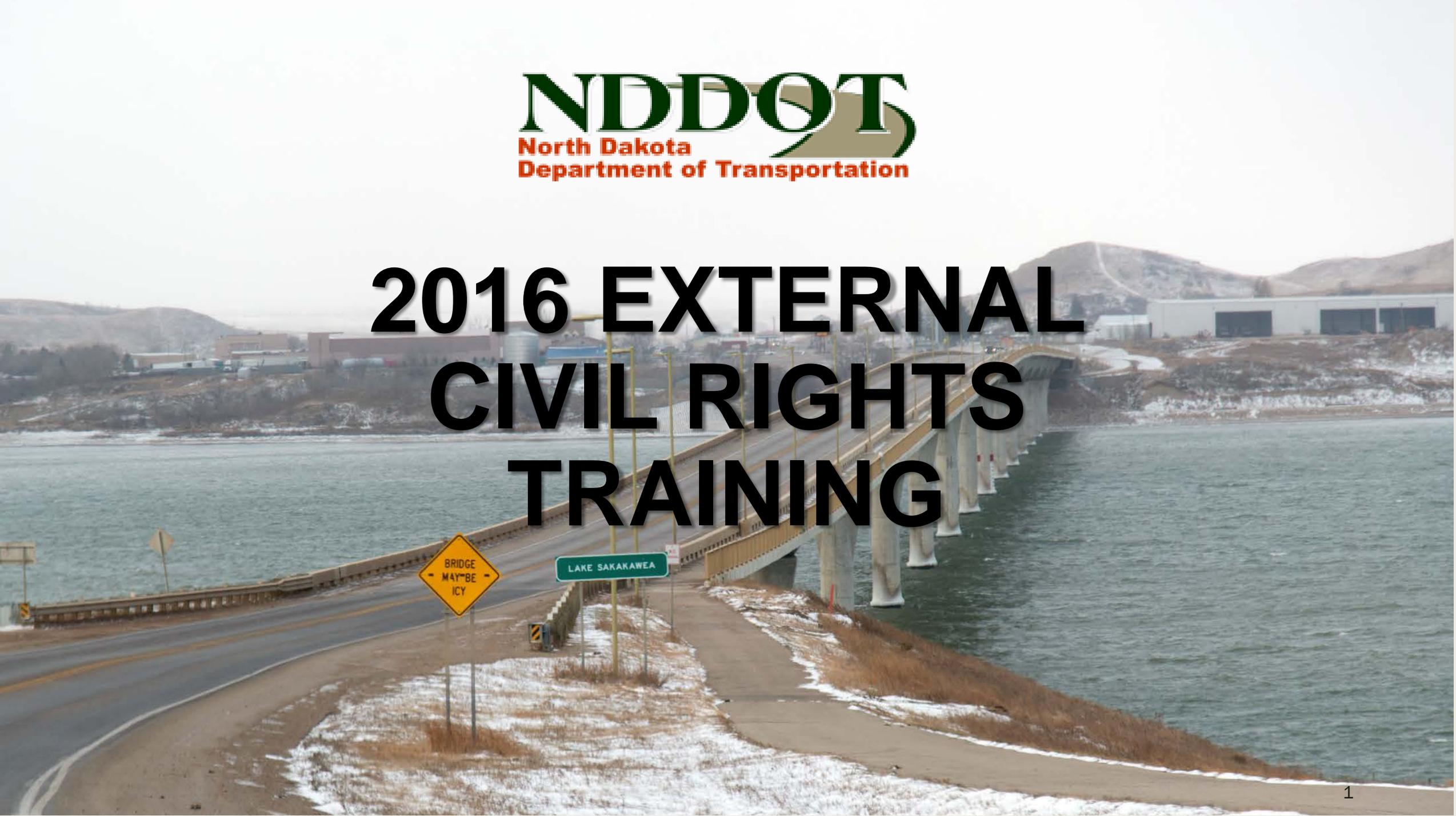




2016 EXTERNAL CIVIL RIGHTS TRAINING





WELCOME

- General Housekeeping:
 - *Emergency Exits, Bathrooms*
 - *Two breaks*
- ECR Manual page numbers
 - *Arial Black for changes*
- Offering one class this year for all project engineers
- LCPtracker training will be provided for consultants following this training



DEFINITIONS

- Project Engineer (PE): Engineer or Manager
- ADE: Assistant District Engineers
- CR Hierarchy: – ADE – Civil Rights (program adm. or director) – ADE
- Documentation: photo, project diary, email

CRD STAFF & ECR TOPICS

- Title VI & Nondiscrimination/ADA : Ramona Bernard
- Disadvantaged Business Enterprise: Denise Spanjer
- Contractor Compliance: Gail Brown
- On-The-Job Training: Denise Spanjer
- Labor Compliance/LCPtracker: Gail Brown





TITLE VI AND NONDISCRIMINATION/ADA

**Presenter: Ramona Bernard
NDDOT Civil Rights Division**

TITLE VI



DBE
OJT

Title VII
Contractor Compliance
Labor Compliance



TITLE VI AND NONDISCRIMINATION/ADA

WHAT IS IT?

- Civil Rights Act of 1964 - race, color, national origin
- Related statutes – sex, age, disability
- Executive Orders
 - *Environmental Justice (EJ) – income status*
 - *Limited English proficiency (LEP)*



REQUIREMENTS OF NDDOT

- NDDOT receives federal money
 - “requirements attached to keep it coming!”
- Director Levi signed “assurances” with FHWA that we will comply.
- Specific Assurances – 10 are listed
 - #3 - *Appendix A and E of the Title VI Assurances*
 - Required in all construction contracts
 - State and federally funded, all tiers
 - Prime contractors/consultants requirements
- Exhibit I-A, page 9

REQUIREMENTS, CONTINUED

- *Protect the public interest*
- *Ensure compliance at all levels*
- *Ensure opportunity to comment*
- *NDDOT ADA Transition Plan*
 - Request for Reasonable Accommodations
 - *Exhibit I-B, page 17*



INTERPRETER SERVICES

Telephonic interpreter services

- Linguistica International
 - *Available for consultants*
 - EEO/Labor Compliance Interviews
 - Contact ADE for instructions

DATA COLLECTION PROCESS

ECRM
Sec.1 p. 6

- *Title VI and Nondiscrimination/ADA Program Requirement*
 - Measures effectiveness of public involvement activities
 - Collection and analysis of demographics
 - Public Meetings and Hearings

- *NDDOT Title VI Public Participation Survey and Instructions*
 - Exhibit I-C, page 19.

YOUR ROLE

- *Compliance Oversight*
 - Monitor Contracts & Contractors
- *Noncompliance and reporting*
- *External discriminatory activities*
 - Contact CRD immediately for course of action
- *Examples of discrimination*

TITLE VI/ADA EXTERNAL COMPLAINTS

- *May file with NDDOT or U.S. DOT*
- *Complaint based on:*
 - Race
 - Color
 - National Origin
 - Sex
 - Age
 - Disability
 - LEP
 - Income Status



WHAT TO DO

- *Refer them to our website to complete the form*
- *Title VI/ADA Complaint for Members of the Public (SFN 51795 Rev. 11-2015) Exhibit I-D, page 21*
- *Do not “investigate”*
- **Title VI vs Title VII**
 - *Employment discrimination = Title VII !*

QUESTIONS AND ANSWERS



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Presenter: Denise Spanjer
NDDOT Civil Rights Division





DBE Certification

DBEs are small for-profit businesses certified by the NDDOT UCP Board.

Owned by disadvantaged individual

Day to Day Control

Real & Substantial Financial Investment

Independence

Expertise to Perform the Work

Gross Receipts

Personal Net Worth



DBE Overall Goal – 6.22%

RACE/GENDER CONSCIOUS

RGC – Percent greater than zero

NDDOT RGC goal – 2.75%

GFE on all replacements

Careful monitoring for any changes after time of award

Replacements require written approval

RACE/GENDER NEUTRAL

RGN – Zero percent

NDDOT RGN goal – 3.47%

No GFE monitored

Notify CRD when changes occur

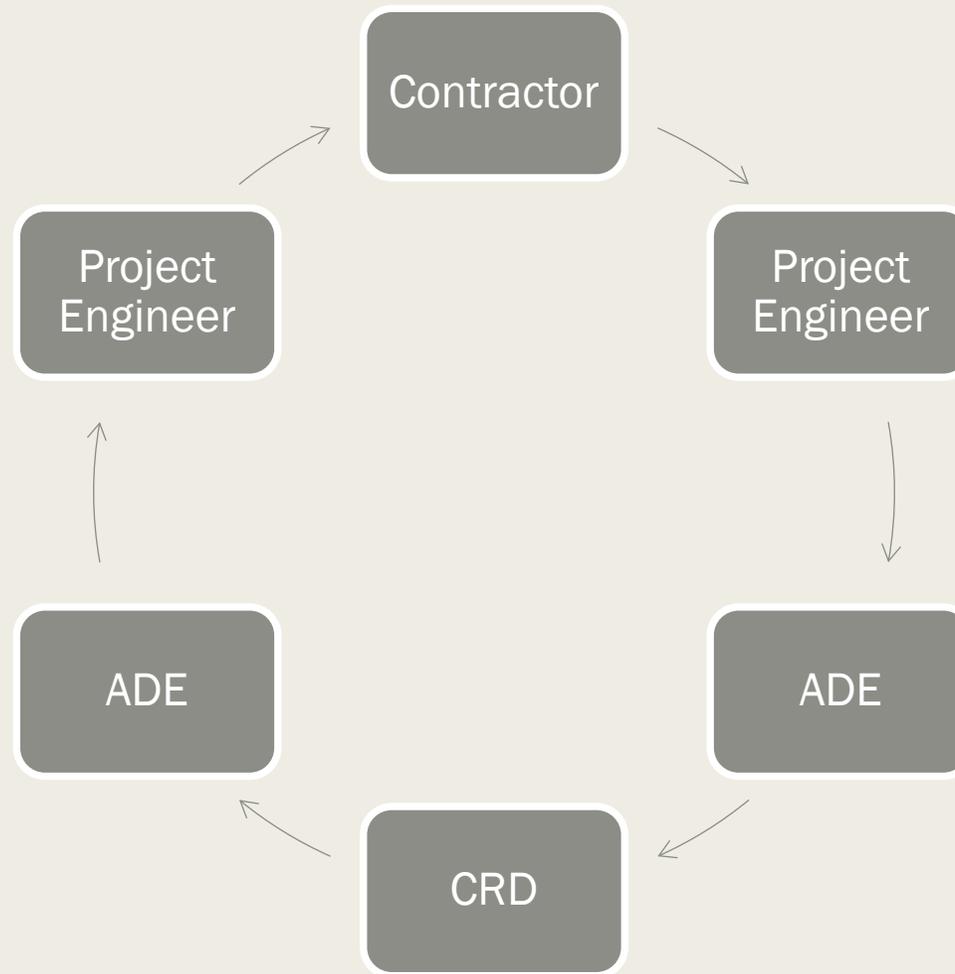
At present we are at 2.24% overall. More projects will contain Race/Gender Conscious Special Provisions as a result.



State Funded Projects

- This presentation DOES NOT APPLY
 - *No DBE Special Provisions apply*
 - *No USDOT or USDOL Federal Requirements*
 - *No Forms to be retrieved from Primes*
 - *No Reports need be submitted to Civil Rights*

Working with CRD

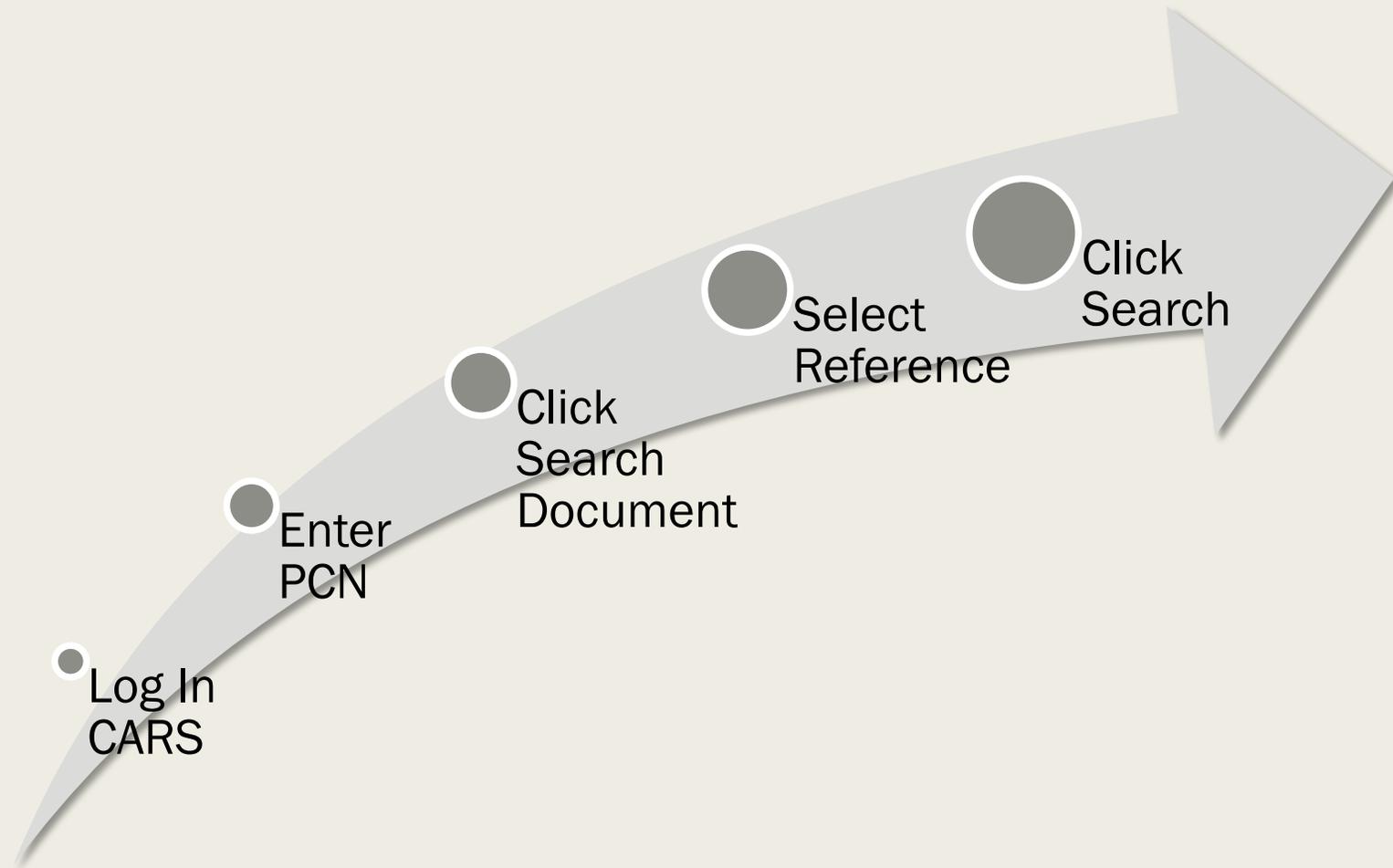


Pre-Construction Conference Communication

Prime must:

- Notify and invite all subs and suppliers - DBE or non-DBE
- Address issues to assure DBE program compliance
- Provide the DBE firms listed on Form C with the Pre-Construction form and conference minutes

Locate Participation Review



DBE Participation Review

Page 1

DBE PARTICIPATION REVIEW – RACE CONSCIOUS
North Dakota Department of Transportation, Civil Rights Division

GOAL: 3.00%
ACH: 4.76%

SFN 13743a (Rev. 2-2013) Update – 11/26/2014 6.59%

BID OPENING November 14, 2014			
APPARENT LOW BIDDER KNIFE RIVER MATERIALS		LOW BID \$1,630,814.45	
JOB NUMBER 34	PCN(S) 18336	PROJECT NUMBER(S) SNH-6-005(028)300	
WORK TO BE COMPLETED 2" MILL & 2" RECYCLED HBP FAA 43 OVERLAY AND ADA PEDESTRIAN RAMS ALON SHARED USE		LOCATION PEMBINA; ND 5 FROM EAST JCT ND 32 EAST TO CAVALIER	

DBEs LISTED ON FORM A

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
West River Striping	28,676.03	1.76%	100%	762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
Reiner Contracting	78,780.78	4.83%	100%	411-0105, 702-0100

DBE BID ITEMS KNIFE RIVER MATERIALS WILL DO WITH THEIR OWN FORCES: 302-0100, 411-0105, 430-0143 haul only and 430-5828

DBEs NOT USED BECAUSE KNIFE RIVER MATERIALS WILL DO THE WORK: Miigwech Trucking (formerly known as Keith Brown Trucking), and JD Donovan

DBEs NOT USED DUE TO BID DIFFERENTIAL: West River Striping – rumble strips, Morris Sealcoat & Trucking – fog only, Hudson, Inc. and Reiner Contracting.

DBES NOT USED DUE TO OTHER (Specify): DBE West River Striping was used over DBEs Muscha Pavement Marking and Dallmann Services Co. for pavement marking

ACTIVITIES & CONTACT:
DBEs Quoting:
 Dallmann Services Co: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124
 Decorative Concrete Designs: 750-2115
 Hudson Incorporated: 411-0105
 JD Donovan: asphalt cement haul only LATE
 Miigwech Trucking, Inc.: 302-0100, 411-0105, 430-0143 haul only
 Morris Sealcoat & Trucking: 702-0100, 760-0005, 760-0007
 Muscha Pavement Marking: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124
 Reiner Contracting: 411-0105
 West River Striping: 702-0100, 760-0005, 760-0007, 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

- Summary of Prime’s DBE Participation at time of award
 - Contract amount
 - DBE subcontractors used
 - Intention to self-perform
 - Non-DBE subcontractors used
 - Management decisions

Utilization Plan = Participation Review

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		
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
3-D Specialties	1	No	No	Sub	\$13,134 3.89%	\$13,134 3.89%	-	View
Fargo Electric Construction	1	No	No	Sub	\$31,850 9.42%	\$31,850 9.42%	-	View
Heartland Labor	1	No	No	Sub	\$2,120 0.63%	\$2,120 0.63%	-	View
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								

- Prime's Plan for the Job
 - *Contract amount*
 - *Subs & Suppliers used*
 - *Intention to self-perform*

Be Prepared

- Make notes and underline
- Highlight areas of the SP
- Review requirements for any changes to “project’s total workforce”



Print Required Forms

Distribute:

- [SFN 60597](#) - DBE Performance - CUF
- [SFN 60638](#) - Monthly Record of DBE Payments
- [SFN 14268](#) - DBE Participation Certification
- [SFN 60595](#) - Replacement Approval Request
- [SFN 60781](#) - DBE Weekly Trucking Report

Prepare for Schedule

		on which on-site work is started, whichever is earlier. *See								
		Working Day Contract NA _____ working days counted								
		or from the actual date on which on-site work is started, w								
		Contract Amount \$	Engineer							
<input type="checkbox"/> Non-DBE Subcontractor										
PROPOSED WORK SCHEDULE										
YEAR	JAN.	FEB.	MAR.	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.
2014									xx	xx
2015										

- Review Progress Charts
- When are DBEs to be on the job?
- “Note to self” tell Prime to provide an updated progress chart to the DBE any time changes are made in the proposed work schedule

SFN60597

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 <input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work or delivery of supplies procured for the contract <input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount we are paying the DBE <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> Manage and supervise the entire trucking operation for which it is responsible on this project <input type="checkbox"/> <input type="checkbox"/> Owns and operates at least one fully licensed, insured, and operational truck being used on this project <input type="checkbox"/> <input type="checkbox"/> Owns, insures, and operates its trucks using DBE employed drivers					I hereby affirm that I will perform a commercially useful function on this project and will be: Yes No <input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work or delivery of supplies for the contract <input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount that I am being paid <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> 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 <input type="checkbox"/> <input type="checkbox"/> Manage and supervise the entire trucking operation for which I am responsible on this project <input type="checkbox"/> <input type="checkbox"/> Own and operate at least one fully licensed, insured, and operational truck being used on this project <input type="checkbox"/> <input type="checkbox"/> Own, insure, and operate my trucks using drivers that I employ						
Signature				Date		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.

SFN 60597 must be submitted for every DBE on every project at the same time as SFN 5682

SFN14268

DBE PARTICIPATION CERTIFICATION

North Dakota Department of Transportation, Construction
SFN 14268 (Rev. 01-2014)

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.

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 submits SFN14268 to project engineer within 4 weeks of the DBE contract work being completed.



CUF

Track DBE Performance with two forms

[SFN60597](#)

CUF Certification

[SFN60596](#)

Project Engineer On-site Work Confirmation

SFN60597

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

<p>I hereby affirm that this DBE will perform a commercially useful function on this project. The DBE agreed that they are:</p> <p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work or delivery of supplies procured for the contract</p> <p><input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract</p> <p><input type="checkbox"/> <input type="checkbox"/> 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</p> <p><input type="checkbox"/> <input type="checkbox"/> Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount we are paying the DBE</p> <p><input type="checkbox"/> <input type="checkbox"/> 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</p> <p><input type="checkbox"/> <input type="checkbox"/> Performing or exercising responsibility for at least 30 percent of the total dollar amount of the DBE participation with its own work force</p> <p>Complete for DBE Trucking Firms: The DBE has agreed that they will:</p> <p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/> Manage and supervise the entire trucking operation for which it is responsible on this project</p> <p><input type="checkbox"/> <input type="checkbox"/> Owns and operates at least one fully licensed, insured, and operational truck being used on this project</p> <p><input type="checkbox"/> <input type="checkbox"/> Owns, insures, and operates its trucks using DBE employed drivers</p>	<p>I hereby affirm that I will perform a commercially useful function on this project and will be:</p> <p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work or delivery of supplies for the contract</p> <p><input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved or delivery of the supplies procured for the contract</p> <p><input type="checkbox"/> <input type="checkbox"/> 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</p> <p><input type="checkbox"/> <input type="checkbox"/> Claiming appropriate participation credit considering the work being subcontracted, industry practices, and the amount that I am being paid</p> <p><input type="checkbox"/> <input type="checkbox"/> 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</p> <p><input type="checkbox"/> <input type="checkbox"/> Performing or exercising responsibility for at least 30 percent of the total dollar amount of the DBE participation with my own work force</p> <p>DBE Trucking Firms complete the following: I affirm that I will:</p> <p>Yes No</p> <p><input type="checkbox"/> <input type="checkbox"/> Manage and supervise the entire trucking operation for which I am responsible on this project</p> <p><input type="checkbox"/> <input type="checkbox"/> Own and operate at least one fully licensed, insured, and operational truck being used on this project</p> <p><input type="checkbox"/> <input type="checkbox"/> Own, insure, and operate my trucks using drivers that I employ</p>
--	---

Signature	Date	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.

SFN 60597 must be submitted for every DBE on every project at the same time as SFN 5682

New form

SFN60596

Project Engineer On-site Work Confirmation

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



Trucking

The prime contractor must:

Monitor all trucking operations for DBE and the labor standards compliance

The project engineer must:

Remind the prime that any changes in DBE trucking firms listed in the Participation Review requires the Replacement Approval Request and Good Faith Efforts throughout the life of the project.

The DBE trucking firm must:

Track trucking daily and submit weekly summary to primes and project engineers on the following Monday



SFN60781

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	Non-DBE Match	Non-DBE
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



On to the Project

Project Changes =

Participation Changes

Communicate any changes with the ADE
and guide prime through the replacement
approval request process ASAP

SFN60595

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.

- If there are any changes in project as it was awarded, a SFN60595 Replacement Approval Request must be submitted.



Good Faith Efforts - Rule of Thumb

Replacement Approval Required

R/G CONSCIOUS

*NO Replacement Approval
Required*

R/G NEUTRAL

GFE Required for Replacement?

	RGC with Goal	RGN No Goal	Goal MET	Goal NOT MET	DBE Can't Perform	Non-DBE/BD Can't Perform	Prime Can't Self-perform	Is GFE Required in this Situation?
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	X	NO



Good Faith Efforts Guidance

Replacement Approval Request

[SFN 60595](#)

Contractor's Good Faith Efforts Documentation

[SFN 60829](#)

DBE Directory

<https://dotnd.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp?TN=dotnd&XID=224>

DBE Capacity



Replacement Approval Exceptions

Public Necessity

Safety

Other Special Provisions

Permits

Occasionally needed project work

Other?



QUIZ

- Which DBE forms are primes required to submit for state funded only jobs?
- How will you know which jobs require Replacement Approval?
- How do you know which DBE Special Provision applies to which job?
- What steps are necessary before signing off on a Request to Sublet?



QUIZ

- T or F: Project Engineers must collect and upload the Monthly Record of DBE Payments into CARS.
- T or F: The transportation value of a minority truck driver's work may be counted toward the DBE goal.
- T or F: There are no exceptions to the Replacement Approval Request process.
- T or F: The contractor is responsible for contacting Civil Rights Division for resolution if problems arise on a job.
- T or F: Forms never change; you can accept any old form the primes submit.

QUESTIONS AND ANSWERS





CONTRACTOR COMPLIANCE PROGRAM

Presenter: Gail Brown
NDDOT Civil
Rights Division



Title VII vs. Title VI

Both are part of Civil Rights Act of 1964-they are part of the same Act and law and do not cover the same thing.

Title VI –deals with how federal \$\$ are spent and whether processes of governmental recipients and subrecipients foster discrimination. Complaints are often by those who use or benefit from NDDOT services.

Title VII – deals with discrimination in employment by both public and private employers.

Title VI deals with the employment relationship in only a few exceptional circumstances



Scenario

You are a Project Engineer on a federal-aid job that takes place partially on a Native American reservation. An employee of the prime contractor comes to you and complains that the foremen made disparaging comments about Native Americans and suggested that cleaning up the project site would not be necessary given the general disrepair of the area. The worker is Native and felt like the comments made on a continual basis made his work environment hostile. Later that same day, a member of the public approached you – he overheard the foreman's comments on clean up and is very, very angry. What do you do?



2015 Issues in CCR

- In reviewing contractors over the summer, the most serious issue is always failure to hire females or minorities
- We had two OJT issues this summer – one involved a history of years of not offering positions to females after training, the other involved alleged discrimination in the replacement of an OJT trainee.



General Contractor EEO Requirement

- Must ensure and maintain a working environment free of discrimination or harassment
- All facilities should be non-segregated, except toilets and changing facilities (privacy).
- Periodic inspections should be done onsite – once a month (Monthly EEO Report)
- When possible, Contractor must take necessary steps to reduce isolation and curb hostile actions on site.

See SP 1273



Harassment on the Project Site

- There were a number of complaints reported by contractors reviewed this last summer.
- Additionally, the behavior of one contractor in terms of sexual harassment was reported directly to CRD
- If you witness harassment, report to ADE (who will report to CRD)



Harassment

- The following may constitute harassment
 - *Hazing or teasing of female or minority employees*
 - *Unwanted touching*
 - *Unwanted sexual advances*
 - *Off-color or inappropriate humor*
 - *Remarks directed at an employee because of race or sex*

Selection Criteria:

Who is Reviewed?

Federal Aid Project > \$3,000,000.00



Compliance Issues

When Contractor was last reviewed

DBE/OJT requirements in project

Type and Location of Project

Review Method

Desk Audit – all reviews start with a review of payroll, recruiting, payment/retainage, etc.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL
(For Contractor's Optional Use. See Instructions, Form 905-037 (Rev. 11/11))

Form 905-037 (Rev. 11/11)

NAME OF CONTRACTOR: [] OR SUBCONTRACTOR: [] ADDRESS: [] CITY AND STATE: [] ZIP CODE: []

FOR HIRE DURING: [] PROJECT AND LOCATION: [] PROJECT OR CONTRACT NO.: []

NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE	JOB CLASSIFICATION	DATE	PAY PERIOD							TOTAL HOURS	GROSS PAYROLL	EMPLOYEE'S SHARE OF SOCIAL SECURITY TAX	EMPLOYEE'S SHARE OF MEDICARE TAX	OTHER TAXES	TOTAL DEDUCTIONS	NET PAYROLL	
			01	02	03	04	05	06	07								
WORKER BACH	CONCRETE	01/01/11							37	32.00	\$1,008.00	\$75.00	\$111.46	\$17.41	\$20.00	\$0.00	\$1,090.87
BACH-DAY	LABORER	01/01/11							37	18.00	\$666.00	\$50.00	\$66.60	\$11.71	\$20.00	\$0.00	\$577.69

We estimate that it will take an average of 75 minutes to complete the 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 the collection of information, including suggestions for reducing the burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room 9050, 200 Constitution Avenue, N.W., Washington, D.C. 20540.

Thereafter, a Conference is conducted

Conference Call

Video Conference

Onsite (District Conference Space)



What does a Project Engineer Need to Do Before a CCR?

- First, do Labor and EEO interviews.
- Make sure you have filled out paperwork on the bulletin board and filed a photograph in CARS/Filenet.
- Report any discrimination or harassment complaints to CRD prior to the Exit Conference so that they can be addressed at the Exit Conference.
- Attend the Exit Conference with your ADE.
- Do follow up as requested by CRD.



Labor Compliance and EEO Contractor Compliance Job-site Interviews:

- Now done through LCPtracker
- Process should be paperless – done on a mobile device
- Don't forget to interview LEP workers (Limited English Proficiency)

BULLETIN BOARDS



- Inspect the Bulletin Board *immediately prior* to a Contractor Compliance Review Conference
- The Bulletin Board should always be inspected at the commencement of a project.
- If the Davis-Bacon wage rates turn up missing, make sure they are posted again promptly.
- Pay attention to subcontractors – have they posted their own EEO policy and EEO officer.



New Language on Gender Identity and Sexual Orientation

- The required posters should have language included (via “stickers”) referring to nondiscrimination on the basis of gender identity and sexual orientation.
- This is now required because of an Executive Order.
- If you notice a poster without the required language, give the contractor up-to-date posters and ask that the old one be replaced.



Scenario

- You are a Project Engineer on a federal-aid highway project. You have set a particular day for completing labor interviews. When you get to the Project site, you see a landscaping subcontractor busy at work with a large crew. You approach a worker and he says he speaks no English. Another worker offers to translate for the whole crew, which is Spanish-only speaking. What do you do?



Answer

- You should use the interpreter's service that NDDOT has contracted for.
- You do not know if a volunteer "translator" might be asking for a kickback from the worker or if he is skilled enough to translate well.
- Every worker has a right to privacy of what he or she says in the interview.
- As tempting as it is to use a person on site as translator, use the service.



Scenario

- You get the translator service on your cell phone and interview several of the workers while using it.
- One of the workers tell you that he is actually an equipment operator and wants to get a better job, but he has been told he needs to speak better English before he can take a CDL test here.



What's Ahead

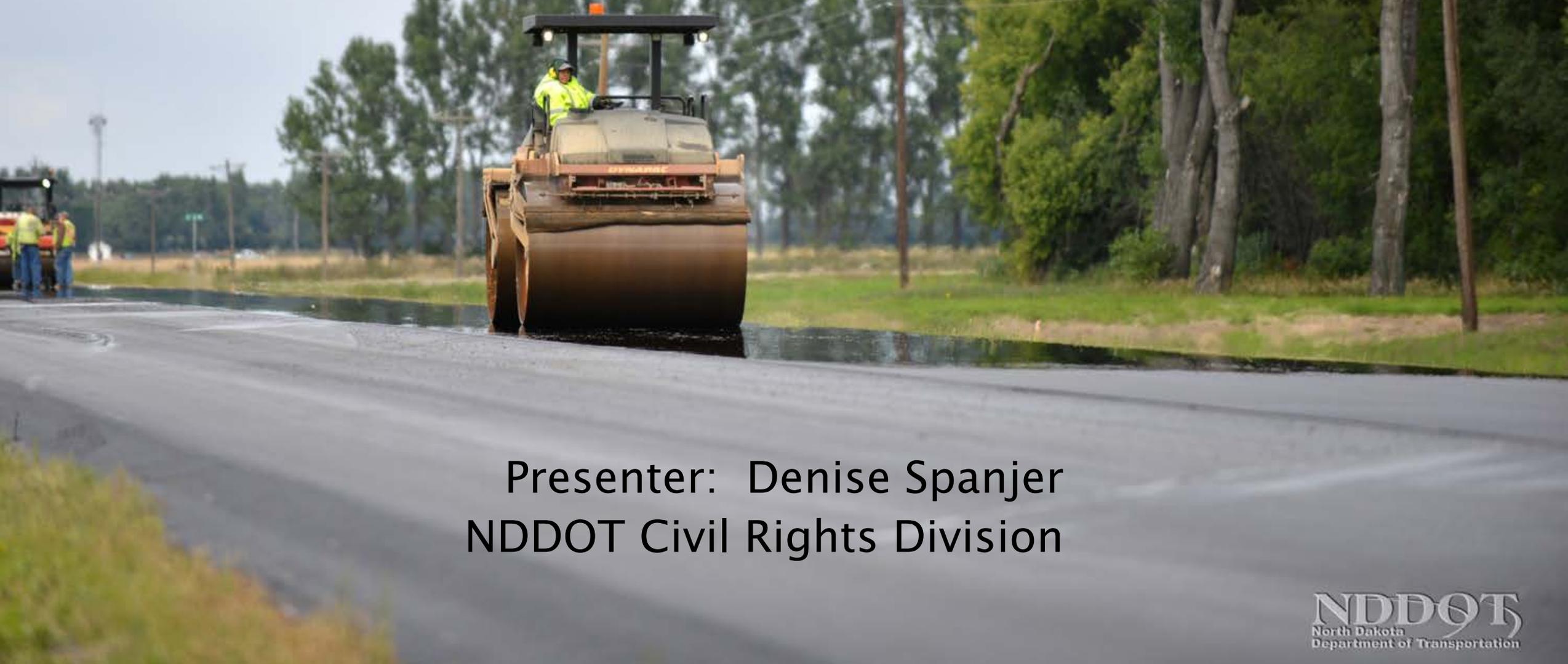
- LCPtracker will make it possible to review EEO progress in real time on a project. The software can generate a complex EEO Report at any point in the project.
- B2GNow will revolutionize the review of DBE payments as its use is expanded.
- Increasingly, we will be able to track compliance and be proactive in avoiding issues raised during CCR Reviews.

QUESTIONS AND ANSWERS





ON-THE-JOB TRAINING (OJT) PROGRAM



Presenter: Denise Spanjer
NDDOT Civil Rights Division

OBSERVE

Primary role of Project Engineer

- *Master List*
- *Trainee training time on the equipment, in the truck, etc.*
- *OJT Supportive Services On-Site Visits*

Progress Payments

- Failure to fill trainee position
 - *The contractor must show good faith in their attempts to hire a trainee to fill a need in their company.*
 - *Contractors who refuse to fill the position face consequences.*
- Failure to train
 - *Using trainee position as laborer or flagger, etc.*
 - *“Train Yourself” - lacking supervision of trainer*

Assignments

- OJT Special Contract Provision
- Trainees are assigned to contractors
 - *Not projects*
 - *May move trainees around to other jobs*
 - from federal projects to state funded only projects
- Contractors from other states may have different experiences with OJT Program

Wold Engineering - OJTSS

- OJT Supportive Services On-Site Monitor
 - *Visits trainees, superintendent, trainer, project engineer on the project site*
- OJT Supportive Services Project Assistant
 - *Contacts contractors weekly to check on trainee status, progress*
 - *Checks payrolls and hours on projects*
- District Payroll Responsibility
 - *Trainee graduates to Journeyworker*

Completion is Important

- Trainee positions are assigned based on a contractor's cumulative contract dollars
- Contractors should complete a trainee's program/curriculum within one construction season



Program Approval

- Contractors must request approval for program and trainee candidate separately
- All requests come through CRD
- Curriculum is outlined in the OJT Program Manual available at
- <http://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf>

Training Programs

- Contractor may create a custom program
- Abbreviated programs
 - *Apprenticeships*
 - *CDL holding Trucker*
 - *Upgrades*
 - *Multiple positions – not simultaneous*

Credit & Reimbursement

- Training hours may be earned on federal and state funded projects
 - *Trainees may also receive credit for hours spent in training on other projects solely funded by:*
 - County, TERO, city, private, out-of-state DOTs
- Training hours are reimbursed at \$4 per hour
- Contractors must submit vouchers monthly

QUESTIONS AND ANSWERS





LABOR COMPLIANCE (DAVIS-BACON) PROGRAM

Presenter: Gail Brown
NDDOT Civil Rights Division



Status of Employee: Independent Contractor, Business Owner or Owner/Operator?

- Let's start with a basic concept that came up a lot this past season.
- If a worker is not a traditional employee of a contractor, do they need to be placed on DBRA Certified Payroll?



Independent Contractor

Scenario: Prime contractor uses an agency who employs independent contractors to do flagging on a federal-aid project. They indicate that they pay these individuals on 1099 Forms, and do no wage withholding or payment of federal taxes. Do they need to be on certified payroll?

They also employ several independent contractors who own and drive their own trucks. Do they need to be on certified payroll?



Owner/Operators of Trucks

- When doing payroll via paper, the Owner/Operator should be listed on payroll of contractor, with notation “owner operator.”
- On LCP Tracker, the Owner/Operator is listed, and the Owner/Operator box is “checked.”



Sole Proprietors

- Sometimes, you will see worker on a federal aid job who claims that they are a sole proprietorship and exempt from Davis-Bacon minimum wages and certified payroll.
- Sole Proprietorship vs. Independent Contractor
- Federal Tax ID – if they are an “Inc.” or a “LLC”, and you can establish this, they are exempt from Davis Bacon certified payroll.



Bona Fide Owner/Executive

- What if a business is not a sole proprietorship, but is owned by several individuals. Are all these individuals exempt from DBRA?
- Scenario – a Prime Contractor has contracted with a business, Flagging, Inc., to provide the flagging services on a federal aid project. The subcontractor Flagging, Inc., claims have 3 owners: Tom, Bob and Lou. Tom owns 50% of the business and is responsible for hiring/firing and payroll. Bob owns 25% and Lou owns 10%.
- All of these individuals spend some time flagging. Do they need to be placed on certified payroll?



LCPtracker/Automated Payroll

- 2016 – use of automated payroll will be voluntary
- Contractors may continue to file via paper as they have, or may elect to file through LCPtracker.
- Get trained, get started using the system.



Checking Payroll: Old System

- Check each line: make sure wage above minimum and that $\text{wage} \times \text{hours} = \text{gross pay}$
- Check fringes either paid in cash or into a plan
- Check for missing or misclassified employees



Checking Payroll – LCPtracker

- Payroll need to be “accepted” by a member of project staff.
- Before accepting, use the “audit” flag to check one worker in each broad classification (trucker, operator, laborer, and skilled craft).
- Look for equipment or workers that you know were present on the worksite who don’t show up on payroll
- Clear any “violations” before accepting.



Labor Interviews

- You should be able to conduct labor interviews on your mobile device
- If the person assigned to do interviews does not have a mobile device, consider a “dedicated” mobile device used for labor interviews
- No signatures needed for employees
- The system should check wage rates for you – look for obvious violations
- New interview Form is one page



Paper Payrolls

- Log In under “Admin” tab
- Scan in and upload under Load Documents
- After ensuring that the payroll is on LCPtracker, the original paper may be destroyed.
- Paper payrolls need to be checked under the old method of manual checking because the system cannot check them.
- By logging the payroll in, the prime and higher sub will have notice that the certified payroll was done and accepted.



Fringe Benefits

- LCPtracker requires the employer to add more information on fringe benefits than in the past – they must be a dollar value per hour for different types of fringes
- Fringe Benefit reports not required once LCPtracker is in use, but do inquire whether payments made in last 120 days.



New Rule – Trucks/Pickups

- < 26,000 pounds GVW rating is a Pickup Truck. The driver will be paid as a Group 1 Laborer.
- > 26,000 pounds GVW rating is a Single Axle Truck. The driver will be paid as a Truck Driver, Single Axle, or above.

Laborers who also Operate Skidsteers

Laborer or Group 5 Equipment Operator?

*Depends on HP of the
the skidsteer*

80 or < HP is a Laborer

*81 or > is a Group 5
Equipment Operator*





Suppliers and Leasing Companies

- **Material suppliers are not subject to Davis Bacon except that drivers may become so if they spent more than a de minimis time on site.**
- **Equipment Lease companies are different – they might be subject to DBRA if time on site is more than incidental.**



Workers with more than one classification

- If a worker moves from Laborer duties to operate a piece of equipment, the time in each classification must be noted.
- Worker must be paid for actual time spent in each classification.
- Rule of Reason – very briefly helping out another crew might be incidental (i.e. too small to note).
- If the duties are part of the job, they are not incidental.

QUESTIONS AND ANSWERS

