFN 60226 Request for On-the-Job Trainee Approval*: http://www.dot.nd.gov/forms/sfn60226.pdf

*SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement*: http://www.dot.nd.gov/forms/sfn51023.pdf

Davis-Bacon and Related Acts (DBRA) Handbook: https://www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

## IV. APPROVALS REQUIRED

A. Requests for Approval of Training Programs and Trainee Candidates must be submitted to Civil Rights Division (CRD). Contractors must request and receive program and trainee candidate approval in order to pay trainees less than the established Davis-Bacon wage for the job classification concerned. No training

program hours will count toward the fulfillment of an assigned trainee position or be eligible for reimbursement without prior approval. No retroactive approval will be granted.

1. Submit *SFN 9762 Request for On-the-Job Training Program Approval* and the pre-approved training curriculum for each trainee position assigned by April 1 or within fifteen (15) calendar days of notification of any additional position assignments. http://www.dot.nd.gov/forms/sfn09762.pdf

2. Submit SFN 60226 *Request for On-the-Job Trainee Approval* and each trainee's employment application. http://www.dot.nd.gov/forms/sfn60226.pdf

3. Submit *SFN 7857 Application for Eligibility,* completed/approved by Job Service North Dakota (JSND) to qualify an economically disadvantaged individual for participation in the OJT Program.

B. Pre-approved curriculum: NDDOT's OJT Program Manual contains pre-approved training curriculum for a number of skilled trade positions. Contractors should select a training program(s) based on their company's employment/staffing needs.

C. Customized curriculum: To request a training curriculum not included in the pre-approved curriculum, submit a written request for approval by NDDOT and FHWA.

The request must include:

- A training curriculum, including the classification requested, minimum number of hours required, and type of training the individual will receive to achieve journeyworker status.
- A minimum wage scale.

If approved, each new classification must comply with the provisions specified in the OJT Program Manual. No hours worked prior to approval will be credited toward completion of the customized training program. Training programs for classifications not covered by the Davis-Bacon and Related Acts (DBRA) will be considered on a limited basis.

The contractor may commence its "customized" training as of the date of the written approval.

D. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, may be used for trainee positions assigned under the OJT Program, provided the trainees or apprentices are minority, female, or economically disadvantaged. Nonminority males not certified as economically disadvantaged may only be used when the contractor has requested and received approval, from the Department, for additional trainee positions. The apprenticeship indenture agreements serve as the trainee's job application and must be provided prior to any hours being credited toward OJT Program completion.

E. Power Equipment Operators:

The contractor may train an individual on a combination of equipment if each piece of equipment falls within the same groups of power equipment operators identified in the training curricula (groups 1-3 and groups 4-6). These power equipment operator groups are referenced to the federal DBRA wage rates contained in the contract proposal. As an example, a "utility operator" may receive training on a broom, a front-end loader less than 1½ cubic yards, or other piece of equipment that is used around a paver if each piece falls within either groups 1-3 or groups 4-6. When multiple wage rates apply, the trainee's wage will be based on the equipment being operated at the time or on the highest of the applicable wage rates.

Use of the classification "pickup machine operator (asphalt dump-person)" as a group 4 power equipment operator is considered standard industry practice. The classification is defined as: "Operates the controls on the pickup machine that runs in front of the paver, trips the levers on the dump trucks, and balances the loads for the paver. The pickup machine operates on similar principles as a shouldering machine."

## V. NDDOT'S RESPONSIBILITIES

A. The NDDOT OJT supportive services (OJTSS) consultant will monitor excerpts from the weekly certified payrolls submitted with the monthly vouchers for reimbursement. This includes weekly payrolls from contractors working on state funded only projects. The OJTSS consultant will assess when the trainees have completed the specified number of hours and their wages are increased accordingly. The OJTSS consultant will also assure that applicable fringe benefits are paid either directly to the trainees or for the trainee into approved plans, funds, or programs.

B. The OJTSS consultant is charged with visiting trainees and monitoring their progress under the OJT Program. To facilitate the on-site visits, the OJTSS consultant will contact contractors for the location of the trainees weekly.

## VI. CONTRACTOR'S RESPONSIBILITIES

A. Appoint a company employee to be available and respond to weekly contacts by the OJTSS consultant. OJTSS monitors the status of assigned trainee positions (e.g., program and trainee approvals, trainees' progress, etc.). The OJTSS consultant will contact the individual listed on the company's approved SFN 60226 Request for OJT Trainee Approval. The appointed must reply to communications from the Department and the OJTSS consultant in a timely manner.

B. Take steps to ensure trainees are aware they are formally enrolled in the OJT program.

C. Make trainees available to the OJTSS consultant for at least two on-site visits during the construction season.

D. Identify trainees on the payroll excerpts, for example: "grp. 4 roller operator trainee." This includes trainees in job classifications not covered by DBRA. Handwritten notes are appropriate for identification.

E. Assign each trainee to a particular person–either a supervisor or an employee proficient in the skills to be trained–who shall see that the trainee is given timely, instructional experience. This person must be familiar with the OJT Program, keep proper records, and ensure completion of the required training hours in accordance with the training curriculum.

F. Make the trainer and project superintendent available to the OJTSS consultant for at least two on-site visits each construction season.

G. May notify the Department to "propose graduation" or discontinue the training period of a trainee who has completed 90% or more of their hours and thereafter advance the trainee to journeyworker status.

H. Notify the Department when a trainee completes the number of hours required to graduate from the OJT Program. The Department will issue a certificate of completion and a wallet-sized card to the trainee.

I. May upgrade proficient trainees from one power equipment operator group or truck driver group to another, with the approval of CRD. Fewer hours are required to complete the upgraded position.

The minimum number of hours required will be:

Power Equipment Operator Groups 4-6 to Groups 1-3 = 400 hrs.
Class C Truck Driver to Class B = 200 hrs.
Class B Truck Driver to Class A = 200 hrs.

Depending on the variety of experience the trainee has gained under the previous curriculum, the difference in the hours may be deducted from the actual operation of the piece of equipment or truck. The contractor will need to review the trainee's past performance in order to make this determination.

J. Commercial driver's license (CDL) holders having over-the-road driving experience, with little or no highway construction experience, may be considered to have completed the Class C truck driver training curriculum and, therefore, are eligible to be upgraded to a Class B truck driver trainee, with the approval CRD.

K. May transfer trainees from one project to another in order to complete the OJT Program. If transfers are made, CRD must be notified and provided with the name of the trainer. The training hours will count toward overall OJT Program completion.

L. May use trainees on municipal, private, or other non-highway work and work performed out of state. The training hours will count toward overall OJT Program completion; however, no program reimbursement will be made for those hours. In addition, the hours will be limited to no more than 25% of the total hours required under the training curriculum.

M. Contractors may delegate or reassign trainee positions to subcontractors, with the acceptance of the subcontractors and the approval of CRD. The prime contractor must verify that the trainee will be able to accumulate enough hours to complete his or her training program. If approved, the subcontractor must obtain training program and trainee approval from CRD before the trainee begins work under the OJT program. Program reimbursement will be made directly to the prime contractor. The trainee position will remain the responsibility of the prime contractor.

N. May use trainees on projects subject to TERO requirements as part of the core crew or as part of the skilled labor supplied by the contractor.

O. Contractors may not use one trainee to fill multiple trainee positions. For instance, a subcontractor may not use the same trainee in the same training program to simultaneously fill two or more trainee positions reassigned to them by prime contractors.

P. May use a trainee on a piece of equipment in groups 1-3 or groups 4-6 for one assigned trainee position, then once that trainee has completed the program, the trainee may be trained on a different piece of equipment in groups 1-3 or groups 4-6 to fulfill a second assigned trainee position. When a trainee is used for a second time within a group, the contractor must pay that trainee at the higher wage rate as described in paragraph B under Wage Rates (page 8).

## VII. CLASSROOM TRAINING

A. Classroom training may be used to train employees. Each classroom training curriculum must be pre-approved by CRD if the contractor wishes to count the classroom hours as training hours and be reimbursed.

Submit a proposed classroom training curriculum to CRD for approval. Define the type of training the individual will receive, classroom training curriculum, and the minimum number of hours required. The Department will determine the number of hours of credit each trainee will receive toward their training. No retroactive approval will be granted.

B. Contractors will be reimbursed for classroom training hours after the trainee has completed 80 hours of work on highway construction projects.

C. Reimbursement for classroom training will be limited to 60 hours per trainee per construction season. Qualified testing technicians and concrete testing technicians/inspectors will not be included in the 60-hour limit. Reimbursement for classroom training required under the NDDOT Transportation Technician Qualification Program will be at the NDDOT discretion.

D. The minimum wage scale to be used for classroom training will be that of the first federal-aid highway construction project on which the trainee will be employed. If the trainee is already employed on a federal-aid highway construction project, the trainee will be paid in accordance with the minimum wage scale applicable to that project. However, if the first project on which the trainee will be employed is a state funded only contract, the minimum wage scale to be used for the classroom training will be that of the appropriate DBRA wage in effect at the time of award of the state funded contract.

## VIII. WAGE RATES

A. In no case shall the minimum wage be less than that of the Group 1 Laborer classification in the federal

DBRA wage rates contained in the contract proposal. A trainee working on a state funded only project, must be paid the DBRA wage rate in effect at the time of award for the type of work the trainee is performing.

B. The minimum wage rates shall not be less than 80% of the journeyworker rate for the first two quarters of training, 85% of the journeyworker rate for the third quarter, and 90% of the journeyworker rate for the fourth quarter.

- Under the power equipment operator training curricula only, once a trainee has completed a training curriculum in either groups 1-3 or groups 4-6, the contractor may enroll the trainee in another training curriculum on a different piece of equipment in either groups 1-3 or groups 4-6.
- The minimum wage rate under the trainee's second program shall not be less than 85% of the journeyworker rate for the first two quarters of training, 90% of the journeyworker rate for the third quarter, and 95% of the journeyworker rate for the fourth quarter.
- For the purpose of the OJT Program, a quarter is 25% of the hours the trainee works toward completion of their approved program. The first two quarters of a 550-hour training curriculum would end after 275 hours, the third quarter after 138 hours, and the fourth after 137 hours.

C. Trainees shall be paid full fringe benefit amounts, where applicable, in accordance to DBRA requirements.

D. At the completion of the OJT Program, the trainee shall receive the wages of a skilled journeyworker.

## IX. RECRUITMENT AND SELECTION

A. Trainee Prerequisites:

Trainees must possess basic physical fitness for the work to be performed, dependability, willingness to learn, ability to follow instructions, and an aptitude to maintain a safe work environment.

B. Licenses:

Truck driver trainees must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. When an instructional permit is used in lieu of a license, the trainee must be accompanied by an operator who:

1. Holds a license corresponding to the vehicle being operated;
2. Has had at least one year of driving experience; and
3. Is occupying the seat next to the driver.

C. Recruitment:

1. Place notices and posters setting forth the contractor's Equal Employment Opportunity (EEO) Policy and the availability of the OJT Program in areas readily accessible to employees, applicants for employment, and potential employees.
2. Employ members of the targeted group (minority, female, or economically disadvantaged individuals) for all trainee positions assigned in accordance with the OJT Program. Additional positions requested by the contractor may be filled by individuals outside of the targeted groups.
3. Conduct systematic and direct recruitment through public and private employee referral sources.
4. Screen present employees for upgrading to higher skilled crafts. A present employee may qualify as a trainee; however, no work hours will be reimbursed or counted toward program completion prior to training program and trainee approval by CRD.

D. Selection:

1. Hire and enroll OJT trainee candidates who qualify as an individual in the targeted group.
2. Select a training program(s) based on their company's employment/staffing needs.

3. Individuals in the targeted group having experience in the selected curriculum may be eligible to participate in the OJT Program providing they:
    - are not or have not been journeyworkers in the selected curriculum, and/or
    - have not been previously trained in the selected curriculum
4. Non-minority males who are economically disadvantaged must obtain written certification from Job Service North Dakota (JSND) to qualify for the OJT Program. Contractors wishing to hire and enroll economically disadvantaged candidates must provide JSND's certification along with SFN 60226 and the employment application when requesting trainee approval.
    - JSND is the only agency that may certify an individual as economically disadvantaged. If JSND refers the candidate to the contractor, written certification under this category will be provided to the contractor at the time of the interview.
    - Any person wishing to obtain this certification must apply to JSND and complete the Workforce Investment Act Program's Application for Eligibility (SFN 7857). A contractor recruiting a candidate who may qualify must contact the Workforce Investment Act Program Manager at JSND. JSND contacts are also online: http://www.dot.nd.gov/divisions/civilrights/docs/jobservice-workforce-invest-contacts.pdf

## X. BASIS OF PAYMENT

A. Contractors will be paid $4.00 for each hour of training in accordance with the OJT Program Manual.

B. Reimbursement will be made directly to the contractor. Complete SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement for each trainee. Attach excerpts from the weekly certified payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits were paid. Excerpts from weekly payrolls are also required for state funded only projects. Vouchers without excerpts from payrolls will not be paid until the excerpts are provided. If the excerpts from the payrolls are not provided within one week, the voucher will not be paid and the trainee's hours will not be credited toward completion. http://www.dot.nd.gov/forms/sfn51023.pdf

C. Submit completed vouchers to CRD for approval and processing by the fifteenth (15th) calendar day of every following month the trainee is employed under the OJT Program.

Regardless, all vouchers for trainee hours worked on state funded only projects from July 1 to June 30 must be received by CRD no later than July 15 in order to be reimbursed. All vouchers for trainee hours worked on federally funded projects from October 1 to September 30 must be received by CRD no later than October 15 in order to be reimbursed. This is due to state and federal end-of-the-year budget fiduciary requirements.

## XI. FAILURE TO PROVIDE THE REQUIRED TRAINING OR HIRE THE TRAINEE AS A JOURNEYWORKER

A. No payment shall be made to a contractor for failure to provide the required training or failure to hire the trainee as a journeyworker when such failure is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this OJT Program Special Provision.

B. If payments have been made, the Department will deduct the amount paid from the contractor's progress payment.

C. A trainee should be hired to begin training as soon as feasible after start of work utilizing the skill involved and remain employed as long as training opportunities exist in the approved work classification or until the trainee has completed his or her training program.

D. It is not required that all trainees be employed for the entire length of the construction season. A contractor will have fulfilled its responsibilities under this OJT Special Provision if it has provided acceptable training to

the number of trainees assigned. The number trained shall be determined on the basis of the total number enrolled for a significant period.

## XII. UNFILLED OR INCOMPLETE TRAINEE POSITIONS

A. Provide written explanation for unfilled or incomplete trainee assignments to CRD by October 1 of the current construction season. CRD will decide, on a case-by-case basis, whether to carry the assigned positions over to the next construction season.

B. Positions carried over from the previous construction season must be among the first positions filled at season startup. To notify CRD of the trainee's rehiring, submit *SFN 60226 Request for On-the-Job Trainee Approval*, marking 'Check if Carryover Trainee' in the Approved Training Program section of the form. There is no need for the training position or a returning trainee to be re-approved.

C. Sanctions, up to and including revocation of bidding privileges, may be imposed on the contractor for failure to provide sufficient explanation and documentation for reasons assigned trainee positions when unfilled or incomplete.

## XIII. DEFINITIONS

Carryover Position: Incomplete trainee position carried forward from a prior program year.

Carryover Trainee: Trainee scheduled to continue required training hours under an approved training program from a prior program year.

CRD: NDDOT's Civil Rights Division administers the NDDOT On-the-Job Training Program.

Good Faith Efforts: A contractor's documented efforts to fulfill the OJT Program requirements, e.g., a new hires list, examples and locations of advertisements, list of current employees reviewed for skills upgrades, and any other means of demonstrating the contractor's efforts.

Journeyworker: A worker employed in a trade or craft who has attained a level of skill, abilities, and competencies recognized within the industry.

OJT Supportive Services (OJTSS): A consultant under contract with the Department to provide in-person oversight, support, and guidance to contractors and trainees to increase the effectiveness of approved training programs.

Trainee: A person who receives on-the-job training, whether through an apprenticeship program or other program approved or accepted by FHWA.

Trainer/Supervisor: Contractor's employee assigned to mentor, train, supervise, and support a OJT Program trainee.

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION

## LOCAL AGENCY CONTRACTS

References to NDDOT, Department, Director, or Engineer in the Standard Specifications for Road and Bridge Construction and other portions of the Contract must be construed as referring to the Owner of the project.

If the Contractor intends to file a claim for additional compensation for work or material not covered by the Contract, the Contractor is required to prosecute the claim in accordance with the 2014 Standard Specifications for Road and Bridge Construction, Section 104.05, “Claims for Adjustment”. The provisions of Section 104.05 D, “Conditions Precedent to Contractor’s Demand for Arbitration”, are not applicable to this Contract, nor are the provisions of North Dakota Century Code §24-02-26 et seq. regarding arbitration applicable, as the North Dakota Department of Transportation is not a party to the Contract.

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION

# BUY AMERICA

## DESCRIPTION

Replace Section 106.08, “Buy America”, with the following:

**Buy America.**

**A. General.**

Provide materials from domestic sources when products are permanently incorporated into the work and the products are composed of steel or iron materials.

Ensure all manufacturing processes, including applications of coatings, occur in the United States. A coating includes all processes required to apply the coating to a product to protect or enhance the value of the product.

The requirements of this SP are not applicable to the temporary iron and steel materials, including materials left in place at the Contractor’s convenience.

**B. Steel and Iron Certification.**

**1. General.**

All certifications are submitted by the prime Contractor. When submitting certifications for materials that are subject to the requirements of this section, the prime Contractor shall include a signed letter stating that the submitted documentation is the documentation that was received by the prime contractor for the material incorporated into the work.

**2. Bulk Manufactured Materials.**

In addition to the requirements of Section 106.01 C, “Certificate of Compliance”, submit a manufacturer’s certificate of compliance stating that the iron and steel products listed in Table 1 that are permanently incorporated into the work are of domestic origin.

**Table 1**

| | |
|---|---|
| Mailbox supports | Cable Fence Materials |
| Chain Link Fence Materials | Barbed Wire Fence Materials |
| Guardrail Components | Woven Wire Fence Materials |
| Culvert Markers | Delineators |
| Perforated Tube Sign Supports and Related Materials | |

**3. Other Steel and Iron Products.**

For steel and iron products permanently incorporated into the work that are not listed in Table 1, submit a certificate of compliance as specified in Section 106.01 C, “Certificate of Compliance” and the following information:

a. A signed mill test report.

b. A signed certification from each fabricator and manufacturer that has handled the steel and iron products affirming that all processes performed on the steel and iron products were conducted in the United States.
c. Material descriptions, quantities, and a means of material identification (lot number, bin number, heat number, or factory identification) for each process performed on the steel and iron products.

Each certification shall contain the material identification from all previous fabricators and manufacturers in the process.

**C. Foreign or Uncertified Products.**

These requirements allow the use of steel and iron products produced and manufactured outside the United States, or products that cannot be certified as originating in the United States, of a total value less than 0.1 percent of the original contract amount, or $2,500, whichever is greater.

The total value is that shown to be the cost of the steel and iron products as delivered to the project site.

Document the cost of:

- Foreign steel and iron products, plus
- Steel and iron products which cannot be certified as originating in the United States.

Submit the documentation of foreign and uncertified products with the certifications required in Section B, “Steel and Iron Certification” of this SP.

# NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION

# CERTIFICATE OF COMPLIANCE (CoC)

## DESCRIPTION

Section 106.01 C, “Certificate of Compliance” is no longer valid. Use this Special Provision in place of that section.

**Certificate of Compliance**

A Certificate of Compliance (CoC) states that the materials represented by the CoC comply with the contract requirements.

All materials manufactured off-site require either a Manufacturer or Contractor CoC. Materials listed in Table 1 require a Manufacturer CoC. All other materials require a Contractor CoC.

Submit a CoC before incorporating the material into the work. Submit CoC’s electronically. Some materials require the submission of additional information as part of the CoC. When this is required, the contract documents will state the additional requirements.

The Department will not include quantities of material represented by a CoC on a progressive estimate until the Contractor has fully met the CoC requirements.

The Department may sample, test, and inspect material represented by a CoC at any time before project acceptance, and will accept or reject materials based on inspections or test results.

**A. Manufacturer Certificate of Compliance.**

A Manufacturer CoC requires the signature of a person having the legal authority to act for the material manufacturer. The manufacturer and prime contractor must sign the Manufacturer CoC.

Provide Manufacturer CoC for the products shown in Table 1. The entity batching Portland Cement Concrete is considered the manufacturer.

**Table 1**
**Manufacturer Certificates of Compliance**

| Section | Item |
|---|---|
| 604 | Prestressed Concrete Beams |
| 606 | Precast Reinforced Concrete Box Culverts |
| 802 | Portland Cement Concrete |
| 804 | Cement (excluding Section 802) and Lime |
| 820 | Fly Ash (excluding Section 802) |
| 830 | Pipe and Drainage Structures |
| 834 | Structural Steel |
| 836 | Reinforcing Steel, Dowel Bars, and Tie Bars |
| 840 | Piling |

**Table 1**
**Manufacturer Certificates of Compliance**

| | |
|---|---|
| 846 | Preservatives and Pressure Treatment Process for Timber |
| 858 | Geosynthetics |

Submit Manufacturer CoC using the form *Manufacturer Certificate of Compliance (SFN 61041)*.

**B. Contractor Certificate of Compliance.**
A Contractor CoC requires the signature of a person having the legal authority to act for the prime Contractor. The prime Contractor may require the manufacturer, supplier, or subcontractor to sign the Contractor CoC.

Submit Manufacturer CoC using the form *Contractor Certificate of Compliance (SFN 61040)*.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION**

**PERMITS AND ENVIORNMENTAL CONSIDERATIONS**

**PROJECT NUMBER: SC-CNOA-CNOB-CNOC-0119(057) – PCN 21357**

This Special Provision incorporates the US Department of the Army Corps Engineers (USACE) Section 404 Permit obtained by Adams County for the reconstruction of CMC 0119 from Hettinger north 6 miles in Adams County, North Dakota. The project as proposed includes widening, regrade, subgrade repairs, double chip seal coat and incidentals to meet current design standards.

The Contractor shall be responsible for complying with all the terms and conditions as contained in the permit(s) attached hereto. Bidders shall become familiar with all standard conditions and special conditions of the permit(s) and submit their bid for the construction of this project based on the following:

- **USACE Section 404 Permit**
  USACE Permit NWO-2015-2416-BIS authorizes the roadway reconstruction project. The 404 Permit is attached.

The Contractor shall be responsible for obtaining permits for impacts not authorized by the attached USACE 404 Permits obtained by Adams County.

This document was
originally issued
and sealed by
William Doerr
Registration Number
PE-7113,
on 04/14/2016 and the
original document
is stored at the office of
Brosz Engineering Inc.
Bowman, ND

**DEPARTMENT OF THE ARMY**
**CORPS OF ENGINEERS, OMAHA DISTRICT**
**NORTH DAKOTA REGULATORY OFFICE**
**1513 SOUTH 12TH STREET**
**BISMARCK ND 58504-6640**

REPLY TO
ATTENTION OF

April 11, 2016

North Dakota Regulatory Office [NWO-2015-2416-BIS]

Mr. Billy Doerr
Brosz Engineering, Inc.
PO Box 357
Bowman, North Dakota 58623

Dear Mr. Doerr:

We have reviewed your request, on behalf of Adam County, for Department of the Army (DA) authorization for a Roadway Rehabilitation Project on Cemetery Road. Based on the information you provided to this office, it has been determined that this project and the associated work is authorized by DA Nationwide Permit (NWP) No. 23, found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. The enclosed fact sheet lists the General Conditions and Section 401 Water Quality Certification Requirements that must be followed for this DA authorization to remain valid. **Please note that any deviations from the original plans and specifications submitted to this office could require additional authorization from this office.**

This verification will be valid until **March 18, 2017.** If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to **March 18, 2017**. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The project is located several sections of Township 129 and 130 North, Ranges 95 and 96 West, in Adams County, North Dakota.

In compliance with General Condition 30, **you are required to submit the following project compliance certification within thirty (30) days of project completion.** [Please check all applicable statements.]

[ ] I certify that I have completed the project as permitted.

Printed on Recycled Paper

[ ] I certify that I have completed a modified version of the project.
[ ] I certify that I have completed all required mitigation.

**Permittee's Signature:**_____**Date:**_____

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of this NWP, **including the Regional Conditions specific to projects undertaken in North Dakota**. If a contractor or other authorized representative will be accomplishing the work authorized by this NWP on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable NWP. Any activity that fails to comply with the terms and conditions of this NWP will be considered unauthorized and may result in an enforcement action.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mr. Swade Hammond of this office by letter or telephone at (701) 255-0015, extension 2012 and reference project number **NWO-2015-2416-BIS**.

Sincerely,

Patricia L. McQueary
Regulatory Program Manager
North Dakota

Enclosure

# U.S. Army Corps of Engineers
# North Dakota Regulatory Office

**1513 South 12th Street**
**Bismarck, North Dakota 58504**
**Telephone (701) 255-0015 Fax (701) 255-4917**


## IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [76 FR 9174] on February 21, 2012. The Nationwide Permits went into effect on March 19, 2012. Project compliance certification is required by General Condition 30. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments. [1]

### STEP 1

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

### STEP 2

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

### STEP 3

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

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[1] There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.

**FACT SHEET**
**NATIONWIDE PERMIT 23**
**(2012)**

## APPROVED CATEGORICAL EXCLUSIONS.

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters.

## Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those

species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas**. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls**. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety a... the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed

activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer

shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. <u>Discovery of Previously Unknown Remains and Artifacts</u>.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. <u>Designated Critical Resource Waters</u>.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the

designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of

the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. <u>Safety of Impoundment Structures</u>.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. <u>Water Quality</u>.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. . *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for all projects proposed to affect Class 1 and 1a rivers or classified lakes, individual certification must be obtained. For project proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed.*

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must

include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification**—(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition
20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but

do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37,

the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

**Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits**
**Regional Conditions**
**Omaha District**
**State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

## Wetlands Classified as Peatlands – Revoked for Use

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

## Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

## Waters Adjacent to Natural Springs – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

## Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

## Borrow Site Identification – All Nationwide Permits

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

## Counter-sinking Culverts and Associated Riprap – All Nationwide Permits

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf

## REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS

## Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities

**Intake Structures -** Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with the intake placed at the maximum practicable attainable depth.

**Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks**

a. If future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.

c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.

e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

**Nationwide Permit 13 - Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

**Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

**Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

## GENERAL CONDITIONS (REGIONAL ADDITIONS)

### General Condition 3- Spawning Areas

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: http://gf.nd.gov/fishing/where-to-fish. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf.

### General Condition 6 – Suitable Material

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/prohibitionpnJuly2011.pdf.

### General Condition 9 - Management of Water Flows

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

### General Condition 31 – Pre-construction Notification

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx .

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov

## Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

### *Soils*

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

### Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

### *Fill Material*

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

# FUEL COST ADJUSTMENT CLAUSE

Revision Date: 9/8/2006

## Introduction

This Special Provision provides for price adjustments to the Contract when significant changes in the cost of motor fuels and burner fuels occur while completing the Contract work. Participation in fuel cost adjustment program is not mandatory. A Contractor is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment provision.

The North Dakota Department of Transportation (NDDOT) will send the low responsible bidder a "Fuel Cost Adjustment Affidavit" (SFN 58393) with the proposed Contract. The Contractor shall return a completed Fuel Adjustment Affidavit with the signed Contract as specified in Standard Specification Section 103.06, Execution and Approval of the Contract. The affidavit shall be returned on all Contracts with this provision even if the Contractor elects not to participate in the provision.

Compensation adjustments for motor fuels and burner fuels consumed in prosecuting the Contract shall be determined by the Engineer in accordance with the provisions set forth herein. Compensation adjustments will be assessed monthly for the cost of the motor fuels and burner fuels whenever the Current Fuel Index (CFI) is outside the given threshold of the Base Fuel Index (BFI) for the Contract.

If the Contractor has a fixed price for fuel for motor or burner fuels to complete the work, no fuel cost adjustments will be made for that fuel type. If there is no fixed fuel price for motor or burner fuels, participation in the Fuel Adjustment provision is the decision of the prime Contractor.

If the prime Contractor decides not to participate, no fuel cost adjustments will be made to the Contract for the Contractor or any subcontractors. If the prime Contractor elects to participate in the fuel cost adjustment provision, the prime Contractor shall include the anticipated fuel cost of subcontractors who wish to participate. If fuel cost adjustments are made to the Contract, the prime Contractor shall ensure that participating subcontractors including second and lower tier, are included in the adjustments in proportion to the percentage of work and anticipated fuel cost by that subcontractor.

## Fuel Indexes

Each month, NDDOT will record the average wholesale price for No. 2 diesel fuel and the average wholesale price for unleaded gasoline (87 octane). The monthly average will be the average of the daily rack prices for the month as reported by DTN Energy for Fargo ND.

The burner fuel index will be the No. 2 diesel fuel index regardless of the type of burner fuel actually used.

The Base Fuel Index (BFI) price for motor fuels and burner fuel to be used in the Contract will be the average wholesale price for the month prior to the bid opening.

The Current Fuel Index (CFI) price for motor fuels and burner fuel to be used for each monthly adjustment will be the average wholesale price for the month prior to the adjustment month.

Fuel Ratio

For motor fuels diesel and unleaded gas, the fuel ratio of the Contract will be determined by dividing the Contractor's affidavit costs for each motor fuel by the original Contract amount.

For burner fuels, the fuel ratio of the contract will be determined by dividing the Contractor's affidavit cost for burner fuels by the original Contract amount of plant-mixed hot bituminous pavement paid by the ton. Asphalt cement, binders and other miscellaneous bituminous items shall not be included.

The fuel ratio of the contract for motor and burner fuels will remain the same throughout the length of the contract. The sum of the affidavit fuel costs shall not exceed 15% of the original Contract amount.

The fuel ratio for the three fuel types will be determined by the following equation:

$$\textbf{Fuel Ratio}_{(x, y, z)} = \textbf{Affidavit Cost}_{(x, y, z)} / \textbf{Original Contract Amount}_{(x, y, z)}$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| Fuel Ratio$_{(x, y, z)}$ | = | Fuel ratio of the contract for each respective fuel type |
| Affidavit Cost$_{(x, y, z)}$ | = | Fuel costs from Fuel Adjustment Affidavit (SFN 58393) |
| Original Contract Amount$_{(x, y)}$ | = | Total of the original contract amount excluding lane rental, and Part B of the bid (when A+B bidding is used), if applicable. |
| Original Contract Amount$_{(z)}$ | = | Total original contract amount for all hot bituminous pavement bid items combined, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. |

Cost Change

The monthly change in fuel costs will be determined by the following equation:

$$\textbf{Cost Change}_{(x, y, z)} = (\textbf{CFI}_{(x, y, z)} - \textbf{BFI}_{(x, y, z)}) / \textbf{BFI}_{(x, y, z)}$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel (use diesel prices) |
| Cost Change$_{(x, y, z)}$ | = | The relative change in the current CFI and the BFI for each fuel type |
| CFI$_{(x, y, z)}$ | = | Current Fuel Index for each fuel type |
| BFI$_{(x, y, z)}$ | = | Base Fuel Index for each fuel type |

Contract Adjustments

Contract adjustments will be made for the cost of motor and burner fuels whenever the cost change exceeds a ±0.10 threshold. No fuel cost adjustment will be made for work done under liquidated damages. Adjustments will be determined for Motor Fuel (diesel), Motor Fuel (unleaded), and Burner Fuel (burner) separately and shall be computed on a monthly basis.

When the cost change is greater than 0.10, the rebate to the Contractor for each fuel type shall be computed according to the following formulas:

$$\mathbf{FCA_{(x,\,y,\,z)} = Fuel\ Ratio_{(x,\,y,\,z)} \times Estimate_{(x,\,y,\,z)} \times (\ Cost\ Change_{(x,\,y,\,z)} - 0.10\ )}$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| $FCA_{(x,\,y,\,z)}$ | = | Fuel Cost Adjustment for each of the fuel types |
| $Fuel\ Ratio_{(x,\,y,\,z)}$ | = | Fuel Ratio for each of the fuel types |
| $Estimate_{(x,\,y)}$ | = | The monthly total of work done on estimates issued in the current month excluding incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages. |
| $Estimate_{(z)}$ | = | The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included. |
| $Cost\ Change_{(x,\,y,\,z)}$ | = | The monthly change in fuel costs for each of the fuel types |

When the cost change is less than -0.10, the credit to the Department for each fuel type shall be computed according to the following formulas:

$$\mathbf{FCA_{(x,\,y,\,z)} = Fuel\ Ratio_{(x,\,y,\,z)} \times Estimate_{(x,\,y,\,z)} \times (\ Cost\ Change_{(x,\,y,\,z)} + 0.10\ )}$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| $FCA_{(x,\,y,\,z)}$ | = | Fuel Cost Adjustment for each of the fuel types |
| $Fuel\ Ratio_{(x,\,y,\,z)}$ | = | Fuel Ratio for each of the fuel types |
| $Estimate_{(x,\,y)}$ | = | The monthly total of work done on estimates issued in the current month excluding any incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages. |
| $Estimate_{(z)}$ | = | The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included. |
| $Cost\ Change_{(x,\,y,\,z)}$ | = | The monthly change in fuel costs for each of the fuel types |

Payments

Adjustments will be determined by the Engineer monthly. Adjustments will be made under the following spec and code for each fuel type:

| | |
|---|---|
| 109 0100 | Motor Fuels (Diesel) |
| 109 0200 | Motor Fuels (Unleaded) |
| 109 0300 | Burner Fuel |

When significant payment adjustments are made on final estimates to account for final in-place measured quantities, the Engineer may prorate the adjustments back to the months when the work was done.

Attachments

For informational purposes, a ‘Fuel Cost Adjustment Affidavit’ (SFN 58393) is included as Attachment A.

# FUEL COST ADJUSTMENT AFFIDAVIT

North Dakota Department of Transportation, Construction Services
SFN 58393 (08-2006)

**Attachment A**

| Project Number |
|---|
| |

*The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.*

Check the box for each fuel type that has a fixed price.
No adjustments in fuel price will be made for the boxes that are checked.

☐ Diesel ☐ Unleaded ☐ Burner Fuel

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price?
No adjustments in fuel prices will be made if **No** is checked.

☐ Yes ☐ No

If yes, provide the total dollars for each of the applicable fuels.

| | | | |
|---|---|---|---|
| Diesel (x) | $ | | |
| Unleaded (y) | $ | | |
| Burner Fuel (z) | $ | | |
| Sum (x+y+z) | $ | % of Original Contract Amount | %* |

*The sum of the x, y, and z may not exceed 15% of the original contract amount.

Under the penalty of law for perjury of falsification, the undersigned,

_____, _____
Name Title

of _____, here by certifies that the documentation is submitted in good
Contractor

faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.

_____ **X** _____
Date Signed

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, _____.

(Seal) **X** _____
Signature of Notary Public

My Commission Expires _____