EXTERNAL CIVIL RIGHTS MANUAL

JANUARY 2016

Prepared by

North Dakota Department of Transportation
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INTRODUCTION

As a recipient of federal funds, the North Dakota Department of Transportation (NDDOT) is required to comply with the rules and regulations of the U.S. Department of Transportation, Federal Highway Administration (USDOT, FHWA) as they pertain to the federal-aid highway program.

NDDOT's internal and external civil rights programs are a function of the Civil Rights Division (CRD). The CRD is located in the central office and is staffed by:

- CRD Director, overall internal and external civil rights program management: Ramona Bernard,
- Contractor Compliance, Internal EEO, and Labor Compliance: Gail Brown,
- Disadvantaged Business Enterprise (DBE), On-the-Job Training (OJT), and DBE/OJT Supportive Services Programs: Denise Spanjer,
- NDDOT's Title VI and Nondiscrimination/ADA Program: Paula Messmer, and
- Administrative office support, specific assignments in various programs: Amy Conklin.

Many of the internal and external civil rights monitoring responsibilities have been delegated to the district engineers. They, in turn, delegate the internal EEO responsibilities and external contractor compliance and labor compliance monitoring to their staff.

This manual deals only with the external civil rights program and includes:

I. Title VI and Nondiscrimination/ADA Program
II. Disadvantaged Business Enterprise
III. Contractor Compliance
IV. On-the-Job Training
V. Labor Compliance
VI. Contract Special Provisions

Each district is responsible for keeping the CRD informed of any EEO, OJT, Title VI/ADA, Title VII, DBE, contractor compliance, and labor compliance activities, either positive or negative, in a timely manner. The CRD Director and Civil Rights Program Administrators are available for technical assistance at any time by contacting the CRD:

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TITLE VI AND NONDISCRIMINATION/ADA SECTION 1

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I. TITLE VI AND NONDISCRIMINATION/ADA

A. TITLE VI AND NONDISCRIMINATION/ADA PROGRAM

1. Title VI of the Civil Rights Act of 1964
   a. Title VI of the Civil Rights Act of 1964 prohibits discrimination in Federal and Federally-assisted projects and programs based upon race, color, and national origin.

2. Related Statutes
   a. Since 1964, additional statutes have prohibited discrimination based upon the following:
      (1) Sex – Federal-aid Highway Act of 1973
      (2) Age – Age Discrimination Act of 1975
      (3) Disability – Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990

3. Executive Orders
   a. Also, since the following Executive Orders (E.O.) are non-discriminatory in their intent, while they are not statutes, FHWA has included them as sections within the Title VI and Nondiscrimination/ADA Program.

      (1) Environmental Justice, E.O. 12898
         (a) Entitled "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations." NDDOT considers the effects of our transportation decisions on minority and low-income populations.

      (2) Limited English Proficiency (LEP), E.O. 13166
         (a) Entitled "Improving Access to Services for Persons With Limited English Proficiency." NDDOT is committed to providing individuals with difficulty using and understanding English through meaningful access to programs and services.

      (3) Taken together, FHWA has defined a Title VI and Nondiscrimination/ADA Program to prohibit discrimination based upon race, color, national origin, sex, age, disability, or income status.

4. Standard Title VI/Non-Discrimination Assurances
   a. In April of 2013, the USDOT signed DOT Order 1050.2A which revised the Standard DOT Title VI Assurances of 1971.

   b. Grant Levi, NDDOT Director, signed the Standard Title VI/Nondiscrimination Assurances on February 4, 2015. It is located at Exhibit I-A and available online at NDDOT, CRD, Title VI and Nondiscrimination/ADA Program web page. https://www.dot.nd.gov/divisions/civilrights/titlevi.htm

   c. The Statutory/Regulatory Authorities are:

(1) Title VI of the Civil Rights Act of 1964 (prohibits discrimination on the bases of race, color, national origin);

(2) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964); and

(3) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); referred to as the "Acts" and "Regulations," respectively.

d. General Assurances

(1) NDDOT gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the DOT, including the Federal Highway Administration.*

Further explains that, "The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted."

e. Specific Assurances

(1) Additionally, the Standard Title VI/Non-Discrimination Assurances include 10 (ten) more specific assurances with respect to its Federal-aid Highway Program.

(a) Assurance #1 addresses compliance in regard to activities facilitated, facility operated, or program conducted.

(b) Assurance #2 addresses notifications in solicitations, etc., regarding disadvantaged business enterprises.

(c) Assurance # 3 requires NDDOT to insert the clauses of Appendix A and E of this Assurance into every contract or agreement subject to the Acts and the Regulations.

(1) Appendix A and E of the assurances is required in all construction contracts whether state or federally

funded. See The Civil Rights Restoration Act of 1987 at Section I.A.4.d(1).

(2) Appendix A of the assurances requires prime contractors to insert Appendix A and E of the assurances in all subsequent subcontracts, all tiers, including procurement of materials and leases of equipment. The prime is responsible for compliance by any subcontractor, lower-tier subcontractor, supplier, and lessor of equipment.

(3) Appendix E includes but is not limited to the pertinent non-discrimination authorities listed.

(4) Appendix A and E of the assurances is also located in Special Provisions in Exhibit VI-G.

(d) Assurances #4, 5, and 6 requires NDDOT to insert the clauses of Appendix B as a covenant running with the land in deeds from the United States.

(e) Assurances #7 and 8 requires NDDOT to insert the clauses in Appendix C and D as a covenant running with the land in future deeds, leases, licenses, permits, or similar instruments.

(f) Assurance #9 addresses methods of administration, referring to the Title VI and Nondiscrimination/ADA Program.

(g) Assurance #10 addresses the United States right to seek judicial enforcement.

5. Compliance with Title VI and pertinent non-discrimination authorities

a. As a recipient of Federal financial assistance, NDDOT is required to protect the public interest by developing a Title VI and Nondiscrimination/ADA Program for their benefit. It is located on the NDDOT website on the "Title VI and Nondiscrimination/ADA Program web page at https://www.dot.nd.gov/divisions/civilrights/titlevi.htm

b. The NDDOT's Title VI and Nondiscrimination/ADA Program identifies the implementation, compliance, and enforcement policies and procedures NDDOT has developed to ensure compliance with Title VI and nondiscrimination authorites at all levels which includes cities, counties, contractors, subcontractors, consultants, and subconsultants.

c. As part of the Title VI and Nondiscrimination/ADA Program, the NDDOT is required to ensure everyone has the opportunity to comment on the transportation programs and activities that affect their community.

d. NDDOT abides by the ADA. The NDDOT implements, monitors, and updates the NDDOT ADA Transition Plan. It is located on the NDDOT website on the

"Title VI and Nondiscrimination/ADA Program" web page at https://www.dot.nd.gov/divisions/civilrights/titlevi.htm

e. NDDOT has developed a Request for Reasonable Accommodations form with Instructions (SFN 60135 Rev. 07-2015) for individuals to request accommodations necessary to access NDDOT programs, services, and activities. It is available at Exhibit I-B and on NDDOT website at http://www.dot.nd.gov/forms/sfn60135.pdf

f. The State of North Dakota has entered into a new Western States Contracting Alliance (WSCA) contract with Linguistica International and CTS LanguageLink, telephonic interpreter service providers. The services are used to communicate with individuals that have limited English proficiency meaning that they have difficulty using and understanding English. The cost went down and varies between $0.62 - $0.54 per minute.

g. State and local government agencies in North Dakota are able to join the contract with the same provisions. You can obtain more information on the State of ND Procurement Office webpage at the following location: https://apps.nd.gov/csd/spo/services/bidder/listCurrentContracts.htm

Under State Contracts select List Contracts, and then scroll down to "Telephone Based Interpreter Services (WSCA)" contract #488. Under State Contracts select List Contracts, and then scroll down to "Telephone Based Interpreter Services (WSCA)" contract #488 to view it.

h. NDDOT provides use of the department's telephonic interpreter services to consultants to conduct EEO/Labor Compliance interviews with limited English speaking employees.

i. To arrange use of this service, please send your request through the chain of Project Engineer (PE) to Assistant District Engineer (ADE). The ADE will provide consultants the instructions, telephone number, and access codes.

6. Data Collection Process

a. NDDOT has developed and implemented a data collection process to collect and process demographics from participants and beneficiaries of transportation projects. This process provides us the necessary information to measure the effectiveness of our public involvement activities.

b. Data collection is an important part of our Title VI and Nondiscrimination/ADA Program as it ensures that transportation programs, services, activities, facilities, and projects effectively meet the needs of "all persons" without discrimination. For example, disproportionately benefitting or harming one group over another is a violation of Title VI. Timely and accurate data allows for better decision-making and provides support to the decisions made.

c. NDDOT is required to file reports with FHWA annually including the information and results of our data collection process.

7. NDDOT Title VI Public Participation Survey
   a. NDDOT developed the Title VI Public Participation Survey (SFN 60149 Rev. 12-2014). It is available at Exhibit I-C and on NDDOT website at http://www.dot.nd.gov/forms/sfn60149.pdf

   b. This survey can be used by NDDOT staff, cities, counties, consultants, or sub recipients.

   c. This survey must be available to the public at public meetings for all NDDOT state and federally funded projects.

   d. There are two sets of instructions available for the Public Participation Survey.
      (1) The NDDOT Title VI Public Participation Survey Instructions is used by everyone who is not a sub recipient of NDDOT. You will know if you are a sub recipient of NDDOT because you will have had to meet specific sub recipient Title VI program criteria and approved for funding as a sub recipient by NDDOT staff.

      (2) The NDDOT survey instructions are available on NDDOT website, CRD, Title VI and Nondiscrimination/ADA Program webpage at https://www.dot.nd.gov/divisions/civilrights/titlevi.htm

      (3) The Sub Recipient Title VI Public Participation Survey Instructions are used by sub recipients only. The survey instructions are available on the NDDOT website, CRD, Title VI and Nondiscrimination Program, Sub recipient webpage at https://www.dot.nd.gov/divisions/civilrights/subrecipients-titlevi.htm

8. Title VI/ADA Compliance Oversight
   a. Enforcement responsibilities have been vested with NDDOT, which ultimately falls on the shoulders of the NDDOT, city, county, or consultant project engineer. The project engineer (PE) should be cognizant of these contractual requirements and monitor the contractor for compliance.

   b. If noncompliance with any provision is even suspected, the NDDOT, city, county, or consultant PE should notify the Assistant District Engineer (ADE) immediately. The ADE should consult with the CRD for a possible course of action.

   c. If department or project staff observe or receive a verbal report of discriminatory activity, they should direct the complainant and/or contact CRD immediately for a possible course of action. Make notes in your diary. NDDOT receives very few Title VI/ADA complaints from construction projects. Some examples of external discriminatory activity or complaints:
      (1) Telling racial jokes or using racial slurs where members of the public are present.

      (2) Making negative comments about minorities living in the USA where members of the public are present.

      (3) Making negative/derogatory comments about individuals with disabilities where members of the public are present.

9. Title VI/ADA External Complaint Process

   a. Title VI/ADA external complaints received by CRD against NDDOT or NDDOT sub recipients or contractors will be forwarded to FHWA Division Office. FHWA will determine who should investigate the complaint.

   b. Complaints must be filed, in writing, no later than 180 calendar days after the date of the alleged discrimination. NDDOT's Title VI/ADA External Complaint for Members of the Public (SFN 51795 Rev. 11-2015) must be used. NDDOT's Title VI/ADA External Complaint Process, form and instructions are available at Exhibit I-D and on NDDOT website at: www.dot.nd.gov/forms/sfn51795.pdf

   c. Complaints may also be filed with the Secretary of the U.S. Department of Transportation, in writing, no later than 180 calendar days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary of the U.S. Department of Transportation. See NDDOT's Title VI/ADA External Complaint Process for the address.

EXHIBIT I-A: STANDARD TITLE VI/NON-DISCRIMINATION ASSURANCES

To access click on the following:

http://www.dot.nd.gov/divisions/civilrights/docs/titlevi/title-vi-assurances.pdf

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The North Dakota Department of Transportation ("NDDOT") (herein referred to as the "Recipient"), **HEREBY AGREES THAT,** as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration is subject to and will comply with the following:

Statutory/Regulatory 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);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);*
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Federal-Aid Highway Program.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal-Aid Highway Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

   "The North Dakota Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C.§§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

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

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

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

   a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

   b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

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

By signing this ASSURANCE, the North Dakota Department of Transportation also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Federal Highway Administration's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the Federal Highway Administration. You must keep records, reports, and submit the material for review upon request to the Federal Highway Administration, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The North Dakota Department of Transportation gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Federal-Aid Highway Program. This ASSURANCE is binding on North Dakota Department of Transportation, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Federal-Aid Highway Program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

By _____
Grant Levi, P.E., Director

DATED 2/4/15

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 Nondiscrimination 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.

A

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX B OF THE TITLE VI ASSURANCES

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the NDDOT will accept title to the lands and maintain the project constructed thereon in accordance with Title 23, United States Code, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the NDDOT all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the NDDOT and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the NDDOT, its successors and assigns.

The NDDOT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the NDDOT will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non- discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

B

NORTH DAKOTA DEPARTMENT OF TRANSPORTAION
APPENDIX C OF THE TITLE VI ASSURANCES

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by NDDOT pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, NDDOT will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, NDDOT will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the NDDOT and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

C

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX D OF THE TITLE VI ASSURANCES

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by NDDOT pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, NDDOT will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, NDDOT will there upon revert to and vest in and become the absolute property of NDDOT and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

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 non-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).

E

EXHIBIT I-B: REQUEST FOR REASONABLE ACCOMMODATIONS AND INSTRUCTIONS

To access click on the following:

http://www.dot.nd.gov/forms/sfn60135.pdf

REQUEST FOR REASONABLE ACCOMMODATIONS
North Dakota Department of Transportation, Civil Rights
SFN 60135 (Rev. 07-2015)

Date

Name			Day Telephone Number	
Street/Mailing Address		City	State	ZIP Code
Preferred Method of Contact ☐ Day Phone ☐ Email ☐ USPS		Email Address		

Type of Event:
☐ Public Meeting/Public Hearing
☐ Training
☐ Other (specify) _____

Date of Event	and/or	Date Needed	Location of Event

Type(s) of Accommodation
☐ Interpreter for deaf (specify ASL, tactile, etc.) _____
☐ Assistive listening device (specify) _____
☐ Physical location accessible for persons with a physical mobility impairment.
☐ Other (specify) _____

Other Type(s) of Assistance
☐ Interpreter for Limited English Proficiency (specify language) _____
☐ Other (specify) _____

Nature of Disability (Medical documentation may be requested.)
☐ Physical Mobility Impairment (Specify: wheelchair, walker, crutches, etc.) _____
☐ Speech Impairment (specify) _____
☐ Visual Impairment
☐ Hearing Impairment (select one) ☐ deaf ☐ hard of hearing ☐ Deaf-blind
☐ Other (specify) _____

List any special requests or anticipated problems for accommodations.

Print Materials

Alternative format you prefer? (Indicate first, second, third choice if possible.) Date Needed
___ ☐ Braille
___ ☐ Large print (font point size) _____
___ ☐ Other (specify) _____
___ ☐ Audio recording-MP3
___ ☐ CD/flash drive

For Office Use Only

The accommodation request is:
☐ Granted as requested ☐ Granted with change - see additional information ☐ Denied - see additional information

Figure 1. Request For Reasonable Accommodations and Instructions (SFN 60135), page 1.

SFN 60135 Page 2 of 2

INSTRUCTIONS:

Requests for Reasonable Accommodations can be made by completing this form. If you prefer to complete this form electronically go to the North Dakota Department of Transportation website at: http://www.dot.nd.gov/forms/sfn60135.pdf

You may submit the completed form as follows:

1. Save the completed form to your computer, click on the email link and attach your completed form. Email to: civilrights@nd.gov

2. Mail to: NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
   CIVIL RIGHTS DIVISION
   608 EAST BOULEVARD AVENUE
   BISMARCK ND 58505-0700

The Civil Rights Division will contact you to discuss your request.

If you need assistance to complete the Request For Reasonable Accommodations form, please contact Paula Messmer, Civil Rights Division, NDDOT at (701-328-2978) or civilrights@nd.gov . TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

REQUESTS MUST BE MADE AS SOON AS POSSIBLE.

Appropriate provisions will be considered when the Department is notified at least 10 days prior to the meeting date or 15 days prior to the date the written comments are due.

Converting printed material may take several weeks.

Figure 2. Request For Reasonable Accommodations and Instructions (SFN 60135), page 2.

EXHIBIT I-C: NDDOT PUBLIC PARTICIPATION SURVEY AND INSTRUCTIONS

To access click on the following:

http://www.dot.nd.gov/forms/sfn60149.pdf

NDDOT TITLE VI PUBLIC PARTICIPATION SURVEY
North Dakota Department of Transportation, Civil Rights
SFN 60149 (Rev. 12-2014)

PLEASE USE DARK INK AND PRINT CLEARLY

The Civil Rights Act of 1964 and related nondiscrimination authorities require the North Dakota Department of Transportation to ensure everyone has the opportunity to comment on the transportation programs and activities that may affect their community.

To help with that, we ask that you respond to the following questions. You are not required to disclose the information requested in order to participate. Any information provided to the NDDOT will be retained solely for the purpose of collecting statistical data to ensure inclusion of all segments of the population affected by transportation programs and activities.

Sex: ☐ Female ☐ Male **Disability:** ☐ Yes ☐ No

Age: ☐ 34 and younger ☐ 35-54 ☐ 55 and older

Race:
☐ American Indian/Alaskan Native ☐ Native Hawaiian/Other Pacific Islander
☐ Asian ☐ White
☐ Black/African American ☐ Other _____
☐ Hispanic or Latino

Language most frequently spoken in your home:
☐ Arabic ☐ German ☐ Somali ☐ Vietnamese
☐ Bosnian ☐ Nepali ☐ Spanish ☐ Other _____
☐ Croatian ☐ Russian ☐ Swahili
☐ English ☐ Serbian ☐ Turkish

Do you receive public assistance? ☐ Yes ☐ No

Indicate how you heard about the event:
☐ Internet ☐ Mailing ☐ NDDOT Contact ☐ Newspaper
☐ Radio ☐ Social Service Agency ☐ Television
☐ Advocacy Group (which group) _____
☐ Other _____

For Office Use

Event Date __ / __ / ____ **City** ___ **County** __

MPO
☐ Bismarck-Mandan
☐ Fargo-Moorhead Metro COG
☐ Grand Forks-East Grand Forks

Div/Dist Number __ **PCN** _____ **ROW** ☐ Negotiation ☐ Relocation **Consultant** ____ **Subrecipient** ☐ Yes ☐ No

After you have completed this form, please place it in the designated location.

Figure 3 - NDDOT Title VI Public Participation Survey (SFN 60149).

Instructions for "NDDOT Title VI Public Participation survey (SFN 60149)"

1. Prior to printing the survey, specific fields must be completed. Use leading zeros.
   - **Event Date:** Enter the date the event is being held.
   - **City:** Enter the ND city number. See code list on NDDOT website at http://www.dot.nd.gov/divisions/civilrights/titlevi.htm
   - **County:** Enter the ND county number. See code list on NDDOT website at http://www.dot.nd.gov/divisions/civilrights/titlevi.htm
   - **Division/District Number:** Enter your NDDOT division or district number. See code list on NDDOT website at http://www.dot.nd.gov/divisions/civilrights/titlevi.htm
   - **Project Control Number (PCN):** If there are multiple PCN's, only enter the Parent PCN.
   - **Right of Way (ROW):** Select/shade the appropriate oval only if the survey is being completed for the specific activity selected.
   - **Consultant:** Enter the Consultant ID number. See the Pre-Qualified Consultant List on NDDOT website at http://www.dot.nd.gov/business/consultants.htm
   - **MPO:** Leave blank. All Sub recipients must use the Sub recipient Title VI Public Participation Survey Instructions located on NDDOT website at http://www.dot.nd.gov/divisions/civilrights/subrecipients-titlevi.htm
   - **Sub recipient:** Select No. All Subrecipients must use the Subrecipient Title VI Public Participation Survey Instructions located on NDDOT website at http://www.dot.nd.gov/divisions/civilrights/subrecipients-titlevi.htm

2. After the above fields are entered, print as many surveys as you may potentially need at your meeting. Do not photocopy or scan to reproduce surveys for use at public events, as they will not be compatible when extracting the data with the automated ILINX Capture program.

3. At your event, explain the purpose of the survey. The purpose of the survey is printed on the survey along with instructions on filling out the survey. The language question is intended to capture Limited English Proficiency (LEP) persons attending. The public assistance question is intended to capture traditionally underserved populations attending. Encourage event attendees to complete the survey. (Only the public attending the events should complete the survey. It is not intended for NDDOT, city, county, or consultant employees who are hosting the event.)

4. Following the event, review the surveys to make sure they are completed according to the instructions:
   - Send the completed **ORIGINAL** surveys (SFN 60149) to your Division's Title VI Specialist as soon after the event as possible. Do not include the survey in the Public Involvement Report.
   - Also send a **COPY** of the Public Meeting Sign-In Sheet (SFN 59531) to your Division's Title VI Specialist as soon after the event as possible. The original Public Meeting Sign-In Sheet (SFN 59531) should remain with the project manager for inclusion into the Public Involvement Report.

EXHIBIT I-D: TITLE VI/ADA EXTERNAL COMPLAINT FOR MEMBERS OF THE PUBLIC WITH INSTRUCTIONS AND TITLE VI/ADA EXTERNAL COMPLAINT PROCESS

To access click on the following:

http://www.dot.nd.gov/forms/sfn51795.pdf

TITLE VI/ADA EXTERNAL COMPLAINT FOR MEMBERS OF THE PUBLIC
North Dakota Department of Transportation, Civil Rights Division
SFN 51795 (Rev. 11-2015)

PART I - COMPLAINANT INFORMATION (Print all items legibly.)

Name		Telephone Number
Mailing Address		Email Address
City	State	ZIP Code

PART II - CAUSE OF DISCRIMINATION BASED ON (Check appropriate box[es].)

☐ Race ☐ Color ☐ National Origin ☐ Limited English Proficiency
☐ Sex ☐ Age ☐ Disability ☐ Income Status

PART III - THE PARTICULARS ARE (Include names, dates, places, and incidents involved in the complaint.)
(If additional space is needed, attach extra sheet[s].)

PART IV - REMEDY SOUGHT (State the specific remedy sought to resolve the issue[s].)

PART V - VERIFICATION

Complainant's Signature	Date

Figure 4. Title VI/ADA External Complaint For Members of the Public (SFN 51795), page 1.

SFN 51795 (Rev. 4-2015) Page 2

NDDOT INSTRUCTIONS

General

1. Instructions provided within this form are not meant to be all inclusive. Members of the public filing a Title VI/ADA complaint are responsible for all procedural requirements contained in NDDOT's Title V/ADA External Complaint Process.

2. Under Title VI of the Civil Rights Act of 1964 and the related statutes and regulations, no person or group(s) of persons shall, on the grounds of race, color, national origin, sex, age, disability, limited English proficiency, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the North Dakota Department of Transportation. Members of the public or group(s) of persons who feel they have been discriminated against may file a complaint.

3. Complainants **must** include all required information and **must** meet all timeframes as defined in NDDOT's Title VI/ADA External Complaint Process.

4. Legible copies of all available pertinent documentation should be attached to this form.

5. All inquiries should be directed to the Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, Telephone (701)328-2978, TTY 711 or (800)366-6888 (toll free).

Part I
Complete all information in this section.

Part II
Check all boxes that apply indicating the basis for the complaint. The discrimination **must** be based on at least one of the listed categories.

Part III
State the specific complaint in a manner that clearly identifies the issues upon which the complaint is based.

Part IV
State the minimum remedy acceptable for resolution of this complaint.

Part V
Sign and date this section to verify the information contained in Parts I through IV.

Figure 5. Title VI/ADA External Complaint For Members of the Public, Instructions (SFN 51795), page 2.

SFN 51795 (Rev. 4-2015) Page 3

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

TITLE VI/ADA EXTERNAL COMPLAINT PROCESS

A. Introduction

NDDOT's Title VI External Complaint Process is consistent with the Federal Highway Administrations (FHWA) Procedures Manual for Processing External Complaints of Discrimination filed under Title VI of the Civil Rights Act of 1964 and related statutes, the Americans with Disabilities Act of 1990, and/or Section 504 of the Rehabilitation Act of 1973. The nondiscrimination statutes, regulations, Executive Orders (E.O.), directives, and other references are available upon request.

B. Agencies Authorized to Receive Complaints

Complaints may be submitted to one of the following: NDDOT, FHWA, the United States Department of Transportation (USDOT), or the United States Department of Justice (USDOJ). See Appendix A.

C. Persons Eligible To File

Members of the public or any specific class of persons, by themselves or by a representative, that believe they have been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA) may file a complaint.

D. Filing a Complaint

1. A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complainants should complete NDDOT's Title VI/ADA External Complaint form (SFN51795) in writing and sign and may be filed by mail, fax, in person, or e-mail. A complaint should contain at least the following information:
   a) A written explanation of what has happened;
   b) A way to contact the complainant;
   c) The basis of the complaint, i.e., age, sex, race, color, national origin, disability, income status, or limited English proficiency;
   d) The identification of the respondent, e.g., agency/organization alleged to have discriminated
   e) Sufficient information to understand the facts that led the complainant to believe that discrimination occurred; and,
   f) The date(s) of the alleged discriminatory act(s).
2. While the above indicates a complaint should be in writing and signed, NDDOT will accept complaints in alternate formats from persons with disabilities, upon request.
   a) Upon request to NDDOT, the complaint may be filed on a compact disk (PDF, word document, or audio recording are all acceptable formats) or in Braille.
3. The complainant may contact NDDOT for assistance in filing a complaint.

   NDDOT will consider every request for reasonable accommodation to provide

   - accommodation for people with disabilities
   - language interpretation for people with limited English proficiency (LEP) and
   - translation of written material necessary to access NDDOT programs and information
   - To request accommodations, complainants may contact the Civil Rights Division, NDDOT at (701) 328-2978 or civilrights@nd.gov. TTY users may use Relay North Dakota at 711 or 18003666888.

Figure 6: Title VI/ADA External Complaint Process (SFN 51795), page 3.

SFN 51795 (Rev. 4-2015) Page 4

E. Timeframes For Filing a Complaint

1. Complaints must be filed within 180 calendar days of the last date of the alleged discrimination, unless the time for filing is extended. The filing date of the complaint is the earlier of:
   a) The postmark of the complaint, or
   b) The date the complaint is received by any agency authorized to receive complaints. See Section B.
2. To request an extension for filing a complaint, contact the agency that received the complaint. See Appendix A.

F. Complaints Received by NDDOT

1. Complaints filed under Title VI in which NDDOT is named as the respondent will be forwarded by NDDOT to FHWA Division Office, who forwards to FHWA Headquarters Office of Civil Rights (HCR) for investigation.
   a) Title VI Complaints against NDDOT will be investigated by HCR or a team comprised of Division Office and Resource Center personnel. HCR will notify the North Dakota FHWA Division Office of the investigation and provide the Letter of Finding (LOF) after completion of the investigation.
2. Title VI complaints filed directly with NDDOT against its sub recipients or contractors will be forwarded by NDDOT to FHWA Division Office who will determine if the complaint will be processed by NDDOT in accordance with the FHWA approved complaint procedures under 23 CFR 200.9(b)(3).
   a) HCR has authority for making all final decisions which includes dismissing complaints and issuing LOFs.
3. Complaints filed under the Section 504/ADA with NDDOT will be forwarded by NDDOT to FHWA Division Office who will determine if the complaint will be investigated by NDDOT in accordance with 49 CFR 27.13(b).
4. The FHWA Division Office may allow NDDOT to conduct a Title VI or Section 504/ADA investigation against a local entity as follows:
   a) The complaint will be reviewed within 10 calendar days of receipt to determine whether it contains all the necessary information required for acceptance.
   b) If the complaint is complete and no additional information is needed, the complainant will be sent a letter of acceptance along with The Complainant Consent/Release form (SFN 60741) and the Notice About Investigatory Uses of Personal Information fact sheet.
   c) If the complaint is incomplete, the complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 15 calendar days to respond to the request for additional information.
   d) After determining the complaint will be accepted for investigation by NDDOT, a notification letter will be sent to the complainant.

I. Complainant is Represented by an Attorney

Complainants represented by an attorney should provide a letter of representation.

H. Timeframes for Investigations by NDDOT and FHWA

1. If directed by FHWA to investigate a Title VI Complaint, NDDOT is required to follow the timeframes in 23 CFR 200.9(b)(3) as follows: A copy of the complaint, together with a copy of the NDDOT's report of investigation shall be forwarded to the FHWA Division Office within 60 calendar days of the date the complaint was received by NDDOT.

Figure 7: Title VI/ADA External Complaint Process (SFN 51795), page 4.

SFN 51795 (Rev. 4-2015) Page 5

2. If directed by FHWA HCR to investigate a Section 504/ADA complaint, FHWA Division Office and NDDOT shall forward a copy of the complaint, together with a copy of the report of investigation within 90 calendar days of receipt of the complaint from FHWA HCR.

3. HCR attempts to complete investigations within 180 calendar days.

I. Dismissals

The FHWA HCR has delegated authority for dismissing or rescinding Title VI complaints; and Section 504/ADA complaints processed by FHWA.

J. Letters of Finding (LOFs)

1. The FHWA HCR has delegated authority for issuing LOFs for all complaints processed by the FHWA.

2. A Title VI finding of violation, no violation, or dismissal is a Federal decision that cannot be delegated. Although NDDOT can conduct a Title VI investigation of its sub recipients or contractors and make a recommended finding to the Federal decision-making authority, the FHWA has delegated authority for all final decisions, dismissals, and LOFs.

K. Appeals

LOFs issued by the FHWA are administratively final.

Figure 8: Title VI/ADA External Complaint Process (SFN 51795), page 5.

SFN 51795 (Rev. 4-2015) Page 6

APPENDIX A

Agencies Authorized to Receive and Process Complaints

North Dakota Department of Transportation
Civil Rights Division
608 E. Boulevard Ave.
Bismarck, ND 58507-0700
Phone: 701-328-2576

Fax: 701-328-0343
TTY: 711 or 800-366-6888
E-mail: civilrights@nd.gov

FHWA
North Dakota Division Office
4503 Coleman St. N., Suite 205
Bismarck, ND 58503
Phone: 701-250-4204

Fax: 701-250-4395
E-mail: NorthDakota.fhwa@dot.gov

United States Department of Transportation (USDOT)
FHWA Headquarters Office of Civil Rights
1200 New Jersey Avenue, SE (HCR-40)
8th Floor E81-314
Washington, DC 20590
Phone: 202-366-0693

Fax: 202-366-1599
TTY: 202-366-5132
E-mail: CivilRights.FHWA@fhwa.dot.gov
Nichole McWhorter, Coordination and Compliance

Phone: 202-366-1396
E-mail: nichole.mcwhorter@dot.gov

USDOJ - Race, Color, National Origin Complaints
Federal Coordination and Compliance
Section NWB
Civil Rights Division
U.S. Department of Justice (USDOJ)
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Phone: 888-848-5306 (English and Spanish)

202-307-2222 (voice)
202-307-2678 (TDD)
E-mail: None published

USDOJ - ADA Complaints
US Department of Justice (USDOJ)
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section 1425 NYAV
Washington, DC 20530
Fax: 202-307-1197

E-mail: ADA.complaint@usdoj.gov
ADA Information Line: 800-514-0301(voice) or 800-514-0383 (TTY)
Main Section Telephone Number: 2023070663 (voice and TTY)

Figure 9. Title VI/ADA External Complaint Process (SFN 51795), pages 6.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SECTION 4

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II. DISADVANTAGED BUSINESS ENTERPRISE

US Department of Transportation - 49 Code of Federal Regulations Part 26, requires NDDOT to implement a Disadvantaged Business Enterprise (DBE) Program to ensure nondiscrimination in the award and administration of federally assisted highway construction contracts. Civil Rights Division (CRD) has the overall responsibility for developing, implementing, and monitoring NDDOT's DBE Program. Day-to-day project monitoring is delegated to the districts.

*Throughout this chapter "self-perform" is defined as a contractor's use of its "own workforce" (employees who are on a contractor's weekly certified payrolls and for whom the contractor contributes to unemployment, social security, and worker's compensation) and its "own equipment" (equipment which is titled, licensed, and insured in the contractor's name or leased from a bona fide equipment supplier). The contractor is not self-performing if it is using equipment or employees from another firm, an affiliate, or a subsidiary firm in place of the contractor's own equipment and employees.

When contractor opts to use the Civil Rights Certification and Compliance System to track payments and DBE participation, the procedure being used to meet federal rules may change. The process, however, does not change. Some paper forms used to report contract activity to the Department may be eliminated, but the reason the forms were in use remains.

Functionally, CRCCS provides contractors the tools to easily communicate with subcontractors and suppliers, quick response to payment advice, and record storage capacity.

A. SPECIAL PROVISIONS DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

DBE Special Provisions (SP) outline the requirements bidders on federal-aid jobs must follow to comply with the DBE regulations. The DBE SPs outline all pre-bid and post-award requirements.

1. Federally-aided highway construction contracts will contain either the Special Provision DBE Race/Gender Conscious (RGC SP), or the Special Provision DBE Program Race/Gender Neutral (RGN SP). The SP in effect at the time of bid governs the project.

    - The Department's overall DBE goal is 6.22 percent.

2. Race/Gender Conscious (RGC) Goals are included in the project proposals and are expressed as a percentage (2%, 3%, 4%, etc.) of the total bid price. On a RGC job, the bidder is required to meet the goal by using DBEs certified or provide evidence of their good faith efforts to meet the goal. Prime contractors follow good faith efforts to meet the goals throughout the life of the project.

    RGC goals are set to level the playing field for woman and minority-owned firms in an effort to right past discrimination. In this case, prime bidders are asked to give priority to DBE firms, who may as a result, enjoy some advantage over other small businesses.

    - The Department's RGC goal is 2.75 percent.

3. Federal rules require NDDOT to meet its overall DBE goal primarily through RGN means. Race/Gender Neutral (RGN) rules assume that the playing field is level for all small businesses; thus providing all small businesses an opportunity to compete equally in subcontracting or supplying prime bidders and large subcontractors. The RGN SP pertains on any contract that does not have a specific percentage goal which is expressed as a zero (0) percent goal.

    Primes are strongly encouraged to solicit and use DBEs on RGN projects; however, bidders face fewer requirements as they prepare and submit their bids. No documentation of good faith efforts is required of the bidder on RGN jobs.

- Although RGN project goals are stated as zero percent (0%) and have "no assigned goal", the Department's RGN goal is 3.47 percent. NDDOT seeks to meet its overall DBE goal through RGN means.

4. Under both RGN and RGC SPs, before award of the contract, the apparent low bidder intending to count DBE participation must provide:

   - SFN 52013 - Rev. 02-2015 Form B – List of Businesses Submitting Quotes to the CRD for each DBE firm intended for use on the project. The bidder will mark which subcontractor and supply quoters they will be using. (This list may be handy to cross check for the Request to Sublets received.)

   - SFN 52160 - Rev. 02-2015 Form C - Notification of Intent to Use to the CRD for each DBE firm intended for use on the project. Under RGC SP only, the apparent low bidder must also provide a SFN 52160 for each non-DBE firm intended for use instead of a DBE firm quoting on the same items. (Bid differential)

   - SFN 7721 - Rev. 09-2014 Proposed Progress Chart to Construction Services Division for each DBE firm intended for use on the project and each non-DBE firm used in a bid differential.

     - *Exception – no chart is required for* oil haulers, suppliers, brokers/regular dealers, or manufacturers.

   Additionally, after award all primes using DBEs must also provide:

   - SFN 60638 - Rev. 1-2015 Monthly Record of DBE Project Payments to CRD to document actual payments made to DBE firms for products provided or work performed.

   - SFN 14268 - Rev. 3-2015 DBE Participation Certification to the project engineer within 4 weeks of the completion of the DBE contract.

For jobs using the Civil Rights Certification & Compliance System:

USING CRCCS – PRE-AWARD REQUIREMENTS

When the CRCCS system is in use on a project proposal, every bidder on the project receives notice that a Utilization Plan has been set up to report their plans. A Utilization Plan (UP) replaces the need for all bidders to provide Form B/quote copies and the apparent low bidders' need to submit the Intent to Use Form C.

Within 7 days of the bid opening, all bidders must complete an individual UP which identifies the bidder's plan for all subcontractors and other vendors who will provide services and/or products to complete the project. A bidder's UP will include

- *A List of Businesses Submitting Quotes – selected from a drop down list*

- *The subcontractor, manufacturer, broker, regular dealer and supply quoters to be used on the project.*

- *Notification of Intent to Use is made through the system's Utilization Plan. Any documentation supporting Good Faith Efforts will be included.*

- *SFN 7721 - Rev. 09-2014 Proposed Progress Chart to Construction Services Division for each DBE firm intended for use on the project and each non-DBE firm used in a bid differential.* ***Must still be sent to Construction Services Division.***
    - *Exception – no chart is required for oil haulers, suppliers, brokers/regular dealers, or manufacturers.*

B. DBE PARTICIPATION REVIEW (RGC) AND (RGN)

DBE Participation Review is the Project Engineer's guide to the job as awarded. The title of the form states whether the RGC or RGN Special Provision governs the job. See Exhibit II-D and Exhibit II-E for examples.

In the interim between 100% live CRCCS and the volunteer/familiarization projects, CRD will continue to produce the Participation Reviews for all jobs. As the system becomes more prevalent in use, project engineers assigned to jobs whose prime contractors have opted to use the system will be trained in methods to interact with contract compliance software.

1. SFN 13743a - RGC Participation Review - (internal form) states the project goal and the prime's achievement in the upper right corner. Any updates to participation after award will be handwritten in this space.

2. SFN 13743b - RGN Participation Review - (internal form) states the prime's achievement in the upper right corner. Any updates to participation after award will be handwritten in this space.

3. The upper tables in this form indicate:

    a. Bid opening date
    b. Prime
    c. Bid price
    d. Job number, PCN, Project number
    e. Work to be completed and project location
    f. DBEs listed on Form A
    g. Any additional participation committed to at the time of award

4. Mid page, the tables indicate:

    a. Spec/code items the prime intends to do with its own forces.
    b. DBEs not used because the prime intends to do the work
    c. DBEs not used due to a price comparison
    d. DBEs not used due to other reasons (price comparison among DBE contractors, DBE quote not received timely, and the like)
    e. Activities & Contact section is a listing of all DBEs quoting and the specific work quoted and all contacts the Department made with the prime and subcontractors prior to award.

5. Recommendation to Management

    a. RGN Review, when the documentation is complete, is recommended for award on the signature of the Civil Rights Division Director

    b. RGC Review includes any determination by the DBE Participation Review Committee of whether the prime has shown adequate good faith efforts if the goal has not been met. The committee may vote to recommend "Award", "Award Subject To" (using DBE), or "Not Award".

c. A RGC Review for a job where the prime has completed its documentation and achieved or exceeded the DBE goal is recommended for award on the signature of the Civil Rights Division Director.

6. Recommendation Correspondence (included on RGC Participation Reviews only)

a. Recommendations to executive management which are other than "Award" are represented in a memo from the CRD director to the Office of Operations.

b. Corresponding management decision memo will state whether management concurs with the Committee's recommendation or has made another decision.

7. The prime's documentation (submitted to comply with the requirements of the SP) is attached to the Participation Review. They are:

a. SFN 52160 *Intent to Use - Form C* (used for both RGC & RGN)

b. Bid Ex Form A or a replacement SFN 52012 (RGN) or SFN 52750 (RGC)

c. SFN 60829 Contractor Good Faith Efforts Documentation (RGC only)

(1) The form guides the prime through the documentation required to support its efforts to meet the project goal. A list on page 3 of the form provides the outline for the prime's explanation.

(2) Throughout the life of the contract, the prime must supply the same documentation to support its Good Faith Efforts prior to requesting approval to replace contractors listed on the participation review at the time of award. SFN 60829 provides the list of required supporting documents.

8. Following contract award, the CRD stores Participation Reviews for every project awarded in FileNet, which makes the reviews available through CARS.

9. The DBE participation review is available through CARS.

a. To retrieve the participation review prior to the Pre-Construction Conference:

- Access CARS
- Enter PCN for the project
- Click Search Documents
- Change the Document Type to REFERENCE
- Click Search.
- CARS will locate the PCN's participation review

10. The assistant district engineer (ADE) and the project engineer must compare information included in the DBE Participation Review and review the Commercially Useful Function Certification when determining whether to approve the SFN 5682 (Rev. 01-2015) *Prime Contractor's Request to Sublet* forms and subcontract agreements, as described in **Section E. Onsite Monitoring by Project Engineers**.

For jobs using the Civil Rights Certification & Compliance System:

1. Recommendation Correspondence to Management

a. *Committee Recommendations to executive management which are other than "Award" are represented in a memo from the CRD director to the Office of Operations.*

b. *All memos for those RGC Reviews for which a prime has been determined to have demonstrated adequate GFE will be uploaded to CRCCS to be available for access by the project engineer.*

c. *After executive management's decision to award, the project engineer will be notified through the system that the project has been awarded and that the contract has been signed.*

2. *A prime contractor's required supporting documentation will be submitted through CRCCS. In the Utilization Plan the prime will:*

   a. *Identify its subcontractors, suppliers, regular dealers, brokers, and manufacturers intended for use – DBE & Non-DBEs alike.*

   b. *List all businesses providing quotes (selected from a drop down list of registered firms.*

   c. *Provide explanations, analysis, and support for any reason the project goal was not met.*

3. *The Contract Utilization Plan is available at CRCCS after log in; search for contract. (See Exhibit II-O – CRCCS Participation Review)*

4. *When reviewing the Commercially Useful Function Certification, the assistant district engineer (ADE) and the project engineer must compare information in the Utilization Plan when determining whether to approve the SFN 5682 (Rev. 01-2015) Prime Contractor's Request to Sublet forms and subcontract agreements, as described in* ***Section E. Onsite Monitoring by Project Engineers****.*

C. PRE-AWARD & POST-AWARD REQUIREMENTS

DBE SPs outline the pre-award and post-award requirements.

DBE SPs - For jobs using the Civil Rights Certification & Compliance System:

Contractors using CRCCS to track project payments and DBE participation are released from submitting most of the paper forms required under the DBE SPs. Each section identifies modifications to the process, but not the requirements.

D. PRIME CONTRACTOR RESPONSIBILITIES

The prime is responsible for compliance with the applicable DBE SP on the part of all subcontractors, suppliers, manufacturers on the project.

1. Pre-Construction Conference

a. The prime contractor is responsible for gathering all subcontractors to the pre-construction conference. The prime is responsible for discussing any project issues necessary for DBE program compliance.

(1) The prime must invite and notify all subcontractors on the project.

(2) The prime must provide a copy of the pre-construction conference form and minutes to all firms identified on the DBE Participation Review/Form B.

(a) If a firm listed in the DBE participation review and is unable to attend the prime must send copies of the conference form and the minutes to those firms not in attendance.

b. The prime is responsible to communicate pertinent issues during the pre-construction conference including the following:

(1) The DBE firms and non-DBE firms listed on the Participation Review.

(2) The products or items of work the DBE firms, and non-DBE firms used in bid differentials, are to provide or to perform.

(3) The time period for the products to be provided or the work to be performed.

(4) Other items such as project scheduling; expected overtime; payment schedule; Davis-Bacon wage and payroll requirements; borrow pit, stockpile site, concrete or asphalt batch plant site, etc., locations; quantities; length of haul; type of haul road; etc.

2. Proposed Progress Charts

a. Prime contractors must provide DBE firms to be used on the project with a SFN 7721 (*Rev. 10-2015) Proposed Progress Chart.* The progress charts must have been submitted prior to award.

b. The progress chart details each firm's type of work, designates the expected start dates for the prime, DBE, and non-DBE firms and when their phase of the work will be completed.

c. Project engineer's uses for Progress Charts.

(1) Track progress of the apparent low bidder, intended DBE firms, and non-DBE firms used in bid differentials.

(2) Refer to missed start dates, document any omissions, and make written inquiry with the contractor regarding an amended start date.

(3) Request revised progress chart.

(4) Inform prime that any revised progress charts must specifically note any new dates for work completion and that the new charts must be sent to all firms affected by the changes.

3. Monitoring DBE Performance

a. For the life of the project, the prime contractor is responsible to monitor and report any changes in the makeup of contract work to be performed and supplied on the project as stated in the DBE participation review. This includes DBEs, non-DBEs, and any work the prime indicated it would self-perform.

b. It is the prime contractor's responsibility to:

(1) Ensure the prime contractor and its DBE and non-DBE subcontractors, suppliers, vendors, brokers, regular dealers, and manufacturers comply with the requirements of the applicable DBE special provision

(2) Monitor and report DBE performance

(a) Submit SFN 60597 DBE Performance - CUF Certification to the project engineer to certify that the DBE firms on the project perform commercially useful function(s) (CUF) with the Prime Contractor's Request to Sublet;

(b) Submit SFN 60638 Monthly DBE Payment Record by the 15th day of each month (when payments are made to DBEs);

(c) Submit SFN 60595 Replacement Approval Request when any changes are proposed;

(d) Submit SFN 14268 DBE Participation Certification, signed by the prime and the DBE firm, to the project engineer no later than 4 weeks after completion of the DBE's contract. A copy of this form must be included in the final project records.

4. Monitoring Trucking Operations

The prime is responsible to monitor all trucking operations to ensure compliance with both the DBE and the labor standards provisions of the contract. The prime must obtain subcontracts and weekly certified payrolls as required from all tiers of subcontracting on the project.

The prime must monitor and verify the status of all truck owner-operators whether the truckers work directly for the prime or for its subcontractors while they are working on federal-aid highway construction projects or the site of the work.

If the prime does not maintain documentation, wage rate complaints filed by individuals with adequate documentation may not be disputed by the prime.

Leased trucks must display the name and identification number (USDOT number issued for interstate commerce) of the DBE firm, including non-DBE match trucks.

To assist the prime in correctly counting participation for DBE trucking operations, DBEs must track trucking daily and summarize and submit SFN 60781 DBE Weekly Trucking Participation Summary - http://www.dot.nd.gov/forms/sfn60781.pdf to the prime with a copy to the project engineer weekly on the Monday following the work.

a. DBE Trucking

(1) CUF is defined in each of the DBE SPs and outlined in SFN 60597 DBE Performance – CUF Certification. SFN 60597 must be signed by the prime and the DBE and submitted to the project engineer at the same time as the SFN 5682 - Prime Contractor's Request to Sublet.

(2) Counting DBE Participation:

(a) The DBE firm 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.

(b) The DBE firm may lease trucks from another DBE firm, including a DBE owner-operator. The DBE firm receives credit for the total value of the transportation services the DBE lessee provides on the contract.

(c) A DBE trucking firm drives her own truck and arranges for a non-DBE to work with her – both trucks count as DBE transportation = value of two trucks. This is called one-for-one.

- If the DBE owns 10 trucks they may match those trucks with 10 non-DBE trucks and count the transportation value of 20 trucks toward the goal.
- This same DBE trucking firm arranges more non-DBE trucks to work on the project over their one-for-one matched 20 trucks.
- Any contract dollar amount over the 20 trucks counts as broker or expediter achievement - only the amount between their contracted price and what they are paying the non-DBE truckers to work on the project may count toward the goal. If the prime is paying the DBE $110 per hour and the DBE is paying an owner/operator $100, $10 per hour may be counted toward the goal.

(d) For more detailed information on leased trucks, refer to either DBE SP under Commercially Useful Function and Counting DBE Participation.

(3) SFN 60781 DBE Weekly Trucking Participation Summary:

(a) To accurately track DBE trucking firms' participation, the DBE will track its transportation services daily and submit a weekly summary of direct participation of its own trucks and employees, any non-DBE trucks to be matched with the DBE's trucks, and any trucks over and above the one-for-one match to the project engineer.

(b) The DBE Weekly Trucking Participation Summary must be submitted to the project engineer on the Monday following the work week, with a copy to the prime contractor.

(c) A sample form will be available online and will be sent to DBE trucking firms for their use.

5. Records and Reports

a. Any firm listed on DBE Participation Review as being used on the project and the prime must maintain records and documents of payments for three (3) years following satisfactory completion of the contract work.

b. These records must be made available for inspection, upon request, by any authorized representative of NDDOT or USDOT.

c. The prime must submit a SFN 60638 Monthly DBE Payment Record by the 15th day of each month after the DBE commences work on the project. This report must indicate the amount(s) paid to each in the previous calendar month. The report does not require payment records or copies of payments.

d. To verify DBE participation, the prime must submit SFN 14268 (Rev. 03-2015) DBE Participation Certification, signed by the prime and the DBE firm, to the project engineer no later than 4 weeks after completion of the DBE's contract. A copy of this form must be included in the final project records.

e. This includes all DBE firms used regardless of whether they were included in the project's DBE Participation Review.

Prime Contractor Responsibilities - For jobs using the Civil Rights Certification & Compliance System:

CRCCS provides prime contractors with the tools to easily communicate with all participants on the prime's contract regardless of tier of subcontracting or supply. The prime has the ability to communicate with the project's subcontractors and suppliers directly through CRCCS.

1. Pre-Construction Conference – Prime's Responsibilities

a. *Use CRCCS to invite all subcontractors to the pre-construction conference.*

b. *Attach SFN 7721 (Rev. 10-2015) Proposed Progress Chart to all tiers of participants on the prime's contract through CRCCS.*

c. *Send Pre-Construction Conference Minutes to all tiers of participants on the prime's contract through CRCCS.*

d. *Communicate any changes in the project schedule to all affected participants on the contract at any time through CRCCS.*

Monitoring Payments/Performance - For jobs using the Civil Rights Certification & Compliance System:

Firms using CRCCS will, upon receipt of progress payments from the Department, enter the amounts paid to subcontractors and others paid as a result of their work on the project. After payments are entered into CRCCS, the system automatically sends notification to the payees. Each payee will then reply with confirmation or a different amount than the prime entered.

The system's functionality allows payment records, purchase orders, and other payment advice to be attached to the contract record. Primes and others making use of this functionality will not need to maintain/store records and documents of payments for the usually required three (3) year period.

CRCCS replaces the necessity of tracking payments and achievement through paper Monthly DBE Payment Records and DBE Participation Certifications.

2. Monitoring DBE Performance

a. *For the life of the project, the prime contractor is responsible to monitor and report any changes in the makeup of contract work to be self-performed and/or performed or supplied by others on the project as stated in the Utilization Plan.*

b. *Enter payments made to subcontractors, suppliers, etc through CRCCS within 5 working days from receipt of payment by the DOT.*

c. *Indicate through CRCCS when final payments to subcontractors, suppliers, etc are made.*

E. ON-SITE MONITORING BY PROJECT ENGINEER

The following activities and procedures must be monitored by the project engineer. Document and keep these items in the project records and diaries.

It is the project engineer's responsibility to immediately notify the ADE of any questions or issues concerning discrimination of any kind, and any labor compliance problems or concerns.

For instruction to retrieve the project's DBE Participation Review for reference, see B. 10 of this manual.

1. Pre-Construction Conference

   Refer to SFN 9423 (Rev. 2-2015) Pre-Construction Conference Form for instructions and an outline of the items to be read and discussed at the Pre-Construction conference.

2. Field monitoring by the project engineer must include:

   a. Compare Request to Sublet forms and subcontracts for firms, regardless of whether they are listed in the DBE Participation Review (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers);

   b. Receive and check for accuracy all weekly certified payrolls for DBE and non-DBE subcontractors working on the site of the work of a federal-aid highway construction project; and

   c. Review work of prime contractors and any firms listed in the DBE participation review form; and,

   d. Other monitoring duties as set forth in the Construction Services Division's *Construction Records Manual* available online at:

      www.dot.nd.gov/manuals/construction/constr-records/constructionmanual.htm

3. Request to Sublet and Replacement Approval

   For DBE participation may be counted toward the Department's DBE goal, SFN 60597 DBE CUF Certification must be received with SFN 5682 Prime Contractors Request to Sublet.

   a. Before signing/approving a request to sublet, retrieve the job's DBE Participation Review.

      (1) Compare the dollar value and material amounts.

      (2) Review SFN 60597 – DBE CUF Certification. Do not sign/approve the Request to Sublet without having a SFN 60597 signed by both the DBE and prime in hand.

      (3) Determine whether the prime is subcontracting work they intended to self-perform at the time of award.

         (a) If so, SFN 60595 Replacement Approval Request is required.

      (4) Check signature dates on any requests to sublet in answer to a replacement approval request. If they are dated prior to the replacement approval request, contact the ADE.

         (a) Request clarification in writing from the prime prior to approving to the request to sublet.

      (5) Note any discrepancies found between the documents included in the DBE Participation Review.

(a) If there are discrepancies and/or issues with a DBE or non-DBE/BD request to sublet, contact the prime and the DBE or DBE/BD for clarification.

b. The project engineer is not responsible for monitoring spec/code items that are not specified in the DBE participation review unless an approved substitution/replacement is made and the participation review is updated to include any new participation.

c. The original of every approved request to sublet must be submitted to the Construction Services Division as soon as they are available.

(1) CRD receives the Request for Sublet after Construction Services Division enters the information into RIMS and stores it in FileNet. The information on the form is used to monitor the prime's commitments after award and to complete the federal semiannual DBE report.

Request for Sublet & Replacement Approval- For jobs using CRCCS:

The project engineer will need to retrieve the Utilization Plan from CRCCS to make these comparisons if the prime is reporting their participation through the new system.

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4. Trucking Operations

a. Project engineers and ADEs must review trucking operations and procedures according to specifications.

b. If DBE or non-DBE trucking firms listed in the DBE participation review form are not complying with trucking requirements, notify the prime and the ADE. It is the prime's responsibility to take corrective action to ensure compliance with the DBE and labor standards provisions of the contract.

5. Complete SFN 60596 prior to uploading it and SFN 60597 into CARS. Refer to the Section F for detailed instructions on completing and uploading the forms.

6. Review SFN 60595 for completeness and make recommendation(s) on necessity and adherence to RGC SP for processes to be followed concerning replacement approval requests for the termination, unfulfilled obligations, and/or replacement of work to be self-performed by the prime as listed on the DBE Participation Review (at the time of award).

F. COMMERCIALLY USEFUL FUNCTION (CUF)

1. NDDOT counts expenditures to a DBE firm toward DBE goals only if the DBE firm is performing a commercially useful function review on the contract. The prime contractor is responsible for assuring that DBEs working on the prime's contract are performing a commercially useful function and not acting as a pass-through for the purpose of meeting the project goal.

For each DBE performing on a project, the prime contractor and DBE must complete SFN 60597 (Rev. 10-2015) *DBE PERFORMANCE – COMMERCIALLY USEFUL FUNCTION CERTIFICATION* to certify that the DBE is performing a commercially useful function. SFN 60597 must be completed and submitted to the project engineer at the same time as the Contractor's Request to Sublet.

Upon receipt of the completed SFN 60597, the project engineer must review whether the DBE and prime have certified their intention to perform a CUF on the project. The project engineer

should upload and store the CUF Certification in CARS until the Onsite Work Confirmation can be completed while the DBE is actively working on the job. Sign SFN 60597 only after completing SFN 60596 DBE Performance – Project Engineer's Onsite Work Confirmation. DBEs who are suppliers, brokers, regular dealers, and/or manufacturers perform a CUF by delivering their products. In these cases, select NA.

To complete SFN 60596, the project engineer must review the listed questions to determine whether he or she agrees with the information submitted by the prime and the DBE.

The answers to the questions should be as illustrated below. If you are unable to answer the questions as illustrated, follow up with the prime to determine the reasons for any differences.

1. Is the DBE providing the work and/or supplies intended at the time of award?		☒ Yes	☐ No
2. Is the DBE performing the work indicated on the subcontract or providing the supplies on the purchase order?		☒ Yes	☐ No
3. Are all of the DBEs employees reported on the DBEs payroll?	☐ NA	☒ Yes	☐ No
4. Does the DBEs equipment have the DBEs name or logo on it?	☐ NA	☒ Yes	☐ No
5. Is the DBEs equipment leased from any other contractor on the project?	☐ NA	☐ Yes	☒ No
6. Is the DBE superintendent or foreman working as an employee of any other contractor or subcontractor on the project?	☐ NA	☐ Yes	☒ No
7. Are any DBE employees also working for the prime contractor?	☐ NA	☐ Yes	☒ No

Please note any questions or concern. If you've marked "No" on questions 1-4 or a "Yes" on questions 5-7, contact the Assistant District Engineer. The NA options are only applicable to regular dealers, suppliers, brokers, and manufacturers.

Figure 1 – Correct Responses to determine Commercially Useful Function

Contact the ADE immediately if you are unable to answer the questions as shown and indicate in the space provided the issues you have.

If you are in agreement with the prime's SFN 60597, sign it and upload your completed SFN 60596 along with the signed SFN 60597 into CARS within five days of conducting the onsite work confirmation.

For a more detailed definition of CUF for DBE firms, refer to the Commercially Useful Function section in either DBE SP.

2. If there is a question concerning the total value of services provided by a DBE firm with owned equipment, or a question regarding employees who are driving, a truck registration card check must be made. This information must be used to determine truck ownership and driver relationships and/or to establish employee and owner-operator relationships and how drivers are listed on weekly certified payrolls. Information needed for a registration card check includes:

   a. Driver's name;
   b. Valid commercial driver's license;
   c. Truck owner (from registration card);
   d. Truck license number;
   e. Truck number being used on scale tickets and haul sheets;
   f. Truck make and model; and
   g. Copies of signed lease or rental agreements.

3. The DBE Supportive Services (DBESS) consultant is available to assist district, city, county, or consultant project engineers when they have questions concerning the DBE program or the DBE firms themselves.

4. The 2015-2016 DBESS consultant is:

   Duane Kuntz
   OHITIKA designs, Inc.
   3200 46th Avenue, SE
   Mandan, ND 58554-4728
   Email: dkdbe@midco.net
   Phone: 701-258-7515

G. REPLACEMENT APPROVAL REQUEST REQUIRED

Any request for replacement of the work indicated on the DBE Participation Review at the time of award must be reviewed prior to approval.

Primes do not have to submit a SFN 60595 - *Replacement Approval Request* or go through GFE to replace a subcontractor if the total amount being counted toward the project goal has actually been paid to the DBE. If the DBE work is complete and the ADE determines the payment on the completed work will meet or exceed the project goal, the prime is not required to submit the approval request or go through GFE to replace a subcontractor on the job.

If the prime has not yet paid the DBE for the amount being counted toward the project goal and payment is not imminent, the prime must submit SFN 60595. Any replacement approval request must be accompanied by the Good Faith Efforts of the prime in replacing the work. Prior to replacement approval, the prime must contact all DBEs in the Directory for the specific work they are looking to replace or substitute.

Prior to submitting the prime's SFN 60595 and its accompanying documentation to the ADE, the project engineer must review the request for completeness and make recommendation(s) on necessity and adherence to RGC SP. Review the request to determine on how to proceed according to the documentation submitted, i.e., whether the prime followed the processes required concerning replacement approval requests for the termination, unfulfilled obligations, and/or replacement of work to be self-performed by the prime as listed on the DBE Participation Review (at the time of award).

Do not submit incomplete documentation to the ADE.

The prime is not limited to replace the exact same type of work. Therefore, a prime has the option to rearrange their self-performance work to solicit replacements for the contract value by substituting some other work.

The prime's GFE responsibility is outlined in the SP at page 6 of the Special Provision.

The prime is also required to submit SFN 60595 and its accompanying documentation for Termination of Use, Unfulfilled Obligations, and Noncompliance/Failure to Perform. The RGN SP details the reasons for each type of situation under the same named sections.

QUICK FACTS INFO ON PRIME'S REPLACEMENT APPROVAL REQUEST REQUIREMENTS

What is required by prime contractors when changes are made to "project specific workforces" after award?

1. **Job with a goal, contractor hasn't met goal, non DBE sub approved in a bid differential can't perform**

   The prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Project engineer forwards to ADE for decision – the decision will be in writing.

2. **Job with a goal, contractor hasn't met goal, prime cannot self-perform as indicated at time of award**

   The prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Project engineer forwards to ADE for decision – the decision will be in writing.

3. **Job with a goal, contractor hasn't met goal, DBE sub can't perform** ***Reduces RGC achievement***

   The prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Documentation must include a written explanation/acknowledgement from DBE stating they are unable or unwilling to perform. Project engineer forwards to ADE for decision – the decision will be in writing.

4. **Job with a goal, contractor has met goal, DBE sub can't perform** ***Reduces RGC achievement***

   If the goal achievement $$ has been paid to DBEs, no GFE or Replacement Approval Request is required. If the DBE work is completed and the District indicates that the payment is pending, no GFE or Replacement Approval is required.

   If payment in full has not been made to the DBE, the prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, and contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Documentation must include a written explanation/acknowledgement from DBE stating they are unable or unwilling to perform. Project engineer forwards to ADE for decision – the decision will be in writing.

5. **Job with a goal, contractor has met goal, non DBE sub can't perform**

   If the goal achievement $$ has been paid to DBEs, no GFE or Replacement Approval Request is required. If the DBE work is completed and the District indicates that the payment is pending, no GFE or Replacement Approval is required.

   If payment in full has not been made to the DBE, the prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, and contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Documentation must include a written explanation/acknowledgement from DBE stating they are unable or unwilling to perform. Project engineer forwards to ADE for decision – the decision will be in writing.

6. **Job with a goal, contractor has met goal, prime cannot self-perform as indicated at time of award**

   If the goal achievement $$ has been paid to DBEs, no GFE or Replacement Approval Request is required. If the DBE work is completed and the District indicates that the payment is pending, no GFE or Replacement Approval is required.

If payment in full has not been made to the DBE, the prime must submit SFN60595 Replacement Approval Request for a replacement subcontractor. Must go through GFE, and contact all DBEs certified for the work to be replaced, and submit documentation of efforts to project engineer. Documentation must include a written explanation/acknowledgement from DBE stating they are unable or unwilling to perform. Project engineer forwards to ADE for decision – the decision will be in writing.

7. **Job without a goal, DBE sub can't perform - *Reduces RGN achievement***

   Written explanation/acknowledgement from DBE stating they are unable or unwilling to perform. Project engineer forwards documentation to ADE.

8. **Job without a goal, non DBE sub can't perform, non DBE prime can't self-perform**

   Prime can hire without going through GFE or Replacement Approval Request.

TABLE - PRIME'S REPLACEMENT APPROVAL REQUEST REQUIREMENTS

	RGC with	RGN No	Goal MET	Goal NOT	DBE Can't	Non-DBE (used in approved Bid	Prime Can't	Is GFE Required in this Situation?

What is required by prime contractors when changes are made to "project specific workforces" after award?

	Goal	Goal		MET	Perform	Differential) Can't Perform	Self-perform	
1.	**X**			**X**		**X**		**YES**
2.	**X**			**X**			**X**	**YES**
3.	**X**			**X**	**X**			**YES**
4.	**X**		**X**		**X**			**YES** (unless Prime has paid out an amount that satisfies the goal or work equivalent to goal $$ has been completed and is expected to be paid)
5.	**X**		**X**			**X**		**YES** (unless Prime has paid out an amount that satisfies the goal or work equivalent to goal $$ has been completed and is expected to be paid)
6.	**X**		**X**				**X**	**YES** (unless Prime has paid out an amount that satisfies the goal or work equivalent to goal $$ has been completed and is expected to be paid)
7.		**X**			**X**			**NO** (Get statement from DBE explaining that they have withdrawn or are unable/unwilling to perform. Submit to ADE)
8.		**X**				**X**	**X**	**NO**

H. PROMPT PAYMENT

See 2014 Standard Specifications for Road and Bridge Construction for detailed information of prompt payment procedures.

I. TITLE VI ASSURANCES AS RELATED TO DBES

Title VI Assurances included in all NDDOT contracts include the following language. "DBEs will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, sexual orientation, gender identity, age, disability, or income status in consideration for an award."

J. FORM LINKS

The following may be obtained from the Department's website:
www.dot.nd.gov/dotnet/forms/forms.aspx (choose Category in the View forms by: drop-down box)

- SFN 60638 - Monthly Record of DBE Project Payments (Rev. 01-2015)
  http://www.dot.nd.gov/forms/sfn60638.pdf
- SFN 60597 - DBE Performance - Commercially Useful Function Certification (Rev. 10-2015)
  http://www.dot.nd.gov/forms/sfn60597.pdf
- SFN 60596 - DBE Performance - Project Engineer On-Site Work Confirmation (Rev. 01-2015)
  http://www.dot.nd.gov/forms/sfn60596.pdf
- SFN 60595 - Replacement Approval Request (Rev. 01-2015)
  http://www.dot.nd.gov/forms/sfn60595.pdf
- SFN 60781 - DBE Weekly Trucking Summary (Rev. 01-2015)
  http://www.dot.nd.gov/forms/sfn60781.pdf

The following may be obtained from the Department's website:

www.dot.nd.gov/dotnet/forms/forms.aspx (choose Category in the View forms by: drop-down box)

- SFN 5682 - Prime Contractor's Request to Sublet (Rev. 07-2012)
  www.dot.nd.gov/forms/sfn05682.pdf
- SFN 7721 - Proposed Progress Chart (Rev. 10-2015)
  www.dot.nd.gov/forms/sfn07721.pdf
- SFN 14268 - DBE Participation Certification (Rev. 1-2014)
  www.dot.nd.gov/forms/sfn14268.pdf

EXHIBIT II-A: DBE PARTICIPATION (REPLACEMENT) FORM A (SFN 52750 RGC)

NDDOT, CRD, SFN 52750 (Rev. 01-2015): To access this form, click the following:
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-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

Figure 2 - DBE Participation (Replacement) Form A Race/Gender Conscious– Page 1

EXHIBIT II-A: P.2 DBE PARTICIPATION (REPLACEMENT) FORM A (SFN 52750 RGC)

NDDOT, CRD, SFN 52750 (Rev. 01-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/SFN52750.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= % 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 Special Provision for additional information.

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

Figure 3 – DBE Participation (Replacement) Form A Race/Gender Conscious– Page 2

EXHIBIT II-B: DBE PARTICIPATION (REPLACEMENT) - FORM A (SFN 52012 RGN)

North Dakota Department of Transportation, CRD, SFN 52012 (Rev. 01-2015)
To access SFN 52012, click the following: http://www.dot.nd.gov/forms/SFN52012.pdf

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RGN)
North Dakota Department of Transportation, Civil Rights Division
SFN 52012 (Rev. 01-2015)

FORM A

		Revision Date
Contractor		Telephone Number
Job Number	Project Number	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.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. List DBEs your firm intends to use on this project.
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 DBE(s) and the total dollar value of the contract.
   - Note whether the DBE firm is to perform only portion of a spec & code item (supply, haul, place, etc.)
   - Explain the reason(s) the DBE is not being used for the entire item and list the name of the contractor who will perform the remaining portion.
   - DBE trucking firms: List hauling to be performed with own equipment & employees and any non-DBE trucks used as match
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 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% =	

Email this form to Subquotes@nd.gov or Fax to (701)328-0343 - Enter additional DBE Firms to be used on the next page.

Figure 4 - DBE Participation (Replacement) - Form A Race/Gender Conscious

EXHIBIT II-C: INTENT TO USE - FORM C (RGC & RGN)

NDDOT, CRD, SFN 52160 (Rev. 01-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/SFN52160.pdf

NOTIFICATION OF INTENT TO USE (RGN & RGC)
North Dakota Department of Transportation, Civil Rights Division
SFN 52160 (Rev. 01-2015)

FORM C
DUE BY 4 P.M. (CENTRAL) 7 CALENDAR 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, in writing, when submitting if the information on Form A and Form C differ in any way, e.g., spec/code item numbers, quantities, or dollar amounts.

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	PCN
Intended DBE/Non-DBE	Bid Opening Date	Job Number

SPEC & CODE #	Spec/Code Work Description	(DBE) Percent of work to be done with own forces	Units	Approx. Quantity	Unit Costs	Amount
					Total	

Are there any agreements not addressed in your quote? ☐ Yes ☐ No If yes, explain:

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

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

Figure 5 - Intent to Use - Form C

EXHIBIT II-D: DBE PARTICIPATION REVIEW – RGC (SFN 13743A)

Page 1

DBE PARTICIPATION REVIEW – RACE CONSCIOUS
North Dakota Department of Transportation, Civil Rights Division
SFN 13743a (Rev. 11-2015)

GOAL: 10.00%
ACH: 7.89%

BID OPENING December 11, 2015		
APPARENT LOW BIDDER ABC CONCRETE ENTERPRISES INC (ABCCE)		LOW BID $10,445,869.85
JOB NUMBER 3	PCN(S) 19743 & 19744	PROJECT NUMBER(S) IM-1-094(156)100, SIM-1-094(157)101
WORK TO BE COMPLETED CPR/GRINDING; ATR		LOCATION County

DBEs LISTED ON FORM A

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT
Dowel Industry Supply	202,673.76	**1.94%**	100%	10-13 and 15 (partial)
Dowel Industry Supply	31,680.00	**0.18%**	60%	12-14 (partial)
Grateful Trucking	50,000.00	**0.29%**	60%	6 haul only
Rhine Contracting	152,786.30	**1.46%**	100%	8, 16 (partial)
Missouri River Striping	698,816.34	**4.01%**	60%	16, 26-30

ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED

DBE BID ITEMS ABCCE INC WILL DO WITH THEIR OWN FORCES: None listed

DBEs NOT USED BECAUSE ABCCE WILL DO THE WORK: None listed

DBEs NOT USED DUE TO BID DIFFERENTIAL: None listed

DBES NOT USED DUE TO OTHER (Specify): DBE Missouri River Striping was used over DBE Straight Line Marking Services; prime is not performing paving services so they did not hire Gold Star Trucking to haul asphalt cement; DBES Reiner Contracting and Hudson, Inc. were not used because the bid items they quoted were included in a large subcontractor's tied quote.

ACTIVITIES & CONTACT:

DBEs Quoting:
Straight Line Marking Services Co: 030-762-0430-Short Term 4in Line-Type NR
Mill City, Inc: 006-411-0105-Milling Pavement Surface; 007-411-0110-Milling PCC Pavement; 016-702-0100- mob
Dowel Industry Supply: 010-570-0240-Doweled Contraction Joint Assembly; 011-570-0424-Dowel Bars; 012-570-0710-10in Conc Pvmt Repair-Full Depth-Doweled; 013-570-0711-9in Concrete Pavement Repair-Full Depth-Doweled; 015-570-1600-Epoxy Coated Deformed Bars
Gold Star Trucking: 005-410-0460-Pg 64-28 Asphalt Cement
Grateful Trucking: 006-411-0105-Milling Pavement Surface
Rhine Contracting: 008-570-0095-Saw Concrete; 016-702-0100-Mob
Missouri River Striping: 016-702-0100-Mobilization; 026-762-0110-Epoxy Pvmt Mk 4in Line-Grooved;027-762-0111-Epoxy Pvmt Mk 12in Line; 028-762-0113-Epoxy Pvmt Mk 4in Line; 029-762-0132-Epoxy Pvmt Mk 8in Line-Grooved

Figure 6 - DBE Participation Review - RGC

EXHIBIT II-E: DBE PARTICIPATION REVIEW – RGN (SFN 13743B)

Page 1 of 1

DBE PARTICIPATION REVIEW - RACE-NEUTRAL
North Dakota Department of Transportation, Civil Rights Division
SFN 13743b (Rev. 10-2015)

GOAL: 0%
ACHIEVED: 0%

BID OPENING		VENDOR ID
December 11, 2015		8281
APPARENT LOW BIDDER		**LOW BID**
BULLFLOAT CONCRETE INC		$240,638.98
JOB NUMBER	**PCN(S)**	**PROJECT NUMBER(S)**
1	20767	TAC-0006(022)
WORK TO BE COMPLETED		**LOCATION**
ADA IMPROVEMENTS, SIDEWALK, CURB & GUTTER, & RETAINING WALL		COUNT; CITY - 1ST STREET SE - HWY 78 TO MAIN AVENUE SE

DBEs LISTED ON FORM A

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
None listed				

ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED

ACTIVITIES & CONTACT:

DBEs Quoting:
Fancy Concrete Designs - 750-2115

Date, time, contact, request/topic:
12/11/2015: Sent emails to all apparent low bidder with notice of deadlines for documentation to be submitted.
12/17/2015: Reminder email to Skreed Ronigan at Bullfloat about missing DCD quotes.
12/17/2015: Received FCD quote from Bullfloat

DOCUMENTATION AND RECOMMENDATION

STEP	DID THE CONTRACTOR?	YES	NO	COMMENT
1	Submit Form A as Required	X		Received 12/11/2015 at time of bid submittal
2	Submit Form B as Required	X		Received quotes 12/11/2015 via email
3	Submit Form C as Required	NA		

RECOMMENDATION BY CIVIL RIGHTS DIVISION

DATE	NAME	AWARD	NOT AWARD

Figure 7 - DBE Participation Review – RGN

EXHIBIT II-F: PRIME CONTRACTOR'S REQUEST TO SUBLET (SFN 5682)

NDDOT, CSD, SFN 5682 (Rev. 01-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/SFN05682.pdf

PRIME CONTRACTOR'S REQUEST TO SUBLET
North Dakota Department of Transportation, Construction
SFN 5682 (Rev. 01-2015)

PCN	Project Number	County
Subcontractor	Address	
Prime Contractor	Address	

A prime contractor's organization shall perform work amounting to not less than 30 percent of the total original contract amount. By signing this form, the prime contractor certifies that the subcontract contains all the applicable provisions and requirements of the prime contract with the North Dakota DOT.

SUBCONTRACTORS who are **NOT PREQUALIFIED,** certified as Disadvantaged Business Enterprise (DBE), or registered with the Department for the type of work being subcontracted must submit a Subcontractor Registration Form (SFN 52243) with this request.

Is Subcontractor a certified DBE in North Dakota? ☐ Yes ☐ No

Name	Name
Title	Title
Subcontractor	Prime Contractor

I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract:

APPLICABLE	NOT APPLICABLE	
☐	☐	Labor Rates from Department of Labor
☐	☐	Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto
☐	☐	Appendix A & E of the Title VI Assurances
☐	☐	Other Federal Aid provisions (i.e., Buy America, etc.)
☐	☐	EEO Affirmative Action requirements
☐	☐	Disadvantaged Business Enterprise Program Special Provision
☐		Plans, Specifications, Supplemental Specifications, Specification Provisions, and all other contract documents

Signature | Date

I hereby acknowledge that I have provided for or assured that the subcontractor has the following applicable provision:

APPLICABLE	NOT APPLICABLE	
☐	☐	Labor Rates from Department of Labor
☐	☐	Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto
☐	☐	Appendix A & E of the Title VI Assurances
☐	☐	Other Federal Aid provisions (i.e., Buy America, etc.)
☐	☐	EEO Affirmative Action requirements
☐	☐	Disadvantaged Business Enterprise Program Special Provision
☐		Plans, Specifications, Supplemental Specifications, Specification Provisions, and all other contract documents

Signature | Date

ITEMS COVERED BY SUBCONTRACT

SPEC. NUMBER	ITEM NUMBER	APPROX. QUANTITY	UNIT	WORK DESCRIPTION	SUBCONTRACT AMOUNT
				TOTAL	0.00

Approved:

Project Engineer Date

Percent Sublet This Request | Total Percent Sublet to Date

Prime Contractor: Submit **original** form to the Project Engineer. One copy of the executed subcontract must be attached.
Project Engineer: Submit **original** form to Construction Services.

Figure 8 - Prime Contractor's Request to Sublet

EXHIBIT II-G: DBE PARTICIPATION CERTIFICATION (SFN 14268)

NDDOT, CSD, SFN 14268 (Rev. 03-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/SFN14268.pdf

DBE PARTICIPATION CERTIFICATION
North Dakota Department of Transportation, Construction
SFN 14268 (Rev. 03-2015)

Complete this form for each disadvantaged business enterprise (DBE) for which a Form C (Notification of Intent to Use DBE) was submitted in accordance with the Disadvantaged Business Enterprise Program Special Provision. The DBE, intended amount, and bid item numbers must reflect what was entered on Form C. If additional DBE participation is realized during the course of the project, this form must be completed and submitted for **ONLY** those additional DBE firms that are certified by NDDOT. In those instances, "not intended" should be entered in the "$ Amount Intended" column.

This statement certifies that the DBE firm listed below performed on the project in accordance with the Disadvantaged Business Enterprise Program Special Provision. The following is a true and accurate statement of the monetary amount of the intended participation and the actual amount paid to the DBE.

			PCN
Prime Contractor	DBE Firm		
Project Number		Job Number	Bid Opening Date
Bid Item Numbers			Amount Paid $
			Amount Intended $

REMARKS:
If the Amount Paid is less than the Amount Intended, use this space to document the reasons for the differing amount.

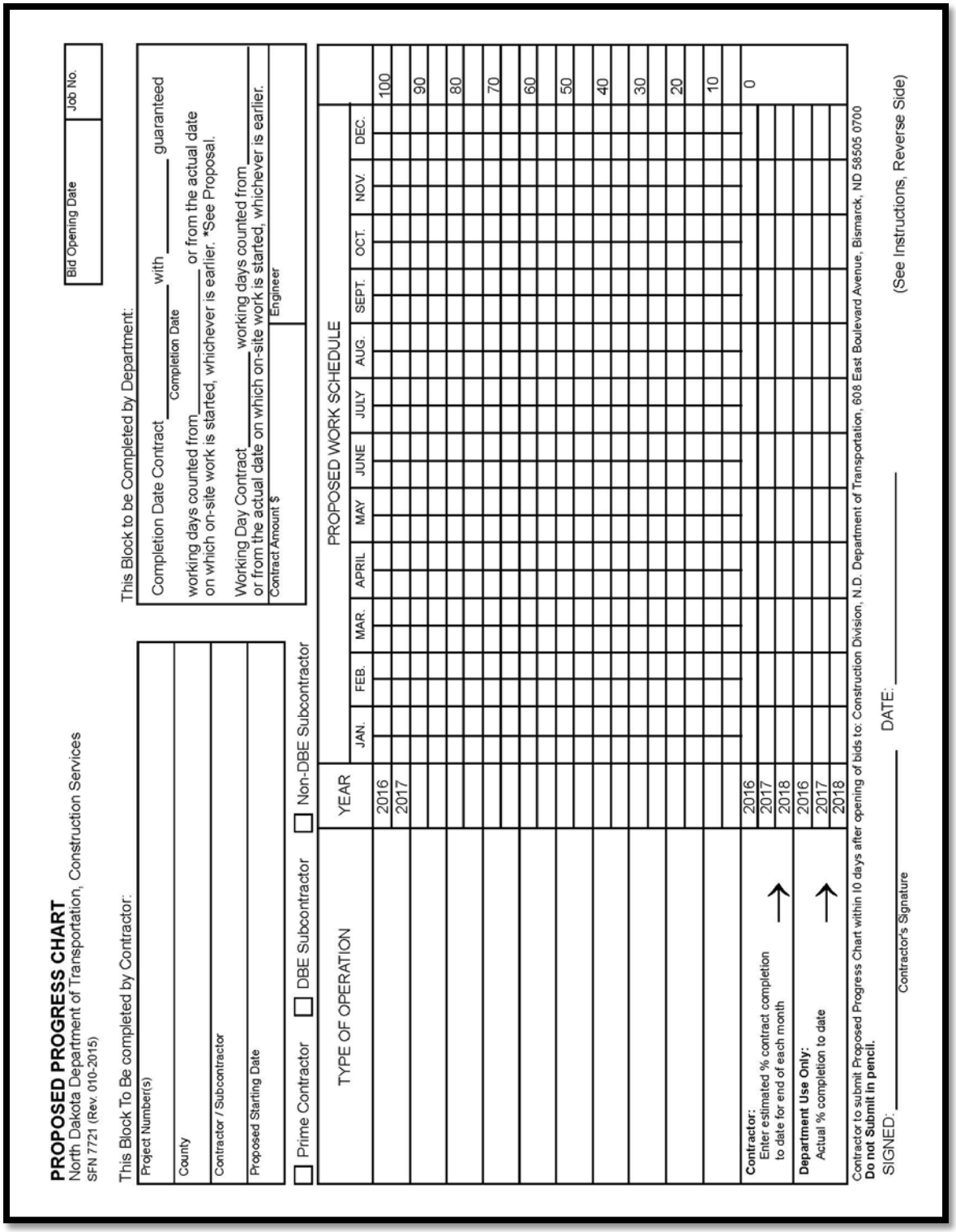
Prime Contractor Signature	Title	Date
DBE Signature	Title	Date

Distribution:
Original - Project Engineer / Manager

Figure 9 - DBE Participation Certification

EXHIBIT II-H: PROPOSED PROGRESS CHART (SFN 7721)

NDDOT, CSD, SFN 7721 (Rev. 10-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/sfn07721.pdf



PROPOSED PROGRESS CHART
North Dakota Department of Transportation, Construction Services
SFN 7721 (Rev. 010-2015)

Bid Opening Date | Job No.

This Block To Be completed by Contractor:

Project Number(s)
County
Contractor / Subcontractor
Proposed Starting Date

☐ Prime Contractor ☐ DBE Subcontractor ☐ Non-DBE Subcontractor

This Block to be Completed by Department:

Completion Date Contract ____ with ____ guaranteed
Completion Date
working days counted from ____ or from the actual date on which on-site work is started, whichever is earlier. *See Proposal.

Working Day Contract ____ working days counted from ____ or from the actual date on which on-site work is started, whichever is earlier.

Contract Amount $ ____ Engineer

PROPOSED WORK SCHEDULE

TYPE OF OPERATION	YEAR	JAN.	FEB.	MAR.	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	
	2016													100
	2017													
														90
														80
														70
														60
														50
														40
														30
														20
														10
														0
Contractor: Enter estimated % contract completion to date for end of each month	2016													
	2017													
	2018													
Department Use Only: Actual % completion to date	2016													
	2017													
	2018													

Contractor to submit Proposed Progress Chart within 10 days after opening of bids to: Construction Division, N.D. Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505 0700
Do not Submit in pencil.

SIGNED: ____ Contractor's Signature DATE: ____ (See Instructions, Reverse Side)

Figure 10 – Proposed Progress Chart

EXHIBIT II-I: CUF CERTIFICATION (SFN 60597)

NDDOT, CRD, SFN 60597 (Rev. 01-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/sfn60597.pdf

DBE PERFORMANCE - COMMERCIALLY USEFUL FUNCTION CERTIFICATION
North Dakota Department of Transportation, Civil Rights Division
SFN 60597 (Rev. 10-2015)

PRIME CONTRACTOR: Complete this CUF review with the DBE(s) on your project and submit to the Project Engineer with SFN 5682 - Prime Contractor's Request to Sublet. By signing this form, the prime contractor certifies that the DBE contractor is performing a commercially useful function as out lined in 49 CFR § 26.55(c)1.

PCN	Project Number	County

Prime Contractor	DBE Firm
Contact Person	Contact Person
Title	Title

Address	City	State	ZIP Code	Address	City	State	ZIP Code

I hereby affirm that this DBE will perform a commercially useful function on this project. The DBE agreed that they are:

Yes	No	
☐	☐	Responsible for execution of the work or delivery of supplies procured for the contract
☐	☐	Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract
☐	☐	Responsible (with respect to materials and supplies used on the project) for negotiating price, determining quality and quantity, ordering the material, and/or installing and paying for the material
☐	☐	Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount we are paying the DBE
☐	☐	Not an extra participant in this transaction, contract, procurement, or project through which funds are passed in order to obtain the appearance of DBE participation
☐	☐	Performing or exercising responsibility for at least 30 percent of the total dollar amount of the DBE participation with its own work force

Complete for DBE Trucking Firms:
The DBE has agreed that they will:

Yes	No	
☐	☐	Manage and supervise the entire trucking operation for which it is responsible on this project
☐	☐	Owns and operates at least one fully licensed, insured, and operational truck being used on this project
☐	☐	Owns, insures, and operates its trucks using DBE employed drivers

Signature	Date

I hereby affirm that I will perform a commercially useful function on this project and will be:

Yes	No	
☐	☐	Responsible for execution of the work or delivery of supplies for the contract
☐	☐	Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract
☐	☐	Responsible (with respect to materials and supplies used on the project) for negotiating price, determining quality and quantity, ordering the material, and/or installing and paying for the material
☐	☐	Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount that I am being paid
☐	☐	An active participant in this transaction, contract, procurement, or project and not an extra participant through which funds are passed in order to obtain the appearance of DBE participation
☐	☐	Performing or exercising responsibility for at least 30 percent of the total dollar amount of the DBE participation with my own work force

DBE Trucking Firms complete the following:
I affirm that I will:

Yes	No	
☐	☐	Manage and supervise the entire trucking operation for which I am responsible on this project
☐	☐	Own and operate at least one fully licensed, insured, and operational truck being used on this project
☐	☐	Own, insure, and operate my trucks using drivers that I employ

Signature	Date

DBE INTENDED AMOUNTS, SPEC & CODE NUMBERS AND WORK DESCRIPTION AS INDICATED ON FORM C

SPEC. & CODE NUMBER	APPROX. QUANTITY	UNIT	WORK DESCRIPTION	ITEMIZED INTENDED AMOUNT
			TOTAL	0.00

Project Engineer Signature (only after DBE Performance - Project Engineer on-site work confirmation has been completed.)	Date	Project Engineer Employer

PROJECT ENGINEER: Do not approve the prime's request to sublet without having SFN 60597 signed by the Prime and DBE. Sign only after completing SFN 60696 DBE Performance - Project Engineer on-site work confirmation. Review sign, and put in CARS within 5 days of the DBE's work commencing on the project. If the Project Engineer determines there is cause to question whether the DBE is performing a CUF, contact ADE immediately.

Figure 11 – Commercially Useful Function Certification

EXHIBIT II-J: REPLACEMENT APPROVAL REQUEST (SFN 60595)

NDDOT, CRD, SFN 60595 (Rev. 02-2015), to access this form click the following:
http://www.dot.nd.gov/forms/sfn60595.pdf

REPLACEMENT APPROVAL REQUEST
North Dakota Department of Transportation, Civil Rights Division
SFN 60595 (Rev. 02-2015)

STEP 1
INSTRUCTIONS: Complete and submit immediately to Project Engineer when any change, replacement, substitution, or additional work is identified. No work may commence until a written replacement approval is provided by the Department. No payment will be made for any replacement or additional work which commenced prior to Civil Rights Division's written approval of this request.

Prime Contractor or Subcontractor		NDDOT Bid Opening Date
Project Engineer		District
Project Location	PCN	Project Number

Date Project Engineer was Notified	Explain if Notice was not Given

Status of Intended Project Goal:
Identify the DBEs currently on the project and the status of the intended DBE participation achievement.

DBE Firm	Original Intended Amount	Amount Paid to Date	New Intended Amount	Participation Loss or Gain

What was your firm's goal achievement percentage at the time of award?
If this replacement is approved, what will your firm's goal achievement be?
Explain your firm's efforts to hire DBE contractors.

Prime Contractor Signature	Date
Project Engineer Signature	Date

Project engineers monitor contract work to ensure the DBEs listed on the DBE Participation Review perform the items of work specified at the time of award and that no improper substitutions occur.

Figure 12 Replacement Approval Request – Page 1

Replacement Approval Request Page 2 SFN 60595

SFN 60595 (Rev. 02-2015) Page 2 of 2

STEP 2 - Good Faith Efforts Documentation

Document your firm's Good Faith Efforts in the space provided below or on a separate sheet that clearly states:
The time, date, and means by which each DBE was contacted; the DBE contact name; description of the solicitation; and notes describing the individual DBE's response.

DBE Firm Contacted	DBE Contact Name	Contact			Individual Responses
		Date	Time	Method	

Name of Replacement Firm Selected
If using non-DBE provide all of the following: Quote used and reason selected; comparison of DBE and non-DBE quotes by dollar value and percentage difference; comparison of each spec/code item and the prices quoted by a DBE to the spec/code items and prices quoted by a non-DBE.
SFN 5682-Prime Contractor's Request to Sublet For Replacement(s) Firm(s): When replacement is approved submit SFN 5682 naming the replacement firm, spec/code, and the dollar amount of the subcontract.

Prime Contractor Signature	Date
Project Engineer Signature	Date
Civil Rights Division Signature	Date

Figure 13 Replacement Approval Request – Page 2

EXHIBIT II-K: MONTHLY RECORD OF DBE PROJECT PAYMENTS (SFN 60638)

NDDOT, CRD, SFN 60638 (Rev. 1-2015): To access this form, click the following:
http://www.dot.nd.gov/forms/SFN60638.pdf

MONTHLY RECORD OF DBE PROJECT PAYMENTS
North Dakota Department of Transportation, Civil Rights Division
SFN 60638 (Rev. 01-2015)

For DBE Project Payment (Enter month and year)

Prime contractors and subcontractors are required to submit a monthly record of project payments to Disadvantaged Business Enterprise (DBE) firms on highway construction project(s). If no payments have been made, please indicate "none" on the form.

Submit by the 15th working day of every month.
The payments listed should reflect those made to the listed DBE in the previous month.

Submit to: CIVIL RIGHTS DIVISION by EMAIL: CIVILRIGHTS@ND.GOV
or FAX: 701-328-0343

Project Number

PCN | Bid Opening Date | Job Number

Prime Contractor/Consultant

Subcontractor/Subconsultant

This payment is a :
☐ Partial Payment
☐ Final Payment

Payments made in the previous month are detailed below (Include additional sheets as needed.)

Intended			Dollar Amounts Paid			
Spec & Code Items Number	Spec & Code Item Description	Amount indicated on Original Form A and/or Request to Sublet	Amount Paid on this Payment	Previous Amount Paid	Total Amount Paid to Date	Remaining on Contracted Amount
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	
					0.00	Subtract Amount Paid from Total Intended Amount
	Totals	0.00	0.00	0.00	0.00	0.00

The Prime Contractor is responsible for reporting all payments to all tiers of subcontracting to count toward DBE achievement.

Figure 14 - Monthly Record of DBE Project Payments

EXHIBIT II-L: PROJECT ENGINEER ON-SITE WORK CONFIRMATION (SFN 60596)

NDDOT, CRD, SFN 60596 (Rev. 01-2015) To access this form, click the following:
http://www.dot.nd.gov/forms/sfn60596.pdf

DBE PERFORMANCE PROJECT ENGINEER ON-SITE WORK CONFIRMATION
North Dakota Department of Transportation, Civil Rights Division
SFN 60596 (Rev. 10-2015)

PCN	Project Number	County
Prime Contractor	DBE Firm	

Project engineers ensure that all DBEs are performing a commercially useful function (CUF).

Complete this on-site work confirmation in the first 5 days the DBE is actively working on the project and prior to signing off on the DBE Performance Commercially Useful Function Certification (SFN 60597). One (1) DBE review shall be completed at least once on each project for each DBE firm performing work on the project.

1. Is the DBE providing the work and/or supplies intended at the time of award?		☐ Yes	☐ No
2. Is the DBE performing the work indicated on the subcontract or providing the supplies on the purchase order?		☐ Yes	☐ No
3. Are all of the DBEs employees reported on the DBEs payroll?	☐ NA	☐ Yes	☐ No
4. Does the DBEs equipment have the DBEs name or logo on it?	☐ NA	☐ Yes	☐ No
5. Is the DBEs equipment leased from any other contractor on the project?	☐ NA	☐ Yes	☐ No
6. Is the DBE superintendent or foreman working as an employee of any other contractor or subcontractor on the project?	☐ NA	☐ Yes	☐ No
7. Are any DBE employees also working for the prime contractor?	☐ NA	☐ Yes	☐ No

Please note any questions or concern. If you've marked "No" on questions 1-4 or a "Yes" on questions 5-7, contact the Assistant District Engineer. The NA options are only applicable to regular dealers, suppliers, brokers, and manufacturers.

Project Engineer Name (Type or Print)	Consulting Firm (Type or Print)
Project Engineer Signature	Date

Project Engineer: Upload this on-site work confirmation along with signed DBE Performance Commercially Useful Function Certification SFN 60597 (Rev. 02-2014) to CARS within 5 days of receipt.

Figure 15 - Project Engineer On-Site Work Confirmation

EXHIBIT II-M: DBE WEEKLY TRUCKING REPORT (SFN 60781)

NDDOT, CRD, SFN 60781 (Rev. 01-2015) To access this form, click the following:
http://www.dot.nd.gov/forms/sfn60781.pdf

DBE WEEKLY TRUCKING REPORT
North Dakota Department of Transportation, Civil Rights Division
SFN 60781 (01-2015)

Page ___ of ___

DBE Firm | Prime Contractor | PCN

Instructions: DBE must track trucking daily. Summarize and submit weekly to the project engineer and prime contractor on the Monday following the work.
Include additional sheets if necessary.

Date	Company Name	Operator Name	Company Truck#	Material Hauled	Check One: DBE Owned	Check One: Non-DBE Match	Check One: Non-DBE
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐
					☐	☐	☐

Figure 16 - DBE WEEKLY TRUCKING REPORT

EXHIBIT II-N: CONTRACTOR GFE DOCUMENTATION (SFN 60829)

NDDOT, CRD, SFN 60829 (Rev. 10-2015) To access this form, click the following:
http://www.dot.nd.gov/forms/sfn60829.pdf

CONTRACTOR GOOD FAITH EFFORTS DOCUMENTATION

Page 1 of 3

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 DOLLARS required to meet DBE GOAL (Total prime Bid dollar amount X DBE % Goal)
Contractor's DBE Participation Percent	$

PART D - PROJECT SUMMARY AMOUNTS

1. Total Prime Bid	$
2. Total Dollars Committed to DBEs - include all tiers (From Part E line 13)	$ 0.00
3. Total Dollars Committed to Non-DBEs (From Part F line 24)	$ 0.00
4. Total DBE Supplier Dollars not Counted but Committed (Total committed to DBE suppliers X 40% - include all tiers)	$
5. Work to be Performed by Prime (Add Part D lines 2, 3, and 4 subtract from Part D line 1)	$ 0.00
6. Percent of Work Performed by Prime (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	

Figure 17 - CONTRACTOR'S GFE DOCUMENTATION

SFN 60829 PAGE 2

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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

Figure 18 – PAGE 2 GFE DOCUMENTATION

SFN 60829 PAGE 3

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	Fax, Phone, or 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, a 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					

Figure 19 – PAGE 3 CONTRACTOR'S GFE DOCUMENTATION

EXHIBIT II-O: UTILIZATION PLAN (CRCCS PARTICIPATION REVIEW FUNCTION)

Utilization Plan Information

Estimated Bid/Transaction Amount	$337,957

Primary Bidder/Prime Contractor

Vendor Name	Cert	Inc in Goal	$ Total	$ Self Perf	$ For Credit	Actions
P Industrial Builders Inc	No	No	$337,957	$274,084 81.10%	-	View

Subcontractors

Subcontractor Name	Sub Tier	Cert	Inc in Goal	Type	$ Commit	$ Self Perf	$ For Credit	Actions
1 3-D Specialties	1	No	No	Sub	$13,134 3.89%	$13,134 3.89%	-	View
1 Fargo Electric Construction	1	No	No	Sub	$31,850 9.42%	$31,850 9.42%	-	View
1 Heartland Labor	1	No	No	Sub	$2,120 0.63%	$2,120 0.63%	-	View
1 Holland Contracting INC	1	No	No	Sub	$16,769 4.96%	$16,769 4.96%	-	View

Goal & Waiver Summary

Goal Type	Goal	Plan	Status	$ to Reach Goal	Waiver Status
DBE	0.00%	0.00%	Met goal		
Total	0.00%	0.00%	Met goal		

Signature

Signature	Pamela S. Morris
Title	EEO Officer Contract Administrator
Organization	Industrial Builders Inc
Signature Date	11/12/2015

Additional Instructions

Additional Instructions to Vendor	
Special Instructions to Vendor	

Figure 20- Utilization Plan Example

CONTRACTOR COMPLIANCE
SECTION 3

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III. CONTRACTOR COMPLIANCE

Under 23 CFR 230, Subpart D, NDDOT is responsible for assuring contractor compliance with the requirements of federal-aid highway construction contracts, including the equal employment opportunity (EEO), on-the-job training (OJT), disadvantaged business enterprise (DBE), Title VI and nondiscrimination, and labor compliance responsibilities set forth in 23 CFR 230; 49 CFR 21; 49 CFR 26; 41 CFR 60; 49 CFR 29; and 29 CFR 1, 3, 5, 6, and 7. The CRD has the overall responsibility for monitoring and assuring prime contractor and covered subcontractor compliance with the above federal rules and regulations. Day-to-day project monitoring has been delegated to the districts.

A. CONTRACT SPECIAL PROVISIONS

1. All federally-aided highway construction contracts contain the following special provisions relative to the equal employment opportunity (EEO) responsibilities of contractors:

    a. *Required Contract Provisions, Federal-Aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)*. This special provision:

        (1) Includes requirements not to discriminate and to take affirmative action to assure EEO as required by the Civil Rights Act of 1964, as amended;

        (2) Incorporates, by reference, the requirements of 49 Code of Federal Regulations Part 26 and the State DOT's USDOT-approved DBE program; and

        (3) Provides for the maintenance of statistical records, company reports, and related materials and information.

    b. *EEO Affirmative Action Requirements (03-15-2014)*. This special provision:

        (1) Specifies a statewide employment goal of 6.9 percent for females in each trade and an assigned percentage goal, by county, for minorities in each trade; and

        (2) Includes additional affirmative action steps contractors are required to implement to assure EEO in achieving the minority and female employment goals.

    c. Prime contractors are required to include these special provisions in all subcontracts of $10,000 or more and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.

2. All federally-aided highway construction contracts contain the following special provisions relative to the labor compliance responsibilities of contractors:

    a. *Required Contract Provisions, Federal-Aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)*. This special provision includes specific requirements for compliance with the rules, regulations, and relevant orders of USDOL as they

pertain to the Davis-Bacon and Related Acts (DBRA).

b. *Labor Rates From U.S. Department of Labor*. This special provision specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction.

c. Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.

3. With the exception of contracts funded solely with county funds and emergency relief projects that are not included in NDDOT's bid openings, all highway construction contracts (state and federally funded) contain *Special Provision On-the-Job Training Program (1-15-13)*. This special provision:

   a. Includes the formula used to determine the number of trainee positions assigned to prime contractors and

   b. Specifies standards contractors are required to follow in order to fulfill the training requirement.

4. Most federally-aided highway construction contracts will contain either the *Special Provision Disadvantaged Business Enterprise Program Race/Gender Conscious (RGC)* or the *Special Provision Disadvantaged Business Enterprise Program Race/Gender Neutral (RGN).* Please refer to the DBE portion of this manual for information on these provisions.

5. The following prompt payment and retainage procedures are contained in Section 109.04, D, E, and F of the *Standard Specifications for Road and Bridge Construction* available online at:

   http://www.dot.nd.gov/dotnet/supplspecs/standardspecs.aspx

6. All federally-aided highway construction contracts contain *Appendix A & E of the Title VI Assurances*. They can be found online at:

   http://www.dot.nd.gov/divisions/civilrights/docs/titlevi/title-vi-assurances.pdf

B. DISCRIMINATION ISSUES AND CONCERNS

1. Nondiscrimination Provisions/FHWA 1273:

   (1) The provisions of Section II of FHWA 1273 are related to 23 CFR Part 230 and are applicable to all federal-aid construction contracts and to all related subcontracts of $10,000 or more. In addition, the contractor and all subcontractors must comply with the following laws, regulations and orders: Executive Order 11246; 41 CFR 60; 29 CFR 1625-1627; 23 USC 140; and the Rehabilitation Act of 1973, as amended (29 USC 794). The contractor and all subcontractors must also 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 EEO Construction Contract Specifications in 41 CFR 60-4.3.

NOTE: The U.S. Department of Labor (USDOL), Office of Federal Contract Compliance has exclusive authority to determine compliance with Executive Order 11246.

By signing the contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

(a) Section II.1 requires the contractor 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. Pursuant to this Section, the contractor must have an EEO Policy that prohibits discrimination and provides for affirmative action in its employment practices.

(b) Section II.2 requires the contractor to have a designated EEO Officer who has the responsibility and authority to administer the contractor's EEO program.

(c) Section II.3 requires all of the contractor's employees who have an active role in the hiring, supervision, or advancement of employees to be aware of, and to implement the contractor's EEO Policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor's EEO Policy through posted notices, posters, handbooks, and employee meetings.

(d) Section II.4 requires the contractor not to discriminate in its recruitment practices and to make an effort to identify sources for potential minority and female employees.

(e) Section II.5 requires the contractor to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The contractor is to promptly investigate all alleged discrimination complaints.

- Contractors are required to have and to post a discrimination complaint procedure and form on their project-site bulletin board.

- A sample discrimination complaint procedure and form is included as an attachment to the pre-construction conference form.

- The contractor's discrimination complaint procedure must include the avenues of appeal available to employees and applicants should the contractor fail to resolve the complaint to the employee's or applicant's satisfaction or should the employee or applicant choose to file the complaint directly with the Equal Employment Opportunity Commission (EEOC) or

The North Dakota Department of Labor, a Fair Employment Practices Agency.

- The contractor is also required to notify the Civil Rights Division of any discrimination complaints received (to include a copy of the complaint). Upon resolution of the complaint, the contractor is required to provide a "Report of Investigation" to the Civil Rights Division.

(f) Section II.6 requires the contractor to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, females, and applicants through such programs.

(g) Section II.7 requires any contractor that relies on unions as a source of employees to obtain the cooperation of such unions to increase opportunities for minorities and females. The contractor is required to use good faith efforts to incorporate an EEO clause into each union agreement.

(h) Section II.8 requires the contractor to become familiar with the requirements for and to comply with the Americans with Disabilities Act and all rules and regulations established thereunder.

(i) Section II.9 requires the contractor to not discriminate in its selection and retention of subcontractors, including material suppliers and equipment leasing companies. Furthermore, the contractor is required to notify all subcontractors, suppliers, and lessors of their EEO obligations and to use good faith efforts to ensure that the subcontractors comply with those obligations.

(j) Section II.10 incorporates the requirements of 49 CFR Part 26 and NDDOT's approved DBE program into the contract and requires the contractor to not discriminate in the performance of the contract.

(k) Section II.11 requires the contractor to keep records that document compliance with the EEO requirements and to retain these records for a period of three years after project completion. The records should include the number and work hours of minority, female, and nonminority employees in each work classification on the project, and the progress and effort being made to increase the employment opportunities for minorities and females. The contractor is required to submit an annual EEO report to NDDOT each July for the duration of the project. If the project contains the training special provision, this information is also required to be collected and reported.

2. Compliance Oversight

a. Enforcement responsibilities are vested with NDDOT, which ultimately falls on the shoulders of the project engineers and ADEs. The project engineer should

be aware on nondiscrimination requirements and monitor the contractor for compliance. Noncompliance with the EEO specifications may be considered a breach of contract for which sanctions can be imposed as detailed in FHWA 1273.

b. If noncompliance with any provision is suspected, the project engineer should notify the ADE immediately. The ADE should consult with the CRD for a possible course of action.

c. In addition, complaints of discrimination can surface at any time. Both Title VI and Title VII of the Civil Rights Act of 1964, and their related statutes, prohibit discrimination on federal-aid construction projects.

d. If anyone on the project observes conduct or activity of a discriminatory nature, or is approached by an employee of the prime contractor or a subcontractor with a complaint of discrimination, the Assistant District Engineer and the Civil Rights Division should be notified immediately. The Civil Rights Division will determine whether the conduct, activity, or complaint falls under Title VI or Title VII and whether it should be investigated by the contractor, NDDOT, or FHWA.

C. IN-DEPTH REVIEW SELECTION CRITERIA

1. The CRD conducts at least ten in-depth contractor compliance reviews annually. Selection criteria include project size ($3 million or more), type, location, whether OJT or DBE requirements are a part of the contract, and when the contractor was last reviewed.

2. All reviews must be conducted prior to or at peak employment. In addition, enough work must have been completed to generate three or more weekly certified payrolls. Contracts and subcontracts must also be large enough to produce meaningful employment figures.

3. Reviews are scheduled at least three weeks in advance in order to give the contractor enough time to gather and submit their review materials one week prior to the review date.

4. All reviews must be completed prior to September 15 each year in order to be counted toward NDDOT's annual goal.

5. The ADE will be contacted for a preliminary construction schedule when a project is earmarked for review. The ADE must keep the CRD informed of the contractor's progress on the project. This is very important because of the state's short construction season.

6. The CRD conducts a desk audit, or a review of all paperwork submitted by the contractor on the project selected, prior to the interview portion of the audit.

7. The interview portion of the Compliance Review may be done by conference call, by video conference, or by an onsite or district site meeting. The Department conducts a conference call or video conference when the following criteria have been met:

a. The contractor has participated in one or more on-site contractor compliance reviews conducted by the CRD during the previous three years;

b. Previous compliance review reports do not contain serious deficiencies;

c. No possible noncompliance issues have been raised; and

d. All of the required information is received timely and, after review, there are only a few basic questions.

8. A conference call to the contractor's home office; the district office; and the city, county, or consultant project manager's-engineer's office, when appropriate, will be held at the scheduled date and time instead of an on-site visit. A video conference will typically be done with the contractor and district staff in the district office and the reviewing officer in the central office. If an onsite interview is done, it will typically take place in the district office conference space. A decision will be made and conveyed to the contractor and other participants approximately forty-eight hours in advance of the scheduled review concerning the method used to conduct the interview.

9. ***Prior to*** the scheduled review, the ADE is responsible for ensuring that the district, city, county, or consultant project engineer has done the following and for reporting his or her findings during the conference call or on-site visit:

a. Conducted labor compliance and EEO contractor compliance job-site interviews;

b. Completed the Project Bulletin Board Review Form to ensure that all required notices and posters are displayed, current, and legible, to include a photo of the Board (typically with a cell phone) attached electronically to the Bulletin Board Review Form when filing in CARS/FileNet; and

c. Inspected the project site to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel and that nonsegregated facilities are maintained.

D. LABOR COMPLIANCE AND EEO CONTRACTOR COMPLIANCE JOB-SITE INTERVIEWS

1. Labor compliance and EEO contractor compliance job-site interviews must be conducted on those projects scheduled for in-depth contractor compliance reviews. ADE and project engineers will receive prior notification of scheduled contractor compliance reviews and are required to attend the reviews.

2. The interviews must be conducted at least 3 days but not more than 15 days prior to the Review Conference. Beginning in 2016, labor interviews will be completed on LCPtracker, an automated labor compliance system. Once required in the contract, labor and EEO Interviews will no longer be done using the prior forms. SFN 9426, as modified 12-2015, will be used to complete Labor Interviews. At the time of publication of this Manual, the EEO Interview form had not been assigned a SFN. Both are available on LCPtracker

(lcptracker.net) on the Admin/Site Visit tab. The interview SFNs should be completed on an electronic device and should be filed online into LCPtracker. Any project staff needing access (i.e. a log-in and a password) should contact Gail Brown at CRD at (701) 328-2605.

3. Interviews should be conducted with a cross-section of the prime contractor's project employees. Selection criteria should include race, sex, job classification, and age. One minority, one nonminority, and one female, if available, should be interviewed. Ideally, five (5) interviews should be conducted.

4. Interviews should not be conducted with bona fide owner-operators of trucks or with haulers and suppliers of petroleum products.

5. All statements and questions on interview forms must be answered fully and detailed information and/or explanations provided where necessary. *All statements made by an employee, whether orally or in writing, must be treated as confidential to avoid disclosure of the employee's identity to the contractor without the employee's consent*.

6. All follow-up data should be obtained on the same day the employee interview data is gathered. The only exception would be verification of the certified payroll for the week of the interviews.

E. BULLETIN BOARDS

1. An inspection of the contractor's bulletin board must be made to ensure that all required notices and posters are displayed. Posted on the bulletin board must be:

   a. *Poster Boards (DOT 3350 - 1 of 3, 2 of 3, and 3 of 3 - Rev. 05-2010* and *04-2015)* provided by NDDOT, or their equivalents;

   b. DBRA wage rate decision found in the contract;

   c. Contractor's discrimination complaint procedure (a sample is attached to the pre-job conference form); and

2. Bulletin Boards should be inspected for every federal-aid project within 15 days of work commencing on the project. It should also be done immediately prior to an in-depth Contractor Compliance Review. After inspecting the Prime Contractor's Bulletin Board, fill out the Project Bulletin Board Review Form, SFN 60547 (Exhibit III-B). This Form provides a record in the CCR file that an onsite inspection was done pursuant to the Compliance Review and that the required posters and notices were on the Board. Fill this out only for the Prime Contractor and not for subcontractors who might also be using the Board. Use the link in CARS to the SFN 60547, under "Add Documents/Civil Rights Forms."

3. When completing the Project Bulletin Board Review Form, take a photo of the Bulletin Board and file it in CARS/FileNet together with the Project Bulletin Board Review Form. This photo provides a context for accessibility and location of the Board.

4. Prime Contractors must always have a Bulletin Board on site, regardless of the

proximity to the home office.

5. Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster boards and DBRA wage rate decision.

6. When a subcontractor is on a federal-aid highway construction project, or the *site of work*, for less than one week (seven calendar days), or when a subcontractor is extremely mobile on a federal-aid highway construction project, or the *site of the work* (e.g., pavement markers, guardrail installers, fencers, etc.), the subcontractor will not be required to provide a *project-site* bulletin board if:

    a. The subcontractor's home office is located in North Dakota.

    b. The subcontractor maintains a bulletin board at their home office location in an area readily accessible to all employees, applicants for employment, and other interested parties.

    c. The bulletin board contains all of the required notices and posters.

    d. The subcontractor provides documentation that their employees are required to check in at the home office on a daily and/or weekly basis and do so.

    e. The subcontractor's employees know where the bulletin board is located.

7. The ADE in which the subcontractor's home office is located must conduct an annual supplemental review of the subcontractor's bulletin board at the location identified to ensure all of the required notices and posters are displayed, current, and legible. The ADE must initiate the supplemental review whenever the subcontractor begins work on a project in the district or whenever another ADE requests a supplemental review be conducted. The supplemental review must then be shared with the other seven ADEs.

8. In cases where a subcontractor works away from their home office location and hires local individuals who do not check in at the home office, a copy of each of the required notices and posters must be given to those individuals. The subcontractor must obtain an acknowledgement of receipt from each individual and provide a copy of each acknowledgement to the ADE of the district in which the project is located.

9. Whenever the subcontractor performs any work on the federal-aid highway construction project, a copy of the supplemental review or a copy of each acknowledgement of receipt must be attached to the *Monthly EEO Project Inspection Report (SFN 9425 - Rev.* 06-2012*)* for the month in which the subcontractor worked. Refer to paragraph B of Section I for information concerning the *Monthly EEO Project Inspection Report*.

10. During routine labor compliance job-site interviews, contractor employees are asked if they know where the bulletin board is located. Any negative answers by the subcontractor's employees must be brought to the attention of the subcontractor. The allowance for the subcontractor to display the required notices and posters at their home office rather than at the project site will be re-evaluated at that time.

F. CONDUCTING EEO INTERVIEWS

1. Immediately prior to an in-depth contractor compliance review, the project engineer should arrange for EEO interviews of on-site workers.

2. Labor Interviews should be completed at the same time, using SFN 9426. EEO Interviews are to be completed using the EEO Interview Form and filed electronically on LCPtracker.

3. In selecting employees for these interviews, try to concentrate on those most vulnerable to mistreatment – i.e. laborers as opposed to higher paid workers, anyone who does not speak English proficiently, females, minorities, those recently hired, etc.

4. If any interviewee reports suspected discrimination, contact the ADE immediately. The allegations will need to be addressed at the Exit Conference, and must be investigated by the contractor.

5. Even if the report of discrimination is made on another project – i.e. the worker reports alleged illegal discrimination or harassment on another project he or she is working on, report the allegations to ADE.

G. NONSEGREGATED FACILITIES

The project site must be inspected to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project personnel and that the contractor does not maintain segregated facilities or allow their employees to work at any location under their control where segregated facilities are maintained. Segregated facilities include waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, and transportation and housing facilities. The only exceptions would be when the demands for accessibility override (handicap parking) and where separate or single- user toilet and necessary changing facilities are provided to assure privacy between the sexes.

H. MONTHLY EEO PROJECT INSPECTION REPORT

1. The Monthly EEO Project Inspection Report *(SFN 9425 - Rev. 06-2012)* must be submitted monthly by district, city, county, and consultant project engineers for each active federal-aid highway construction project under their supervision.

2. The Monthly EEO Project Inspection Report should be filed by the 10th day of each month, beginning the first full month following commencement of a federal-aid project.

3. The report should include an ongoing inspection of the project bulletin board, a verification of efforts to ensure that trucking operations are in compliance with DBE and DBRA standards, and a summary of labor compliance interviews planned or completed.

4. The Monthly EEO Project Inspection Report is attached as Exhibit III-C and is available at www.dot.nd.gov/forms/sfn09425.pdf

I. TOILET FACILITIES

Complaints with regard to adequate toilet facilities are sometimes characterized as discriminatory treatment. It is, however, the prime contractor's responsibility to provide adequate toilet facilities and access to these facilities to *all* workers. Toilet facilities on construction sites, including highway construction, are regulated under 29 CFR 1926.51(c) (1), which requires that, on construction jobsites, a specified minimum number of "toilets shall be provided for employees . . ." in accordance with Table D-1.

> *Toilets at construction jobsites. (1) Toilets shall be provided for employees according to the following table:*

Table 1 – Toilets at Construction Sites

Number of employees	***Minimum number of facilities***
20 or less	*1*
20 or more	*1 toilet seat and 1 urinal per 40 workers.*
200 or more	*1 toilet seat and 1 urinal per 50 workers.*

OSHA has ruled "provide" means to make available, and that access to toilet facilities must be provided to employees in a prompt manner. This means that it must not take an employee more than 10 minutes, generally, to walk, drive or be driven to a toilet. In the case of flagger, who must be relieved by another worker in order to use the toilet, the prime contractor must ensure that there is a method under which the flagger can call for relief and be able to use toilet facilities within a reasonable amount of time, or the contractor is not "providing" a toilet to the flagger. Similarly, toilets that are unsanitary to the point of being unusable and not "provided" under §1926.51(c)(1).

The following may be obtained from the CRD, phone: 701-328-2605, civilrights@nd.gov, and web site: www.dot.nd.gov/dotnet/forms/forms.aspx (choose *Category* in the *View Forms by:* drop-down box).

- *Labor Compliance Job-site Interview* (SFN 9426 - Rev. 12-2015) www.dot.nd.gov/forms/sfn09426.pdf

- *Poster Boards DOT 3350*-1 of 3 (Rev. 5-2010), 2 of 3 and 3 of 3 (Rev. 2-2013).

- *Project Bulletin Board Review Form*, (SFN 60547 - Rev. 1-2014). (Available in CARS and on intranet forms area.)

- *Monthly EEO Project Inspection Report* (SFN 9425 - Rev. 06-2012)
  www.dot.nd.gov/forms/sfn09425.pdf

EXHIBIT III-A: LABOR COMPLIANCE AND EEO CONTRACTOR COMPLIANCE JOB-SITE INTERVIEW

North Dakota Department of Transportation, CRD, SFN 9426 (Pending – Revised 12-2015)

To access SFN 9426, click on the following: www.dot.nd.gov/forms/sfn09426.pdf

LABOR COMPLIANCE JOB-SITE INTERVIEW
North Dakota Department of Transportation, Civil Rights Division
SFN 9426 (Rev. 01-2016)

INTERVIEWER: Labor compliance interviews (site interviews) should be conducted on all federal-aid highway construction contractors annually. You should interview a cross-section of project employees on at least one job per district for each contractor. If possible, interview 5 employees, with a cross section of the workforce, including women, minorities, and individuals with limited English proficiency (LEP). The **Department's telephonic interpreter service is available for interviewing employees with limited English proficiency via cell phone. The phone number and instructions must be obtained from the District Office.** Please call Civil Rights Division at (701)328-2605 for assistance and guidance on job-site interviews.

PART A - PROJECT INFORMATION

Project Number	District
Name And Title of Interviewer	PCN
Contractor Name ☐ Prime ☐ Sub	
If Subcontractor, Name of Prime	
Date of Interview	

PART B - LABOR COMPLIANCE INTERVIEW DATA

1. Employee name	Telephone Number
2. Job classification:	
3. Is the employee properly classified? ☐ Yes ☐ No	
4. Does the classification, duties, and wage information provided by the employee correspond to field office records? ☐ Yes ☐ No If no, list office information:	
5. What is your fringe benefit amount? $ ☐ Does not apply	
6. If applicable, are fringe benefits paid to you in cash or does the contractor pay them into approved plans, funds, or programs? ☐ Cash ☐ Funds Have you experienced any problems? ☐ Yes ☐ No If yes, describe:	
7. How often are you paid? ☐ Weekly ☐ Other (specify):	
8. Other than the required deductions for social security and federal withholding tax, are other deductions being made to your paycheck? ☐ State tax ☐ Union dues ☐ Insurance ☐ Pension ☐ Other (specify):	
9. Did you pay a fee to secure this job? ☐ Yes ☐ No	
10. Are you required to return any of your wages to your employer? ☐ Yes ☐ No If yes, for what reason?	
11. Dates employed on this project: From: To:	
12. Supervisor's name:	
13. How is your time reported? ☐ Daily time card ☐ Weekly time card ☐ Verbal ☐ Other (specify):	
14. Do you have a wage grievance based on the above questions? ☐ Yes ☐ No	
15. Additional comments:	

Figure 1 – Labor Compliance and EEO Contract Compliance Job-Site Interview

EXHIBIT III-B: PROJECT BULLETIN BOARD REVIEW

North Dakota Department of Transportation, CRD, SFN 60547 (Rev. 01-2014)

To access SFN 60547, click the following: https://intranetapps.nd.gov/dot/forms/sfn60547.pdf

PROJECT BULLETIN BOARD REVIEW
North Dakota Department of Transportation, Civil Rights Division
SFN 60547 (01-2014)

Review Date	Inspected by	Project Number	PCN
Project Location			
Contractor			

A. Bulletin Board

- ☐ Yes ☐ No Is bulletin board **accessible** to all employees on a continual basis?
- ☐ Yes ☐ No Is bulletin board located in any area where employees generally congregate?
- ☐ Yes ☐ No Is it maintained properly and contents easy to read?

B. Poster Required

- ☐ Yes ☐ No Form DOT 3350, 1 of 3 - EEO Notice Poster.
- ☐ Yes ☐ No Form DOT 3350, 2 of 3 - Wage/Hour Poster
- ☐ Yes ☐ No Form DOT 3350, 3 of 3 - Various Other Laws Poster

C. Additional Notices Required

- ☐ Yes ☐ No Applicable Davis Bacon Wage Rates
- ☐ Yes ☐ No Prime Contractor EEO Policy (may be filled out on Poster 1)
- ☐ Yes ☐ No Discrimination Complaint Procedure

Comments

Please take a photo of the bulletin board and enter as an attachment to this file.

This Form should be completed and entered into CARS/FileNet within 15 days of commencement of work on any federally-assisted project. It should also be done and filed up to 15 days prior to a scheduled Contractor Compliance Review conference.

Figure 2 – Project Bulletin Board Review

EXHIBIT III-C: MONTHLY EEO PROJECT INSPECTION REPORT

North Dakota Department of Transportation, CRD, SFN 9425 (Rev. 06-2012)

To access SFN 9425, click on the following: www.dot.nd.gov/forms/sfn09425.pdf

MONTHLY EEO PROJECT INSPECTION REPORT
North Dakota Department of Transportation, Civil Rights Division
SFN 9425 (Rev. 02-2014)

Month	Year

District	Date Filed	Project Number
Project Manager-Engineer (NDDOT or Consultant)		Title
Prime Contractor		PCN

A. Bulletin Boards

1. Are bulletin boards current? ☐ Yes ☐ No
2. If not, describe corrective action requested and due date:

B. Trucking Operations

1. Have trucking operations and procedures been reviewed and documented? ☐ Yes ☐ No
2. If not, describe corrective action requested and due date:

C. Labor Compliance Interviews (SFN 9426)

1. Is the prime contractor targeted for labor compliance interviews? ☐ Yes ☐ No
2. If yes and interviews have not been conducted, list target date for interviews:
3. List subcontractors targeted for labor compliance interviews and anticipated dates of interviews:

	Date
	Date
	Date
	Date
	Date
	Date
	Date
	Date

Submit this form to the NDDOT Civil Rights Division by adding document in the CARS application within 14 days of the date the form was completed.

Figure 3 – Monthly EEO Project Inspection Report

ON THE JOB TRAINING (OJT)

SECTION 4

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IV. ON-THE-JOB TRAINING

Under 23 Code of Federal Regulations Part 230, NDDOT is required to provide training and skill improvement opportunities to assure the increased participation of minorities, women, and economically disadvantaged persons in all phases of the highway construction industry. CRD has the overall responsibility for developing, implementing, and monitoring NDDOT's On-the-Job Training Program (OJT). The monitoring of contractor payrolls for the payment of correct wage rates and fringe benefits, where applicable, has been delegated to NDDOT's On-the-Job Training Supportive Services (OJTSS) Consultant.

The Department's approved OJT completion goal for 2016 is 20 trainees.

Special FHWA funding was provided in the 2015-2016 year to examine the Department's current program for potential improvements and practical enhancements. Although the changes have not as yet been implemented, it is possible that contractor's may inquire about the project's status. Please forward any questions or programmatic suggestions to Denise Spanjer at dgspanjer@nd.gov.

Project Engineers: The project engineer's primary responsibility for an OJT trainee is to observe and note in the project diary such things as: how is the trainee(s) being treated, is there a trainee on the job, is the trainee learning the craft or working on the equipment related to the approved program, etc.

Trainees can be moved from project to project which makes your oversight of the OJT Program and its participants "incidental."

Contractors are required to notify CRD when they move trainees from project to project; however, there are many times when CRD is not notified timely. CRD will notify the ADE as soon as it is known that the trainee has moved into the ADE's district.

It is the contractor's responsibility to provide training hours so the trainee can adequately learn the skills required by the program's curriculum.

It is the project engineer's responsibility, when notified by CRD, to withhold progress payments when/if the contractor is not responding or complying with the OJT contract provision.

Additionally, if a contractor indicates interest in having a trainee, please have them contact CRD.

A. SPECIAL PROVISION ON-THE-JOB TRAINING PROGRAM

With the exception of contracts funded solely with county funds and emergency relief projects that are not included in NDDOT's bid openings, all highway construction contracts (state and federally funded) contain *Special Provision On-the-Job Training Program (10/1/2015)*.

There are two types of trainee positions – Assigned: Required; Requested: Voluntary.

B. GENERAL OJT PROGRAM OVERVIEW

1. NDDOT trainee positions are not assigned to specifically to projects. Trainees are assigned to prime contractors who may provide training on any of the contractor's projects.
    - Trainees are assigned by formula.
    - The number of trainee positions assigned is determined by applying a formula based on calculations involving specific project specification numbers on applicable projects funded with federal highway dollars awarded by NDDOT to a prime contractor from October 1 to September 30 of each federal fiscal year.
    - The dollar value of contracts subject to Tribal Employment Rights Ordinances (TERO) and concrete pavement repair (CPR), electrical, rest area, signing, striping, and state funded highway contracts are excluded when determining the number of trainee positions assigned.
    - Contractors who are not assigned positions may request programs by submitting SFN _____ and SFN_____.
2. In early March, the CRD sends a summary of the trainee positions required to date and links to the OJT package to participating prime contractors. The summary and links are sent to prime contractors as they become eligible for trainee positions throughout the remainder of the year.
3. The number of trainee positions assigned to each prime contractor in the summary provided will increase proportionately for any applicable federally funded highway construction contracts awarded to the prime between March 1 and September 30.
    - Maximum of four (4) trainee positions.
    - Contracts awarded after September 30 are included in the following year's OJT program.
    - Carryover trainee positions from a prior program year are included in the summary but are not included in the cap of four.
    - CRD takes into consideration whether there is enough work for a trainee to successfully complete a program, and whether the contractor will be exceeding the allowable ratio of trainees to journeyworkers (generally considered to be one trainee or apprentice to every three to five journeyworkers), etc.
4. Contractors not qualifying for the OJT program, or contractors desiring to train more than the assigned number of trainees, may apply to the CRD for additional trainee positions.
    - Approval of additional positions is at the sole discretion of NDDOT.
    - The contractor may pay the reduced training rates to additional trainees outside of the targeted groups and receive the hourly reimbursement for those trainees.
    - If approved, additional trainee positions may be filled by individuals outside of the targeted groups (minority, female, and economically disadvantaged).

5. A prime contractor may delegate or reassign one or more of the assigned trainee positions to subcontractors, by agreement with the subcontractor(s) and the approval of the CRD.
    - The prime contractor must verify that the subcontractor has enough work for the trainee to accumulate the number of hours required to complete the trainee's program.
    - The prime contractor will be held responsible for the subcontractor's compliance with the OJT program requirements. This includes obtaining training program and trainee approvals from the CRD before the trainee's hours count toward completion of the selected OJT curriculum.
    - OJT program reimbursement will be made directly to the prime contractor.
6. Contractors may transfer trainees from one highway construction project to another (state and federally funded) to complete the OJT program. These training hours will count 100% toward overall OJT program completion.
    - CRD must be notified and provided the name of the new trainer.
    - The Master List will be updated and sent to the ADE for distribution.
7. Contractors 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.
    - All hours count 100%; but are not reimbursable.
8. Contractors may use trainees on municipal, private, or other non-highway work and work performed out of state.
    - Eligible completion hours on these projects are limited to no more than 25 percent of the total hours required under the training curriculum, e.g., Class A truck driver program is 500 hours. A maximum of 125 hours worked on projects listed in #8 will count toward completion. The remaining hours must be completed on state or FHWA funded projects.
    - No program reimbursement will be made for these hours.
9. Contractors may not use one trainee to simultaneously fill multiple trainee positions.
10. Contractors 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).
    - 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 must be based on the equipment being operated at the time or on the highest of the applicable wage rates.
11. Use of the classification pickup machine operator (asphalt dump-person) as a group 4 power equipment operator is considered standard industry practice in North Dakota.
12. Contractors may upgrade trainees from one power equipment operator or truck driver group to another, with CRD's approval.

- Upgraded trainees are considered partially complete; therefore, the new program's hours are reduced as follows:
  - (1) Power Equipment Operator Groups 4-6 to Groups 1-3 = 400 hours
  - (2) Class C Truck Driver to Class B = 200 hours
  - (3) Class B Truck Driver to Class A = 200 hours
- 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 must review the trainee's past performance to make this determination.
- 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 of the CRD.

13. Contractors may use a trainee on a piece of equipment in groups 1-3 or 4-6 for one assigned trainee position.
    - When a trainee completes at least 90% of the first program, the trainee may be trained on a different piece of equipment in groups 1-3 or 4-6 to fulfill a second assigned trainee position.
    - A trainee used a second time within a group must be paid at the higher wage rate described in **Section F Minimum Wage Rates.**
14. The power equipment operator groups are referenced to the federal Davis-Bacon wage rate decision contained in the contract proposal.

C. TRAINING PROGRAM REQUIREMENTS

1. To use the OJT program, contractors must submit *Request for OJT Program Approval (SFN 9762 - Rev. 10-2015)*.
    - It is the contractor's responsibility to select training programs to fill the firm's workforce needs. The program is designed to provide contractor's incentive and support to recruit and fill future employment needs.
    - The program's success can be measured by the number of trainees retained as journeyworkers.
2. Program approval requests must be submitted by April 1, or within fifteen (15) calendar days of notification of trainee assignments.
    - The contractor will receive a signed approval of the request.
3. Contractors may develop training programs to address their skilled workforce needs.
    - The process for requesting approval of "custom" programs is included in the OJT Program Manual.

4. Contractors may submit requests to replace approved programs with a different program.
    - The program approval process is outlined previously in this section.
5. Classroom training may also be used to train employees with the approval of CRD.
    - Reimbursement for classroom training will be limited to 60 hours per trainee per construction season with the exception of qualified testing technicians and concrete testing technicians/inspectors.
    - Contractors will be reimbursed for classroom training hours only after the trainee has completed 80 hours of work on a highway construction project(s).
    - The contractor must submit a proposed classroom training curriculum with its *Request for OJT Program Approval (SFN 9762 - Rev. 01-2013)*
    - The classroom training curriculum must define the type of training the individual will receive and the minimum number of hours required.
    - CRD will determine the amount of credit the trainee receives for classroom training.
    - Reimbursement for classroom training hours required under the *NDDOT Transportation Technician Qualification Program* will be at NDDOT's discretion.
    - 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.

      (1) If the trainee is already employed on a federal-aid highway construction project, the trainee must be paid in accordance with the minimum wage scale applicable to that project.

      (2) 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 Davis-Bacon wage in effect at the time of award of the state funded contract.
6. All nonunion training programs must be approved by the CRD.
7. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), USDOL, are recognized by NDDOT.
    - Contractors must select the pre-approved OJT curriculum closest to the union apprenticeship/BAT registered program
    - Submit *Request for OJT Program Approval (SFN 9762 - Rev. 09-2015)*
    - Union apprenticeship/BAT registered programs may be used for OJT trainee positions, provided the trainees or apprentices are minority, female, or economically disadvantaged.
    - Contractors must produce the apprentice's indenture papers to:

      (1) Be eligible for reimbursement,

(2) Pay the trainees or apprentices less than the appropriate Davis-Bacon wage established for the job classification concerned, and

(3) Receive credit for fulfilling assigned trainee positions.

- Nonminority males not certified as economically disadvantaged may be used when the contractor has requested and received approval, for trainee positions over and above the contractor's assignment(s).

D. TRAINEE CANDIDATE REQUIREMENTS

1. Contractors are required to submit SFN 60226 *Request for On-the-Job Trainee Approval (Rev. 07-2013)* with the trainee candidate's job application.
   - Contractors are responsible for the recruitment and placement of trainees.
   - No training hours will count toward completion and no reimbursement will be made on hours worked before CRD's approval of the trainee candidate.
   - Written approval will be provided to contractors by CRD if the candidate is eligible to participate in the OJT program.
2. Contractors must employ minority, female, or economically disadvantaged individuals for all trainee positions assigned.
   - To be considered economically disadvantaged, applicants must meet specific financial eligibility criteria and must be referred to Job Service North Dakota for screening and certification.
   - Job Service is the sole agency NDDOT recognizes as being able to designate an individual as economically disadvantaged.
   - The contractor must submit Job Service documentation for each employee they intend to use under this category. This written documentation must be provided to the CRD, with the other required information, as part of the approval process of trainees.
   - If the contractor is unable to produce this documentation, they will not be eligible for reimbursement for that particular trainee, will not be allowed to pay that trainee less than the appropriate Davis-Bacon wage established for the job classification concerned, and will not receive credit for fulfilling the assigned trainee position.
3. A contractor may not employ an individual as a trainee in a classification for which the individual has completed training or been employed as a journeyworker.
   - The proposed candidate's work experience will be reviewed to determine whether the candidate is eligible.
4. Individuals enrolled in the truck driver training program must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks.
   - The contractor's application form must be designed to include proper questions to ascertain this information.

5. A contractor may terminate the training period of a trainee who has completed 90% or more of the required number of training hours and advance the trainee to journeyworker status after providing notice to the CRD.

6. The contractor must notify CRD when a trainee completes the program.
   - A certificate of completion and a laminated, wallet-size certificate will be issued to each OJT program graduate.

E. CONTRACTOR REIMBURSEMENTS

1. Contractors are reimbursed $4.00 per hour for each eligible hour of training provided. (See exceptions on reimbursement for classroom training, TERO work, and county/city/private project works.)

2. To request reimbursement, contractors must complete SFN 51023 *Voucher for On-the-Job Training Program Hourly Reimbursement (Rev. 09-2015)* for each OJT program trainee.
   - Excerpts from weekly payrolls showing the trainee's hours, rate of pay, and how applicable fringe benefits are paid must be attached to each voucher regardless of funding source.
   - No reimbursement will be made and no hours may be counted toward completion without payroll documentation.

3. Vouchers must be submitted requesting payment by the fifteenth (15th) calendar of every following month the trainee is employed.
   - Due to state and federal end-of-the-year budget fiduciary requirements:

     (1) Vouchers received for trainee hours worked in June on state-funded only projects must be received by CRD no later than July 15 to be reimbursed.

     (2) Vouchers for trainee hours worked on federally funded projects in September must be received by CRD no later than October 15 to be reimbursed.

F. MINIMUM WAGE RATES

1. Basic hourly rates for all job classifications and fringe benefit payments, where applicable, are established by USDOL under the Davis-Bacon and Related Acts.
   - These rates are included in all federally-aided highway construction contracts as *Labor Rates from U.S. Department of Labor*.

     (1) For additional information regarding wage rates and fringe benefits, see Davis-Bacon Wage And Payroll Requirements Handbook https://www.dot.nd.gov/manuals/civilrights/davisbacon.pd

2. A trainee working on a state funded only contract must be paid the Davis-Bacon wage, including applicable fringe benefits, in effect at the time of award.

3. During the first half of the training program hours, the contractor may pay the trainee 80 percent of the established Davis-Bacon rate for the trainee's approved job classification.

- If 80 percent of the rate falls below the lowest established laborer rate for the project, the contractor must pay that laborer rate.
- The contractor may then pay 85 percent of the Davis-Bacon rate during the third quarter of training and 90 percent of the Davis-Bacon rate during the fourth quarter. Refer to **Section G Payment of Fringe Benefits** for information concerning the payment of fringe benefits.

4. For the purpose of the OJT program, a quarter is 25 percent of the hours worked by each trainee and does not represent three months of the year.
    - The first two quarters of a 550-hour training curriculum end after 275 hours, the third quarter after 138 hours, and the fourth after 137 hours.
5. Under the power equipment operator training programs only, a trainee having completed a program within groups 1-3 or groups 4-6, may be enrolled in another training program on a different piece of equipment within groups 1-3 or groups 4-6.
    - The minimum wage under the second program cannot be less than 85 percent of the journeyworker rate for the first two quarters of training, 90 percent of the journeyworker rate for the third quarter, and 95 percent of the journeyworker rate for the fourth quarter.

G. PAYMENT OF FRINGE BENEFITS

1. OJT trainees must be paid full fringe benefits, where applicable.
2. On-the-job trainees and apprentices must be paid fringe benefits in accordance with the provisions of the approved program or apprenticeship program.
3. The contractor has the option of paying the fringe benefits into approved plans, funds, or programs or directly to his or her employees.
    - For additional information regarding wage rates and fringe benefits, see Davis-Bacon Wage And Payroll Requirements Handbook

H. ON-SITE MONITORING BY PROJECT ENGINEER

1. To help project engineers identify trainees on their projects, CRD maintains a master database listing all assigned contractors and their trainees.
    - ADEs will receive updated lists for distribution to project staff as trainees are approved and/or as the programs are completed.
    - ADEs are asked to distribute the master list to the appropriate district, city, county, and project engineers.
2. When a trainee completes their program, the wages will then be monitored by the District staff, as part of the regular payroll monitoring responsibilities.
3. Project engineers should be aware of trainees working on a highway construction project under their jurisdiction, regardless of the funding source. Particular attention should be paid to the type of work the trainees are performing.
    - An equipment operator or a truck driver trainee should not be continually performing laborer work.

4. All project engineers should immediately report observed abuses of the OJT program requirements to the ADE. Additionally, the project engineer should note the abuses in the project diary.
    - The ADE must bring the matter to the contractor's project superintendent attention.
    - The project superintendent must direct the assigned trainer to provide the training required under the contractor's contract with NDDOT.
    - If abuse continues, the assistant district engineer must immediately notify CRD.
5. Project engineers are responsible for immediately reporting any observed abuses of the trainees. Additionally, the project engineer should note the abuses in the project diary.
    - If the project engineer or their project staff observe other contractor employees verbally abusing a trainee, making derogatory remarks within hearing distance of a trainee, throwing tools or materials at or in the direction of a trainee, or any other such inappropriate activity, the project engineer must first step in and stop the behavior, then notify the contractor's project superintendent, and the ADE. The ADE will notify CRD.

I. TRAINEE ON-SITE VISITS

1. Approved trainees are monitored by NDDOT's OJTSS consultant, Wold Engineering.
    - Wold Engineering:

        (1) Makes two work-site visits to trainees working on the job

        (a) Contractors must make the trainees available to the OJTSS consultant for on-site

        (b) OJTSS will confer with the project engineer and the contractor's project superintendent regarding the trainee's progress.

        (c) The project engineer should reassure the contractor that OJTSS has a contract with NDDOT and that the process is part of the contractor's contractual responsibility under the OJTSP.

        (2) Contacts contractors responsible for completion of trainee positions each week to determine trainee progress

        (a) Contractor's appointees who do not respond timely, risk sanctions as noted in the OJTSP and Sections J & K of this manual.

        (3) Reviews all requests for reimbursement prior to CRD approval.

        (4) Analyzes weekly payroll excerpts (on federal and state funded projects) which are submitted monthly.

        (5) Assesses trainee hours and ascertains whether their wages and fringes are paid correctly and appropriately

2. To contact OJTSS consultant Wold Engineering, P.C.:

   Bill Prichard or Lisa Rhodes
   Wold Engineering, P.C.
   316 Eastdale Drive
   Bismarck, ND 58501
   Email: bismarck@woldengr.com
   Phone: 701-258-9227

J. FAILURE TO COMPLY

1. No payment will 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 *Special Provision On-the-Job Training Program*.
   - If payments have been made, the CRD will notify the ADE to withhold the amount paid from the contractor's progress payment.
   - The contractor may be subject to sanctions up to and including revocation of bidding privileges.
2. It is normally expected that all trainees will begin their training as soon as feasible after start of work utilizing the skill involved and remain employed as long as training opportunities exist in their work classifications or until they have completed their training programs
   - To show good faith efforts toward program completion in following the contract special provision, trainees should be among the first employees hired or recalled and the last employees laid off.
3. 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 *Special Provision On-the-Job Training Program* if it has provided acceptable training to the number of trainees specified. The number trained will be determined on the basis of the total number enrolled for a significant period.

K. INCOMPLETE TRAINEE POSITIONS

1. A contractor may be unable to fulfill the assigned number of trainee positions during a construction season for a variety of reasons. To demonstrate the contractor's efforts in good faith to complete the assigned positions, the contractor must:
   - Submit good faith efforts documentation and explanation for the incomplete assignments by October 1 of the current construction season
   - Project engineers may be asked to comment on the contractor's efforts to fulfill, complete, and/or hire trainees to fill their position assignments.
2. The CRD will decide, on a case-by-case basis, whether the trainee positions will be carried over to the next construction season.

3. Sanctions, up to and including revocation of bidding privileges, may be imposed by NDDOT for failure on the part of the contractor to provide sufficient documentation as to why assigned trainee positions were not fulfilled**.**

To contact CRD, phone: 701-328-3116, Email: civilrights@nd.gov, FAX: 701-328-0343

Forms necessary for the OJT Program are available on the NDDOT web site at:
www.dot.nd.gov/dotnet/forms/forms.aspx (choose *Category* in the *View forms by:* drop-down box)

- NDDOT OJT Special Provision
  https://www.dot.nd.gov/divisions/civilrights/docs/ojtspecialprovision.pdf
- NDDOT's OJT Program Manual, includes the Minimum Wage Scale
  www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf
- SFN 9762 Request for OJT Program Approval (Rev. 09-2015)
  www.dot.nd.gov/forms/sfn09762.pdf
- SFN 60226 Request for OJT Trainee Candidate Approval (07-2013)
  www.dot.nd.gov/forms/sfn60226.pdf
- SFN 51023 Voucher for On-the-Job Training Program Hourly Reimbursement (Rev. 09-2015)
  www.dot.nd.gov/forms/sfn51023.pdf

EXHIBIT IV-A: NDDOT OJT SPECIAL PROVISION

To access the current OJT Program, click on the following:
www.dot.nd.gov/divisions/civilrights/docs/ojtspecialprovision.pdf

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

2016 NDDOT On-the-Job Training Special Provision Page 1 of 7

Figure 1 - OJT Special Provision

EXHIBIT IV-B: NDDOT OJT PROGRAM MANUAL

To access the current OJT Program, click on the following:
www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION (NDDOT)

2016 ON-THE-JOB TRAINING PROGRAM MANUAL

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 the OJT Program Manual and Special Provision. Contractors that fail to do so 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. INTRODUCTION/PROGRAM BACKGROUND

The OJT Program was originally prepared through the cooperative efforts of the Associated General Contractors of North Dakota (AGC); the Federal Highway Administration (FHWA); the North Dakota Department of Transportation (Department); and, other program stakeholders.

Successful operation of the OJT Program requires that contractors follow uniform and basic procedures in training, keeping records of trainee progress toward journeyworker status, and reporting each trainee's completion or termination.

III. ASSIGNED OJT POSITIONS

A. Contractors are assigned trainee positions based only 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 based on calculations involving specific project specification numbers on applicable projects.

B. Projects funded solely with county funds and emergency relief projects that are not included in the Department's bid openings will not contain this OJT Program Special Provision (i.e., no training program hours will count toward completion of an approved training program or be eligible for reimbursement).

C. The dollar value of projects subject to Tribal Employment Rights Ordinances (TERO), concrete pavement repair (CPR) projects, electrical projects, rest area projects, signing projects, striping projects, and state-aid highway projects will be excluded when determining the number of trainee positions assigned.

D. Contractors will receive the number of positions assigned and links to resources necessary for completion of program requirements via email.

E. The number of trainee positions assigned to each contractor will increase proportionately, as shown below, for any applicable federally funded projects awarded to them.

2016 NDDOT On-the-Job Training Program Manual Page 1 of 35

Figure 2 - OJT Program Manual

EXHIBIT IV-C: REQUEST FOR OJT PROGRAM APPROVAL

North Dakota Department of Transportation, CRD
SFN 9762 (Rev. 09-2015)
To access SFN 9762, click on the following:
www.dot.nd.gov/forms/sfn09762.pdf

REQUEST FOR ON-THE-JOB TRAINING PROGRAM APPROVAL
North Dakota Department of Transportation, Civil Rights Division
SFN 9762 (Rev. 09-2015)

INSTRUCTIONS: Submit one completed request form for each trainee in the OJT Program by **April 1 or within 15 days of notification of additional trainee assignments**. Include the individual training curriculum with each request.

Contractor	Trainee Starting Date
Address	Project Control Number (PCN) Trainee Starting On

We are requesting approval to use the North Dakota Department of Transportation On-the-Job Training (OJT) Program for the following: [Check only one box]

☐	Power Equipment Operator (Groups 1-3) (550 hrs.)	Specify Group And Classification
☐	Power Equipment Operator (Groups 4-6) (350 hrs.)	Specify Group And Classification
☐	Structural Carpenter (500 hrs.)	
☐	Concrete Finisher (500 hrs.)	
☐	Truck Driver *Class A (500 hrs.)	
☐	Truck Driver *Class B (400 hrs.)	
☐	Truck Driver *Class C (300 hrs.)	
☐	Qualified Testing Technician (500 hrs.)	
☐	Concrete Testing Technician/Inspector (500 hrs.)	

* Class A: Any combination of vehicles with a GVWR of 26,001 pounds or more, provided the trailer is in excess of 10,000 pounds.
* Class B: Single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a trailer under 10,001 pounds.
* Class C: Single vehicle with a GVWR of 26,000 pounds or less, and any such vehicle towing a trailer under 10,001 pounds. A Class C requires the operator to have endorsements for either hazardous materials or for carrying 16 or more passengers.

Is this an upgrade from one Power Equipment Operator or Truck Driver group to another?
☐ Yes ☐ No

Type and number of classroom training hours received:

Type	Date	Number of Hours

Company Representative _____ Title _____ Date _____

Approved: North Dakota Department of Transportation

OJT Program Administrator _____ Date _____

Return to:
CIVIL RIGHTS DIVISION
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700
TELEPHONE: (701)328-3116
FAX: (701)328-0343

Figure 3 - Request for OJT Program Approval

EXHIBIT IV-D: REQUEST FOR OJT TRAINEE APPROVAL

North Dakota Department of Transportation, CRD
SFN 60226 (07-2013)
To access SFN 60226, click on the following:

www.dot.nd.gov/forms/sfn60226.pdf

REQUEST FOR ON-THE-JOB TRAINEE APPROVAL
North Dakota Department of Transportation, Civil Rights Division
SFN 60226 (07-2013)

We are requesting approval to use the North Dakota Department of Transportation On-the-Job Training (OJT) Program for the following trainee:

TRAINEE INFORMATION

Trainee Name	Starting Wage	Starting Date

Gender: ☐ Male ☐ Female

Ethnic Group Designation (check one): ☐ Caucasian ☐ Hispanic ☐ Asian or Pacific Islander ☐ Black ☐ American Indian or Alaskan Native ☐ Economically Disadvantaged

CONTRACTOR INFORMATION

*** Company Contact		Company Name	
Email Address		Telephone Number	Office Number
Address		City	State / ZIP Code
Project Number Trainee Starting On	Project Location	Job Number	Bid Opening Date

NDDOT District (check one): ☐ Bismarck ☐ Devils Lake ☐ Dickinson ☐ Minot ☐ Fargo ☐ Grand Forks ☐ Valley City ☐ Williston

APPROVED TRAINING PROGRAM

☐ Power Equipment Operator (Groups 1-3) (550 hrs) — Specify Group and Classification
☐ Power Equipment Operator (Groups 4-6) (350 hrs) — Specify Group and Classification

☐ Structural Carpenter (500 hrs)
☐ Concrete Finisher (500 hrs)
☐ Qualified Testing Technician (500 hrs)
☐ Concrete Testing Technician/Inspector (500 hrs)
☐ Truck Driver *Class A (500 hrs)
☐ Truck Driver *Class B (400 hrs)
☐ Truck Driver *Class C (300 hrs)
☐ Check if Carryover Trainee

PROJECT CONTACT INFORMATION

Trainer	Direct Contact Number (cell)
Superintendent	Direct Contact Number (cell)
Description of Superintendent's Vehicle	
On-site Project Engineer	Direct Contact Number (cell)

Signature - EEO Officer	Date

Approved: North Dakota Department of Transportation

Signature - OJT Program Administrator	Date

Return completed form and Trainee's Job Application to:
Civil Rights Division
North Dakota Department of Transportation
608 E Boulevard Ave
Bismarck, ND 58505-0700
Telephone: (701) 328-3116
Fax: (701) 328-0343
Website: www.civilrights@nd.gov

*** **Company Contact:** On-the-Job Training Supportive Services (OJTSS) staff is charged with contacting this person weekly to assist your company where possible. It is the prime contractor's contractual responsibility to respond timely and communicate weekly with OJTSS.

Figure 4 - Request for OJT Trainee Approval

EXHIBIT IV-E: VOUCHER FOR OJT HOURLY REIMBURSEMENT

North Dakota Department of Transportation, CRD
SFN 51023 (Rev. 09-2015)
To access SFN 51023, click on the following:

www.dot.nd.gov/forms/sfn51023.pdf

VOUCHER FOR ON-THE JOB TRAINING PROGRAM HOURLY REIMBURSEMENT
North Dakota Department of Transportation, Civil Rights Division
SFN 51023 (Rev. 09-2015)

Return to:
CIVIL RIGHTS DIVISION
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK, ND 58505-0700
TELEPHONE: (701)328-3116
FAX: (701)328-0343

INSTRUCTIONS: Submit one completed voucher form by the **15th day of every month** for each trainee currently enrolled in the OJT Program.

Prime Contractor	Address (to remit payment)	
Name of Trainee	Gender (check one) ☐ MALE ☐ FEMALE	Type of Program (specify group and classification where applicable)

Ethnic Group Designation (check one)
☐ CAUCASIAN ☐ BLACK ☐ HISPANIC ☐ ASIAN OR PACIFIC ISLANDER ☐ AMERICAN INDIAN OR ALASKAN NATIVE ☐ ECONOMICALLY DISADVANTAGED

REPORTING PERIOD AND HOURS OF TRAINING

Payroll Week Ending Date	Project Control Number (PCN)	Total Hours Worked Previous Hours		Cumulative Total Number of Hours In Program	Number of Hours To Be Paid On This Voucher
		By DOT Project	Non- DOT Project		
TOTALS		0	0		0

Approved Classroom Training

Type	Dates	Location	Hours Completed

I certify that the foregoing information is a true, complete, and accurate statement of the total hours worked by the identified trainee for which this company is entitled to reimbursement.

Prime Contractor Representative	Title	Date

Subcontractor Representative (where applicable)	Title	Date

Approved: North Dakota Department of Transportation

OJT Program Administrator _____ Date _____

For NDDOT Office Use Only

Federal-Aid Project Hours		X $4.00	= $
State Aid Project Hours		X $4.00	= $
Total Lump Sum Payment			= $

Figure 5 - Voucher for OJT Training Program Hourly Reimbursement

LABOR COMPLIANCE
SECTION 5

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V. LABOR COMPLIANCE

The Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA), 29 CFR 1, 3, 5, 6, and 7, contain wage and payroll requirements applicable to federal –aid highway construction projects and are incorporated into contracts and subcontracts through FHSA 1273 (*Required Contract Provisions, Federal-Aid Construction Contracts, USDOT Form FHWA 1273 - Rev. 5-1-12)*. DBRA is binding on all federal-aid highway construction contracts.

NDDOT has the primary responsibility for the enforcement of the labor standards provisions included in all federally funded highway construction contracts. Overall monitoring of contractors for labor compliance is the responsibility of the Assistant District Engineer (ADE). District, city, county, and consultant project engineers have the responsibility for day-to-day monitoring at the project level.

The *U.S. Department of Labor (USDOL) Field Operations Handbook - Chapter 15 (revised 10-25-10)* covers the federal rules and regulations that govern labor compliance, and ADE and district, city, county, and consultant project engineers must familiarize themselves with this handbook. This handbook does not contain all laws and rulings surrounding DBRA. That said, it contains guidelines which although not all inclusive of the federal laws, rules, regulations, regulatory guidance, etc., should be helpful in labor compliance oversight, DBRA coverage and other labor standards provisions of federal-aid highway construction contracts. [Refer to paragraph M of this section for reference sources.] The guidelines are not meant to preclude, replace, supersede, or otherwise circumvent any previously existing or future federal laws, rules, regulations, regulatory guidance, etc., that have or may be issued by USDOL. These guidelines are provided to assist district, city, county, and consultant project managers-engineers in monitoring contractors for compliance with the federal wage and payroll requirements of DBRA on NDDOT federally funded highway construction projects only. Although the information has been obtained from reputable sources in accordance with currently available information, it may not be applicable to other contracting agencies or other State Departments of Transportation. The CRD provides technical assistance to only those district, city, county, and consultant project engineers who administer federally funded highway construction projects in North Dakota.

A. DAVIS-BACON AND RELATED ACTS COVERAGE

1. Special Provisions

    a. Under DBRA, all persons employed on or working upon the *site of the work* of a federally funded highway construction contract must be paid the wage rates and fringe benefits determined by the Secretary, USDOL, to be prevailing in the area of the project. In addition, DBRA requires that certain labor standards provisions be specified in the contract awarded to the successful bidder and that the applicable DBRA wage rate decision also be included in the contract documents. Consequently, all federally-aided highway construction contracts contain the following special provisions:

        (1) *Required Contract Provisions, Federal-aid Construction Contracts*

(USDOT Form FHWA 1273 - Rev. 5-1-12). This special provision outlines contractor requirements relating to wages, payrolls, and compliance statements and is available online at:

www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

(2) *Labor Rates From U.S. Department of Labor*. This special provision specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction and is available online at (select a published date from the drop-down box):

https://www.dot.nd.gov/divisions/civilrights/laborcompliance.htm

(3) The Special Provision on Automated Payroll (10-24-2015)

b. Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.

c. Whenever any state, county, or city funded project is combined with or tied to a federally funded highway construction project as one contract, the entire contract is considered federally funded and is subject to DBRA. Therefore, DBRA wages must be paid and weekly certified payrolls, together with a Statement of Compliance, must be generated and submitted for all portions or segments of the contract.

d. The falsification of certified payroll may subject the contractor or subcontractor to civil or criminal prosecution. See *The USDOL Prevailing Wage Resource Book, DBRA Investigations, p.5.* Knowledge of falsification by project personnel or consultants must be disclosed to the ADE, and paperwork evidencing falsification must be preserved. Consult CRD with any questions.

e. Beginning in 2016, contractors of all tiers may file certified payroll either through the traditional paper method, or electronically through LCPtracker, an internet-based system for certified payroll.

2. Site of the Work Definition

a. The federal regulations at 29 CFR 5.2(l) define the term *site of the work* as:

"(1) The *site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on *the site of work* as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract."

b. The federal regulations at 29 CFR 5.2(j)(1)(iv) also define the terms *construction*, *prosecution*, *completion, or repair* to include:

(A) Transportation between the *site of the work* within the meaning of paragraph 5.2(l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the *site of the work* within the meaning of paragraph 5.2(l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the *site of the work* within the meaning of paragraph 5.2(l)(1) of this section, and the physical place or places where the building or work will remain.

c. The key words are *dedicated* to the job site and *adjacent or virtually adjacent* to the location where the work is being constructed. Inasmuch as the federal regulations do not define *adjacent or virtually adjacent*, NDDOT has defined the terms as any tool yard, fabrication plant, job headquarters, material or supply source (e.g., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., whose boundary is located *within one-half mile* of the closest right of way boundary to the federal-aid highway construction project. The distance is measured as one-half mile from the boundary to the tool yard, fabrication plant, job headquarters, material or supply source (e.g., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., to the closest project boundary, *as the crow flies*, not to the middle of the project.

3. Material and Supply Sources

a. The DBRA generally do not apply to a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., when it is determined to not be included in the *site of the work* of a federal or federally-aided highway construction contract or project.

   (1) According to USDOL, the only exception involves truck drivers employed by prime contractors and subcontractors who haul materials and supplies to and from the *site of the work* of a federal-aid highway construction project and spend *more than a de minimis* amount of time on the *site of the work*. The truck drivers would be due DBRA wages, including applicable fringe benefits, for all of the time spent on the *site of the work* that is *more than de minimis*.

   (2) *De minimis*, as defined by USDOL, means only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc. Refer to paragraph B of this section for information concerning the application of DBRA to truck drivers.

   NOTE: Contractors should be referred to Section C of the *NDDOT Davis-Bacon Wage and Payroll Requirements Handbook* available online at:

   www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

b. If the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *more than one-half mile* from the closest right of way boundary to a federal-aid highway construction project, DBRA generally does not apply. It does not matter when the project was *let to contract* (i.e. the bid opening date) because the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is *more than one-half mile* away.

c. If the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *one-half mile or less* from the closest right of way boundary to a federal-aid highway construction project,

   (1) DBRA generally does not apply if the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., has been open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (not awarded).

   (2) DBRA does apply if the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., has not been open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (not awarded).

d. It does not matter who owns the borrow pit, stockpile site, concrete or asphalt batch plant site, etc.; who is crushing; or who is producing the product. What matters is whether the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is *dedicated* to the federal-aid highway construction project and is *adjacent or virtually adjacent* to the project.

e. In addition, it does not matter if the borrow pit is a state-optioned pit. If the borrow pit is located *more than one-half mile* from the closest right of way boundary to the federal-aid highway construction project, DBRA generally does not apply.

f. If rubble or other material is hauled from a federal-aid highway construction project to a location designated in the plans and specifications for the project, DBRA does apply and weekly certified payrolls are required. If no location is designated in the plans and specifications and the truck drivers are hauling the rubble or material from the project to a location determined to not be a *site of the work*, DBRA generally does not apply and weekly certified payrolls are generally not required by NDDOT.

g. If DBRA does apply to a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., the employees who perform tasks directly related to producing the product are covered, including the truck drivers who haul the materials from the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., to the federal-aid highway construction project, regardless of on whose weekly certified payroll they appear.

4. Bona Fide Material Suppliers

a. Pursuant to paragraph 15e16 of USDOL's *Field Operations Handbook - Chapter 15 (10-25-10)*:

(1) "(a) The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete, when accomplished by bona fide material suppliers operating facilities serving the public in general, are activities not covered by DBRA. This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site. Such bona fide material suppliers are not considered contractors under DBRA. Thus, their employees are not subject to DBRA labor standards.

(2) (b) A particular facility set up at or near a construction site for the purpose of fulfilling the material requirements of a contract and thus subject to the DBRA initially, may undergo a change in its character to such an extent that it becomes the operation of a supplier. This would be so, for example, if it makes a sufficient quantity of sales from its producing facility to the general public. What constitutes a sufficient quantity of sales to the general public depends on the circumstances in each case, but must be more than mere token sales.

(3) (c) If a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work would be subject to DBRA in the same manner as those employed by any other contractor or subcontractor. Employees of a material supplier who are required to perform more than an incidental

amount of construction work in any workweek at the site of the work would be covered by DBRA and due the applicable wage rate for the classification of work performed. This would include warranty and/or repair work. For example, if an employee of a supplier of precast concrete items is required to go to the project site to repair and clean such items, and in so doing performs more than an incidental amount of construction activity on the contract, the individual would be subject to DBRA. Similarly, an employee of an equipment rental dealer or tire repair company who performs on-site repair work on leased equipment is subject to DBRA if the employee performs more than an incidental amount of work on the site. For enforcement purposes, if such an employee spends more than 20% of his or her time in a workweek engaged in such activities on the site, he or she is DBRA covered for all time spent on the site during that workweek.

(4) (d) 29 CFR Part 5.2(l) specifically excludes from the definition of site of the work permanent fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman that are established by a supplier of materials for the project before opening of bids and near to but not on the actual project site, even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

b. A bona fide material supplier must be able to demonstrate that he or she has *routinely been selling to the general public* from the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., and that the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was opened for that use, not for the federal-aid highway construction project in question. In other words, if they are normally considered a supplier but they opened the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., just for the federal-aid highway construction project, and the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *one-half mile or less* from the closest right of way boundary to the project, they would be considered a subcontractor and not a supplier. Consequently, DBRA wages would be due and weekly certified payrolls would be required.

c. If a bona fide material supplier has demonstrated that he or she was open and making sales to the general public from a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., within the previous *twelve months* of the *day* the federal-aid highway construction project was *let to contract* (not awarded), DBRA does not apply no matter where the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located.

5. Whenever any state, county, or city funded project is combined with or tied to a federally funded highway construction project as one contract, DBRA wages must be paid and weekly certified payrolls must be generated and submitted for all portions or segments of the contract. (Note: If the tied projects have separate contracts, performance bonds, pay items and distinct funding sources, the prevailing wage rates apply only to the Federal-aid portion of the contract. See FHWA *Davis-Bacon*

and Related Acts, Questions and Answers, 2014.) Consequently, the principles previously described apply to borrow pits, stockpile sites, concrete or asphalt batch plant sites, etc., used for the contract or project. For example:

A contract has three portions or segments, of which two are federally funded and one is strictly state funded. There is a two and one-half mile gap between the state funded portion or segment and the next closest federally funded portion or segment. Material is being hauled from a borrow pit located *less than one-half mile* from the closest right of way boundary to the state funded portion or segment.

a. Because two of the portions or segments are federally funded, the entire project is viewed as federally funded.

b. Since the borrow pit is located *less than one-half mile* from the closest right of way boundary to the state funded portion or segment,

(1) DBRA generally does not apply if the borrow pit has been open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (not awarded).

(2) DBRA does apply if the borrow pit has not been open and making sales to the general public within the previous twelve months of the day the project was let to contract (not awarded).

c. DBRA applies to anyone working *adjacent* (within one-half mile) to the boundaries of the project site, normally at a borrow pit, stockpile site, concrete or asphalt batch plant site, etc.

d. If material is hauled from that same borrow pit to any one of the other two portions or segments, which are not *adjacent* to the borrow pit, DBRA still applies because the portions or segments are looked at as a whole.

6. There are times when, at the end of a federal-aid highway construction project, NDDOT adds another mile or two to the project through the issuance of a change order. If it was previously determined that the boundary to a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was located *more than one-half mile* from the closest right of way boundary to the project but the added segment brings the boundary to the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., *within one-half mile* of the project boundary:

a. Those employees working on the additional segment under the change order would be due Davis-Bacon wages, including applicable fringe benefits, and weekly certified payrolls would be required.

b. Those employees hauling from and working at the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., under the change order would be due DBRA wages, including applicable fringe benefits, and weekly certified payrolls would be required by NDDOT only if the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was not open

and making sales to the general public within the previous 12 months of the day the project was let to contract (not awarded).

c. If the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (not awarded), the truck drivers employed by the prime contractor, and/or any subcontractor, who haul the materials to and from the additional segment and spend *more than a de minimis* amount of time on the additional segment would be due DBRA wages, including applicable fringe benefits, for all time spent on the additional segment that is *more than de minimis*.

7. The project engineer must use his or her best judgment to determine whether a location in question is considered a *site of the work* of a federal-aid highway construction project. If the Project Engineer has questions or is unsure whether a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is covered, he or she must consult the CRD.

B. TRUCK DRIVERS AND DBRA

1. The following is taken from USDOL's final rule amending 29 CFR 5 (12-20-2000):

a. The Department of Labor adopted as a final rule an amendment to the regulations, 29 CFR 5, which defines the DBRA language construction, prosecution, completion, or repair at 29 CFR 5.2(j), and site of the work at 29 CFR 5.2(l). Specifically, this document revises the site of the work definition to include material or supply sources, tool yards, job headquarters, etc., in the site of the work only where they are dedicated to the covered construction project and are adjacent or virtually adjacent to the location where the building or work is being constructed. The final rule also changed the regulatory definition of construction to provide that the off-site transportation of materials, supplies, tools, etc., is not covered unless such transportation occurs between the construction work site and a dedicated facility located "adjacent or virtually adjacent" to the construction site.

b. The final rule revised section 5.2(l)(1) to include within the *site of the work*, secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. In conjunction with this change, section 5.2(j) was amended to provide that transportation of portion(s) of the building or work between a secondary covered construction site and the site where the building or work will remain when it is completed is subject to DBRA requirements.

c. The USDOL's regulations provide a three-part definition of the *site of the work*.

(4) The first part at 29 CFR 5.2(l)(1) provides that "the *site of the work* is the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site."

(5) The second part at 29 CFR 5.2(l)(2) provides that "fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc." are part of the *site of the work* provided they meet two tests—a geographic test of being "so located in proximity to the actual construction location that it would be reasonable to include them," and a functional test of being "dedicated exclusively, or nearly so, to performance of the contract or project."

(6) The third part at 29 CFR 5.2(l)(3) states that fabrication plants, batch plants, borrow pits, tool yards, job headquarters, etc., "of a commercial supplier or materialman which are established by a supplier of materials for the project before the opening of bids and not on the project site, are not included in the *site of the work*." In other words, facilities such as batch plants and borrow pits are not covered if they are ongoing businesses apart from the federal contract work.

d. The USDOL disagreed that the *Midway* decision exempts all material delivery truck drivers regardless of how much time they spend on the *site of the work*. Clearly, truck drivers who haul materials or supplies from one location on the *site of the work* to another location on the *site of the work* are "mechanics and laborers employed directly upon the *site of the work*," and therefore, entitled to prevailing wages. Likewise, truck drivers who haul materials or supplies from a dedicated facility that is adjacent or virtually adjacent to the *site of the work* pursuant to amended section 5.2(l) are employed on the *site of the work* within the meaning of the Davis-Bacon Act and are entitled to prevailing wages for all of their time spent performing such activities.

e. It is also the USDOL's position, as stated in the Notice of Proposed Rulemaking (NPRM), that truck drivers employed by construction contractors and subcontractors must be paid at least DBRA rates for any time spent on-site which is *more than de minimis*. It must be noted that this is not a regulatory change, nor is it a subject of this rulemaking. However, the USDOL will provide some discussion on this issue in order to provide some clarification as to its position.

f. The USDOL ruled that "our reading of *Midway* does not preclude coverage for time spent on the *site of the work* no matter how brief. However, as a practical matter, since generally the great bulk of time spent by material truck drivers is off-site beyond the scope of DBRA coverage, while the time spent on-site is relatively brief, the Department

chooses to use a rule of reason and will not apply the Act's prevailing wage requirements with respect to the amount of time spent on-site, unless it is more than "de minimis." Pursuant to this policy, the Department does not assert coverage for material delivery truck drivers who come onto the *site of the work* for only a few minutes at a time merely to drop off construction materials."

2. USDOL publishes a *Field Operations Handbook - Chapter 15*, which supplements 29 CFR 1, 3, 5, 6, and 7 pertaining to a group of statutes generally identified as the DBRA and the Contract Work Hours and Safety Standards Act (CWHSSA).

   a. Federal contracting or other administering agencies have the primary responsibility for the enforcement of DBRA and CWHSSA labor standards provisions included in its contracts. USDOL has coordination and oversight responsibilities, including the authority to investigate labor standards compliance as warranted. USDOL issued the regulations referenced in Chapter 15 to coordinate the administration and enforcement of DBRA and CWHSSA labor standards. In other words, NDDOT is to refer to Chapter 15 in its labor standards enforcement responsibilities.

   b. The following is taken verbatim from USDOL's *FOH- Chapter 15 (10-25-10)*:

      (1) 15e16 <u>Material Suppliers</u>

      (a) The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete, when accomplished by bona fide material suppliers operating facilities serving the public in general, are activities not covered by DBRA. This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site. Such bona fide material suppliers are not considered contractors under DBRA. Thus, their employees are not subject to DBRA labor standards. (See also FOH 15b04 and 15e22.)

      (b) A particular facility set up at or near a construction site for the purpose of fulfilling the material requirements of a contract and thus subject to the DBRA initially, may undergo a change in its character to such an extent that it becomes the operation of a "supplier." This would be so, for example, if it makes a sufficient quantity of sales from its producing facility to the general public. What constitutes a "sufficient quantity" of sales to the general public depends on the circumstances in each case, but must be more than mere token sales.

      (c) If a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a

subcontractor, its laborers and mechanics employed at the site of the work would be subject to DBRA in the same manner as those employed by any other contractor or subcontractor. Employees of a material supplier who are required to perform more than an incidental amount of construction work in any workweek at the site of the work would be covered by DBRA and due the applicable wage rate for the classification of work performed. This would include *warranty and/or repair work. For example, if an employee of a supplier of precast concrete items is required to go to the project site to repair and clean such items, and in so doing performs more than an incidental amount of construction activity on the contract, the individual would be subject to DBRA. Similarly, an employee of an equipment rental dealer or tire repair company who performs on-site repair work on leased equipment is subject to DBRA if the employee performs more than an incidental amount of work on the site. For enforcement purposes, if such an employee spends more than 20% of his or her time in a workweek engaged in such activities on the site, he or she is DBRA covered for all time spent on the site during that workweek.*

(d) 29 CFR Part 5.2(l) specifically excludes from the definition of "site of the work" permanent fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or "materialman" that are established by a supplier of materials for the project before opening of bids and near to but not on the actual project site, even where such operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract. (See FOH 15b04(b) and 29 CFR 5.2(l).)

(2) 15e17 <u>Owner-operators of trucks and other hauling equipment</u>

As a matter of administrative policy, the provisions of DBRA/ CWHSSA are not applied to bona fide owner-operators of trucks who are independent contractors. For purposes of these Acts, the certified payrolls including the names of such owner-operators need not show hours worked nor wages paid, but only the notation "Owner-operator." This position does not pertain to owner-operators of other equipment such as bulldozers, scrapers, backhoes, cranes, drilling rigs, welding machines, and the like. Moreover, employees hired by owner-operators are subject to DBRA in the usual manner.

(3) 15e22 <u>Truck drivers</u>

The application of DBRA to truck drivers is based on the definition of "construction, prosecution, completion, or

repair" in 29 CFR 5.2(l) (see FOH 15b05). Three U.S. appellate court decisions in the 1990's helped to clarify these definitions and provide the guidance below. (65 FR 80268-80278, Dec 20, 2000)

(a) Truck drivers are <u>covered</u> by DBRA in the following circumstances:

(1) Drivers of a contractor or subcontractor for time spent working on the site of the work.

(2) Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not de minimis. See FOH 15e22(b)(3).

(3) Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.

(4) Truck drivers transporting portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

(b) Truck drivers are <u>not covered</u> in the following instances:

(1) Material delivery truck drivers while off the "site of the work."

(2) Drivers of a contractor or subcontractor traveling between a DBRA job and a commercial supply facility while they are off the "site of the work."

(3) *Truck drivers whose time spent on the site of the work is de minimis, such as only a few minutes at a time merely to pick up or drop off materials or* supplies.

3. Based on the information contained in USDOL's *Field Operations Handbook - Chapter 15*, and through consultation with USDOL's Headquarters Office in Washington, D.C., and USDOL's Regional Office in Dallas, Texas, NDDOT hereby issues the following additional guidance and clarification:

a. With some exceptions, DBRA coverage includes all work, including trucking activities and operations, that takes place within the confines of the federal-aid highway construction project as described in the bidding documents and subsequent contract. DBRA coverage also includes all such work performed at locations determined to be a *site of the work* of the federal-aid highway construction project. Both of these locations are hereinafter referred to as the *site of the work*.

b. Exemptions from DBRA coverage include:

(1) Those workers whose duties are primarily administrative, executive, professional, or clerical in nature, rather than manual. For example, supervisory personnel, field office employees, surveyors, gravel testers, quality control technicians, scale operators, etc.

(2) Truck drivers employed by prime contractors and subcontractors for time spent loading and/or unloading materials and supplies on the *site of the work*, if such time is *de minimis*.

(3) Individual truck drivers employed by material suppliers, or by trucking firms hired by material suppliers, for time spent loading and/or unloading materials and supplies on the *site of the work*.

(4) Bona fide owner-operators of trucks.

(5) Traffic control suppliers (with some exceptions).

(6) Refer to paragraph F of this section for information concerning exemptions from DBRA coverage.

c. For DBRA purposes, an employee's time starts the moment the employee reaches the *site of the work*. This includes but is not limited to:

(1) Checking in to get instructions for the day.

(2) Attending weekly EEO and safety toolbox meetings.

(3) Fueling and other maintenance, mechanical repair, or service work performed on equipment or trucks (whether it be by the operator, who must be paid the appropriate equipment operator rate and fringe benefits; the driver, who must be paid the appropriate truck driver rate and fringe benefits; or a mechanic, who must be paid the appropriate mechanic, greaser, or oiler rate and fringe benefits).

(4) Cleaning any part of the equipment and trucks.

(5) All time spent waiting:

(a) For a flagger or pilot car driver to allow access onto the *site of the work* or to a specific area on the *site of the work*.

(b) To be weighed at a scale and to be otherwise processed in and out (e.g., turning in haul sheets, timecards, or other records).

(c) To load and unload trucks.

d. For DBRA purposes, an employee's time ends the moment the employee leaves the *site of the work*. This includes all times during the workday where a truck driver leaves the *site of the work* and travels to and from a site that has been determined to not be a *site of the work*.

e. If an employee performs work in more than one job classification during a single payroll period and the classifications require different wage rates, the employee must be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicate which of the hours were included in the periods spent in each classification of work. The contractor may then pay not less than the rate specified in the DBRA wage rate decision incorporated into the contract for the job classification that describes each type of work performed.

f. The *site of the work* means a federal-aid highway construction project and any tool yard, fabrication plant, job headquarters, material or supply source (e.g., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., that is:

(1) *Dedicated* to the federal-aid highway construction project and

(2) *Adjacent or virtually adjacent* to the federal-aid highway construction project.

g. Inasmuch as USDOL does not specifically define *adjacent or virtually adjacent*, NDDOT has defined *adjacent or virtually adjacent* as any tool yard, fabrication plant, job headquarters, material or supply source (e.g., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., whose boundary is located *within one-half mile* of the closest right of way boundary to a federal-aid highway construction project. The distance is measured as one-half mile from the boundary to the tool yard, fabrication plant, job headquarters, material or supply source (e.g., borrow pit, stockpile site, concrete or asphalt batch plant site), etc., to the closest project boundary, *as the crow flies*, not to the middle of the project.

h. *Dedicated* to the federal-aid highway construction project means the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., was not open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (i.e. the bid opening date).

i. For truck drivers employed by prime contractors and subcontractors, *de minimis* is defined by USDOL as only a few minutes at a time merely to pick up or drop off materials, supplies, tools, etc. According to USDOL:

(1) The *de minimis* ruling is a result of the *Midway* court case. The Midway truck drivers came on-site for only ten minutes at a time to drop off their deliveries and that the time spent *directly upon the site of the work* constituted only ten percent of their workday; but no one argued in the case that the truck drivers were covered only during that brief time. USDOL does not preclude coverage for time spent on the *site of the work* no matter how brief. However, as a practical matter, since generally the great bulk of the time spent by material truck drivers is off-site and beyond the scope of DBRA coverage while the time spent on-site is relatively brief, USDOL chooses to use a rule of reason and will not apply DBRA with respect to the amount of time spent on-site, unless it is *more than de minimis*.

(2) Situations involving *de minimis* rulings normally arise when:

(a) A borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *beyond the half-mile limit* but still close enough to cause the truck drivers less time in travel and more time on the *site of the work* waiting to be loaded and/or unloaded.

(b) A borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *within the half-mile limit* and was open and making sales to the general public within the previous *twelve months* of the *day* the project was *let to contract* (not awarded), thus making it a commercial borrow pit, stockpile site, concrete or asphalt batch plant site, etc., and thus causing the truck drivers less time in travel and more time on the *site of the work* waiting to be loaded and/or unloaded.

(3) There is no set percentage of time used to determine *de minimis*. USDOL will consider 5-10 percent to be *de minimis* but may not consider 18 percent or more to be *de minimis*. Decisions on anything close to 20 percent are made on a case-by-case basis.

(4) In determining whether a truck driver's time spent on the *site of the work* is *more than de minimis*, USDOL recommends basing the percent of time spent on the *site of the work* on all of the hours the truck driver works in any given workweek rather than the truck driver's daily hours. Thus, 8 hours out of a 40-hour workweek would be 20 percent.

j. The prime contractor is ultimately responsible for compliance by it and any of its subcontractors. The burden of proof lies with the prime

contractor and its subcontractors. The prime contractor and its subcontractors can either:

(1) Pay the appropriate DBRA wage, including applicable fringe benefits, for all of the hours the truck drivers spend on the *site of the work*; or

(2) Keep accurate records of the time so spent on the *site of the work* and pay the appropriate DBRA wage, including applicable fringe benefits, for all of the time spent on-site that is *more than de minimis*.

NOTE: The prime contractor can either include the truck drivers on its weekly certified payrolls or require the subcontractor to generate and submit weekly certified payrolls for the time spent on-site that is *more than de minimis*.

(3) A prime contractor's or subcontractor's failure to keep accurate records may cause NDDOT to find for the complainant should a wage dispute ensue.

(4) If a wage dispute does ensue, the complainant will be required to provide documentation to substantiate his or her claim in order to proceed. If the complainant kept records of his or her time on-site and off-site, the prime contractor will be required to provide records for comparison. If the prime contractor or subcontractor did not keep records and NDDOT finds for the complainant, the prime contractor will be held responsible for ensuring restitution is made. The prime contractor may appeal the NDDOT's decision to the USDOL for resolution.

(5) The prime contractor can minimize the likelihood of situations occurring where *de minimis* rulings are required by having truck drivers wait at locations considered not to be a *site of the work* until radioed in.

4. Both USDOL's final rule amending 29 CFR 5, and the *Field Operations Handbook - Chapter 15* reference secondary sites other than the project's final resting place.

a. These are sites that have been established specifically for the performance of the DBRA covered contract at which a significant portion of the public building or work called for in the contract is constructed.

b. This is a new ruling resulting from the development of new construction technologies whereby major segments of a project can be constructed at locations some distance from where the permanent structure(s) will remain after construction is completed.

c. A case in point is the Braddock Locks and Dam project in Pennsylvania that involves the construction of two massive floating structures, each

about the length of a football field, which would comprise the vast bulk of the new gated dam. The actual construction of these floating structures is at an upriver location on or near the water. They are then floated down the river to the point where they are submerged into the dam and gate piers.

d. USDOL will not specifically define the terms *significant portion* and believes it is unnecessary and unwise to do so. The size and nature of the project would dictate what constitutes a *significant portion*; and in those rare situations where projects are constructed in this manner, any questions would typically arise early in the procurement process so that advice could be obtained from USDOL in a timely manner.

e. Nonetheless, truck drivers transporting portions of a building or work to and from the project's final resting place are covered by Davis-Bacon.

5. Truck Owner-Operators

a. DBRA applies to laborers and mechanics, as defined at 29 CFR 5.2(m), and as stated in the Davis-Bacon Act: "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics."

[29 CFR 5.2(m) states: "The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial."]

b. The only exception is bona fide owner-operators of trucks (also referred to as independent truck owner-operators or ITOs). Bona fide owner-operators of trucks are not covered by DBRA. However, if the prime contractor or a subcontractor is using truck owner-operators for hauling on a federal-aid highway construction project, or the *site of the work*, they must appear on either the prime contractor's or the subcontractor's weekly certified payrolls as:

(1) Owner-operator's name and an individual identifying number (e.g., the last four digits of the owner-operator's social security number), with the notation *owner-operator* after the name.

(2) Vehicle identification number or license plate number of the vehicle being driven.

(3) Truck number that will or is being used on scale tickets and haul sheets.

(4) Neither the hours worked nor the wages paid need be shown.

c. When on the *site of the work* of a federal-aid highway construction project, the actual owner-operator must *drive the truck at all times*. If, for any reason, he or she does not drive the truck, even for a short period of

time, the replacement driver must be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, and must appear on weekly certified payrolls showing the hours worked and the wages paid.

d. The prime contractor is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and weekly certified payrolls as required, as well as monitoring and verifying the status of all truck owner-operators working on a federal-aid highway construction project, or the *site of the work*, either directly for the prime contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor must request, verify, and provide the following information to the NDDOT, city, county, or consultant project manager-engineer before the truck owner-operator begins work:

(1) Owner-operator's name;

(2) Valid commercial driver's license;

(3) Vehicle registration in the owner-operator's name;

(4) Current vehicle license number;

(5) Truck number that will or is being used on scale tickets and haul sheets; and

(6) Copies of any signed lease or rental agreements for owner-operator trucks. The lease or rental agreement must be between the driver and a reputable dealership (e.g., Nelson Leasing, Inc., Allstate Peterbilt of Fargo, Inc., W.W. Wallwork, Inc., etc.); not the driver and the prime contractor or the driver and a subcontractor on the project.

e. According to USDOL, a lease or rental agreement does not constitute ownership. However, NDDOT chooses to recognize lease or rental agreements with reputable dealerships only. Those dealerships have no vested interest in when, where, for whom, or if the truck driver works.

f. Determinations made by the North Dakota Department of Labor (DOL), or any other state agency, concerning independent contractor status for wage and hour, tax, worker's compensation, etc., purposes do not apply to DBRA covered contracts. The North Dakota DOL's determinations concerning independent contractor status are for state wage and hour purposes and are based on state law only. DBRA and USDOL rules and regulations are controlling in wage and hour matters concerning federal-aid highway construction projects.

C. PAYMENT OF PREDETERMINED MINIMUM WAGE

1. All employees working on the *site of the work* of a federally funded highway construction contract must be paid unconditionally and not less often than *once a week*, unless these employees fit under some type of exception, such as an equipment lease subcontractor where employee time is incidental and less than 20% of the work week.

2. Therefore, the contractor must establish a fixed workweek (Sunday through Saturday for example) and a weekly payday (such as Friday, or the preceding day should such payday fall on a holiday). Any deviation from this schedule may indicate the contractor is attempting to circumvent the overtime requirements. Refer to paragraph C, 12 of this section for information concerning the payment of overtime hours.

3. Employees must be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. Refer to paragraph C, 13 of this section for information concerning fringe benefit payments.

4. Only payroll deductions authorized by law, or permitted under the regulations issued by the Secretary, USDOL, may be made from an employee's weekly paycheck. Refer to paragraph C, 14 of this section for information concerning payroll deductions.

5. The payment must be computed at wage rates not less than those contained in the DBRA wage rate decision incorporated into the contract, regardless of any contractual relationship that may be alleged to exist between the contractor, its subcontractors, and their employees. In LCPtracker, the Wage Decision will be assigned to a project at the time of bid and rates will be checked automatically.

6. Employees must be paid the appropriate wage and fringe benefits for the classification of work actually performed, without regard to skill, except those employees enrolled in approved apprenticeship and on-the-job training programs.

7. Apprentices and trainees must be paid at not less than the rate specified in the registered or approved program for the apprentice's or trainee's level of progress, expressed as a percentage of the journeyworker-level hourly rate specified in the applicable DBRA wage rate decision. Apprentices and trainees must also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. Refer to paragraph C, 13 of this section for information concerning fringe benefit payments.

8. If an employee performs work in more than one job classification during a single payroll period and the classifications require different wage rates, the employee must be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicate which of the hours were included in the periods spent in each classification of work. The contractor may then pay not

less than the rate specified in the DBRA wage rate decision incorporated into the contract for the job classification that describes each type of work performed. Contractors must keep accurate records of such periods of work and ensure the employee is paid at the correct rate for periods of work performed in each job classification. Refer to paragraph C, 12 of this section for information concerning the payment of overtime hours.

9. If an employee's job classification is doubtful, contact the CRD for a ruling.

10. If the job classification is known but is not included in the DBRA wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, must be conformed *after the contract has been awarded* as described in paragraph G of this section.

11. Counting and Reporting Time

    a. An employee's time starts for the day whenever he or she does any of the following in any sequence:

        (1) Checks in to get instructions for the day;

        (2) Loads, services, or does preventive maintenance on equipment;

        (3) Cleans any part of the equipment; and

        (4) Drives or rides in a company vehicle or drives a piece of equipment to the project site. This includes truck drivers who transport equipment, tools, materials, or supplies to and from the project site or the *site of the work* and to and from the home office site.

    b. An employee's time ends for the day after any of these same duties are performed at the end of the day.

    c. For the time spent performing the above duties, employees must be paid at least the federal minimum wage (currently $7.25 per hour). DBRA wages are due when the employee reaches a federal-aid highway construction project, or the *site of the work*. For example:

        (1) An employee spends 1 hour each morning getting ready to go to and/or driving *to the site of the work* and 1 hour each day returning *from the site of the work*. While *at the site of the work*, he or she works 8 hours each day, Monday through Friday (10 hours each day for a total of 50 hours). The salary paid while *off the site of the work* is $10.00 per hour while the salary paid *at the site of the work* is $20 per hour. Overtime is paid at a rate of one and one-half times the applicable rate for all hours worked in excess of forty (40) hours per week.

        (2) The above employee would have worked 40 hours at the applicable regular rate of pay from Monday through Thursday.

The employee is entitled to 8 hours at $10.00 per hour (2 hours each day times 4 days) and 32 hours at $20.00 per hour (8 hours each day times 4 days).

(3) For Friday, the employee would be entitled to 2 hours at $15.00 per hour ($10.00 x 1.5) and 8 hours at $30.00 per hour ($20.00 x 1.5).

(4) Refer to paragraph C, 12 of this section for additional information concerning the payment of overtime hours.

d. Truck drivers who have reached a federal-aid highway construction project, or the *site of the work*, of a federal-aid highway construction project and are waiting to be loaded and/or unloaded must also be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, for their waiting time. Refer to paragraph B of this section for information concerning the application of DBRA to truck drivers.

e. Except as noted in paragraph B of this section, truck drivers are generally not due Davis-Bacon wages when transporting equipment, tools, materials, or supplies to and from the home office site, or a project site not covered by DBRA, to and from a project site that is covered by DBRA. Truck drivers are generally due DBRA wages only when transporting equipment, tools, materials, or supplies from one project to another *when both projects are covered by DBRA*.

f. Rounding Time

(1) Rounding time is permitted under DBRA. For example:

a. Seven minutes or less is dropped; 8 minutes through 22 minutes is 15 minutes; 23 minutes through 37 minutes is half an hour; etc. To be allowed, rounding must be fair for both the employer and the employee.

b. Under the system outlined above, an employee may gain a few minutes one day and lose a few minutes another day.

(2) Rounding is allowed, but is not required. Actual minutes may be used rather than rounding.

(3) Rounding to a number greater than the nearest 15 minutes is not allowed. In other words, rounding to the nearest half hour is not permitted.

(4) Contractors should keep in mind that rounding to the nearest 15 minutes causes the break between 7 and 8 minutes. Under this concept, some contractors do not allow employees to record the 15 minutes until the full 15 minutes have been worked. This is a violation.

(5) Rounding must not be done in such a way that the employee is consistently deprived of wages.

g. Breaks

(1) There is no federal law covering breaks.

(2) There is a state law which reads, “On shifts exceeding five (5) hours and which consist of two (2) or more employees, there shall be a thirty (30) minute, uninterrupted *break made available to employees who desire such a break*. Collective bargained provisions will prevail over provisions of the Wage Order.”

(3) If employees want a break, state law says they must be given one. Also, employees must generally be paid for meal periods unless the following conditions exist:

(a) The period is at least 30 minutes long;

(b) The employee is completely relieved of duties; and

(c) The employee can leave his or her work post, although he or she can be required to remain on the company premises.

(4) Rest periods and coffee breaks of 20 minutes or less are generally required to be counted as hours worked. Payment for break periods over 20 minutes depends on whether or not the employee is free to pursue his or her own activities.

(5) NDDOT does not enforce the state law on breaks. Any problems or questions should be addressed to the North Dakota Department of Labor (NDDOL). Refer to paragraph L of this section for addresses and phone numbers.

h. Timecards

(1) There are no mandatory formats or procedures for employees to report their daily and weekly hours worked. Generally, it is the employer's responsibility to provide a daily or weekly timecard to each employee and the employee’s responsibility to complete the daily or weekly timecard and to submit it to their project supervisor on a timely basis.

(2) Federal regulations only require that contractors keep accurate records of periods of work and ensure that employees are paid at the correct wage rate for the periods of work performed in each job classification.

(3) When an employee's timecard contains an error, NDDOT strongly recommends any changes made to the timecard be initialed and dated by both the supervisor, or other company official, and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.

12. Overtime Hours

a. No overtime compensation requirements are included under DBRA. Overtime provisions for employees subject to DBRA depend on coverage under the CWHSSA and/or the Fair Labor Standards Act (FLSA). Both CWHSSA and FLSA require prime contractors and subcontractors with DBRA covered contracts to pay laborers and mechanics (those who perform manual labor) employed in the performance of the contracts one and one-half times their *basic rate of pay* for all hours worked over forty (40) in a workweek.

b. The *basic rate of pay* under CWHSSA is the straight time hourly rate and cannot be less than the basic hourly rate required in the Davis-Bacon wage rate decision incorporated into the contract. This means the wage rate actually paid an employee for non-overtime work, when it exceeds the applicable DBRA rate, is the *basic rate of pay* on which not less than time and one-half for overtime must be computed.

c. Under DBRA, amounts paid as fringe benefits, both contributions made to bona fide fringe benefit plans and cash payments made to employees, are excluded in computing overtime obligations under CWHSSA. Refer to paragraph C, 13 of this section for information concerning fringe benefit payments.

d. CWHSSA applies to laborers and mechanics (those who perform manual labor) for the time spent on DBRA covered contract work only (i.e., total up all time each employee spent working on DBRA covered contracts and exclude all commercial, non-government work).

NOTE: Commercial, non-government work is subject to the Fair Labor Standards Act (FLSA). FLSA establishes the federal minimum wage of (now $7.25 per hour at time this manual printed) and requires overtime of not less than time and one-half the *basic rate of pay* for all hours worked in excess of forty (40) in a workweek. NDDOT does not enforce FLSA. Any problems or questions should be addressed to either NDDOL or USDOL. Refer to paragraph L of this section for addresses and phone numbers.

e. In the case of an employee working for two or more employers, all hours worked under the same contract are to be counted for purposes of CWHSSA overtime even though the employers are disassociated or otherwise separate, such as a prime contractor and a subcontractor. This also applies to employees of a temporary employment agency. Refer to paragraph J of this section for additional information concerning employees hired through temporary employment agencies.

f. An employee working for the same contractor on two or more separately awarded contracts subject to DBRA and CWHSSA is entitled to have the hours worked on all such covered contracts combined and to receive overtime for all such hours worked in the workweek in excess of forty (40) as described in paragraph C, 12, h of this section. This also applies to employees of a temporary employment agency. Refer to paragraph J of this section for additional information concerning employees hired through temporary employment agencies.

g. When an employee performs two or more types of work for which different hourly rates are applicable (i.e., different job classifications, DBRA work which is all covered by CWHSSA, or non-DBRA work which is covered by FLSA, etc.), the CWHSSA overtime premium is computed under FLSA principles. This means:

(1) The contractor can compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked; or

(2) The contractor can use the weighted average method to determine the overtime premium pay required under CWHSSA and/or FLSA. For example:

Assume an employee is hired to perform work on a DBRA covered contract in two job classifications: Painter and Electrician. The basic hourly rate for a Painter is $10.00 plus $3.00 in fringe benefits; and the basic hourly rate for an Electrician is $12.00 plus $2.50 in fringe benefits. The weekly certified payroll shows the employee performed painting and electrical duties as follows:

	S	**M**	**T**	**W**	**T**	**F**	**S**
Painter		8	8	8			
Electrician				8	8	4	

Step 1: Determine the straight time wages due, excluding fringe benefits

24 x $10 = $240 (as Painter)
20 x $12 = $240 (as Electrician)
44 $480 (total straight time wages)

Step 2: Calculate the ***regular rate***

$480 ÷ 44 = $10.91

Step 3: Compute the overtime premium due

$10.91 x .50 = $5.455 x 4 = $21.82

h. In the example above, the employee is working on one federal-aid highway construction project. As stated in paragraph C, 12, f of this section,
if an employee is working for the same contractor on two or more separately awarded contracts subject to DBRA and CWHSSA, the employee is entitled to have the hours worked on all such covered contracts combined and to receive overtime for all such hours worked in the workweek in excess of forty (40). If the employee is also performing two or more types of work for which different hourly rates are applicable, the contractor can again compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked or use the weighted average method to determine the overtime premium.

NOTE: Use of the weighted average method does not preclude contractors from having to keep accurate records of the actual hours worked in each job classification in order to pay not less than the basic hourly rate specified in the Davis-Bacon wage rate decision for the job classification that describes each type of work performed. If a contractor fails to do so, the employee must be paid the highest rate for all hours worked.

i. Additionally, CWHSSA has no *site of the work* limitations as does DBRA. For example, if an employee performs part of the contract work under a construction contract at the job site and then continues contract work at a shop or other facility located at a remote distance, all the hours at both locations, including travel time between them, would be considered subject to CWHSSA. Different wage rates, however, might be paid since the DBRA prevailing wage requirements would apply only to activities performed on the *site of the work*.

j. Contractors should also keep in mind that NDDOT, city, county, and consultant staff check all weekly certified payrolls for completeness and accuracy. If an employee is working on two or more separately awarded contracts and the contracts fall under the jurisdiction of different NDDOT districts, cities, counties, or consultants, NDDOT strongly recommends contractors compute the overtime premium based on the *basic rate of pay* in effect when the overtime hours were worked. If the weighted average method is used, contractors must provide a clear explanation (including all calculations made) in an attachment to each separate payroll.

k. When an employee performs two or more types of work for which different hourly rates are applicable and the employee works on DBRA covered contracts and commercial, non-government work in a single workweek, USDOL requires that the hours be segregated. This means they must be broken down as to the actual hours worked on the DBRA covered contracts and the actual hours worked on the commercial, non-government work using two separate weekly payrolls. The contractor **cannot** the DBRA hours and the non-DBRA hours and use the weighted average method to determine the overtime premium.

l. Refer to paragraph C, 11 of this section for information concerning the counting and reporting of time.

m. Refer also to paragraphs 15g00 through 15k111 (pages 53-66) of the USDOL *Field Operations Handbook - Chapter 15* (Exhibit V-E) for additional information regarding overtime requirements.

13. Fringe Benefit Payments

a. When hourly fringe benefits are listed on the DBRA wage rate decision, they may be paid in the following manner:

(1) Making payments in the amount of the required fringe benefits to an established program, funded or unfunded. Funded programs are those programs in which the payments are irrevocably made to a trustee or a third person, i.e., the program is established separately from the contractor's own organization, such as Blue Cross/Blue Shield. Unfunded programs are those in which the fringe benefit payments are made directly to a program provided from the general assets of the contractor's organization, such as vacation programs.

(2) Making payments to the employee in the amount of the required fringe benefits.

(3) A combination of the above methods.

b. For example, assume the DBRA wage rate decision provides that an employee is entitled to a basic hourly wage of $15.00 per hour plus $2.50 per hour for health and welfare and $2.50 per hour for a pension or retirement program. The employer may do any one of the following:

(1) Pay not less than $15.00 per hour to the employee, plus make payments to established health and welfare and pension programs in amounts which total not less than $5.00 per hour for either health and welfare, or for pension, or for both.

(2) Pay not less than $15.00 per hour to the employee, plus pay an additional $5.00 per hour to the employee for fringe benefits (the employee would receive a straight-time rate of $20.00 per hour).

(3) Pay not less than $15.00 per hour to the employee, plus an additional payment of $2.50 per hour to the employee, plus a contribution of $2.50 per hour to either health and welfare or pension programs. In this example, the employer is combining the methods discussed above. This method could be used in those cases where an employer provides some but not all of the fringe benefits set forth in the DBRA wage rate decision.

c. If the payments made by the employer to health and welfare, or pension programs, or to both programs, is greater than the combined total of $5.00 per hour, the excess may be applied toward the $15.00 basic hourly wage rate, i.e., the employer could satisfy the obligations by paying an hourly wage rate of $14.00, plus $6.00 per hour in fringe benefits. However, overtime compensation must be computed on the $15.00 basic hourly wage rate contained in the DBRA wage rate decision regardless of any collective bargaining agreement (see 29 CFR Part 5.32*). For example:

Hours 1-40 (at published rates)
$15.00 + $5.00 = $**20.00** x hours

Hours over 40 (at published rates)
$15.00 + $7.50 ($15.00 ÷ 2) + $5.00 = **$27.50** x hours

Hours 1-40 (excess fringes applied to basic hourly rate)
$14.00 + $6.00 = $**20.00** x hours

Hours over 40 (excess fringes applied to basic hourly rate)
$14.00 + $7.50 ($15.00 ÷ 2) + $6.00 = **$27.50** x hours

*29 CFR 5.32 states:

"(a) The Act excludes amounts paid by a contractor for fringe benefits in the computation of overtime under the FLSA, the CWHSSA, and the Walsh-Healey Public Contracts Act (WHPC) *whenever the overtime provisions of any of these statutes apply concurrently with the DBRA* or its related prevailing wage statutes. It is clear from the legislative history that *in no event can the regular or basic rate upon which premium pay for overtime is calculated* under the aforementioned federal statutes *be less than the amount determined by the Secretary of Labor as the basic hourly rate* (i.e., cash rate) under Section 1(b)(1) of the DBRA. *Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed* under these statutes; that is, *an employee's* regular or *basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits*. The *contractor's contributions* or costs for fringe benefits *may be excluded* in computing such rate *so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination*.

(b) The legislative report notes that the phrase contributions irrevocably made by a contractor to a trustee or to a third person pursuant to a fund, plan, or program was added to the bill in Committee. This language in essence conforms to the overtime provisions of Section 7(d)(4) of the FLSA, as amended. The intent of the Committee was to prevent any avoidance of overtime requirements under existing law.

(c) (1) The Act permits a contractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash

equivalent would also be excludable in computing the regular or basic rate under the federal overtime laws mentioned in paragraph (a). For example, W Construction pays their laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3.00 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because the contractor has made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases, a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c) (2) and (c) (3) of this section.

(c) (2) X Construction has for some time been paying $3.25 an hour to a i2tttr55jjnjmechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3.00 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X Construction rather than the $3.00 rate determined as prevailing by the Secretary of Labor.

(c) (3) Under the same prevailing wage determination discussed in paragraph (c) (2) of this section, Y Construction who has been paying $3.00 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under Section 1(b)(2)(B) as $1.00 an hour. In this example, the regular or basic hourly rate would continue to be $3.00 an hour."

d. Contributions to fringe benefit plans, funds, or programs made by a prime contractor or subcontractor must be made on a regular basis (not less often than quarterly).

e. A contractor may take credit for contributions for any bona fide fringe benefits regardless of whether the particular benefit is listed in the Davis-Bacon wage rate decision.

f. The cost of transportation and board and lodging is considered as payment of travel expenses *properly reimbursable by the employer and incurred for its benefit*. Such payments are not *considered bona fide fringe benefits* within the meaning of DBRA, are not *part of the employee's wages*, and do not *constitute board, lodging, or other facilities customarily furnished, which are deductible from the predetermined wage pursuant to Regs 3.5(j)*.

NOTE: 3.5 (j) is in reference to Section 3(m) of the FLSA. According to USDOL, *board, lodging, or other facilities customarily furnished, which*

are deductible from the predetermined wage are rare and do not apply to the highway construction industry.

g. It is the *contractor's choice* whether the fringe benefits are paid into an approved plan, fund, or program; directly to the employee; or a combination of partial payment directly to the employee and partial payment to a plan, fund, or program.

NOTE: According to USDOL, the contractor is under no obligation to obtain the employee's concurrence before contributing to the fringe benefit plan, fund, or program on his or her behalf. However, the plan must be communicated, in writing, to the employee (i.e., the employee must be provided information on how to participate in or receive benefits from the plan, fund, or program).

h. Eligibility Standards for Participation in Fringe Benefit Plans, Funds, or Programs:

(1) Eligibility standards are permissible in an otherwise bona fide fringe benefit plan, fund, or program under DBRA. However, an employer must make payments or incur costs in the applicable specified amounts with respect to each individual employee performing DBRA covered contract work. Employees who are excluded from a plan, fund, or program for whatever reason and for whom the employer makes no contribution must be paid in cash. For example, many hospitalization plans require a waiting period of 30 days before an employee can participate in the plan. Since the employer normally makes no contribution for the employee during the waiting period, the employee must be paid the fringe benefit in cash or furnished other bona fide fringe benefits equal in monetary value. If the plan requires contributions to be made during the eligibility waiting period, credit may be taken for such contributions.

(2) Since it is not required that all employees participating in a bona fide fringe benefit plan, fund, or program be entitled to receive benefits from that plan, fund, or program at all times; however, credit may not be taken for contributions for employees who by definition are not eligible to participate, such as employees who are excluded because of age or part-time employment.

(3) Similarly, employers frequently make contributions to union fringe benefit funds for employees who are not members of the union. If the employee cannot participate in or receive benefits from the union fund, the employee must be paid the fringe benefits in cash, even though the employer, by the terms of his or her union contract, may be required to contribute to the union fringe benefit fund on behalf of such employees.

i. To convert the annual cost of a particular fringe benefit to an hourly cash equivalent, the following formula may be used:

Divide the annual cost of the fringe benefit by the total number of working hours to which the cost is attributable (52 weeks per year times 40 hours per week equals 2,080 hours). For example, if the annual cost to the employer for a pension program is $5,000 per employee, divide 5,000 by 2,080. This equals a cash equivalent of $2.40 per hour.

j. Refer to paragraphs 15f11 through 15f19 of the USDOL *Field Operations Handbook - Chapter 15* (Exhibit V-E) for additional information regarding fringe benefit requirements.

k. Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the Davis-Bacon wage rate decision, is not calculated at time and one-half when figuring the overtime rate. For example, if an employee's basic hourly rate is $15.00 per hour plus $5.00 per hour in fringe benefits, and the employee works 50 hours in one week, the employee would be entitled to 50 hours at $20.00 per hour (basic hourly rate plus fringe benefit amount) and 10 hours at $7.50 per hour (one-half of the basic hourly rate of $15.00).

l. Fringe benefits for electricians and line construction workers are different from power equipment operators and truck drivers. For example, as of 12/15/2013, the prevailing rate for a lineman is $31.16 plus $4.75 and 29.5% or $45.10 per hour ($31.16 x .295 = $9.19 + $31.16 + $4.75 = $45.10. Refer to paragraphs D, 3, b and c of this section and paragraph E, 9 of this section for additional information concerning electrician and line construction classifications.

NOTE: According to USDOL, where a fringe benefit includes a percentage, compliance will be achieved by computation of the percentage stated times the basic wage rate.

m. Apprentices and trainees must also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. If the apprenticeship or training program does not specify or mention fringe benefits, apprentices and trainees must be paid the full amount of fringe benefits listed in the Davis-Bacon wage rate decision for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprenticeship classification, fringe benefits must be paid in accordance with that determination. If that is the case, trainees must receive the same fringe benefits as apprentices.

n. NDDOT's OJT program package specifies that on-the-job trainees be paid full fringe benefits where applicable.

14. Payroll Deductions

a. Only deductions authorized by law may be made from an employee's weekly paycheck. Authorized payroll deductions include:

(1) Federal and state withholding income taxes and federal social security taxes.

(2) Sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest and in such a manner as to give the employee complete freedom of disposition of the advanced funds. NDDOT strongly recommends that any advanced payment of wages be documented, signed, and dated by the employer and employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue. Upload documentation related to this deduction to LCPtracker through the Edocument function.

(3) Amounts required by court process to be paid to another, unless the deduction is in favor of the employer, or any affiliated person, or when collusion or collaboration exists. Upload documentation related to child support withholding or other court garnishment to LCPtracker through the Edocument function.

(4) Contributions made on behalf of the employee to funds established by the employer, or representatives of its employees, or both, for the purpose of providing, either from principle or income, or both, medical or hospital care; pensions or annuities on retirement; death benefits; compensation for injuries, illnesses, accidents, sickness, or disability, or for insurance to provide any of the foregoing; or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the employees, their families, and dependents providing, however, that the following standards are met:

(a) The deduction is not otherwise prohibited by law.

(b) The deduction is either voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is not:

- A condition either for the obtaining of or for the continuation of employment; or
- Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.

(c) No profit or other benefit is otherwise obtained, directly or indirectly, by the employer, or any affiliated person, in the form of commission, dividend, or otherwise.

(d) The deduction shall serve the convenience and interest of the employee.

(5) Contributions made on behalf of the employee toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(6) Deductions requested by the employee to enable him or her to repay loans to, or to purchase shares in, credit unions organized and operated in accordance with federal and state credit union statutes.

(7) Deductions voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(8) Deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Way, and similar charitable organizations.

(9) Deductions to pay regular union initiation fees and membership dues, not including fines or special assessments; provided, however, a collective bargaining agreement between the employer and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(10) Deductions not more than for the *reasonable cost* of board, lodging, or other facilities meeting the requirements of Section 3(m) of the FLSA. When such deductions are made, the additional records required under 29 CFR 516.25(a) must be kept.

NOTE: USDOL has indicated these instances are rare and do not apply to the highway construction industry.

(11) Deductions for the cost of safety equipment of nominal value purchased by the employee as his or her own property and personal protection in his or her work, such as safety shoes, safety glasses, safety gloves, and hard hats:

(a) If such equipment is not required by law to be furnished by the employer;

(b) If such deduction is not violative of the FLSA or prohibited by other law;

(c) If the cost on which the deduction is based does not exceed the actual cost to the employer where the

equipment is purchased from him or her and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person; and

(d) If the deduction is either:

- Voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

- Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.

(12) Deductions for which the employer has applied and received permission to make from the Secretary, USDOL, Washington, D.C.

b. Deductions *specifically prohibited* include:

(1) Deductions from an employee's wages to pay for damage caused by the employee to company equipment, such as trucks, or for the theft of company property.

(2) Deductions for the cost of lost or destroyed clothing and other items issued to the employees for use in performing their jobs.

(3) Deductions for purchasing, renting, and laundering protective clothing, coveralls, etc., where the use of such clothing is required either by the employer or the nature of the job.

c. In addition, the practice of *docking* an employee a stated period of time or money (other than for the actual time lost) for being late for work, failing to punch a time clock, or other violation of an employment rule is considered a *kickback, rebate, or unlawful deduction*.

D. PAYROLL REQUIREMENTS

1. Weekly certified payrolls and basic records relating thereto must be maintained by the prime contractor and each subcontractor during the course of the work of a federally funded highway construction contract for all employees working at the *site of the work*. Weekly payrolls may be done by the traditional paper method, or may be filed electronically through LCPTracker.

2. Prime contractors will be contacted by CRD staff and asked to set up a Prime Approver Account on LCPtracker after award of a contract.

3. The Prime Contractor and subcontractors may use LCPtracker to set up Contractor Accounts, which allow for the filing of payroll electronically. These contractors will be assigned to the Project (generally by the Prime contractor) and will receive an email asking them to set up a Contractor Account. Use of LCPtracker is currently voluntary – contractors may continue to file paper payrolls until it is made a requirement.

4. Weekly certified payrolls are not required by NDDOT for employees working on state funded only contracts and are generally not required for employees working at locations considered not to be a *site of the work* of a federally funded highway construction contract.

   NOTE: This does not preclude contractors from having to maintain payrolls for such work. Refer to paragraph B of this section for information concerning the application of DBRA to truck drivers and paragraph C, 12 of this section for information concerning the payment of overtime hours.

5. There is no mandatorily prescribed format for contractor payrolls. LCPtracker will require all necessary information and will prompt the contractors to provide it. If using paper payrolls, all contractors must uniformly complete weekly certified payrolls using the job classifications found in the DBRA wage rate decision incorporated into the contract. For example:

   a. Laborers must be listed as *Laborer* and either *Group 1*, *2*, *3*, or *4*. Unacceptable terms are *Laborer*, *General Laborer*, *Unskilled Laborer*, *Semi-skilled Laborer*, and *Skilled Laborer*.

   b. When electrical work is performed on or within a commercial building only, such as a rest area, the job classification *Electrician* must be used. *Any other electrical work on a federal-aid highway construction project is covered by line construction*. Electrician rates are listed in the Davis-Bacon wage rate decision by county. Consequently, the county in which the project is located must also be included after the job classification *Electrician*.

   c. Line construction workers must be listed as either *Lineman*, *Cable Splicer*, *Line Equipment Operator*, or *Groundman*. Use of the term *journeyworker* standing alone is unacceptable. Refer to paragraphs C, 13, l-n of this section and paragraph E, 9 of this section for additional information concerning electrician and line construction classifications.

   d. Power equipment operators must be listed as *Power Equipment Operator* and either *Group 1*, *2*, *3*, *4*, *5*, or *6*. Listing the type of equipment operated after the group number is optional but not required.

e. Truck drivers must be listed as either *Single-axle Truck*, *Tandem- or Tri-axle Truck*, *Tandem- or Tri-axle Semi*, *Lowboy*, *Off Road Heavy Duty End Dump*, or *Euclid*. Refer to paragraph E, 15 of this section for additional information concerning truck driver classifications.

6. In addition, all weekly certified payrolls must contain:

   a. The employee's full name and an individual identifying number (e.g., the last four digits of the employee's social security number);

      NOTE: Addresses and social security numbers must be maintained by the prime contractor or subcontractor and provided, upon request, to NDDOT, FHWA, USDOL, or the prime contractor (when a subcontractor) for purposes of an investigation or audit of compliance with prevailing wage requirements.

   b. The employee's correct job classification or classifications;

   c. The employee's hourly wage rate or rates (regular and overtime) and, where applicable, fringe benefits;

   d. The daily and weekly hours worked in each job classification, including actual overtime hours worked;

   e. Total earnings;

   f. Itemized deductions made (per employee); and

   g. Actual or net wages paid.

7. The contractor must ensure that all employees are included on the weekly certified payroll and that the employees are properly classified and properly paid.

8. Each weekly payroll submitted must be accompanied by a completed *Statement of Compliance* (formerly *USDOL Form WH-348*) signed by the contractor, or his or her agent who pays or supervises the payment of the persons employed under the contract. LCPtracker contains an electronic signature feature which will allow contractors to file the *Statement of Compliance* electronically. The *Statement of Compliance* certifies that:

   a. The weekly payroll contains the information required to be maintained and that such information is correct and complete;

   b. The persons employed on the contract during the payroll period have 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 the permissible deductions set forth in the regulations; and

c. Each employee has been paid not less than the applicable wage rate and fringe benefits, or cash equivalent, for the classification of work performed as specified in the applicable Davis-Bacon wage rate decision incorporated into the contract.

9. For the convenience of contractors, USDOL has made available a payroll form which includes the *Statement of Compliance* on the reverse side. *Payroll Form (WH-347)* may be purchased directly from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. See Exhibit V-D for samples of *Payroll Form (WH-347)*, the *Statement of Compliance* (formerly *WH-348)*, and instructions for completing both forms.

10. An pdf version of *Payroll Form (WH-347)* is also available online at:

www.dol.gov/whd/forms/wh347.pdf

a. Use the blue down arrow on the toolbar to get the *Statement of Compliance* on the reverse side of the payroll form.

b. AdobeReader® version 5 or later is needed to view, fill out, and print PDF forms. This may be downloaded for free at:

www.adobe.com/products/acrobat/readstep2.html

c. To save the completed forms on a workstation, use the "Save As" method to save the file. For example, move the cursor over the PDF link described in paragraph D, 8 of this section and right-click. This will cause an alternative menu to be displayed, from which the proper save option may be selected – depending upon which browser is being used:

- For Microsoft IE users, select *Save Target As*.

d. Once the proper save option has been selected for the browser being used and the file has been saved to the location specified, go to the program menu and start the Adobe® Acrobat® Reader®. Once open, locate the PDF file that was saved and open (right-click) it directly in Acrobat®.

11. The instructions for completing *Payroll Form (WH-347)* and the *Statement of Compliance* are available online at:

www.dol.gov/whd/forms/wh347instr.htm

12. A completed, sample *Payroll Form (WH-347)* and *Statement of Compliance* is also available online at:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

13. NDDOT requires that all *contractors working on federal-aid highway construction contracts in North Dakota* use the *Statement of Compliance* (formerly *WH-348*)

included in Exhibit V-D or the electronic version available through the link described in paragraph D, 8 of this section.

NOTE: Some states have modified the form to include other requirements under their state law, which do not pertain to North Dakota.

14. The contractor must furnish, to the project engineer or his or her staff at least one signed copy of the certified payroll for each week in which any contract work is performed, if filing through the traditional paper method. This signed copy of the weekly certified payroll must be placed in the project file that is sent to the Construction Services Division when the contract is finaled.

    NOTE: Paper weekly certified payrolls may be submitted via email or fax with proper use of electronic signatures. These are digital signatures, which are only available through an electronic payroll system. If a contractor completes *Payroll Form (WH-347)* and the *Statement of Compliance* (formerly *WH-348)* online, they must be printed out and hand signed. Once *Payroll Form (WH-347)* and the *Statement of Compliance* (formerly *WH-348)* are in paper form, they must remain in paper form; and the signed weekly certified payroll must be submitted to the Project Engineer. In addition, submitting weekly certified payrolls by use of a FAX machine does not satisfy the electronic signature requirement. True electronic filing of certified payroll may only be achieved through use of LCPtracker.

15. Payrolls and compliance statements are due within seven (7) calendar days after the regular payment date of the payroll period.

16. Prime contractors are responsible for the submission of weekly certified payrolls by all subcontractors. This includes ensuring timely submittal and reviewing the weekly certified payrolls for completeness and accuracy before furnishing a signed copy to the Project Engineer. When there are problems, the prime contractor should be working with the subcontractor to resolve the issues. This is not the responsibility of the Project Engineer. In LCPtracker, all subcontractors who decide to submit certified payrolls electronically will submit automatically to the Prime Approver Account. If the Prime Approver (representative of Prime Contractor) is satisfied that the payrolls are accurate, they will approve them and forward the payrolls to the Project Engineer or their staff.

17. NDDOT's DBE Supportive Services (DBESS) consultant is available to assist contractors and/or district, city, county, and consultant project engineers who are having difficulty in obtaining weekly certified payrolls from DBE firms. The DBESS consultant will work with the DBE firm to ensure weekly certified payrolls are completed correctly and submitted timely. The current DBESS consultant is **OHITIKA Designs, Inc.** Contact:

Duane Kuntz
OHITIKA Designs, Inc.
3200 46th Avenue, Southeast
Mandan, ND 58554-4728
Email: dkdbe@midco.net
Phone: 701-258-7515

18. All payroll records must be maintained and preserved by the contractor for a period of three (3) years following the completion and final acceptance of the project. In addition, the payroll records must be made available, at the request of FHWA; the Secretary, USDOL; and NDDOT, at any time during that period.

E. CLASSIFICATIONS

1. ASSISTANT OPERATOR

A worker providing assistance to a Group 1-6 Equipment Operator, who is not actually operating the equipment in question, is a Group 6 Assistant Operator.

2. APPRENTICE OPERATOR

To be paid as a Group 6 Apprentice Operator, a worker must be in an approved USDOL Apprentice program, or must be a trainee in an approved NDDOT OJT program. Apprentices or trainees may be paid under the Group 6 rate, or as otherwise required under the NDDOT program or under the approved USDOL program.

3. (BOBCAT) SKIDSTEER OPERATORS

a. The operator of a skidsteer which has 80 HP or less, will be included in the appropriate Laborers Group (1-4) for the type of work performed.

b. The operator of a skidsteer which has 81 HP or more will be included in the Power Equipment Operator Group 5, regardless of the type of work performed.

4. BORING MACHINE LOCATOR

A worker operating a piece of equipment tracking and providing guidance to a horizontal or directional drilling machine is a Group 4 Boring Machine Locator.

5. CARPENTRY

The DBRA wage rate decision for highway construction in North Dakota includes the classification *Carpenter* and the classification *Carpenter Tender* under the Laborer Group 2.

a. Carpenter:

(1) A *Carpenter* is a tradesperson who builds and assembles forms and their components for concrete used in engineering and construction projects (bridges, box culverts, retaining walls, etc.). Typically, a *Carpenter*:

(a) Reads construction plans and sketches.

(b) Lays out structures.

(c) Measures, cuts, and shapes materials with power and hand tools.

(d) Rigs and places forms and materials.

(e) Assembles forms by hand with nails, bolts, and arc welding processes.

(f) Handles a range of manual and power saws, drills, screw drivers, and hammers, among other tools.

(2) Carpentry work performed in connection with bridges and structures generally involves:

(a) Pier, pile, and cap formwork;

(b) Decking formwork;

(c) Endwall formwork;

(d) Box culverts, inlet, and headwall formwork; and

(e) Preparation of steel and other metals for use.

b. Carpenter Tender:

A *Carpenter Tender* is a laborer who directly assists a *Carpenter* by performing specific or general duties of lesser skill. Tending consists of the handling and conveying of materials and tools to be used by *Carpenters*.

(1) According to USDOL, helpers or tenders are permitted on DBRA covered contracts if the helper or tender classification is included in the applicable wage rate decision incorporated into the contract, or if conformed rates are approved by USDOL pursuant to 29 CFR Part 5, Subpart A, Section 5.5(a)(1)(ii). In either case, area practice determines the allowable duties of helpers or tenders; and their use is not restricted in a ratio to the number of journeyworkers employed by the contractor on a federal-aid highway construction project, or the *site of the work*. A request for a conformed helper or tender wage rate will be approved by USDOL only where the helper or tender in question *constitutes a*

separate and distinct class of worker whose use is prevailing in the area and *whose scope of duties can be differentiated from those of the journeyworker*. A helper or tender may not be used as an informal apprentice or trainee, and it is not permissible for helpers or tenders to use the *tools of the trade* in assisting a journeyworker.

(2) A *Carpenter Tender* typically:

(a) Moves and lifts building materials, tools, and supplies.

(b) Hands materials, tools, and supplies to *Carpenters*.

(c) Dismantles, moves, and cleans forms for reuse.

(d) Cleans materials, equipment, and tools and clears all debris from the construction area.

(3) According to USDOL, a *Carpenter Tender* cannot saw wood, nail a board to a wall, etc., because that is what a *Carpenter* does. The moment an employee pounds a nail or cuts a piece of wood, he or she must be classified and paid as a *Carpenter for all of the hours he or she works in connection with the carpentry work*.

6. CONCRETE FINISHING

The DBRA wage rate decision for highway construction in North Dakota includes the classification Cement Mason/Finisher; the classifications Sack Shaker (cement and mineral filler) and Salamander Heater and Blower Tender under the Laborer Group 1; the classifications Bulk Cement Handler, Concrete Bucket Signalman, Concrete Curing Man (not water), Concrete Finisher Tender, Concrete Vibrator Operator, and Power Buggy Operator under the Laborer Group 2; and the classification Concrete Mixer Operator (one bag capacity) under the Laborer Group 3.

a. Cement Mason/Finisher:

A Concrete Finisher, also known as a Cement Mason, is a tradesperson who works with concrete. Duties include placing, finishing, protecting, and repairing concrete used in engineering and construction projects. Typically, a Concrete Finisher:

(1) Sets (or directs the setting of) the forms for holding the concrete, checks, and properly aligns the forms to ensure they have the correct depth and pitch or angle.

(2) Supervises Concrete Finisher Tenders who direct the placement of the concrete and use shovels and rakes to spread the poured concrete into inaccessible sections of the forms.

(3) Levels, smoothes, edges, and finishes surfaces of poured concrete floors, walls, sidewalks, curbs, etc., to specified textures by performing the following steps using the tools of the trade:

(a) Guides a straightedge back and forth across the top of the forms to screed, or level, the freshly placed concrete to the specified depth and workable consistency.

(b) Immediately after leveling the concrete, carefully smoothes the concrete surface using either a hand masonry trowel (a long-handled bull float) or a powered float to bring water to the surface and produce a soft topping.

(c) After the concrete has been leveled and floated, presses an edger between the forms and the concrete and guides it along the edge and the surface. This produces slightly rounded edges and helps prevent chipping or cracking.

(d) Uses a special tool called a groover to make joints or grooves at specific intervals that help control cracking.

(e) Trowels the surface using either a powered or hand trowel (a small, smooth, rectangular metal tool).

(f) Applies architectural, exposed, patterned, stamped, broomed, or smooth finishes. The concrete surface is retroweled back and forth with powered and hand trowels to create a smooth finish. For a course, non-skid finish, the surface is brushed with a broom or stiff-bristled brush. For a pebble finish, small gravel chips are embedded into the surface. Any excess cement is then washed from the exposed chips with a mild acid solution. Colored premixed concrete is used for color. Refer to paragraph E, 3, f of this section for information concerning decorative concrete.

(g) Smoothes any rough surfaces that remain when the pouring forms have been removed. High spots and loose concrete are cut away with a hammer and chisel, and any large indentations are filled with Portland cement paste. Any high spots are rubbed with a brick or carborundum stone to smooth them. A rich mixture of cement is then rubbed in with a sponge-rubber float or with burlap.

(h) Applies hardening and sealing components to cure the surfaces.

(4) Throughout this entire process, Concrete Finishers monitor how the wind, heat, or cold affects the curing of the concrete. They must have a thorough knowledge of concrete characteristics so

that, by using sight and touch, they can determine what is happening to the concrete and take measures to prevent defects.

b. Group 1 Laborers:

(1) Sack Shaker (cement and mineral filler) – Empties, cleans, and bundles cement bags typically at a concrete mixing or batch plant.

(2) Salamander Heater and Blower Tender – Tends a portable, forced air heater used to dry concrete. The heater may be propane or kerosene fueled. This includes the connection and disconnection of fuel tanks and the turning on and off of the heater.

c. Group 2 Laborers (excluding Concrete Finisher Tenders):

(1) Bulk Cement Handler – Hauls cement from storage in bulk or bags typically at a concrete mixing or batch plant.

(2) Concrete Bucket Signalman – Directs the placement of the bucket used to deliver concrete by means of a tower crane. Signals the Tower Crane Operator when he or she cannot see the point of placement.

(3) Concrete Curing Man (not water) – Covers the new concrete with sheet plastic or sprays a liquid curing compound onto the new concrete to seal in moisture.

(4) Concrete Vibrator Operator – Operates a machine that vibrates the concrete to remove air pockets.

(5) Power Buggy Operator – Drives a self-propelled buggy to transport concrete from the mixer or source of supply to the place of deposit.

d. Group 3 Laborers:

Concrete Mixer Operator (one bag capacity) – Operates a portable concrete mixer.

e. Concrete Finisher Tender:

(1) A Concrete Finisher Tender is a Group 2 Laborer who directly assists a Concrete Finisher by performing specific or general duties of lesser skill. Tending consists of the preparation of materials and the handling and conveying of materials and tools to be used by Concrete Finishers, whether such preparation is by hand or any other process.

(2) According to USDOL, helpers or tenders are permitted on DBRA covered contracts if the helper or tender classification is included in the applicable wage rate decision incorporated into the contract,

or if conformed rates are approved by USDOL pursuant to 29 CFR Part 5, Subpart A, Section 5.5(a)(1)(ii). In either case, area practice determines the allowable duties of helpers or tenders; and their use is not restricted in a ratio to the number of journeyworkers employed by the contractor on a federal-aid highway construction project, or the site of the work. A request for a conformed helper or tender wage rate will be approved by USDOL only where the helper or tender in question constitutes a separate and distinct class of worker whose use is prevailing in the area and whose scope of duties can be differentiated from those of the journeyworker. A helper or tender may not be used as an informal apprentice or trainee, and it is not permissible for helpers or tenders to use the tools of the trade in assisting a journeyworker.

(3) Under a Concrete Finisher's supervision, a Concrete Finisher Tender typically:

(a) Measure distances from grade stakes, sets stakes, and stretches string line.

(b) Directs the placement of the concrete either from the concrete wagon chute, concrete pump, concrete skip, or wheelbarrow. Signals the concrete deliverer to position the truck to facilitate the pouring of the concrete. Moves the discharge chute of the truck to direct the concrete into the forms.

(c) Spreads the poured concrete into inaccessible sections of the forms using shovels and rakes.

(d) Dismantles, moves, and cleans the forms once the concrete is set.

(e) May rub concrete surfaces with abrasive stone to remove rough spots.

(f) Ages and cures the finished concrete by any mode or method. For example, places mats on newly poured concrete and keeps them moist for curing purposes.

(g) Cleans equipment and tools and clears all debris from the construction area.

(4) According to USDOL, a Concrete Finisher Tender cannot use a straightedge, bull float, edger, groover, etc., because those are the tools used by a Concrete Finisher. The moment an employee uses any tools of the trade, he or she MUST be classified and paid as a Concrete Finisher for all of the hours he or she works in connection with the concrete work.

f. Decorative Concrete:

(1) The transformation of concrete into decorative concrete is achieved through the use of a variety of materials that may be applied during the pouring process or after the concrete is cured. These materials and/or systems include stamped concrete, acid staining, decorative overlays, polished concrete, etc.

(2) Stamped concrete is the process of adding texture and color to concrete to make it resemble stone, brick, slate, cobblestone, and many other products found in nature including wood, fossils, shells, etc.

(3) The installation consists of pressing molds into the concrete while the concrete is still in its plastic state. Color is achieved by using dry shakes or color hardeners, powder or liquid releases, integral colors, or acid stains. All these products may be combined to create even more intricate designs.

(4) According to USDOL, concrete stamping is work that could be performed by a Concrete Finisher Tender if it is not already being performed by a Concrete Finisher. Tasks include:

(a) Hand broadcasting the color hardener onto the concrete surface.

(b) Once a Concrete Finisher has troweled the hardener into the concrete, hand broadcasting the release agent onto the concrete surface.

(c) Placing textured mats onto the concrete surface and tapping the mats down with a pounder.

(d) Removing the stamping mats.

(e) After the concrete has been allowed to dry for 24 hours, washing any excess release agent from the concrete surface with a water hose.

7. CONCRETE SAW OPERATORS

The Davis-Bacon wage rate decision for highway construction in North Dakota includes a Concrete Saw (power operated) under the Power Equipment Operator Group 5 and a Concrete Saw Operator under the Laborer Group 2. An employee who walks behind a concrete saw is considered a Group 2 Laborer and must be paid not less than the appropriate Davis-Bacon wage. It does not matter what size the engine is or whether it is self-propelled. An employee who rides a concrete saw is considered a Group 5 Power Equipment Operator and must be paid not less than the appropriate Davis-Bacon wage, including applicable fringe benefits.

8. CORE SAMPLING

a. Some federal-aid concrete projects, mainly on the interstate and major expressways in North Dakota, now contain a separate bid item for cored samples (specification 950, code 9700). An employee who cuts the core samples is considered a laborer and must be paid not less than the appropriate Davis-Bacon wage for Group 1 Laborers (similar to Drill Runner Tender). For example:

   To cut the cores, the contractor employee stands alongside a trailer on which the coring machine is mounted. The coring machine is powered by a generator and has a metal bit. The employee spins a wheel to drill up and down. The employee does not ride the machine. The core sample is taken out and laid along the roadway for an NDDOT employee to pick up. NDDOT personnel perform the actual testing.

b. The employee driving the truck that is pulling the trailer would receive the wages of a truck driver for the type of truck being driven as described in paragraph E, 15 of this section.

9. CURE BRIDGE OPERATOR

The classification “Cure Bridge Operator” first appeared in the November 1, 2013 Wage Decision. Cure Bridge Operators must be classified and paid as Group 5 Power Equipment Operators.

10. DOWEL BASKET AND DOWEL BAR PLACEMENT

Contractor employees placing dowel baskets and dowel bars on federal-aid concrete pavement projects in North Dakota are considered laborers and must be paid not less than the appropriate Davis-Bacon wage for Group 4 Laborers (Reinforcing Steel Setters/Tiers).

11. FLAGGERS

a. According to USDOL and FHWA, flagging is not considered hazardous work under federal and state child labor laws. Therefore, the minimum age for Flaggers is 16. Refer to paragraph H of this section for additional information concerning child labor laws.

b. Other Standards For Flagging are specified in Section 704.03X of the 2008 Standard Specifications For Road and Bridge Construction (Volume 1) available online at:

www.dot.nd.gov/dotnet/supplspecs/standardspecs.aspx

c. In addition, FHWA encourages contractors to check out information from:

www.workzonesafety.org

d. Refer to paragraphs C, 12, e and f of this section, paragraph H of this section, and paragraph J of this section for additional information concerning *Flaggers*.

12. JOINT SEALING

a. Contractor employees performing joint sealant work on federal-aid highway construction projects in North Dakota are considered laborers and must be paid not less than the appropriate Davis-Bacon wage for *Group 4 Laborers* (similar to *Powderman*, *Gunite and Sandblast*, and *Nozzleman*). For example:

The employees operate an air compressor and tar kettle (hot pour sealant) mounted in the box of a pickup. The pickup also pulls a trailer on which an air compressor and silicone drums with a pump are mounted. The employees use a sandblasting nozzle to clean the joints before the sealant is applied. Either a hot pour or a silicone sealant is applied with a nozzle. Before the silicone sealant is applied, backer rod is placed into the cracks.

b. The employee driving the pickup would receive the wages of a *Group 1 Laborer (Light Truck and Pickup Driver)* as described in paragraph E, 15 of this section.

13. LINE CONSTRUCTION AND ELECTRICIANS

a. When electrical work is performed on or within a commercial building only, such as a rest area, the job classification *Electrician* must be used. *Any other electrical work on a federal-aid highway construction project in North Dakota is covered by line construction*. The following types of electrical construction are considered line construction:

(1) Pole line construction (whether built of wood, metal, or other material); digging and backfilling of holes for poles or anchors (by hand or mechanical equipment); and the handling, assembling, or erecting of all materials, including the guying, stringing of conductors, or other work necessary, on through to the ultimate completion of such pole line work.

(2) Highway lighting systems and motor vehicle traffic controls (traffic signals, flashing beacons, etc.). Handled in the same manner as pole line construction.

(3) Electrical underground construction, including the placing of fish wires, the pulling of cables or wires through such raceways, and the splicing of such conductors.

(4) Underground construction, including excavation, trenching, and installation of raceways or ducts; construction of manholes, transformer vaults, and hand holes; backfilling; installation of fish wire; and pulling, splicing, and laying of wire or cables installed in raceways, ducts, or direct burial.

(5) Underground construction, including apparatus and fixtures on public property such as street lighting, highway lighting, lines, or equipment.

b. This includes not only new installation work but also the repair, maintenance, or dismantling of all above structures, lines, or equipment.

c. The job classifications and duties performed in line construction are:

(1) ***Lineman*** – Responsible for all aerial work performed, whether from a bucket or by the use of belts and climbers. May perform any underground work, including but not limited to: installing duct work, raceway, pulling cables or wires, installing direct burial cable or wires, junction boxes, terminating cable or wire, setting poles, and assembling lights or signals.

(2) ***Cable Splicer*** – In addition to the same duties as lineman, may be required to splice and terminate high voltage cable and multi-conductored cable when special procedures or kits are required to accomplish the task.

(3) ***Line Equipment Operator*** – Operates any equipment needed to complete the project, including but not limited to: backhoe, front-end loader, trencher, and hole auger.

(4) ***Groundman*** – Performs basic laborer work such as hand excavation; assists in pouring cement, site cleanup, etc.; and assists other crafts while they are performing aerial work.

NOTE: This is the only laborer classification that can be used in connection with the line construction work.

d. Refer to paragraphs C, 13, l-n of this section and paragraphs D, 3, b and c of this section for additional information concerning electrician and line construction classifications.

14. MECHANICS, GREASERS, OILERS

The Davis-Bacon wage rate decision for highway construction in North Dakota includes *Mechanics*, *Greasers*, and *Oilers* under the following Power Equipment Operator groups:

a. **Group 2: *Master Mechanic***

The employee supervises five or more *Mechanics* employed on the same project.

b. **Group 3: *Mechanic or Welder, Heavy Duty***

The employee operates a service truck used in the repair and maintenance of equipment, using *Mechanic's* tools, welding equipment, and hoists.

c. **Group 4: Fuel and Lube Operator**

The employee operates a truck with a large tank body, suitable for transporting fuel or lube oil in bulk, and delivers fuel and lube oil to various other equipment.

d. **Group 4: *Truck Mechanic***

The employee operates a smaller service truck used in the repair and maintenance of equipment, without the use of welding equipment and hoists.

e. **Group 4: *Greaser***

The employee operates a self-contained service truck used in greasing equipment and adding fluids such as gas and oil.

f. **Group 5: *Oiler***

The employee assists the operating engineer of a track or truck crane by greasing and oiling the crane while the operating engineer runs it.

15. MICRO MACHINE AND SLURRY SEAL MACHINE OPERATORS

The classification of "Micro Surfacer Machine" Operator and
Slurry Seal Machine" Operator first appeared in the November 1, 2013 Wage Decision. These employees MUST be classified and paid as:

a. Power Equipment Operator Group 4: *Micro Machine Operator*

The employee drives the Micro Machine.

b. Power Equipment Operator Group 4: *Slurry Seal Machine Operator*

The employee operates a self-propelled machine for delivering a mix, such as asphalt emulsion slurry seal.

c. Power Equipment Operator Group 4: *Pugmill Operator*

The employee operates the Pugmill hooked onto the back of the machine.

d. Laborer Group 1: *Cement Person or Sack Shaker (cement and mineral filler)*

The employee dumps bags of cement onto the conveyors.

e. Laborer Group 1: *Oil and Water Person or General Construction Laborer*

Two employees sit on the front of the machine and regulate the water and oil for proper consistency**.**

16. PIPELAYERS

The Davis-Bacon wage rate decision for highway construction in North Dakota includes *Pipelayers* under the following Laborer groups:

a. **Group 1: *Pipe Handler***

The employee loads and unloads pipe from a truck, boxcar, etc. When unloading, the employee stockpiles the pipe only.

b. **Group 2: *Multiplate Pipelayer, Culvert Pipelayer***

The employee places galvanized pipe and some PVC (plastic pipe) into trenches and assembles. The employee may also work with 6- and 8-inch PVC sanitary sewer pipe.

c. **Group 3: *Bottom Man (Sanitary Sewer, Storm Sewer, Water, and Gas Lines)***

The employee is lowered into a tunnel, well, or caisson (elongated box that is put into a sewer – no water runs through) with a bucket and cleans out the bottom of the hole making it wider or ready for concrete pouring. The employee cleans out loose dirt.

d. **Group 4: *Pipelayer (Sanitary Sewer, Storm Sewer, Water, and Gas Lines)***

The employee places special, low pressure type pipe into trenches and assembles. The employee may also work with some 18- to 48-inch reinforced concrete pipe and some 24- to 60-inch reinforced concrete storm sewer pipe.

17. RUMBLE STRIP MACHINE OPERATORS

The classification for "Rumble Strip Machine" Operator first appeared in the November 1, 2013 Wage Decision. An employee who operates the *Rumble Strip Machine* (grinder with rotating blade) is considered a Group 4 Power Equipment Operator.

18. SIGN INSTALLATION

a. Contractor employees performing sign installation work on federal-aid highway construction projects in North Dakota are considered laborers and must be paid not less than the appropriate DBRA wage for *Group 1 Laborers*. For example:

   The employees install, remove, relocate, etc., metal traffic signs such as stop, yield, exit destination, etc. The employees bolt the signs onto a metal sign post or base.

b. However, if an employee is also required to install the sign posts or bases; and in so doing is required to operate a piece of equipment, that employee must be classified and paid not less than the appropriate DBRA wage, including applicable fringe benefits, for the Power Equipment Operator group under which the piece of equipment falls.

19. TRUCK DRIVERS

a. The driver of any single vehicle which has a gross vehicle weight rating of 26,000 pounds or less or any combination of vehicles which has a gross combination weight rating of 26,000 pounds or less, will be included in Group 1 Laborers.

b. The driver of any single vehicle which has a gross vehicle weight rating of more than 26,000 pounds or any combination of vehicles which has a gross combination weight rating of 26,001 pounds or more will be included in the Truck Drivers category.

c. An employee operating a tractor or a modified scraper on a federal-aid highway construction project, or the *site of the work*, that is pulling a water tank mounted on a trailer or a wagon is considered an equipment operator and must be paid not less than the appropriate DBRA wage, including applicable fringe benefits, for the Power Equipment Operator group under which the tractor or scraper falls.

d. An employee operating a "post pounder truck" (hydraulically powered sign and/or guardrail post pounder mounted on a truck) on a federal-aid highway construction project in North Dakota, or the *site of the work*, MUST be classified and paid as either a *Pavement Breaker, Hydro Hammer Type, Operator* or a *Tamping Machine Operator* under the Power Equipment Operator Group 4.

e. Subcontractors

(1) If the prime contractor is using subcontractors for hauling on a federal-aid highway construction project, or the *site of the work* of a federal-aid highway construction project, approved *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 07-2012)* forms and subcontract agreements between the prime contractor and the subcontractors are required *prior to performing any hauling*. The *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)* and the applicable Davis-Bacon wage rate decision must be incorporated into the subcontract agreements. The subcontractors must pay their employees the appropriate Davis-Bacon wage, including applicable fringe benefits, and provide weekly certified payrolls. This applies to all tiers of subcontracts.

(2) If the prime contractor is using subcontractors for hauling from a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., that has not been open and making sales to the general public within the previous *twelve months* of the *day* a federal-aid highway construction project was *let to contract* (not awarded), and the boundary to the borrow pit, stockpile site, concrete or asphalt batch plant site, etc., is located *more than one-half mile* from the closest right of way boundary to the project, approved *Prime Contractor's Request to Sublet (SFN5682 - Rev. 07-2012)* forms and subcontract agreements between the prime contractor and the subcontractors are required *prior to performing any hauling*. The *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)* and the applicable Davis-Bacon wage rate decision must be incorporated into the subcontract agreements. The subcontractors must pay their truck drivers the appropriate Davis-Bacon wage, including applicable fringe benefits, and provide weekly certified payrolls only for the amount of time spent within the project boundaries that is *more than de minimis*. This applies to all tiers of

subcontracts. Refer to paragraph B of this section for additional information concerning *de minimis*.

(3) If the prime contractor, or a subcontractor, is using a DBE firm for hauling from a borrow pit, stockpile site, concrete or asphalt batch plant site, etc., that has been open and making sales to the general public within the previous *twelve months* of the *day* a federal-aid highway construction project was *let to contract* (not awarded), no matter what its location, approved *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 07-2012)* forms and subcontract agreements between the prime contractor, or subcontractor, and the DBE firm are required *prior to performing any hauling*.

This includes non-DBE match trucks, as required under the DBE race-conscious special provision.

Only the *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)* must be incorporated into the subcontract agreements because it contains more than just the labor standards provisions (i.e., DBRA wages and payrolls are not required).

f. Truck Owner-Operators

(1) DBRA applies to laborers and mechanics, as defined at 29 CFR 5.2(m), and as stated in the DBRA: "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics."

[29 CFR 5.2(m) states: "The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial."]

(2) The only exception is bona fide owner-operators of trucks (also referred to as independent truck owner-operators or ITOs). Bona fide owner-operators of trucks are not covered by DBRA. However, if the prime contractor or a subcontractor is using truck owner-operators for hauling on a federal-aid highway construction project, or the *site of the work*, they must appear on either the prime contractor's or the subcontractor's weekly certified payrolls as:

(a) Owner-operator's name and an individual identifying number (e.g., the last four digits of the owner-operator's social security number), with the notation *owner-operator* after the name.

(b) Vehicle identification number or license plate number of the vehicle being driven.

(c) Truck number that will or is being used on scale tickets and haul sheets.

(d) Neither the hours worked nor the wages paid need be shown.

(3) When on the site of the work of a federal-aid highway construction project, the actual owner-operator must drive the truck at all times. If, for any reason, he or she does not drive the truck, even for a short period of time, the replacement driver must be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, and must appear on weekly certified payrolls showing the hours worked and the wages paid.

(4) The prime contractor is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and weekly certified payrolls as required, as well as monitoring and verifying the status of all truck owner-operators working on a federal-aid highway construction project, or the site of the work, either directly for the prime contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor must request, verify, and provide the following information to the NDDOT, city, county, or consultant project manager-engineer before the truck owner-operator begins work:

(a) Owner-operator's name;

(b) Valid commercial driver's license;

(c) Vehicle registration in the owner-operator's name;

(d) Current vehicle license number;

(e) Truck number that will or is being used on scale tickets and haul sheets; and

(f) Copies of any signed lease or rental agreements for owner-operator trucks. The lease or rental agreement must be between the driver and a reputable dealership (e.g., Nelson Leasing, Inc., Allstate Peterbilt of Fargo, Inc., W. W. Wallwork, Inc., etc.); not the driver and the prime contractor or the driver and a subcontractor on the project.

(5) According to USDOL, a lease or rental agreement does not constitute ownership. However, NDDOT chooses to recognize lease or rental agreements with reputable dealerships only.

Those dealerships have no vested interest in when, where, for whom, or if the truck driver works.

(6) Determinations made by the North Dakota DOL, or any other state agency, concerning independent contractor status for wage and hour, tax, worker's compensation, etc., purposes do not apply to DBRA covered contracts. The North Dakota DOL's determinations concerning independent contractor status are for state wage and hour purposes and are based on state law only. DBRA and USDOL rules and regulations are controlling in wage and hour matters concerning federal-aid highway construction projects.

g. Equipment Owner-Operators

(1) Owner-operators of other types of equipment are considered employees under DBRA. Consequently, they must be paid the appropriate DBRA wage, including applicable fringe benefits, and be included on weekly certified payrolls showing the hours worked and the wages paid.

(2) When a contractor pays an equipment owner-operator a lump sum amount, it may be difficult to determine whether the owner-operator was paid the correct hourly wage. If a wage dispute ensues, USDOL suggests:

(a) Researching the open market for the rate required to rent the same piece of equipment by the hour;

(b) Multiplying that figure by the total number of hours the owner-operator worked;

(c) Figuring the wages the owner-operator should have been paid based on the total number of hours worked and the required rate of pay (straight time, overtime, and fringe benefits);

(d) Adding the two figures together; and

(e) Comparing the total to the lump sum amount.

(3) If the total is substantially greater than the lump sum amount, the owner-operator would be due the difference.

20. WATER SPRAYING EQUIPMENT

The Davis-Bacon wage rate decision for highway construction in North Dakota includes *Water Spraying Equipment, Self-propelled* under the Power Equipment Operator Group 5. This is a piece of equipment that is not being pulled by another piece of equipment or a truck. If an employee:

a. Is driving a tandem-axle truck with a water tank mounted on the back of the truck, the employee must be classified and paid as a *Tandem-axle Truck Driver*.

b. Is driving a semi that is pulling a water tank mounted on a trailer or a wagon, the employee must be classified and paid as a *Tandem-axle* or *Tri-axle Semi Driver*.

c. Is operating a tractor or a modified scraper that is pulling a water tank mounted on a trailer or a wagon, the employee would be considered an equipment operator and must be paid not less than the appropriate Davis-Bacon wage, including applicable fringe benefits, for the Power Equipment Operator group under which the tractor or scraper falls.

21. WEED SPRAYERS

Some federal-aid thin lift overlay projects in North Dakota now contain a separate bid item for spraying herbicide on the shoulders to kill weeds and grass. An employee who sprays the weeds and grass is considered a laborer and must be paid not less than the appropriate DBRA wage for *Group 1 Laborers*. The employee should be listed on the weekly certified payroll as: *Group 1 Laborer (Weed Sprayer)*. For example:

The contractor employee rides a four-wheeler or ATV with attached spraying equipment and sprays the weeds and grass on the shoulders of the road.

22. WELDERS

a. The Davis-Bacon wage rate decision for highway construction in North Dakota states: *Welders receive rate prescribed for craft performing operation to which welding is incidental*. In the case of *Welders* employed on structural projects during pile driving operations, NDDOT has determined:

(1) The *Carpenter* rate will apply when an actual *Carpenter* is working with the *Welder* (not a person classified as a *Foreman* who has carpentry skills).

(2) The *Crane Operator* rate will apply when it is the only other skilled craft present during the welding.

b. Whatever rate is chosen must be used for the life of the project. For example, if the *Crane Operator* rate is used and all the piling is in place and the crane has left, those individuals who later weld ice nose angle or rebar on the piling should continue to receive the *Crane Operator* rate. This would be so even though an actual *Carpenter* is also present on the project.

F. EXEMPTIONS FROM DBRA COVERAGE

1. The *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)*, which is included in every federal-aid highway construction contract and is further required to be included in all subsequent subcontract agreements, states in part:

   "All *mechanics and laborers* employed or working upon the *site of the work* will be paid unconditionally and *not* less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR Part 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates *not* less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such *laborers or mechanics*."

2. In addition, Title 29, Code of Federal Regulations, Part 5.2(m) states:

   "The term *laborer or mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer or mechanic* includes apprentices, trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term *does not* apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity, as defined in Title 29, Part 541, are *not* deemed to be *laborers or mechanics*. Working foremen who devote *more than 20 percent of their time* during a workweek to mechanic or laborer duties, and who *do not* meet the criteria of Part 541, are *laborers and mechanics* for the time so spent."

3. Title 29, Part 541, includes the following definitions for *Executive Employees*:

   a. "<u>Business Owners</u>

      The term *employee employed in a bona fide executive capacity* in Section 13, (a), (1) of the Act also includes any employee who *owns at least a bona fide 20 percent equity interest* in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

   b. <u>Management</u>

Generally, *management* includes but is not limited to activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandize to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandize and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures."

4. In consideration of the foregoing, NDDOT requires:

a. Company Owners

Those individuals who *own at least 20 percent* of the company (prime contractor or subcontractor) and who perform the work of a *laborer or mechanic* on a federal-aid highway construction project, or the *site of the work*, are not due DBRA wages. However, the owner must be listed on the weekly certified payroll with only their name and the notation *owner*, applicable job classification, and daily total hours worked.

b. Supervisory Personnel

(1) As a general rule, those employees who work in a supervisory capacity on a federal-aid highway construction project, or the *site of the work*, are not covered by DBRA. However, the mere fact that an employee is called a *working supervisor* or working foreman does not necessarily mean the worker is not a *laborer or mechanic* as defined under DBRA (one who performs manual labor) and is, therefore, subject to the provisions of DBRA.

(2) If a person employed in a supervisory capacity performs the work of a *laborer or mechanic more than 20 percent of the time* in any given workweek, he or she is subject to the provisions of DBRA during the periods while so employed as a *laborer or mechanic*. Consequently, he or she must be paid not less than the appropriate DBRA wage, including applicable fringe benefits, for the job classification of work performed.

(3) In either case, the supervisor must be listed on the weekly certified payroll. When the supervisor performs nonmanual labor, only their name, with the notation *salaried*, and daily total hours worked need be shown. When the supervisor or working foreman performs manual labor *more than 20 percent of the time*, the proper job classification, hours, and wage rate information must be included on the weekly certified payroll.

5. Surveyors, Gravel Testers, Technicians, Scale Operators

   a. Contractor employees working in the capacity of *Surveyors*, *Gravel Testers*, *Quality Control Technicians* (testing and/or laboratory technicians), and *Scale Operators* (operating a scale and a computer) on a federal-aid highway construction project, or the *site of the work*, are not *laborers or mechanics* within the definition of DBRA (one who performs manual labor) and are, therefore, not covered. They are not due Davis-Bacon wages and do not have to appear on weekly certified payrolls.

   b. The above includes *Bituminous Mix Testers*, *Bituminous Pavement Inspectors*, *Bituminous Mix Controllers*, and *Aggregate Testers* as defined in the *NDDOT Transportation Technician Qualification Program (TTQP)*.

6. Field Office Employees

   Contractor employees whose duties are primarily administrative, executive, or clerical in nature are not considered *laborers or mechanics* within the definition of DBRA (one who performs manual labor). Those duties include but are not limited to: bookkeeping; recordkeeping; inspecting; operating computers; receiving, reviewing, and otherwise handling material invoices; collecting scale tickets and haul sheets; collecting oil samples from transport tankers; transferring oil from transport tankers to storage tanks and from storage tanks to haul trucks and distributors; flushing hoses, pumps, and distributer spray bars; etc. These employees are not due DBRA wages and not not have to appear on weekly certified payrolls.

7. Traffic Control Suppliers

   a. Employees of a traffic service company operating as a subcontractor on a federal-aid highway construction project, or the *site of the work*, to set up and service traffic control devices (e.g., barricades, directional signs, lights, arrowboards, etc.) are generally covered by DBRA. However, a traffic service company that rents equipment to the prime contractor or a subcontractor and performs only incidental functions on a federal-aid highway construction project, or the *site of the work*, in connection with delivery of the equipment is regarded as a material supplier whose employees would not be subject to DBRA, unless the employees spend a substantial amount of time (*more than 20 percent*) in the workweek on the federal-aid highway construction project, or the *site of the work*.

   b. A traffic control supplier on a federal-aid highway construction project, or the *site of the work*, who furnishes traffic control devices, delivers the devices to the *first use* location, sets the devices up at the *first use* location, and picks the devices up after the project has been completed is considered a material supplier if, after the initial setup, the prime contractor or subcontractor maintains the devices on the project, or the *site of the work*, and assumes the responsibility of relocating the devices on a day-to-day basis. Bona fide material suppliers are not covered by

DBRA. Thus, their employees are not due DBRA wages and weekly certified payrolls are not required by NDDOT.

c. If, after initial setup, the traffic control supplier performs any of the following *more than 20 percent of the time in any given workweek*, it is treated as a subcontractor in the same manner as a temporary employment agency:

(1) Provides regular surveillance, cleaning, routine maintenance, and repair of devices or

(2) Changes the system between stages.

d. The traffic control supplier's employees would be subject to the provisions of DBRA during the periods while so employed on the federal-aid highway construction project, or the *site of the work*. Consequently, the employees must be paid the appropriate DBRA wage, including applicable fringe benefits, for the job classification of work performed. The contractor must acknowledge joint employment and either put the traffic control supplier's employees on its weekly certified payroll or require the traffic control supplier to generate and provide weekly certified payrolls.

NOTE: If the traffic control supplier's employees are working on two or more federally funded highway construction contracts (held by one or more contractors) in any given workweek, all of the hours worked on the contracts must be combined and considered in determining whether the employees met the *20 percent*. Hours worked on commercial, non-government work may be excluded. Refer to paragraph C, 12 of this section for information concerning the payment of overtime hours.

8. Truck Owner-Operators

a. DBRA applies to laborers and mechanics, as defined at 29 CFR 5.2(m), and as stated in the DBRA: "regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics."

[29 CFR 5.2(m) states: "The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial."]

b. The only exception is bona fide owner-operators of trucks (also referred to as independent truck owner-operators or ITOs). Bona fide owner-operators of trucks are not covered by DBRA. However, if the prime contractor or a subcontractor is using truck owner-operators for hauling on a federal-aid highway construction project, or the *site of the work*, they must appear on either the prime contractor's or the subcontractor's weekly certified payrolls as:

(1) Owner-operator's name and an individual identifying number (e.g., the last four digits of the owner-operator's social security number), with the notation *owner-operator* after the name.

(2) Vehicle identification number or license plate number of the vehicle being driven.

(3) Truck number that will or is being used on scale tickets and haul sheets.

(4) Neither the hours worked nor the wages paid need be shown.

c. When on the *site of the work* of a federal-aid highway construction project, the actual owner-operator must *drive the truck at all times*. If, for any reason, he or she does not drive the truck, even for a short period of time, the replacement driver must be paid the appropriate DBRA wage, including applicable fringe benefits, and must appear on weekly certified payrolls showing the hours worked and the wages paid.

d. The prime contractor is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and weekly certified payrolls as required, as well as monitoring and verifying the status of all truck owner-operators working on a federal-aid highway construction project, or the *site of the work*, either directly for the prime contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor must request, verify, and provide the following information to the NDDOT, city, county, or consultant project manager-engineer before the truck owner-operator begins work:

(1) Owner-operator's name;

(2) Valid commercial driver's license;

(3) Vehicle registration in the owner-operator's name;

(4) Current vehicle license number;

(5) Truck number that will or is being used on scale tickets and haul sheets; and

(6) Copies of any signed lease or rental agreements for owner-operator trucks. The lease or rental agreement must be between the driver and a reputable dealership (e.g., Nelson Leasing, Inc., Allstate Peterbilt of Fargo, Inc., W. W. Wallwork, Inc., etc.); not the driver and the prime contractor or the driver and a subcontractor on the project.

e. According to USDOL, a lease or rental agreement does not constitute ownership. However, NDDOT chooses to recognize lease or rental

agreements with reputable dealerships only. Those dealerships have no vested interest in when, where, for whom, or if the truck driver works.

f. Determinations made by the North Dakota DOL, or any other state agency, concerning independent contractor status for wage and hour, tax, worker's compensation, etc., purposes do not apply to DBRA covered contracts. The North Dakota DOL's determinations concerning independent contractor status are for state wage and hour purposes and are based on state law only. DBRA and USDOL rules and regulations are controlling in wage and hour matters concerning federal-aid highway construction projects.

g. Owner-operators of other types of equipment are considered employees under DBRA. They must be paid not less than the appropriate DBRA wage, including applicable fringe benefits, and must be included on the prime contractor or subcontractor's weekly certified payrolls showing the hours worked and the wages paid. Refer to paragraph E, 15, h of this section for additional information concerning equipment owner-operators.

h. In LCPtracker, the owner operator may be placed on the payroll of the contractor to which they are subcontracted with the "owner operator" box checked and no time or other data filled in.

9. Utility Relocations, Adjustments, and Accommodation

Whenever federal-aid funds are included in utility work, DBRA applies to only that work which is included as part of an NDDOT-let contract. DBRA is not applicable to utility-let contracts, including continuing contracts.

10. Relatives

There are no exemptions from coverage under DBRA on the basis of family relationships, or for relatives who are performing the work of *laborers or mechanics* on a federal-aid highway construction project, or the *site of the work*. They must be paid not less than the appropriate DBRA wage, including applicable fringe benefits, for the job classification of work performed and must be included on weekly certified payrolls.

G. CONFORMANCE PROCESS

1. When a job classification is not included in the DBRA wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, must be conformed *after the contract has been awarded*. This means the contractor must submit a proposed job classification and base hourly rate, plus any fringe benefits, to the CRD. The CRD forwards the contractor's request to USDOL for approval. Included with the contractor's request must be the following supporting documentation:

a. *Request For Authorization of Additional Classification and Rate (SF-1444)*;

b. Copies of weekly certified payrolls issued for the project or other projects located in the area showing the current rate of pay and fringe benefits, where appropriate, for the job classification in question, or

If the contractor belongs to a union, a copy of the current collective bargaining agreement showing the required rate of pay and any appropriate fringe benefit amounts for the job classification in question and the project area; and

c. Statements by the employees involved concerning whether they agree or disagree with the proposed job classification and wage rate, including fringe benefits where appropriate, or

If the employees are unknown, a statement to that effect.

NOTE: Contractors may use Block 16 of the *Request For Authorization of Additional Classification and Rate (SF-1444)* to provide this information or the *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08-2006)* form developed by the CRD.

2. An instructional package is available through the CRD to aid contractors in making a request (Exhibit V-C). A letter explaining the process and including the following attachments is sent to the contractor:

a. A sample letter to NDDOT requesting a job classification and wage rate determination;

b. The federal requirements;

c. The USDOL form *Request For Authorization of Additional Classification and Rate (SF-1444)*; and

d. The *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08-2006)* form developed by the CRD for providing the employee statements.

H. CHILD LABOR LAWS

1. There are federal and state child labor laws:

a. Prohibited Employment - State Law

State child labor provisions establish a minimum age of 14 to be employed and regulate the employment of teens ages 14 and 15. Generally, persons age 14 and 15 are required to file an *Employment and Age Certificate* (work permit) with NDDOL, are limited in the hours they

can work, and are prohibited from performing certain types of work. Prohibited work includes construction work other than cleaning, errand-running, moving, stacking, and loading or unloading materials by hand.

b. Prohibited Employment - Federal Law

Federal child labor laws further limit the types of work that can be performed by teens 14 and 15 years of age and prohibit teens ages 16 and 17 from working in certain occupations USDOL deems to be hazardous. Hazardous work includes:

Manufacturing and storing of explosives; driving a motor vehicle and being an outside helper on a motor vehicle; coal mining; logging and sawmilling; power-driven woodworking machines; exposure to radioactive substances; power-driven hoisting apparatus; power-driven metal-forming, punching, and shearing machines; mining, other than coal mining; meat packaging or processing (including the use of power-driven meat slicing machines); power-driven bakery machines; power-driven paper-product machines; manufacturing brick, tile, and related products; power-driven circular saws, band saws, and guillotine shears; wrecking, demolition, and shipbreaking operations; roofing operations; and excavation operations.

2. When state and federal child labor provisions differ, the more stringent standard prevails and must be followed. For example, if federal law prohibits a type of employment that is allowed under state law, the federal law would apply and the work would be prohibited.

3. In consideration of the foregoing, NDDOT has determined the following will apply to highway construction:

a. Individuals age 14 and 15 may not work in any construction or repair jobs.

b. Individuals age 16 and 17 may perform only non-hazardous work (laborer or grunt work).

c. Individuals age 18 and older may perform any job, whether hazardous or not.

NOTE: According to USDOL and FHWA, flagging is not considered hazardous work. Therefore, the minimum age for *Flaggers* is 16. Refer to paragraph E, 7 of this section and paragraph J of this section for additional information concerning *Flaggers*.

4. If it is found that an under-aged individual was employed on a federal-aid highway construction project, or the *site of the work*, he or she must be paid the appropriate Davis-Bacon wage, including applicable fringe benefits, and be shown on the weekly certified payrolls for the time worked.

I. UNCLAIMED PAYCHECKS

If, for any reason, a contractor is unable to deliver a paycheck to a current or former employee, the money must be turned over to the Unclaimed Property Division of the North Dakota Department of Trust Lands. The Unclaimed Property Division makes every effort to reunite the money with its rightful owner or with the rightful owner's heirs. The procedure for turning over unclaimed property to the Department of Trust Lands can be found on their Web site at: www.land.nd.gov. Contact Susan Dollinger at: sdollinger@nd.gov or 701-328-2800 for needed assistance.

J. EMPLOYEES HIRED THROUGH TEMPORARY EMPLOYMENT AGENCIES

1. Employees, such as *Flaggers*, who are hired through temporary employment agencies must be paid not less than the appropriate DBRA wage, including applicable fringe benefits, and must appear on either the contractor's weekly certified payroll or the temporary employment agency's weekly certified payroll when employed on a federal-aid highway construction project, or the *site of the work*. Since the temporary employment agency is the employer, it is treated as a subcontractor in the same way a company providing traffic control devices would be treated.

2. The contractor must acknowledge joint employment and either put the employee on its weekly certified payroll or require the employment agency to generate and provide a weekly certified payroll. If the employee has a wage grievance, the employee would file against the employment agency.

3. According to USDOL, no subcontract agreement between the contractor and the temporary employment agency is required. Therefore, no *Prime Contractor's Request to Sublet* (*SFN 5682 - Rev. 07-2012*) is required. However, NDDOT cautions prime contractors and subcontractors that any agreement they have with a temporary employment agency should clearly indicate that the employees must be paid full Davis-Bacon wages, including fringe benefits where applicable. Any additional charges or fees to be paid to the temporary employment agency must be above and beyond the required DBRA wages. If an employee has a wage grievance, the prime contractor will be held ultimately responsible for compliance with DBRA. This means if the wages cannot be recouped from the temporary employment agency, the prime contractor will be held responsible for paying the wages.

4. The above guidance also applies to third-party recruiters or search firms (headhunters) who seek out job candidates when normal recruitment efforts have failed.

5. Refer to paragraphs C, 12, e and f of this section, paragraph E, 7 of this section, and paragraph H of this section for additional information concerning *Flaggers*.

K. ON-SITE MONITORING BY PROJECT ENGINEER

1. Project engineers are responsible for monitoring prime contractor and subcontractor compliance with the labor standards provisions through the use of proper inspection procedures. A distinction must be drawn between investigations, which are concerned with a specific allegation or allegations of wrongdoing, and inspections, which are checks on procedures and practices regarding labor matters without any allegations of improper actions.

2. Early and complete labor compliance inspections are essential to the development of a sound compliance pattern on all federal-aid highway construction projects. Projects where the contract is of short duration (six months or less) must be inspected at least once while the work is in progress. In the case of contracts extending over a longer period, the inspections must be made with such frequency as may be necessary to assure compliance.

3. Inspections must include:

   a. A check to determine whether the proper DBRA wage rate decision and other required wage posters and notices are properly displayed on job-site bulletin boards;

   b. Interviews with employees with reference to payroll data and classification information; and

   c. Examinations of the weekly certified payrolls themselves.

4. Bulletin Boards

   a. The following must be displayed on federal-aid highway construction projects, or the *site of the work*, in an area readily accessible to all employees, applicants for employment, and other interested parties:

      (1) *Important Wage Rate Information, Federal-aid Highway Project (Form FHWA-1495 - Rev. 09/1981)**

      (2) *Employee Rights Under the Davis-Bacon Act (WH-1321 - Rev. 04/2009)**

      (3) *Employee Rights Under the Fair Labor Standards Act (WHD-1088 - Rev. 07/2009)**

      (4) *Employee Rights For Workers With Disabilities Paid at Special Minimum Wages (WH-1284 - Rev. 07/2009)**

      (5) *Labor Rates From U. S. Department of Labor***

      *Contained on *Poster Board (DOT 3350 - 2 of 3 - Rev. 02-2013)* provided by NDDOT, or their equivalents.

**DBRA wage rate decision incorporated into the contract.

b. In addition, other EEO, USDOL, OSHA, etc., posters and notices are required to be displayed on federal-aid highway construction projects or the *site of the work*. These posters and notices are contained on *Poster Board (DOT 3350 - 1 of 3 - Rev. 05-2010)* and *Poster Board (DOT 3350 - 3 of 3 - Rev. 02-2013)* provided by NDDOT, or their equivalents. EEO requirements are included with the labor standards provisions incorporated into the contract as *Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA 1273 - Rev. 5-1-12)* available online at:

www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

c. Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster boards, and Davis-Bacon wage rate decision.

d. When a subcontractor is on a federal-aid highway construction project, or the *site of the work*, for less than one week (seven calendar days), or when a subcontractor is extremely mobile on a federal-aid highway construction project, or the *site of the work* (e.g., pavement markers, guardrail installers, fencers, etc.), the subcontractor will not be required to provide a *project-site* bulletin board if:

(1) The subcontractor's home office is located in North Dakota.

(2) The subcontractor maintains a bulletin board at their home office location in an area readily accessible to all employees, applicants for employment, and other interested parties.

(3) The bulletin board contains all of the required notices and posters.

(4) The subcontractor provides documentation that their employees are required to check in at the home office on a daily and/or weekly basis and do so.

(5) The subcontractor's employees know where the bulletin board is located.

e. The ADE in which the subcontractor's home office is located must conduct an annual supplemental review of the subcontractor's bulletin board at the location identified to ensure all of the required notices and posters are displayed, current, and legible. The ADE must initiate the supplemental review whenever the subcontractor begins work on a project in the district, or whenever another ADE requests a supplemental review be conducted. The supplemental review must then be shared with the other seven ADEs.

f. In cases where a subcontractor works away from their home office location and hires local individuals who do not check in at the home office, a copy of each of the required notices and posters must be given to those individuals. The subcontractor must obtain an acknowledgement of receipt from each individual and provide a copy of each acknowledgement to the assistant district engineer of the district in which the project is located.

g. Whenever the subcontractor performs any work on the federal-aid highway construction project, a copy of the supplemental review or a copy of each acknowledgement of receipt MUST be attached to the *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 06-2012)* for the month in which the subcontractor worked. Refer to paragraph B of Section I for information concerning the *Monthly EEO Project Inspection Report*.

h. During routine labor compliance job-site interviews, contractor employees are asked if they know where the bulletin board is located. Any negative answers by the subcontractor's employees must be brought to the attention of the subcontractor. The allowance for the subcontractor to display the required notices and posters at their home office rather than at the project site must be re-evaluated at that time.

5. Labor Compliance Job-site Interviews

a. Systematic spot interviews with the contractor's project employees must be conducted by project engineers or their staffs. The interviews are used to determine whether the DBRA wage rate decision and other labor standards provisions of the contract are being fully complied with, and that there is no misclassification of employees.

b. Each prime contractor with a project in a district's jurisdiction must have labor compliance job-site interviews* conducted on a portion of their project workforce at least once annually. For those prime contractors with more than one project in a district, daily monitoring will be required but it will not be necessary to conduct job-site interviews. Only one project per contractor need be selected for interviews.

*Not required for contracts and subcontracts under $10,000 where work on the project is sporadic and of short duration (three weeks or less).

c. If a contractor has a history of labor compliance problems, however, the assistant district engineer will be so informed and instructed to conduct interviews on all of the contractor's projects located within the district.

d. Every subcontractor, regardless of the number of subcontracts they hold in the district, must have job-site interviews conducted on at least one project annually.

e. No interviews should be conducted with bona fide owner-operators of trucks or with haulers and suppliers of petroleum products.

f. Generally, projects must be selected and interviews scheduled for the time when the contractor is at peak construction activity for the project.

g. Beginning in 2016, a new procedure for Labor Interviews (also known as "site visits") will be followed by the Project Engineer or their staff. The *Labor Compliance Job-site Interview (SFN 9426 - Rev. 012-2015)* form must be used to conduct the interviews, but will be submitted electronically. The form will now be available on LCPtracker, the new automated payroll software under the Admin/Site Visits tab.

h. Follow the Site Visit instructions available on Site Visits page. There is a link there to the Labor Compliance and EEO Interview Forms.

i. All statements and questions on the form must be answered fully, and detailed information and/or explanations provided where necessary. *All statements made by an employee, whether orally or in writing, must treated as confidential so as to avoid disclosure of the employee's identity to the contractor without the employee's written consent*.

j. Particular attention must be paid to determine whether there are any subcontractors not submitting weekly certified payrolls. Interviews with operators of equipment not clearly identified as belonging to the prime contractor, or an approved subcontractor, will disclose this problem. In such interviews, the names of the subcontractors must always be requested and recorded.

k. All follow-up data normally can and must be obtained on the same day the employee interview data is gathered. The only exception would be verification of the certified payroll for the week of the interviews.

l. When conducting the interviews, a good cross-section of the contractor's project employees should be selected. Selection criteria should include race, sex, job classification, and age. One minority, one nonminority, and one female in each trade, job classification, or occupation should be interviewed. *A minimum of five (5) interviews should be conducted if at all possible*. Contractors must allow their employees to be interviewed.

m. The ADE is to be informed and consulted any time there is an irregularity or issue of concern under the DBRA or certified payroll. It is also important to remember that all of the employee's responses must be treated as confidential. The employee's identity must not be revealed to the contractor unless the employee has given his or her written permission.

n. The completed interview forms should be input and saved in LCPtracker.

6. Weekly Certified Payrolls

a. Commencing with the October 9, 2015 bid opening projects and going forward, contractors will have the option of filing certified payrolls under either the traditional paper method, or electronically through LCPtracker.

b. Under the traditional paper method, the project engineer or their staff must inspect the prime contractor's and all subcontractors' weekly certified payrolls to determine:

(1) Whether the wages being paid, including applicable fringe benefits, are at rates not less than the DBRA wage rate decision contained in the contract;

(2) Whether the work being performed by the employees, including apprentices and trainees, conforms to the job classifications included in the DBRA wage rate decision contained in the contract;

(3) Whether the job classifications are correct;

(4) Whether there is evidence of any disproportionate employment of laborers and apprentices or trainees to journeyworkers so as to indicate avoidance of the DBRA wage rate decision and other labor standards provisions of the contract; and

NOTE: Several laborers and only one journeyworker electrician on a weekly certified payroll submitted by an electrical contractor would normally indicate that laborers are performing journeyworker electrician's work. The allowable ratio of apprentices and trainees to journeyworkers is generally considered to be one apprentice or trainee to every three to five journeyworkers.

(5) Whether there are any individuals employed whose job classifications are not listed on the DBRA wage rate decision contained in the contract. If so, it will be necessary for the contractor to submit a request for job classification and wage rate determination for the project as described in paragraph G of this section.

c. Under LCPtracker, the project engineer or their staff must electronically review and accept payrolls. It is not necessary to check whether the wages being paid,

including applicable fringe benefits, are at rates not less than the DBRA wage rate decision contained in the contract: this is checked automatically by LCPtracker. The following must be checked:

1. Whether any flagged violations have merit;

2. Whether the work being performed by the employees, including apprentices and trainees, conforms to the job classifications included in the DBRA wage rate decision – i.e. are employees properly classified;

3. Whether there is evidence of any disproportionate employment of laborers and apprentices or trainees to journeyworkers so as to indicate avoidance of the DBRA wage rate decision and other labor standards provisions of the contract; and

4. Whether fringe benefits paid into bona fide plans are being paid appropriately. To do this, one employee of each broad job classification (operators, truckers, laborers, and other trades) should be "audited."

d. Minor payroll issues or discrepancies (improper job classifications, basic hourly rates, overtime rates, fringe benefits, etc.) should be handled by project rngineer at the project level. If it is not possible to bring the issue to settlement within a reasonable length of time (thirty calendar days), the matter must be referred to the ADE.

e. When there is reason to believe violations exist that are not readily adjustable, are of a serious nature, or may be willful or criminal in nature, the project engineer must report such findings, including sufficient data concerning the nature and extent of the violations, to the Assistant District Engineer. The ADE must notify the CRD immediately. The CRD will determine who should investigate and resolve the matter.

f. Additional information concerning payroll monitoring requirements is included in the *Construction Records Manual* issued by the Construction Services Division, which is available online at:

www.dot.nd.gov/manuals/construction/constr-records/constructionmanual.htm

L. FEDERAL AND STATE DEPARTMENT OF LABOR PERSONNEL

Wage and Hour Division
U.S. Department of Labor
Room 323
220 East Rosser Avenue
Bismarck, ND 58501-3869
Phone: 701-250-4320

North Dakota Dept of Labor
State Capitol, 13th floor
600 East Boulevard Avenue
Bismarck, ND 58505-0340
Phone: 701-328-2660 or
In-state, toll-free: 1-800-582-8032
Email: labor@nd.gov

Wage and Hour Division
U.S. Department of Labor
Denver District Office
Phone: 720-264-3250

Government Contracts Enforcement Division
U.S. Department of Labor
Suite 800
525 South Griffin Street
Dallas, TX 75202
Phone: 972-850-2648 or 872-850-2647

M. REFERENCE SOURCES

The following were used in the development of this section but are not all inclusive of the federal laws, rules, regulations, regulatory guidance, etc., that are available concerning DBRA coverage and other labor standards provisions of federal-aid highway construction projects:

- *29 CFR Parts 1, 3, 5, 6, and 7*
- *USDOL Field Operations Handbook - Chapter 15 (10-25-10)* available online at:

  www.dol.gov/whd/FOH/FOH_Ch15.pdf
- Required Contract Provisions, Federal-aid Construction Contracts (USDOT Form FHWA
  1273 - Rev. *5-1-12*) available online at:

  www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf
- 65 FR 80268-80278, December 20, 2000, available online at:

  www.gpo.gov/fdsys/pkg/FR-2000-12-20/pdf/00-32436.pdf

  www.lcptracker.net. Click on the "Training Materials" tab.

N. REPORTING THE NEED FOR INVESTIGATIONS

1. As a result of regular project inspections, an employee's or other interested person's complaint, or a routine check of weekly certified payrolls, indicators or *red flags* may surface that signal the presence of violations that are of a serious nature, or ones that are not readily adjustable. The district, city, county, or consultant project manager-engineer must bring to the attention of the assistant district engineer the need for investigative assistance or a complete investigation whenever:

    a. Complaints alleging intentional violations are received that the district, city, county, or consultant project manager-engineer feels may have some validity. Some of the sources of such complaints will be employees, their representatives (unions), competing contractors, or other interested persons. *Complaints must be treated confidentially*.

    b. There are habitual and persistent violations of other requirements of the contract so as to indicate a general carelessness on the part of the contractor with respect to his or her contractual responsibilities.

    c. There is a delay by a contractor in furnishing the required weekly certified payrolls and a satisfactory explanation is not forthcoming, or other suspicious circumstances exist.

    d. Discrepancies, other than routine errors, are discovered. The discovery of falsifications in the time and payroll records, or reasonable cause to believe such a situation exists, calls for especially prompt and vigorous action.

2. In all such cases, the assistant district engineer must notify the CRD immediately. The CRD will determine a possible course of action.

3. When anyone on the project observes a violation, they should not wait for a complaint to be filed. The assistant district engineer or the district, city, county, or consultant project engineer must be alerted to the situation immediately so they can work with the contractor and the CRD to get the matter resolved before it becomes a major problem. The situation will be much easier to settle while it is still fresh in everyone's mind rather than months later. In addition, the uncovering of a violation in the early stages will save time on the part of NDDOT and will avoid large back pay obligations on the part of the contractor.

O. INVESTIGATING COMPLAINTS AND VIOLATIONS

1. If a DBRA wage issue cannot be handled informally, the employee may file a *Davis-Bacon Complaint Form,* SFN 60557 (1-2014). (Attached as Exhibit IV-C.) This Form may be used for complaints concerning unpaid wages, improper job classifications, improper wage rates, overtime rates, fringe benefit payments, payroll requirements, improper deductions, etc. The employee should be directed to the CRD, and referred to the appropriate form online, if he or she has access.

2. The DBRA Complaint Form consists of two pages – a main complaint form and a supplemental complaint form for truckers. If a complainant is trucking or hauling for on a federally assisted project, they should fill out the supplemental section for truckers. Otherwise, the complainant should fill out only the main complaint form (first page). The Davis-Bacon Complaint Form should be printed out and signed by the complainant and mailed (or faxed/emailed) to the CRD together with documentation, if any. CRD will coordinate the investigation, if required.

3. An investigation will be necessary if the alleged violations are not readily adjustable, are of a serious nature, or may be willful or criminal in character. The assistant district engineer must notify the CRD immediately and the CRD will determine who should investigate and resolve the matter. If a full-scale investigation is warranted, the CRD will conduct the investigation.

4. Upon notification that a wage claim has been received, the CRD will instruct the assistant district engineer or the district, city, county, or consultant project engineer to withhold a portion (an amount sufficient to cover the claim) or all of the prime contractor's progress payments until the claim has been resolved.

5. When any situation involves a subcontractor, all actions concerning the matter must go through the prime contractor. Even if the subcontractor contacts the Project Engineer on the issue of a DBRA complaint or investigation, they should be informed politely but firmly that all matters should go through the prime contractor and the conversation should end.

6. The assistant district engineer may be asked to investigate and resolve the wage claim or complaint. If this is the case, the assistant district engineer must keep the CRD informed of the progress being made in resolving the matter. If it is not possible to effect a settlement within a reasonable length of time (thirty calendar days), the matter must be referred to the CRD for advice, guidance, and/or resolution.

7. Investigations are much more thorough than inspections in that they are designed to either dispel allegations of wrongdoing or to assemble concrete evidence upon which administrative or even criminal action can be taken. Because of the seriousness of investigations, much more attention must be paid to details; and evidence must be obtained to substantiate all of the investigator's findings. In other words, if the contractor maintains that payment has been made, the investigating engineer should ask to see cancelled checks or proof of automatic deposit that cannot be altered or faked. All facts must be substantiated – if withholding is being done pursuant to a court order, ask to see an official copy of the order.

8. A case file must be established at the start of the investigation. All documentary material pertaining to the investigation, such as wage claims or complaints, if any; employee statements; employment and payroll records; and all other papers relevant to the investigation must be placed in the case file.

9. The employee or complainant must provide documentation wherever possible (timecards, check stubs, etc.). In some instances, the claim or complaint will be in sufficient detail so that a personal interview with the employee or complainant won't

be necessary. If this is the case, an explanation to that effect must be included in the file. If a personal interview is warranted, it must be conducted in such a manner so as not to compromise the employee's or complainant's identity. In some cases, it may be desirable to conduct the interview by phone.

10. Depending on the nature or extent of the claim or complaint, any or all of the following investigatory steps may or must be taken:

    a. An examination of the contract must be made to determine whether the DBRA wage rate decision and the required labor standards provisions were inserted into the prime contract and all subcontracts. In addition, the following information must be noted for the case file:

        (1) Contract number;

        (2) Date of award;

        (3) Description of work of the prime contractor and each subcontractor;

        (4) Applicable DBRA wage rate decision; and

        (5) The name and address of the prime contractor and each subcontractor.

    b. A visit to the project site must be made to ensure the applicable Davis-Bacon wage rate decision is properly posted on the bulletin board.

    c. An examination of the weekly certified payrolls of the prime contractor and each subcontractor must must be made for completeness and accuracy as to:

        (1) The names and individual identifying numbers (e.g., the last four digits of the employee's social security number) of employees;

        (2) Job classifications;

        (3) Wages (basic hourly and overtime rates) and applicable fringe benefit amounts;

        (4) Hours worked, including overtime;

        (5) Gross earnings;

        (6) Itemized deductions; and

        (7) Net weekly wages paid.

    d. The wage rate for each job classification must be compared with the corresponding wage rates set forth in the applicable DBRA wage rate decision.

e. The number of employees in each job classification must be checked to determine if there exists a disproportionate number of laborers and apprentices or trainees to journeyworkers. For example, existence of any of the following circumstances may indicate a disproportionate ratio, depending on the status and type of project:

(1) Several laborers and only one journeyworker electrician on a weekly certified payroll submitted by an electrical contractor would normally indicate that laborers are performing journeyworker electrician's work.

(2) A greater number of apprentices or trainees than journeyworkers generally indicates that the ratio of apprentices or trainees to journeyworkers is being disregarded, apprentices or trainees are performing the work of journeyworkers, all of the apprentices or trainees are not properly registered in approved programs, or the contractor is not conforming to approved apprenticeship or on-the-job training standards.

NOTE: The allowable ratio of apprentices or trainees is generally considered to be one apprentice or trainee to every three to five journeyworkers.

f. A careful review of project logs, diaries, progress reports, project files, etc., must be made. They may provide valuable information that can be used in comparing the kinds of work performed during a certain period with the job classifications listed on the certified payrolls for the corresponding period. For instance, if pile driving work was being done during a particular month and weekly certified payrolls for that month fail to show any pile drivers, it may be that the contractor is in violation of the labor standards provisions.

g. The contractor must be required to present the canceled checks (front and back) of a randomly selected weekly certified payroll for verification of actual payment made to the employees.

h. A sufficient number of checks of timecards, books, sheets, or other work or personnel records of a representative number of employees in each job classification must be made against the payroll records in order to disclose any possible discrepancies, or to give reasonable assurance that none exist. Pertinent excerpts or copies of such records must be included in the case file.

i. The records of individual employees must also be included in the check whenever there appears to be any doubt or question concerning an individual as a result of the weekly certified payroll examinations, employee interviews, or for other pertinent reason.

j. Conducting employee interviews is essential to carrying out a successful investigation. A sufficient number of employees must be interviewed to

serve as a check against the contractor's records and the substance of the violations alleged. Oral interviews must be conducted with a number of employees in various job classifications on the project, and where appropriate, must include former employees.

k. If possible, former employees must be interviewed in person. If this proves to be inconvenient, a carefully prepared questionnaire, to which short answers may be given, must be mailed. However, every attempt must be made to conduct personal interviews, with the mail method being used only as a last resort.

l. Information obtained from individuals involved in a labor compliance investigation is exempt from disclosure under the Freedom of Information Act, Subsection (b), (7), (D). Such information may also be protected under the Privacy Act of 1974, Subsections (k), (2); (k), (5); and (k), (7) [5 USC 552a].

m. Interviews conducted at the job site or the *site of the work* must be arranged so as to cause the least inconvenience to both the contractor and the employee and to provide for a necessary degree of privacy. No employee should ever be interviewed in the presence of other employees or owner/managers. Care should be taken not to disclose the identity of complainants or interviewees. If the elements of fear and intimidation are present, the interview must be conducted at the employee's residence or some other mutually agreeable place. Interviews conducted elsewhere must be scheduled during the employee's non-work hours and at his or her convenience. Care must be taken in scheduling the interviews to allow for adequate time, and the schedule must be rigidly adhered to.

n. Each employee should be informed that the information given is confidential to the fullest extent of the law, and that his or her identity will not be disclosed to the employer without the employee's written permission insofar as the law permits. (See *Department of Labor Prevailing Wage Resource Book, p.12; 29 CFR 5.6(a)(5).)*

o. In some situations, interviews with prior employees may be appropriate, but only with prior permission of CRD.

p. An early step in most investigations will be an interview with the complainant. The interview must be conducted in such a manner so as not to compromise the complainant's identity. To avoid such compromise, it may be necessary to conduct the interview at a place other than the job site or by phone. In some cases, the complaint will be in sufficient detail so that a personal interview with the complainant won't be necessary. If this is the case, an explanation to that effect must be included in the case file.

q. Employee statements that merely confirm information in the contractor's records and do not indicate a violation where none has been otherwise alleged need not be recorded. However, notes of the interviews with

names, dates, places where they were held, and comments such as *no additional information obtained* must be made for the case file.

r. To preserve confidentiality, any statements recorded must be put on a separate sheet or sheets of paper. Repetitive statements by various employees concerning the same facts may be recorded once; however, a comment listing the names of the additional employees must be included for the case file. Signed statements must be obtained from employees when the information given is needed to prove a violation. For example, signed statements must always be taken when:

(1) Information concerning conditions of employment when such information is missing from, or possibly falsified in, the contractor's records;

(2) Intimidation, or other *kickback* activity involving employees being forced to relinquish part of their compensation, is involved;

(3) Pertinent information concerning an actual or potential controversy with the contractor involved, as to the occurrence of a given violation, is disclosed; and

(4) Information concerning possible violations not previously known to the investigator, or other information which may become material to the overall investigation, is obtained.

s. Written employee statements must be prepared by the investigator and must contain:

(1) The contractor's name and address;

(2) The project number and location;

(3) The employee's name and address;

(4) His or her status as a present or former employee;

(5) The place and date of the interview;

(6) The employee's job classification and a brief description of the exact duties performed, including equipment operated, tools used and the frequency of their use, and the place where the work is performed;

(7) The period of employment, starting and quitting times, daily and weekly hours worked, and the manner in which the working time is recorded and by whom;

(8) The rate of pay and wages received;

(9) Any information the employee is able to furnish concerning the matters involved in the allegation or allegations and any intimidation involved with *kickback* activity; and

(10) Any further essential information concerning the accuracy or adequacy of the contractor's records.

t. The information given by the employee for the statement must be paraphrased in a concise and clear manner while clearly reflecting the intent of the employee. It must be written in the first person form as though the employee prepared the statement. A final line must be added stating that the employee has read the foregoing statement and that it accurately reflects his or her intent. The statement must be signed by the employee and witnessed by the investigator. Any changes made to the statement must be initialed by the employee. If the statement is longer than one page, each and every page must be signed or initialed by the employee.

u. The investigator must always keep in mind that it is his or her function to ascertain and report the facts concerning a given investigation, not to take sides with either the contractor or the employee involved. The investigator must not give to the employees, or allow them access to, the contractor's records that are made available to the investigator. For example, employees must not be shown copies of the hours worked and wages paid with regard to them, but rather must be questioned regarding the wages paid and hours worked. The answers can then be compared with the contractor's records. The investigator may inform employees as to how the wages and overtime are computed but must not express an opinion as to whether wages are due, or encourage lawsuits by an employee or group of employees with regard to the subject matter of the investigation.

11. At the conclusion of the investigation, within 90 (ninety) days of the filing of the complaint, in most cases, a final report must be prepared and recommendations for corrective action made to the CRD. The report must consist of a narrative summary of the facts disclosed by the investigation. Answers to the following questions must appear in the report: who? what? where? when? why? and how? In addition, the following specific items must be noted in the report:

a. The contract number and location.

b. The name and address of the prime contractor and, where appropriate, subcontractor(s) involved.

c. A brief statement concerning the circumstances that brought about the investigation.

d. A statement concerning the extent of the investigation. For example: Who the investigator talked with, what records were examined, and any other action taken by the investigator.

e. A statement of facts concerning what the investigation disclosed. For example: Were the allegations proven? If so, how? Were they dispelled? If so, how?

f. Conclusions of the investigator as to willfulness, negligence, or other factors involved in the matter.

g. Recommendations of the investigator as to further action required, with reasons for the recommendations and facts supporting them; or if the matter was resolved, how was such resolution accomplished?

12. **A final conference should be scheduled with the prime contractor when the investigation is completed. At this conference, the contractor is informed generally as to investigation findings and indicated the factual basis of these findings. Detail specifically what must be done in order to eliminate the violations. The ADE and CRD should be willing to consider additional evidence, if any, offered at this conference. The Contractor should be informed of the possibility of liquidated damages under DBRA.**

13. **If there is agreement to pay at this stage, appropriate supplementary payroll must be issued.** The contractor must submit a copy of the supplementary payroll and canceled check (front and back) to NDDOT as proof that restitution was made. If no agreement can be reached, the file must be forwarded by CRD to the appropriate WHD Regional Office pursuant to 29 CFR 5.7 for review, possible collection of back wages and possible debarment consideration.

14. **In refusal to pay cases, the contracting agency (NDDOT) is required to withhold contract funds to cover the back wages due.** If funds remaining on the contract under which the violation occurred are insufficient to cover the back wages due, the contracting agency can withhold funds from other contracts subject to the DBA held by the same prime contractor. This is optional and is referred to as "cross-withholding." *USDOL Prevailing Wage Resource Book, DBRA Investigations, p.19.*

15. The USDOL Wage and Hour Division will send a "Due Process" letter to the contractor and will go forward if the contractor refuses to pay back wages. The WHD will also advise the contractor of hearing and appeal rights. Only the WHD may debar the contractor. See 29 CFR 5.11 and 5.12.

16. When the wage claim or complaint has been resolved and all of the necessary follow-up documentation has been received, in most cases within 6 months, the *Labor Compliance Report (SFN 13082 - Rev. 08-2006)* must be completed and forwarded to the CRD. The report lists the nature of the complaint or problem (improper job classification, overtime, incorrect wages or fringe benefits, kickback, etc.); the outcome; and the amount of wages found due, if applicable. A copy of the supplementary payroll and canceled check (front and back) must be attached to the report when applicable.

17. The CRD will instruct the assistant district engineer or the district, city, county, or consultant project manager-engineer to release any progress payments being withheld from the prime contractor.

The following may be obtained from the CRD, Email: civilrights@nd.gov, and Web site: www.dot.nd.gov/dotnet/forms/forms.aspx (choose *Category* in the *View forms by:* drop-down box)

- *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08-2006)*
  www.dot.nd.gov/forms/sfn50043.pdf

- *Labor Compliance and EEO Contractor Compliance Job-site Interview (SFN 9426 - Rev. 02-2012)*
  www.dot.nd.gov/forms/sfn09426.pdf

- *Labor Compliance Report (SFN 13082 - Rev. 08-2006)*
  www.dot.nd.gov/forms/sfn13082.pdf

- *Poster Boards (DOT 3350 -1 of 3 (Rev. 05-2010), 2 of 3 (Rev. 02-2013), and 3 of 3 (Rev. 02-2013)**

- *Davis-Bacon Complaint Form (SFN 60557 – 1-2014)*
  www.dot.nd.gov/forms/sfn60557.pdf

***NOT** available on the Web site.

EXHIBIT IV-A: LABOR COMPLIANCE JOB-SITE INTERVIEW

North Dakota Department of Transportation, CRD
SFN 9426 (Rev. 12-2015)
To access SFN 9426, click on the following:
www.dot.nd.gov/forms/sfn09426.pdf

LABOR COMPLIANCE JOB-SITE INTERVIEW
North Dakota Department of Transportation, Civil Rights Division
SFN 9426 (Rev. 01-2016)

INTERVIEWER: Labor compliance interviews (site interviews) should be conducted on all federal-aid highway construction contractors annually. You should interview a cross-section of project employees on at least one job per district for each contractor. If possible, interview 5 employees, with a cross section of the workforce, including women, minorities, and individuals with limited English proficiency (LEP). The **Department's telephonic interpreter service is available for interviewing employees with limited English proficiency via cell phone. The phone number and instructions must be obtained from the District Office.** Please call Civil Rights Division at (701)328-2605 for assistance and guidance on job-site interviews.

PART A - PROJECT INFORMATION

Project Number	District
Name And Title of Interviewer	PCN
Contractor Name ☐ Prime ☐ Sub	
If Subcontractor, Name of Prime	
Date of Interview	

PART B - LABOR COMPLIANCE INTERVIEW DATA

1. Employee name	Telephone Number
2. Job classification:	
3. Is the employee properly classified? ☐ Yes ☐ No	
4. Does the classification, duties, and wage information provided by the employee correspond to field office records? ☐ Yes ☐ No If no, list office information:	
5. What is your fringe benefit amount? $ ☐ Does not apply	
6. If applicable, are fringe benefits paid to you in cash or does the contractor pay them into approved plans, funds, or programs? ☐ Cash ☐ Funds Have you experienced any problems? ☐ Yes ☐ No If yes, describe:	
7. How often are you paid? ☐ Weekly ☐ Other (specify):	
8. Other than the required deductions for social security and federal withholding tax, are other deductions being made to your paycheck? ☐ State tax ☐ Union dues ☐ Insurance ☐ Pension ☐ Other (specify):	
9. Did you pay a fee to secure this job? ☐ Yes ☐ No	
10. Are you required to return any of your wages to your employer? ☐ Yes ☐ No If yes, for what reason?	
11. Dates employed on this project: From: To:	
12. Supervisor's name:	
13. How is your time reported? ☐ Daily time card ☐ Weekly time card ☐ Verbal ☐ Other (specify):	
14. Do you have a wage grievance based on the above questions? ☐ Yes ☐ No	
15. Additional comments:	

Figure 1 - Labor Compliance Job Site Interview

EXHIBIT IV-B: LABOR COMPLIANCE REPORT

North Dakota Department of Transportation, CRD
SFN 13082 (Rev. 08-2006)
To access SFN 13082, click on the following:
www.dot.nd.gov/forms/sfn13082.pdf

LABOR COMPLIANCE REPORT
North Dakota Department of Transportation, Civil Rights Division
SFN 13082 (Rev. 08-2006)

Name of Complainant			
Address	City	State	Zip Code
Home Phone No.	Office Phone No.		
Project No.	Prime Contractor	Subcontractor (where applicable)	

Nature of complaint (improper job classification, overtime, incorrect wages or fringe benefits, kickback, etc.):

Outcome:

Amount of wages due:

1. Use additional paper where necessary.
2. Fill out one form for each individual filing a complaint.
3. Return this form, canceled check, and supplemental payroll to: CIVIL RIGHTS DIVISION
ND DEPARTMENT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

Figure 1 - SFN 13082 – Labor Compliance Report

EXHIBIT IV-C: DAVIS-BACON COMPLAINT FORM

North Dakota Department of Transportation, CRD

SFN 60557 (1-2014)

To access SFN 60557, click on the following:

www.dot.nd.gov/forms/sfn60557.pdf

DAVIS BACON WAGE COMPLAINT
North Dakota Department of Transportation, Civil Rights Division
SFN 60557 (01-2014)

Contact Information

Name				
Address		City	State	ZIP Code
E-mail Address (Optional)	Home Telephone Number	Cell Phone Number		

Project Information

Project Number (if available)	PCN	Prime Contractor		
Project Location (Highway or Street)		City	State	ZIP Code

Employer Information

Name			
Address	City	State	ZIP Code
Are you still employed by this employer? ☐ Yes ☐ No	If no, last date worked		
Was your termination ☐ Voluntary ☐ Involuntary			

Wage/Work Performed

Position/Job Classification	
List work Performed	
Tools/Equipment Used or Operated	
Date Worked on Project From To	Hourly Rate of Pay REG OT
Note: It is important that you provide records of hours worked, through a time sheet, pay stub, etc.	

Complaint

Nature of Complaint ☐ Wage Rate ☐ Overtime ☐ Fringes ☐ Unpaid Hours
Please Describe Complaint (Add sheets, if necessary)

Complainant's Signature	Date

Figure 2 - SFN 60557 – Davis-Bacon Complaint Form

EXHIBIT IV-D: CONFORMANCE DOCUMENTS

SAMPLE

_____(Date)_____

Ms. Ramona Bernard, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Dear Ms. Bernard:

Subject: Job Classification and Wage Determination For
Project ____(number)____
_____ County

I am hereby requesting a wage determination for __(classification)__ on the above referenced project. I am proposing a base rate of $ ___.___ per hour __(with no/plus $. in)__ fringe benefits. Enclosed is documentation supporting this request.

If you have any questions, contact me at __(telephone number)___.

Sincerely,

_____(Name)_____
_____(Title)_____

ri
Enclosures

REQUESTS FOR ADDITIONAL CLASSIFICATIONS AND WAGE RATES

Criteria for the approval of additional classifications and wage rates are set forth in the Code of Federal Regulations, Title 29, Part 5, Subpart A, Section 5.5 (a) (1) (ii). Section 5.5 (a) (1) (ii) (A) states:

"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:

5. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

6. The classification is utilized in the area by the construction industry; and

7. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination."

Section 5.5 (a) (1) (ii) (B) further states:

"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 will so advise the contracting officer, or will notify the contracting officer within the 30-day period that additional time is necessary."

The U.S. Department of Labor's policy in conforming a job classification and wage rate is:

1. If the proposed classification is a skilled craft, the proposed rate cannot be less than the lowest rate already established for a skilled job classification in the wage determination.

2. Exceptions to the skilled job classifications are the Power Equipment Operator and Truck Driver groups.

3. If the established rate for a skilled job classification varies between counties, the proposed rate cannot be less than the established rate for the county in which the project is located.

4. If the established rate for a skilled job classification includes a fringe benefit amount, the proposed rate does not have to specify an amount for fringe benefits. The fringe benefit amount could be added to the hourly wage. In other words, the proposed rate must be equal to or higher than the total of the established hourly rate plus the amount designated for fringe benefits.

NOTE: Requests for Additional Classifications and Wage Rates must be made prior to commencement of work on the contract. For necessary forms and procedures, contact:

Ramona Bernard, Director
Civil Rights Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700 FAX: 701-328-0343 Email: rbernard@nd.gov or
Telephone: 701-328-2576 Email: civilrights@nd.gov

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE STANDARD FORM 1444 (REV. 12-2001)

To access SF-1444, click on the following:
http://www.gsa.gov/portal/forms/download/115906

AUTHORIZED FOR LOCAL REPRODUCTION

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE	CHECK APPROPRIATE BOX ☐ SERVICE CONTRACT ☐ CONSTRUCTION CONTRACT	OMB Number: 9000-0089 Expiration Date: 9/30/2017

PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0089, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER.

1. **TO:** ADMINISTRATOR, WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, DC 20210	2. **FROM:** *(REPORTING OFFICE)*

3. CONTRACTOR	4. DATE OF REQUEST

5. CONTRACT NUMBER	6. DATE BID OPENED *(SEALED BIDDING)*	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (If *APPLICABLE) (SERVICE CONTRACT ONLY)*

10. SUBCONTRACTOR *(IF ANY)*

11. PROJECT AND DESCRIPTION OF WORK *(ATTACH ADDITIONAL SHEET IF NEEDED)*

12. LOCATION *(CITY, COUNTY AND STATE)*

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS *(Service contracts only)* *(Use reverse or attach additional sheets, if necessary)*	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE *(IF ANY)*	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE	
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. ☐ AGREE ☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER *(CHECK AS APPROPRIATE - SEE FAR 22.1019 (SERVICE CONTRACT LABOR STANDARDS) OR FAR 22.406-3 (CONSTRUCTION WAGE RATE REQUIREMENTS))*

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send 3 copies to the Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NUMBER	DATE SUBMITTED

PREVIOUS EDITION IS USABLE

STANDARD FORM 1444 (REV. 4/2013)
Prescribed by GSA-FAR (48 CFR) 53.222(f)

Figure 3 - SFN 1444 – Request for Additional Classification

INSTRUCTIONS

Block 1 Pre-printed on form.
Block 2 To be completed by Contracting Officer (NDDOT).

The contractor completes:

Block 3 Enter complete name and mailing address.
Block 4 Enter date of request.
Block 5 Enter contract number.
Block 6 Enter date bid opened. If not sure, call NDDOT to obtain.
Block 7 Enter date of contract award. If not sure, call NDDOT to obtain.
Block 8 Enter date contract work started.
Block 9 Enter date contract option was exercised (if applicable).
Block 10 Enter name and address of subcontractor (if applicable).
Block 11 Enter summary of project's statement of work.
Block 12 Enter location of project (city, county, and state).
Block 13 List numbers and dates of all applicable wage determinations (consult proposal/contract).
Block 13a List the classification title and level and provide the job description for the work of the classification being conformed. (If the work to be performed is the same as the work described in the SCA Directory for the title and level entered here, do not repeat the job description.) Also list the Federal Grade Equivalency (FGE) and the source of the FGE for the classification being conformed.
Block 13b Enter the proposed wage rate.
Block 13c Enter the required fringe benefits already established on the applicable wage determination.
Block 14 Enter the signature(s) and title(s) of the subcontractor's representative (if applicable). Attach additional sheet(s) if necessary.
Block 15 Enter the signature and title of the prime contractor representative.
Block 16 If there is an official representative of the employees who are working under the proposed conformed rates, contact that individual and inform him/her of the conformance proposal. Ask that individual to sign Block 16 and indicate whether or not there is agreement with the conformance proposal, and the reasons for the position. Also, make sure the applicable box in Block 16 is checked.

If there is no duly elected representative, ask each employee working in the class being conformed to sign a separate sheet, indicating agreement or disagreement with the proposal. These employees also must be offered an opportunity to explain their position(s).

If no employees have been hired yet, indicate in Block 16.

Once the contractor has completed the form, send it to the Contracting Officer (NDDOT). DO NOT send it directly to the Department of Labor's Wage and Hour Division.

The Contracting Officer (NDDOT) completes the bottom of the form, checking the applicable box, signing, dating, providing a commercial telephone number at which he/she may be reached, and presenting the agency recommendation and other relevant information as an attachment. If the Contracting Officer does not agree with any proposed classes or rates, a statement of the agency's position and rationale must be attached.

NOTE: After receipt/review of SF-1444, the Contracting Officer completes the bottom of the form and forwards it, with the contractor's supporting documentation, to the DOL address listed in Block 1.

EXHIBIT IV-E: CLASSIFICATION AND WAGE RATE REQUEST – EMPLOYEE INFORMATION

North Dakota Department of Transportation, CRD
SFN 50043 (Rev. 08-2006)
To access SFN 50043, click on the following:
www.dot.nd.gov/forms/sfn50043.pdf

NOTE: May be used in lieu of filling out Block 16 of the *Request For Authorization of Additional Classification and Rate (Standard Form 1444)*.

CLASSIFICATION & WAGE RATE REQUEST
EMPLOYEE INFORMATION
North Dakota Department of Transportation, Civil Rights Division
SFN 50043 (Rev. 08-2006)

Contractor	Job Classification
Project Number	Proposed Hourly Rate $
Location	Fringe Benefits $

☐ I agree with the hourly rate and fringe benefits for _____ as proposed above.
Job Classification

☐ I disagree with the hourly rate and fringe benefits for _____ as proposed above.
Job Classification

I propose the rate of $ _____ and fringe benefits in the amount of $ _____. My reasons are as follows:

Name (Please Pprint)	Date
Signature	

TO BE FILLED OUT BY CONTRACTOR:

☐ Employees are unknown at this time.

☐ Individual has left employment and cannot be reached.

Figure 4 - SFN 50043 – Classification and Wage Rate Request Employee Information

EXHIBIT IV-F: INSTRUCTIONS AND LINKS TO PAYROLL FORMS

U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
INSTRUCTIONS FOR COMPLETING PAYROLL FORM (WH-347) AND STATEMENT OF COMPLIANCE

NOTE - 1:

The instructions for completing *Payroll Form (WH-347)* and the *Statement of Compliance* are available online at:

www.dol.gov/whd/forms/wh347instr.htm

NOTE - 2:

A completed, sample *Payroll Form (WH-347)* and *Statement of Compliance* is available online at:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their federal or federally-aided construction-type contracts and subcontracts to submit weekly certified payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to weekly certified payrolls submitted in connection with contracts subject to the Davis-Bacon and Related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on federally financed or assisted construction contracts to respond to the information collection contained in 29 CFR §§ 3.3, 5.5(a). The Copeland Act (40 USC § 3145) requires contractors and subcontractors performing work on federally financed or assisted construction contracts to *furnish weekly a statement with respect to the wages paid each employee during the preceding week*. U.S. Department of Labor (USDOL) Regulations at 29 CFR § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the federal agency contracting for or financing the construction project, accompanied by a signed *Statement of Compliance* indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. USDOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and Related Acts, the contractor is required to pay not less than the prevailing wage, including fringe benefits, as predetermined by the U.S. Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds, or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies paid to each worker, whether as basic rates or as cash in lieu of fringes, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll Number: Beginning with the number "1," list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see contracting officer or agency representative. An individual may be shown as having worked in more than one classification, provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate line entries.

Column 4 - Hours Worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours and Safety Standard Act, enter hours worked in excess of 40 hours a week as ***overtime***.

Column 5 - Total: Self-explanatory.

Column 6 - Rate of Pay (Including Fringe Benefits): In the ***straight time*** box, for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, ***$12.25/.40*** would reflect a $12.25 base hourly rate plus $0.40 for fringe benefits. This is of assistance in correctly computing overtime. See ***Fringe Benefits*** below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the ***overtime*** box for each worker; otherwise, you may skip this box. See ***Fringe Benefits*** below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under

the Contract Work Hours and Safety Standards Act of 1962 if the prime contract exceeds $100,000. In addition to paying not less than the predetermined rate for the classification in which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds, or programs or shall pay as cash in lieu of fringe benefits. See ***Fringe Benefits*** below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in ***Column 7*** first the amount earned on the federal or federally assisted project and then the gross amount earned during the week on all projects, thus ***$163.00/$420.00*** would reflect the earnings of a worker who earned $163.00 on a federally assisted construction project during a week in which $420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deductions are involved, use the first four columns and show the balance deductions under the ***Other*** column; show the actual total under the ***Total Deductions*** column; and in the attachment to the payroll, describe the deduction(s) contained in the ***Other*** column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR Part 3. If an individual worked on other jobs in addition to this project, show the actual deductions from his/her weekly gross wage, and indicate that deductions are based on gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals: Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the ***Statement of Compliance*** need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 USC § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1 and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the ***Deductions*** column above, state ***See Deductions column in this payroll***. See ***Fringe Benefits*** below for instructions concerning filling out ***Section 4*** of the statement.

Item 4 FRINGE BENEFITS - Contractors Who Pay All Required Fringe Benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check ***Section 4(a)*** of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in ***Section 4(c)***.

Contractors Who Pay No Fringe Benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the ***straight time*** of the ***Rate of Pay*** column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the

applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall not be less than the sum of the basic predetermined rate, plus the half time premium of the basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check ***Section 4(b)*** of the statement on page 2 of the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in ***Section 4(c)***.

Use of Section 4(c), Exceptions: Any contractor who is making payment to approved plans, funds, or programs in amounts less than what the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to ***Sections 4(a)*** or ***4(b)*** in ***Section 4(c)***. Enter in the ***Exception*** column the craft, and enter in the ***Explanation*** column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in ***Section 4(c)*** to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the federal or federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in ***Column 6*** on the payroll. See paragraph on ***Contractors Who Pay No Fringe Benefits*** for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, Northwest, Washington, D.C. 202010.

NOTE: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at:

www.adobe.com/products/acrobat/readstep2.html

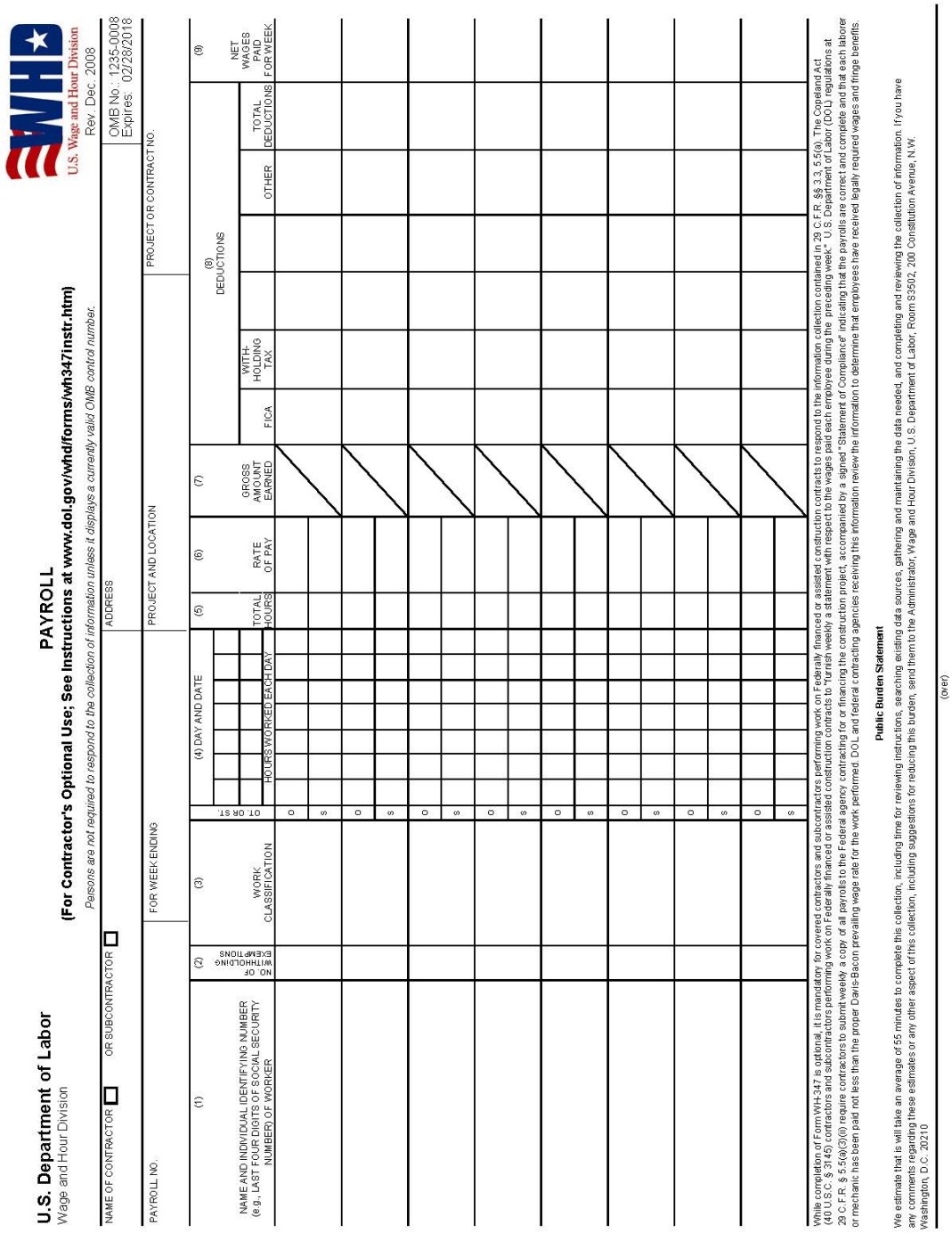
To save the completed forms on your workstation, you need to use the ***Save…As*** method to save the file. For example, move your cursor over the PDF link and click on your "Right" mouse button. This will cause a menu to be displayed, from which you will select the proper save option – depending upon which browser you are using.

- For Microsoft IE users, select ***Save Target As***.

Once you've selected the proper save option for your browser and have saved the file to a location you specified, go to your program menu and start the Adobe® Acrobat® Reader®. Once open, locate the PDF file you saved and open it directly in Acrobat®.

EXHIBIT IV-F: PAYROLL FORM (WH-347) AND STATEMENT OF COMPLIANCE

To access ***PAYROLL FORM (WH-347)*** and the ***STATEMENT OF COMPLIANCE***, click on the following:
www.dol.gov/whd/forms/wh347.pdf



U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
Rev. Dec. 2008

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1235-0008
Expires: 02/28/2018

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | PROJECT OR CONTRACT NO.

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST	(4) DAY AND DATE HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS FICA	WITH-HOLDING TAX		OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
			O										
			S										
			O										
			S										
			O										
			S										
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Figure 5 - WH 347 – Certified Payroll, USDOL

NOTE - 1:

Use the blue down arrow on the tool bar to get the ***Statement of Compliance*** on the reverse side of the payroll form.

NOTE - 2:

Adobe® Acrobat® Reader® version 5 or later is needed to view, fill out, and print PDF forms. This may be downloaded for free at: www.adobe.com/products/acrobat/readstep2.html.

NOTE - 3:

To save the completed forms on a workstation, use the ***Save…As*** method to save the file. For example, move the cursor over the PDF link and right-click. This will cause a menu to be displayed, from which the proper save option may be selected – depending on which browser is being used:

- For Microsoft IE users, select ***Save Target As***.
- For Netscape Navigator users, select ***Save Link As***.

Once the proper save option has been selected for the browser being used and the file has been saved to a location specified, go to the program menu and start the Adobe® Acrobat® Reader®. Once open, locate the PDF file that was saved and open (right-click) it directly in Acrobat®.

NOTE - 4:

The instructions for completing *Payroll Form (WH-347)* and the *Statement of Compliance* are available online at: http://www.dol.gov/whd/forms/wh347instr.htm

NOTE - 5:

A completed, sample *Payroll Form (WH-347)* and *Statement of Compliance* is available online at:

www.wheda.com/root/uploadedFiles/Website/Wheda_Products/Regulations/Sample%20WH_347.pdf

EXHIBIT IV-G: U.S. DEPARTMENT OF LABOR FIELD OPERATIONS HANDBOOK - CHAPTER 15

To access the *Field Operations Handbook - Chapter 15*, click on the following: www.dol.gov/whd/FOH/FOH_Ch15.pdf

Rev. 660 FIELD OPERATIONS HANDBOOK – 10/25/2010

Chapter 15

DAVIS-BACON AND RELATED ACTS AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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CONTRACT SPECIAL PROVISIONS

SECTION 6

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VI. CONTRACT SPECIAL PROVISIONS

- ***REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (USDOT FORM FHWA 1273)***

  www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf

- ***LABOR RATES FROM U.S. DEPARTMENT OF LABOR***

  www.dot.nd.gov/divisions/civilrights/laborcompliance.htm
  (Select a published date from the drop-down box.)

- ***SPECIAL PROVISION EEO AFFIRMATIVE ACTION REQUIREMENTS***

  www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf

- ***SPECIAL PROVISION ON-THE-JOB TRAINING PROGRAM***

  www.dot.nd.gov/divisions/civilrights/docs/ojtspecialprovision.pdf

- ***SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (RACE/GENDER-CONSCIOUS)***

  www.dot.nd.gov/divisions/civilrights/dbeprogram.htm
  (Select a published date from the drop-down box.)

- ***SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (RACE/GENDER-NEUTRAL)***

  www.dot.nd.gov/divisions/civilrights/dbeprogram.htm
  (Select a published date from the drop-down box.)