

Emergency Relief Contract Requirements

Project Number:

ER Site:

Location:

Year:

The Contractor shall perform all work in accordance with the *North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction* and the most current *Supplemental Specifications*. The Contractor's signature and initials below indicated he has received and will abide by the policies and regulations of each of the following:

_____ NDDOT Special Provision – DBE Race-Neutral (with revision)
www.dot.nd.gov/divisions/civilrights/dbeprogram.htm.

_____ FHWA 1273 – Required Contract Provisions

_____ EEO Affirmative Action Requirements
www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf

_____ Prompt Payment – 46 CFR 26.29
www.dot.nd.gov/divisions/civilrights/docs/dbe/promptpay20080118.pdf

_____ Davis-Bacon Wage and Payroll Requirements -- It is the responsibility of the Contractor to ensure that the most current Davis-Bacon Labor Rates are used, which can be found at:
www.dot.nd.gov/divisions/civilrights/laborcompliance.htm

_____ Buy America Provision
<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

_____ Convict Produced Material/ Convict Labor Provision
<http://www.fhwa.dot.gov/construction/cqit/convict.cfm>

_____ NDDOT ADA Requirements

_____ Contractor shall ensure that all materials come from an approved location. Pre-approved locations can be found on the NDDOT website at:
www.dot.nd.gov/dotnet2/materialsource/certificatesofapproval.aspx
For new locations the contractor shall complete and submit SFN 58466 - MATERIAL SOURCE APPROVAL REQUEST

NDDOT or LPA witness

Date

Contractor Representative

Date

NOTICE

This project is considered race-neutral and does not have a Disadvantaged Business Enterprise (DBE) goal assigned to it.

The following revisions shall be made to the S. P. DBE Race-Neutral, dated February 8, 2008, contained in the Bidders Proposals for the project listed above. The following steps will **not** be required for this project:

Page 3, Step 1: Advertise

Page 3-4, Step 2: Sign In

Page 4, Guidelines for Submitting Quotes to Bidders

Page 5, Submitting Quotes to the Department of Transportation

The following steps **are required** including the revisions stated below:

Page 5, Forms A, B, and C:

Submission of these documents will be required **within 30 days** after award of contract.

All other parts of the S. P. DBE Race-Neutral, dated February 8, 2008, shall apply.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

PROJECT _____

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INTRODUCTION

49 Code of Federal Regulations Part 26 (CFR) states that the contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractors shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

In addition, Title VI assures that no person or group of persons may, on the grounds of race, color, national origin, sex, age, or handicap or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs or activities administered by the Department. For information regarding Title VI, see the 2005 DBE Program.

The two paragraphs above apply to every contractor on the project, including every tier of subcontractor. It is the prime contractor's or subcontractor's responsibility to include the two above paragraphs in every subcontract.

In this special provision:

“Apparent low bidder” means the bidder whose bid is read as low bid at the bid opening.

“Blanket quote” means when a business provides the same quote, for all projects, at a bid opening, using the same price or when a business provides one quote for an entire season, at one rate, that is not project specific. Generally this is done by trucking firms.

“Contractor” means ALL DBE (including MBE and WBE) and non-DBE firms, including prime contractors, subcontractors (under/over \$500,000), suppliers, brokers, vendors, regular dealers, and manufacturers.

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

“Prime Contractor” means bidders or contractors who are submitting proposals on this project, regardless of the size of the project.

“Quoter” means a DBE or a non-DBE subcontractor (under/over \$500,000), supplier, broker, vendor, regular dealer, or manufacturer who submits quotes to another contractor.

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

“Aggregate providers” are considered subcontractors rather than suppliers, regardless of the amount of their quote.

When counting DBE participation the following definitions will apply as per 49 CFR Part 26:

“Broker” means an agent who negotiates contracts of purchase, work, lease, or sale; or buys and sells goods; or negotiates between buyers and sellers; but without having custody of the property. A broker may assist in the procurement of facilities, materials or supplies required for the performance of the contract. A broker is not regarded as a supplier, manufacturer, or regular dealer for the purposes of this program.

“Manufacturer” means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

“Regular dealer” means a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

“Supplier” means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- “Materials” is defined as aggregate, steel, petroleum products, concrete, asphalt, and other construction materials.

SOLICITATION EFFORTS

The following is a list of actions to be taken or documentation to be provided by all bidders (including DBE primes) to obtain DBE participation. Efforts shall include, but are not limited to, the following steps:

STEP 1: ADVERTISE

- The prime contractor may place an advertisement soliciting DBE participation in either general circulation media or the supportive services newsletter before the bid opening. "General circulation media" means a newspaper in the area of a project or a trade association publication such as the Construction Bulletin
- Prime contractors who submit their proposals by mail should say so in their advertisement. The ad should also state a date and time by which all quotes may be submitted for consideration, and where quotes should be sent.
- The supportive services newsletter is published two weeks before each bid opening. Requests for ads in the newsletter must be received, in writing, by the Civil Rights Division no later than noon (Central time), 2 weeks before the bid opening date. Advertisements may be emailed to: subquotes@nd.gov or faxed to 701-328-0343, 701-328-4545, 701-328-1965, or mailed to the Civil Rights Division, 608 East Boulevard, Bismarck, ND 58505-0700. Bidders are also encouraged to publish an email address for their company where subcontractors and suppliers can email their quotes to.

STEP 2: SIGN IN

DBE and non-DBE prime contractors who are bidding by paper only, or subcontractors over \$500,000, (excluding suppliers, brokers, vendors, regular dealers, and manufacturers) who are quoting non-electronically are not required but are strongly encouraged to sign-in utilizing one of the following two options:

- Sign-in as specified in third paragraph below: "Prior to 11 am (Central),..."
- Prior to 10:30 a.m. (Central), the day before the bid opening, he or she may call the Civil Rights Office, 701-328-3116 or 701-328-2637 if assistance is needed to sign-in electronically.

DBE and non-DBE prime contractors and subcontractors over \$500,000, (excluding suppliers, brokers, vendors, regular dealers, and manufacturers) who are bidding or quoting electronically, (fax or email), are not required but are strongly encouraged to do the following:

- Prior to 11 a.m. (Central), the day before the bid opening date, may electronically sign-in at: <http://www.dot.nd.gov/dbebidinfo.html> and click on "**Sign-in for Prime Contractor and Subcontractor Quoting Over \$500,000,**" providing information (location, phone, email and/or fax number) where they can be contacted by businesses wishing to submit quotes, to them, between 11:00 a.m. and 8 p.m. that same day.
- Designate at that time which jobs they are bidding or quoting on.

- Between 11:00 a.m. and 8 p.m. (Central), the day before the bid opening the prime contractor and subcontractors over \$500,000 should have a representative available to receive and discuss quotes at the contact location, phone/fax numbers, or email, as required above.

NOTE: To facilitate the flow of information subcontractors quoting over \$500,000 are not required but are strongly encouraged to complete each phase in Step 1 above.

DBE and non-DBE suppliers, brokers, vendors, regular dealers, manufacturers, and subcontractors quoting either over/under \$500,000 are not required but are strongly encouraged to:

- After 11:00 a.m. (Central), the day before the bid opening, retrieve the “**Report for Prime Contractor and Subcontractor Quoting Over \$500,000**,” which will be posted electronically at <http://www.dot.nd.gov/dbebidinfo.html>. A copy can be obtained by fax, by calling 701-328-3116, 701-328-2637, or 701-328-2576.

GUIDELINES FOR SUBMITTING QUOTES TO BIDDERS

All DBE and non-DBE businesses are **strongly encouraged** to follow these guidelines when quoting.

- The night before the bid opening,
 - By 2 p.m. (Central) all DBE and non-DBE suppliers, regular dealers, vendors, manufacturers, and brokers should cease quoting.
 - By 5 p.m. (Central) all subcontractors under \$500,000 should cease quoting.
 - By 8 p.m. (Central) all subcontractors over \$500,000 should cease quoting.
- Indicate the date of the bid opening, job number, and project number being quoted.
- Include bid item numbers and units or quantities.
- Use bid items and quantities from the proposal rather than from the Notice to Bidders.
- Show all calculations on the quote.
- Indicate whether mobilization is included, cost of bond if required, and any other special conditions.
- Indicate if a quote does not include something required by the specifications for a particular bid item.
- Include on all trucking quotes the type and number of units available and their capacity.
- Provide separate quotes for each project (each quote on a separate page).
- Indicate on all quotes for more than one bid item whether the bid items are tied or not tied.
- Subcontractors over \$500,000 should attach a copy of their Form A to their quote when submitting it to the prime contractor.

- DBEs should state on their quote the dollar value of the work to be actually performed by their own forces or other DBEs they intend to use.
- Blanket quotes for trucking for the construction season or for an entire bid opening are not allowed
- Faxed quotes must clearly indicate the date and time the fax was sent.

SUBMITTING QUOTES TO DEPARTMENT OF TRANSPORTATION

By the times listed in the chart below, the night before a bid opening, all DBE and non-DBE subcontractors (under/over \$500,000), suppliers, regular dealers, vendors, manufacturers, or brokers **should submit a copy** of all phone or paper quotes given for each project. Quotes may be emailed to subquotes@nd.gov or faxed to the DBE Liaison Officer, 701-328-1965, 701-328-0343, 701-328-4545.

DBE AND NON-DBE	SHOULD TURN IN QUOTES
Suppliers, brokers, vendors, regular dealers, and manufacturers	3:00 p.m. (Central)
Subcontractors under \$500,000	6:00 p.m. (Central)
Subcontractors over \$500,000	9:00 p.m. (Central)

FORM A

By noon (Central) on the next work day following the bid opening, the apparent low bidder **must** submit Form A to the DBE Liaison Officer. Form A is a list of all the DBEs intended for use on the project including DBE’s intended to perform work in the first tier(or below) of subcontracting.

FORM B OR COPIES OF QUOTES

Within 5 working days after the bid opening, all bidders must either:

- Submit Form B to include all tiers of subcontracting on the project or
- Provide copies of all quotes received to include all tiers of subcontracting on the project to the DBE Liaison Officer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700. Copies may be faxed to 701-328-1965 or emailed to subquotes@nd.gov

When submitting a Form B, copies of all quotes **must** be retained, by each bidder, for **45 days after the bid opening date**. If a quoter has not provided a copy of their quote to the Department, the bidder **must** provide a copy of the quote, upon request, by the Department.

FORM C

Within 10 working days after the bid opening, the apparent low bidder **must** submit a For C for each DBE listed on Form A to the address below, unless NDDOT grants a time extension.

No award will be made on a project until all Form C’s, for each DBE, are submitted to NDDOT. The contractor and DBE **must both** sign the form. Form C applies to all tiers of subcontractors working with DBEs.

Form Cs may be faxed to NDDOT's DBE Liaison Officer at 701-328-1965 or mailed to the DBE Liaison Officer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700.

Signatures need not be original; faxed signatures are acceptable.

If Form C contains additional pages or an attachment, each page or attachment must be signed by the intended DBE.

If Form A and Form C contain different information (e.g., bid items numbers, quantities, or dollar amounts), the prime contractor or subcontractor must explain the difference in writing to NDDOT when submitting Form C.

LIST OF DBE PARTICIPATION

Generally, two working days after the bid opening, the DBE Participation list is posted to the NDDOT website: <http://www.dot.nd.gov/dbebidinfo.html> To request a paper copy of the DBE participation web site listing, contact DBE Liaison Officer, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, fax 701-328-1965, phone 701-328-2637 or 701-328-3116.

FAILURE TO PROVIDE REQUIRED DOCUMENTATION

Prime contractors and subcontractors are encouraged to discuss the requirements of this special provision with all businesses providing quotes on a specific project.

Apparent low bidders may be denied future quoting or bidding privileges for failure to submit Form A and Form C as required.

CONSTRUCTION PROGRESS CHART

Before the award of the contract, the apparent low bidder must create a construction progress chart for each DBE to be used on the contract (excluding oil haulers, suppliers, brokers, vendors, regular dealers, or manufacturers). The chart must state the type of work to be performed and when it will be performed.

The apparent low bidder must supply all charts to the Department and the appropriate chart to each DBE to be used on the contract. Any subsequent charts noting a change in schedule **must** also be provided to the Department and all DBEs.

AWARD OF CONTRACT

Contract award will be made to the bidder who submits the lowest responsive proposal meeting the pre-bid and pre-award requirements.

PRE-JOB CONFERENCE

It is the prime contractors' responsibility to invite all DBEs listed on Form C to the pre-job conference and to encourage attendance. If the DBE is unable to attend the pre-job conference **it is the prime contractors' responsibility to provide a copy of the pre-job conference minutes to each DBE.**

In addition, it is the prime contractors' responsibility to discuss any project issues necessary for joint DBE program compliance on the part of the prime contractor, non-DBEs subcontractors and their DBE subcontractors, manufacturers, or regular dealers.

CONTRACT MONITORING, RESPONSIBILITIES, AND REPORTING

For the life of the project, the prime contractor is responsible for the DBEs listed on Form C and for the specific bid items or products that the bidder committed to during the pre-award process. It is the prime contractors' responsibility to monitor DBE performance on the project, to ensure that the DBE performs a commercially useful function and to ensure both the prime contractor and their subcontractors, suppliers, manufacturers, and regular dealers comply with the requirements of this special provision.

DBEs are responsible for performing a commercially useful function. Should the DBE be unable to perform a commercially useful function or perform as stated on Form C it is their responsibility to **immediately notify** the prime contractor orally and in writing. See pages 9 and 10 of this special provision for information regarding commercially useful function.

The prime contractor must submit a completed copy of the DBE Participation Certification (SFN 14268B), signed by the prime contractor and the DBE, to the project engineer upon completion of the contract to verify DBE participation. This includes DBEs used that were not included on Form A. The project will be monitored to ensure the DBE is performing a commercially useful function.

MAINTAINING RECORDS AND TRACKING PAYMENTS

The Department will require prime contractors and subcontractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. The three year period will commence upon acceptance of the final payment from NDDOT. These records will be made available for inspection, upon request, by an authorized representative of the NDDOT or USDOT. This reporting requirement also applies to any certified DBE.

Prime contractors and subcontractors must keep a running tally of actual payments to DBEs for work committed to them at any time during the life of the contract. Prime contractors and subcontractors will be required to complete the Record of DBE Project Payments (SFN 53664) on a semi-annual basis. The record must be submitted to the NDDOT by the tenth working day after the October-March period, and the tenth working day after the April-September period. The record must contain the name of the prime contractor or subcontractor, the DBE firm name, the project number, the bid opening date, the amount paid, and the date of payment to the DBE for the reporting period only. Send the record to the DBE Liaison Officer, North Dakota Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700.

NDDOT may perform interim audits on contract payments to DBEs to ensure that the actual amount paid to DBEs equals or exceeds the dollar amount stated on Form C.

MONITORING AND ENFORCEMENT MECHANISMS

The Department will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, or referral to the USDOT Inspector General for action under Suspension and debarment or Program Fraud and Civil Remedies rules) provided in subsection

26.107 of 49 CFR Part 26. The Department will also consider similar action under its own legal authorities, including responsibility determination in future contracts.

COUNTING DBE PARTICIPATION

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

1. When a DBE participates in a contract, the Department counts only the value of the work actually performed by the DBE toward DBE goals.
 - A. The Department counts the entire amount of that portion of a construction contract (or other contract not covered by paragraph 1B of this section) that is performed by the DBE's own forces. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - B. The Department counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, if the Department determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
2. When a DBE performs as a participant in a joint venture, the Department counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
3. The Department counts expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - A. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is

such an extra participant, the Department must examine similar transactions, particularly those in which DBEs do not participate.

- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department must presume that it is not performing a commercially useful function.
 - D. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph 3C of this section, the DBE may present evidence to rebut this presumption. The Department may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - E. The Department's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.
4. The Department will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - C. The DBE 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.
 - D. The DBE may lease trucks from another DBE firm, including an owner-operator certified as a DBE. The DBE leasing trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - E. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- F. For purposes of this paragraph (4), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. The Department counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- A. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.
- (1) For purposes of this paragraph (5A), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- B. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (1) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- a. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- b. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (5B[1]) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (5B).
- C. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, if the Department determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

6. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the Department does not count the firm's participation toward any DBE goals, except as provided for in §26.87(i).
7. The Department does not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the Department's overall annual goal.
8. The Department does not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION(RN)

North Dakota Department of Transportation, Civil Rights Division
 SFN 52012 (Rev. 12-2006)

FORM A

Contractor		Phone
Job No.	Project No.	Bid Opening Date

By noon (Central time) on the next work day following the bid opening, all apparent low bidders must provide a list of the DBE firms intended for use on this project to the NDDOT Civil Rights Division. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the prime contractor intends to use DBE quotes received from a subcontractor, the prime contractor **must** attach the subcontractor's Form A to the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

- For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract:
 - If the DBE firm is perform do only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number **the bidder must state why the DBE was not used for the**
 - For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own employees and equipment.**
 - For DBE trucking firms, **list the amount of hauling to be performed by the DBE with its own trucks and employees;** or the fees or commissions earned on non-DBE leased trucks. However, if the DBE is leasing trucks from a non-DBE firm, including an owner-operator, you can count the total value of the services provided by the non-DBE, not to exceed the total value of the services provided by the DBE-owned trucks). (See page 9, number 4, of this special provision for more detailed information.)
- DBE prime contractors **must** list the work they will perform with their **own forces** and any work subcontracted to or materials purchased from other DBEs.
- If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the apparent low bidder or subcontractor **must** provide, with the Form C, a written explanation for the difference.
- The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.
- DBE bidders **must** list the work they will perform with their **own employees and equipment** and any work subcontracted to or materials purchased from other DBEs.

DBE Firm	
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$
Percent DBE will do with own equipment/forces = %	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) = %	

DBE Firm	
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$
Percent DBE will do with own equipment/forces = %	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) = %	

DBE Firm	
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$
Percent DBE will do with own equipment/forces = %	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) = %	

FORM A (continued)

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

DBE Firm		
List Specific Bid Item Numbers or Products to be Supplied	Total Contract Dollar Value \$	
Percent DBE will do with own equipment/forces =	%	If Regular Dealer, X 60% = \$
Percent Non-DBE will do (trucking only) =	%	

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

The NDDOT DBE Liaison Officer can be contacted at: CIVIL RIGHTS DIVISION
 ND DEPARTMENT OF TRANSPORTATION
 608 E BOULEVARD AVE
 BISMARCK ND 58505-0700

digoe@nd.gov
 phone (701) 328-2576
 fax (701) 328-1965, (701) 328-0343

LIST OF BUSINESSES THAT SUBMITTED QUOTES (RN)

North Dakota Department of Transportation, Civil Rights Division
SFN 52013 (Rev. 07-2006)

SP DBE -- Race-neutral

February 8, 2008

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FORM B

Contractor		Phone
Job No.	Project No.	Bid Opening Date

SUBMIT WITHIN 5 WORKING DAYS OF BID OPENING

Within 5 working days after the bid opening, all bidders must either:

- Submit Form B to include all tiers of subcontracting on the project or
- Provide copies of all quotes received to include all tiers of subcontracting on the project to the DBE Liaison Officer, North Dakota Department of Transportation, 608 E Boulevard Ave., Bismarck, ND 58505-0700. Copies may be faxed to (701) 328-1965 or emailed to subquotes@nd.gov

When submitting a Form B, copies of all quotes **must** be retained, by each bidder, for **45 days after the bid opening date**. If a quoter has not provided a copy of their quote to the Department, the bidder **must** provide a copy of the quote, upon request by the Department.

This includes information from all tiers of subcontractors for the project.

List below the names of all businesses, including subcontractors, suppliers, vendors, regular dealers, manufacturers, and brokers who provided you quotes for this project. This includes information from any large subcontractor who also provided you a quote on this project and their subcontractors, suppliers, vendors, regular dealers, manufactures, and brokers.

Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
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Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)
Name of Business	Contact Person	Phone
Mailing Address		Type of Work (See Reverse Side for Codes)

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

FORM B (continued)

A-1	Engineering - Professional services such as design or construction inspections performed by an engineering firm.								
A-5	Other - Other professional services such as supportive services and research contracts.								
B-1	Grading/Drainage - Grading, drainage, clearing, and related construction items.								
B-2	Paving - Construction of base course, pavements, and related items.								
B-3	Structures/Buildings - Bridge construction operations, including piling, substructure, superstructure, etc.; and building construction, including plumbing, heating, electrical, etc.								
B-4	Trucking - Hauling of earthwork or other materials for a construction project.								
B-5	Traffic Control - Permanent traffic control items such as signs, signals, and markings; and temporary traffic control items such as barricades and flagging.								
B-6	Landscaping - Landscaping, seeding, sodding, erosion control, and related items.								
B-7	Other - Other construction activities such as lighting contracts and guardrail.								
C-	<p>Supplies - The packaging and shipment of a product (materials, goods, and supplies) and the furnishing of BULK ITEMS which are incorporated into a construction project.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">C-1 Aggregate</td> <td style="width: 50%;">C-5 Petroleum Products</td> </tr> <tr> <td>C-2 Concrete</td> <td>C-6 Pipe</td> </tr> <tr> <td>C-3 Electrical</td> <td>C-7 Ready Mix</td> </tr> <tr> <td>C-4 General</td> <td></td> </tr> </table>	C-1 Aggregate	C-5 Petroleum Products	C-2 Concrete	C-6 Pipe	C-3 Electrical	C-7 Ready Mix	C-4 General	
C-1 Aggregate	C-5 Petroleum Products								
C-2 Concrete	C-6 Pipe								
C-3 Electrical	C-7 Ready Mix								
C-4 General									
D	Manufacturing - The physical production of materials and supplies through standard manufacturing processes obtained by a contractor for incorporation into a construction project.								
E	Equipment - Purchases and rental of equipment for use on a specific construction project.								

The DBE Liaison Officer can be contacted at:

CIVIL RIGHTS DIVISION
 ND DEPT OF TRANSPORTATION
 608 E BOULEVARD AVE
 BISMARCK ND 58505-0700

E-mail: digoe@nd.gov
 Phone: (701) 328-2576
 Fax: (701)328-1965, (701) 328-0343

NOTIFICATION OF INTENT TO USE DBE (RN)

North Dakota Department of Transportation, Civil Rights Division
SFN 52160 (Rev. 12-2006)

SP DBE -- Race-neutral
February 8, 2008
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FORM C

1. The prime contractor and any subcontractors who listed DBE Participation on Form A **must** complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.
2. If the information on a Form C **differs** from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **must** be provided by the prime contractor or subcontractor with the Form C.
3. The Form C **must be signed** by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page **must** be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).
4. The forms **must** be returned to the NDDOT Civil Rights Division **within ten working days** after the bid opening. Forms may be faxed to the Civil Rights Division at (701) 328-1965 or (701) 328-0343. **Award will not be made** until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

Prime Contractor or Subcontractor	Project No.	
Intended DBE	Bid Opening Date	Job No.

Bid Item Nos.	Work Description	Units	Approx. Quantity	Unit Costs	Amount
Total					

Comments

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

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Division, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, digoe@nd.gov, phone (701) 328-2576, or fax (701) 328-1965, (701) 328-0343..

Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273)
(NDDOT Rev. January 18, 2009)

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2h.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. **Discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or**
 - b. **Employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.**

II. **NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. **The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.**
 - b. **The contractor will accept as his operating policy the following statement:**

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. **Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.**

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. Training and Promotion:
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
 - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such

information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
 - a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
 - a. The records kept by the contractor shall document the following:
 1. The number of minority and non-minority group members and women employed in each work classification on the project;
 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If

on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
2. As used in this certification, the term "segregated facilities" means any 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, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General

- a. 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 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 (hereinafter "the wage determination") 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 and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona

bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - 1. The work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - 2. The additional classification is utilized in the area by the construction industry;
 - 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - 4. With respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

- 1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- 2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In

addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than

full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. Such records shall contain the name, address, and social security number of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Contractors and subcontractors shall maintain the full social security number and current address of each covered employee, and shall provide them upon request to the FHWA, the SHA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the SHA.
- e. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1. That the payroll for the payroll period contains the information required to be maintained under paragraphs 2b and 2c of this Section V and that such information is correct and complete;
 - 2. That such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - 3. That each laborer or mechanic 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 wage determination incorporated into the contract.

- f. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2e of this Section V.
- g. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- h. The contractor or subcontractor shall make the records required under paragraphs 2b and 2c of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID
HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:
(Applicable to all Federal-aid contracts - 49 CFR 29)**
 - a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
 - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
 - c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
 - d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.**
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.**
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.**

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:**

 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;**
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;**
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and**

- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

**2. Instructions for Certification - Lower Tier Covered Transactions:
(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)**

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING
XIII. (Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- XIV.**
- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.]
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. **The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.**

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
EEO AFFIRMATIVE ACTION REQUIREMENTS

June 27, 2002

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

APPENDIX A

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

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:
 - a. Goals for Female Participation in Each Trade – Statewide 6.9%
 - b. Goals for Minority Participation in Each Trade by County:

Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, Traill	0.7%
Grand Forks	1.2%
Benson, Cavalier, Nelson, Pembina, Ramsey, Towner, Walsh	2.0%
Burleigh, Morton	0.4%
Adams, Billings, Bowman, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Mercer, Oliver, Sheridan, Sioux, Slope, Stark, Wells	1.3%
Bottineau, Burke, Divide, McHenry, McKenzie, McLean, Mountrail, Pierce, Renville, Rolette, Ward, Williams	4.4%

These goals are applicable to all federal-aid highway construction work performed in the covered area.

EEO Affirmative Action Requirements
Page 2

The Contractor's compliance with the Executive Order and the regulations in 41 CFR 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

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

Notification should be sent to:

U.S. Department of Labor/ESA/OFCCP
Denver District Office
P.O. Box 46550
Denver, Colorado 80201-6550
Phone: 720-264-3200
Fax: 720-264-3211

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

APPENDIX B

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

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the proposal from which this contract resulted.

- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups, not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the proposal from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or

Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor. (Training programs approved by the North Dakota Department of Transportation are recognized by the U.S. Department of Labor.)
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working

environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the Company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the Company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing it with the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minorities and women, and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and Company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and Suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all Supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minorities, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under utilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION
49 CFR 26.29**

PROMPT PAYMENT AND RETAINAGE

PROMPT PAYMENT

The prime contractor must pay the subcontractor the amount due for work done or services rendered, less applicable retainage not to exceed 2%, from the current progress payment within 20 calendar days of receipt of payment from the department or owning agency, unless the prime contractor has just cause to not make payment. If the prime contractor withholds payment from the subcontractor, the prime contractor must immediately notify the subcontractor and the project engineer, in writing, the reasons for withholding payment. The subcontractor may also notify the engineer if prompt payment has not been made.

If the department or owning agency determines the prime contractor is withholding payment without just cause, interest will accrue at the rate provided by NDCC §§13-01.1-02. The prime contractor is responsible for paying the accrued interest starting on the 21st calendar day after the prime contractor receives payment. If the prime contractor is withholding subcontractor payments without just cause the department or owning agency may, suspend all payments due to the prime contractor, until the subcontractor is properly paid and the contractor agrees to make payments as specified. If the department or owning agency determines there is just cause for withholding payment, interest will not accrue on the amount due.

These prompt payment procedures apply to all tiers of subcontracts and is based on 49 CFR 26.29.

RETAINAGE

If the prime contractor elects to use retainage on subcontract work, prompt payment shall also include the release of retainage monies that have been withheld from the subcontractor, within 20 days after the subcontractor's work is satisfactorily completed. Non-bonded subcontractors must submit proof of payment for all material bills and wages to the prime contractor before the prime contractor is required to pay the retainage. If retainage is not released as per this provision, interest will accrue at the rate provided by NDCC §§13-01.1-02 beginning the 21st calendar day after the subcontractor's work is satisfactorily completed.

The department or owning agency will determine whether the subcontractor's work has been "satisfactorily completed." A subcontractor's work is satisfactorily completed when all of the tasks called for in the subcontract have been accomplished, documented in accordance with the contract and paid for on a pay estimate. To be satisfactorily complete a subcontractor must provide all necessary final documentation required in the contract. Final documentation may include, but is not limited to: certified payrolls, materials certification, haul road releases, pit receipts of payment, pit releases, night watchman reports, warrantees, operating manuals, product literature, and verification of final quantities, and the DBE Certification (SFN 14268).

The release of retainage applies to all tiers of subcontracts.

NO CIRCUMVENTION

On federal-aid contracts the contractor shall not include any provision in its subcontract that would circumvent 49 CFR Part 26.29.

LABOR RATES FROM U.S. DEPARTMENT OF LABOR

NDDOT's *Davis-Bacon Wage and Payroll Requirements Handbook* is available at:
www.dot.nd.gov/manuals/civilrights/davisbacon.pdf

U.S. DEPARTMENT OF LABOR

STATE NORTH DAKOTA	COUNTY STATEWIDE	DECISION NO. ND100002	PAGE 1
		DATE OF DECISION 3-12-10	

Revised 04-02-10 (Mod. No. 1)
 Revised 05-07-10 (Mod. No. 2)
 Revised 05-28-10 (Mod. No. 3)
 Revised 06-04-10 (Mod. No. 4)
 Revised 07-23-10 (Mod. No. 5)
 Revised 10-01-10 (Mod. No. 6)
 Revised 10-08-10 (Mod. No. 7)
 Revised 10-15-10 (Mod. No. 8)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr.	Others
CARPENTERS	\$23.00	\$ 3.65			
CEMENT MASONS/FINISHERS	23.00	3.65			
LINE CONSTRUCTION:					
Lineman	31.16	4.75 + 29.5%			
Cable Splicer	31.16	4.75 + 29.5%			
Line Equipment Operator	28.04	4.75 + 29.5%			
Groundman	18.70	4.75 + 29.5%			
ELECTRICIANS:					
Electrician	34.06	11.61			
Cable Splicer	34.46	11.66			
(Adams, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, and Williams Counties)					
Electrician	25.41	10.92			
Cable Splicer	26.68	11.07			
(Barnes, Benson, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La-Moure, Logan, McIntosh, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells Counties)					
Electrician (Cass County)	14.72	3.40			
WELDERS:					
Receive rate prescribed for craft performing operation to which welding is incidental					
LABORERS:					
Group 1					
Drill Runner Tender; Flaggers and Pilot Car Drivers; General Construction Laborer; Light Truck and Pickup Driver; Pipe Handler; Sack Shaker (cement and mineral filler); Salamander Heater and Blower Tender	15.90				

LABOR RATES

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LABORERS: (CONT.)

Group 2

Bituminous Worker (Shoveler, Dumper, Raker, and Floater); Brick and Mason Tender; Bulk Cement Handler; Carpenter Tender; Chain Saw Operator; Chipping Hammer, Grinders, and Paving Brakers (tamper-dirt); Concrete Bucket Signalman; Concrete Curing Man (not water); Concrete Finisher Tender; Concrete Saw Operator; Concrete Vibrator Operator; Conduit Layer, telephone or electrical; Culvert Pipe Layer; Form Setter (pavement); Gas, Electric, or Pneumatic Tool Operator; Kettleman (bitum. or lead); Multiplate Pipe Layer; Power Buggy Operator; Semi Skilled Laborer

\$16.15

Group 3

Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Caisson Worker; Concrete Mixer Operator (one bag capacity); Mortar Mixer

16.30

Group 4

Drill Runner (includes Wagon Churn or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman, gunite and sandblast; Nozzleman; Reinforcing Steel Setters/Tiers

17.05

POWER EQUIPMENT OPERATORS:

Group 1

All Cranes, 60 tons and over; Cranes doing piling, sheeting, dragline/clam work; Derrick (Guy and Stiff); Gentry Crane Operator; Helicopter Operator; Mole Operator or Tunnel Mucking Machine; Power Shovel, 3-1/2 cy and over; Traveling Tower Crane

22.45

\$12.65

Group 2

All Cranes, 21 tons and up to 59 tons; Backhoe Operator, 3 cy and over; Creter Crane; Dredge Operator, 12" and over; Equipment Dispatcher; Finish Motor Grader; Front End Loader Operator, 8 cy and over; Master Mechanic (when supervising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat

21.55

12.65

Basic Hourly Rates	Fringe Benefits Payments			
	H & W/Pensions	Vacation	App. Tr.	Others
LABORERS: (CONT.)				
Group 2 Bituminous Worker (Shoveler, Dumper, Raker, and Floater); Brick and Mason Tender; Bulk Cement Handler; Carpenter Tender; Chain Saw Operator; Chipping Hammer, Grinders, and Paving Brakers (tamper-dirt); Concrete Bucket Signalman; Concrete Curing Man (not water); Concrete Finisher Tender; Concrete Saw Operator; Concrete Vibrator Operator; Conduit Layer, telephone or electrical; Culvert Pipe Layer; Form Setter (pavement); Gas, Electric, or Pneumatic Tool Operator; Kettleman (bitum. or lead); Multiplate Pipe Layer; Power Buggy Operator; Semi Skilled Laborer				
\$16.15				
Group 3 Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Caisson Worker; Concrete Mixer Operator (one bag capacity); Mortar Mixer				
16.30				
Group 4 Drill Runner (includes Wagon Churn or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman, gunite and sandblast; Nozzleman; Reinforcing Steel Setters/Tiers				
17.05				
POWER EQUIPMENT OPERATORS:				
Group 1 All Cranes, 60 tons and over; Cranes doing piling, sheeting, dragline/clam work; Derrick (Guy and Stiff); Gentry Crane Operator; Helicopter Operator; Mole Operator or Tunnel Mucking Machine; Power Shovel, 3-1/2 cy and over; Traveling Tower Crane				
22.45	\$12.65			
Group 2 All Cranes, 21 tons and up to 59 tons; Backhoe Operator, 3 cy and over; Creter Crane; Dredge Operator, 12" and over; Equipment Dispatcher; Finish Motor Grader; Front End Loader Operator, 8 cy and over; Master Mechanic (when supervising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat				
21.55	12.65			

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POWER EQUIP. OPERATORS: (CONT.)

Group 3

All Cranes, 20 tons and under; Asphalt Paving Machine Operator; Asphalt Plant Operator; Automated Grade Trimmer; Backhoe Operator, 1 cy up to and including 2-1/2 cy; Boom Truck, Hydraulic, 8 tons and over; Cableway Operator; Concrete Batch Plant Operator (electronic or manual); Concrete Mixer Paving Machine Operator; Concrete Paver, Bridge Decks; Concrete Pump; Concrete Spreader Operator and Belt Placer; Crushing Plant Operator; Dozer Operator; Dredge Operator or Engineer, 11" and under; Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 3-1/2 cy up to and including 7-1/2 cy; Gravel Washing and Screening Plant Operator; Locomotive, all types; Mechanic or Welder, Heavy Duty; Motor Grader Operator; Pavement Breaker, Non-Hydro Hammer Type; Pipeline Wrapping, Cleaning, and Bending Machine Operator; Power Actuated Auger and Horizontal Boring Machine Operator, 6" and over; Refrigeration Plant Engineer; Roto Milling Machine (Surface Planer), 43" and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator, 100 H.P. and over

\$21.30

\$12.65

Group 4

Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Console Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; Longitudinal Float and Spray Operator; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42"; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot Packer with Dozer Attachment, 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching

Basic Hourly Rates	Fringe Benefits Payments			
	H & W/Pensions	Vacation	App. Tr.	Others
<p>Group 3 All Cranes, 20 tons and under; Asphalt Paving Machine Operator; Asphalt Plant Operator; Automated Grade Trimmer; Backhoe Operator, 1 cy up to and including 2-1/2 cy; Boom Truck, Hydraulic, 8 tons and over; Cableway Operator; Concrete Batch Plant Operator (electronic or manual); Concrete Mixer Paving Machine Operator; Concrete Paver, Bridge Decks; Concrete Pump; Concrete Spreader Operator and Belt Placer; Crushing Plant Operator; Dozer Operator; Dredge Operator or Engineer, 11" and under; Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 3-1/2 cy up to and including 7-1/2 cy; Gravel Washing and Screening Plant Operator; Locomotive, all types; Mechanic or Welder, Heavy Duty; Motor Grader Operator; Pavement Breaker, Non-Hydro Hammer Type; Pipeline Wrapping, Cleaning, and Bending Machine Operator; Power Actuated Auger and Horizontal Boring Machine Operator, 6" and over; Refrigeration Plant Engineer; Roto Milling Machine (Surface Planer), 43" and over; Scraper Operator; Slip Form Concrete Paving Operator; Tandem Pushed Quad 9 or similar; Tractor with Boom Attachment; Trenching Machine Operator, 100 H.P. and over</p>	\$21.30	\$12.65		
<p>Group 4 Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Console Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; Longitudinal Float and Spray Operator; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42"; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot Packer with Dozer Attachment, 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching</p>				

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POWER EQUIP. OPERATORS: (CONT.)

Group 4 (cont.)

Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points

\$21.15

\$12.65

Group 5

Boom Truck, A-Frame or Hydraulic, 2 tons up to and including 7 tons; Broom, Self-Propelled; Concrete Saw (power operated); Front End Loader Operator, less than 1-1/2 cy; Mobile Cement Mixer; Oiler; Power Actuated Auger and Horizontal Boring Machine Operator, up to and including 5"; Roller (on other than hot mix asphalt paving); Vibrating Packer Operator (Pad Type) (Self-Propelled); Water Spraying Equipment, Self-Propelled

20.30

12.65

Group 6

Brakeman or Switchman; Curb Machine Operator (Manual); Dredge or Tugboat Deckhand; Drill Truck Gravel/Testing Operator; Form Trench Digger (Power); Gunite Operator Gunall; Paint Machine Striping Operator; Pick-up Sweeper, 1 cy and over Hopper Capacity; Scissor Jack (Self-Propelled) Platform Lift; Straw Mulcher and Blower; Stump Chipper Operator; Tractor Pulling Compaction or Areating Equipment; Trenching Machine Operator, up to and including 45 H.P.

19.00

12.65

TRUCK DRIVERS:

Single-Axle Truck
 Tandem- and Tri-Axle Truck
 Tandem- and Tri-Axle Semi
 Lowboy
 Off Road Heavy Duty End Dumps, 20 Yards and Under
 Euclid, Over 20 Yards

21.77

9.95

21.89

9.95

22.20

9.95

22.20

9.95

22.20

9.95

22.97

9.95

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses [29 CFR, 5.5 (a) (1) (ii)].

Title 23 United States Code, Section 313

§ 313. Buy America

- (a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.
- (b) The provisions of subsection (a) of this section shall not apply where the Secretary finds--
- (1) that their application would be inconsistent with the public interest;
 - (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.
- [(4) Redesignated (3)]
- (c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.
- (d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title that restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
- (e) Intentional violations.--If it has been determined by a court or Federal agency that any person intentionally--
- (1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or
 - (2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;
- that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.
- (f)

Secretary, in consultation with the United States Trade Representative, determines that--

- (1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and
- (2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,

the provisions of subsection (b) shall not apply to products produced in that foreign country.

[(g) Redesignated (f)]

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[Laws in effect as of January 3, 2007]
[CITE: 23USC114]

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TITLE 23--HIGHWAYS

CHAPTER 1--FEDERAL-AID HIGHWAYS

Sec. 114. Construction

(a) Construction Work In General.--The construction of any Federal-aid highway or a portion of a Federal-aid highway shall be undertaken by the respective State transportation departments or under their direct supervision. The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) Convict Labor and Convict Produced Materials.--

(1) Limitation on convict labor.--Convict labor shall not be used in construction of highways or portions of highways located on a Federal-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.

(2) Limitation on convict produced materials.--Materials produced after July 1, 1991, by convict labor may only be used in such construction--

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) Qualified prison facility defined.--As used in this subsection, ``qualified prison facility'' means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system.

(c) Construction Work in Alaska.--

(1) In general.--The Secretary shall ensure that a worker who is employed on a remote project for the construction of a highway or portion of a highway located on a Federal-aid system in the State of Alaska and who is not a domiciled resident of the locality shall receive meals and lodging.

(2) Lodging.--The lodging under paragraph (1) shall be in accordance with section 1910.142 of title 29, Code of Federal

Regulations (relating to temporary labor camp requirements).

(3) Per diem.--

(A) In general.--Contractors are encouraged to use commercial facilities and lodges on remote projects, however, when such facilities are not available, per diem in lieu of room and lodging may be paid on remote Federal highway projects at a basic rate of \$75.00 per day or part of a day the worker is employed on the project. Where the contractor provides or furnishes room and lodging or pays a per diem, the cost of the amount shall not be considered a part of wages and shall be excluded from the calculation of wages.

(B) Secretary of labor.--Such per diem rate shall be adopted by the Secretary of

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Labor for all applicable remote Federal highway projects in Alaska.

(C) Exception.--Per diem shall not be allowed on any of the following remote projects for the construction of a highway or portion of a highway located on a Federal-aid system:

(i) West of Livengood on the Elliot Highway.

(ii) Mile 0 on the Dalton Highway to the North Slope of Alaska; north of Mile 20 on the Taylor Highway.

(iii) East of Chicken on the Top of the World Highway and south of Tetlin Junction to the Alaska Canadian border.

(4) Definitions.--In this subsection, the following definitions apply:

(A) Remote.--The term ``remote'', as used with respect to a project, means that the project is 65 road miles or more from the international airport in Fairbanks, Anchorage, or Juneau, Alaska, as the case may be, or is inaccessible by road in a 2-wheel drive vehicle.

(B) Resident.--The term ``resident'', as used with respect to a project, means a person living within 65 road miles of the midpoint of the project for at least 12 consecutive months prior to the award of the project.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-657, Sec. 8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93-87, title I, Sec. 115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97-424, title I, Sec. 148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98-473, title II, Sec. 226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100-17, title I, Sec. 112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102-240, title I, Sec. 1019, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105-178, title I, Sec. 1212(a)(2)(A), June 9, 1998, 112 Stat. 193; Pub. L. 109-59, title I, Secs. 1409(d), 1904(b), Aug. 10, 2005, 119 Stat. 1232, 1467.)

Amendments

2005--Subsec. (a). Pub. L. 109-59, Sec. 1904(b), substituted ``Federal-aid highway or a portion of a Federal-aid highway'' for ``highways or portions of highways located on a Federal-aid system'' and ``The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.'' for ``Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary.''

Subsec. (c). Pub. L. 109-59, Sec. 1409(d), added subsec. (c).

1998--Subsec. (a). Pub. L. 105-178 substituted ``State transportation department'' for ``State highway department'' in two places and ``State transportation departments'' for ``State highway departments''.

1991--Subsec. (b)(2). Pub. L. 102-240, inserted ``after July 1, 1991,'' after ``Materials produced'' in introductory provisions.

1987--Subsec. (a). Pub. L. 100-17, Sec. 112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100-17, Sec. 112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ``Convict labor or materials produced by convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.''

1984--Subsec. (b). Pub. L. 98-473 which directed the insertion of ``, supervised release,'' after ``parole'' effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100-17, Sec. 112(a), which contained ``, supervised release,'' after ``parole'' wherever appearing.

1983--Subsec. (b). Pub. L. 97-424 inserted ``or materials produced by convict labor'' after ``Convict labor''.

1973--Subsec. (a). Pub. L. 93-87 amended last sentence generally. Prior to amendment, last sentence read as follows: ``On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.''

1960--Subsec. (a). Pub. L. 86-657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Highways for Life Pilot Program

Pub. L. 109-59, title I, Sec. 1502, Aug. 10, 2005, 119 Stat. 1236, provided that:

``(a) Establishment.--

``(1) In general.--The Secretary [of Transportation] shall establish and implement a pilot program to be known as the `Highways for LIFE Pilot Program'.

``(2) Purpose.--The purpose of the pilot program shall be to

advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges.

``(3) Objectives.--Under the pilot program, the Secretary shall provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction.

``(b) Projects.--

``(1) Applications.--To be eligible to participate in the pilot program, a State shall submit to the Secretary [of Transportation] an application that is in such form and contains such information as the Secretary requires. Each application shall contain a description of proposed projects to be carried by the State under the pilot program.

``(2) Eligibility.--A proposed project shall be eligible for assistance under the pilot program if the project--

``(A) constructs, reconstructs, or rehabilitates a route or connection on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code;

``(B) uses innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality; and

``(C) meets additional criteria as determined by the Secretary.

``(3) Project proposal.--A project proposal submitted under paragraph (1) shall contain--

``(A) an identification and description of the projects to be delivered;

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``(B) a description of how the projects will result in improved safety, faster construction, reduced congestion due to construction, user satisfaction, and improved quality;

``(C) a description of the innovative technologies, manufacturing processes, financing, and contracting methods that will be used for the proposed projects; and

``(D) such other information as the Secretary may require.

``(4) Selection criteria.--In selecting projects for approval under this section, the Secretary shall ensure that the projects provide an evaluation of a broad range of technologies in a wide variety of project types and shall give priority to the projects that--

``(A) address achieving the Highways for LIFE performance standards for quality, safety, and speed of construction;

``(B) deliver and deploy innovative technologies, manufacturing processes, financing, contracting practices, and performance measures that will demonstrate substantial improvements in safety, congestion, quality, and cost-effectiveness;

``(C) include innovation that will lead to change in the administration of the State's transportation program to more quickly construct long-lasting, high-quality, cost-effective projects that improve safety and reduce congestion;

``(D) are or will be ready for construction within 1 year of approval of the project proposal; and

``(E) meet such other criteria as the Secretary determines appropriate.

``(5) Financial assistance.--

``(A) Funds for highways for life projects.--Out of amounts made available to carry out this section for a fiscal year, the Secretary may allocate to a State up to 20 percent, but not more than \$5,000,000, of the total cost of a project approved under this section. Notwithstanding any other provision of law, funds allocated to a State under this subparagraph may be applied to the non-Federal share of the cost of construction of a project under title 23, United States Code.

``(B) Use of apportioned funds.--A State may obligate not more than 10 percent of the amount apportioned to the State under one or more of paragraphs (1), (2), (3), and (4) of section 104(b) of title 23, United States Code, for a fiscal year for projects approved under this section.

``(C) Increased federal share.--Notwithstanding sections 120 and 129 of title 23, United States Code, the Federal share payable on account of any project constructed with Federal funds allocated under this section, or apportioned under section 104(b) of such title, to a State under such title and approved under this section may amount to 100 percent of the cost of construction of such project.

``(D) Limitation on statutory construction.--Except as provided in subparagraph (C), nothing in this subsection shall be construed as altering or otherwise affecting the applicability of the requirements of chapter 1 of title 23, United States Code (including requirements relating to the eligibility of a project for assistance under the program and the location of the project), to amounts apportioned to a State for a program under section 104(b) that are obligated by the State for projects approved under this subsection.

``(6) Project selections.--In the period of fiscal years 2005 through 2009, the Secretary, to the maximum extent possible, shall approve at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if the State submits an application and the project meets the eligibility requirements and selection criteria under this subsection.

``(7) Maximum number of projects.--The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is 15.

``(c) Technology Partnerships.--

``(1) In general.--The Secretary [of Transportation] may make grants or enter into cooperative agreements or other transactions to foster the development, improvement, and creation of innovative technologies and facilities to improve safety, enhance the speed of highway construction, and improve the quality and durability of highways.

``(2) Federal share.--The Federal share of the cost of an activity carried out under this subsection shall not exceed 80 percent.

``(d) Technology Transfer and Information Dissemination.--

``(1) In general.--The Secretary [of Transportation] shall conduct a highways for life technology transfer program.

``(2) Availability of information.--The Secretary shall ensure that the information and technology used, developed, or deployed under this subsection is made available to the transportation community and the public.

``(e) Stakeholder Input and Involvement.--The Secretary [of Transportation] shall establish a process for stakeholder input and involvement in the development, implementation, and evaluation of the

Highways for LIFE Pilot Program. The process may include participation by representatives of State departments of transportation and other interested persons.

``(f) Project Monitoring and Evaluation.--The Secretary [of Transportation] shall monitor and evaluate the effectiveness of any activity carried out under this section.

``(g) Contract Authority.--Except as otherwise provided in this section, funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

``(h) State Defined.--In this section, the term `State' has the meaning such term has in section 101(a) of title 23, United States Code.''

Materials Produced by Convict Labor

Pub. L. 101-162, title II, Sec. 202, Nov. 21, 1989, 103 Stat. 1002, provided that: ``During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.''

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100-459, title II, Sec. 202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100-202, Sec. 101(a) [title II, Sec. 202], Dec. 22, 1987, 101 Stat. 1329, 1329-15.

Pub. L. 99-500, Sec. 101(b) [title II, Sec. 202], Oct. 18, 1986, 100 Stat. 1783-39, 1783-51, and Pub. L. 99-591, Sec. 101(b) [title II, Sec. 202], Oct. 30, 1986, 100 Stat. 3341-39, 3341-51.

Pub. L. 99-180, title II, Sec. 202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98-411, title II, Sec. 202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100-17, title I, Sec. 112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98-166, title II, Sec. 202, Nov. 28, 1983, 97 Stat. 1085.

NOTICE

Americans with Disabilities Act (ADA)

Pedestrian and/or Bicycle facilities that may have been impacted or damaged will be required to be restored to meet ADA requirements. The repairs are typically considered as part of the permanent restoration process.

Permanent Repairs or Permanent Repairs Performed Concurrently with Emergency Repairs

If pedestrian and/or bicycle facilities are restored during one of these operations, they must be restored in accordance with ADA requirements. ADA requirements can be found in the following locations:

- North Dakota Department of Transportation (NDDOT) Design Manual, Chapter III, Section 7 http://www.dot.nd.gov/manuals/design/designmanual/chapter3/DM-3-07_tag.pdf
- Americans with Disabilities Act Accessibility Guidelines (ADAAG), <http://www.access-board.gov/>

MATERIAL SOURCE APPROVAL REQUEST

North Dakota Department of Transportation, ETS - Environmental and Cultural Resources
SFN 58466 (2-2009)

Complete a separate form for each material source location
The following information is REQUIRED
(including map file showing boundary of area to be approved)

Pit ID (NDDOT Use Only)
Date Submitted

Legal Description

County	Township (number, not name)	Range	Section
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Material/Activity Check all that apply

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> Aggregate | <input type="checkbox"/> Staging Area |
| <input type="checkbox"/> Borrow | <input type="checkbox"/> Stockpile Area |
| <input type="checkbox"/> Rip-Rap | <input type="checkbox"/> Plant Site |
| <input type="checkbox"/> Waste Site | |

Approximate Depth of Excavation

Source Name

Project Information

Name (Project Engineer or Project Manager)		Division/District/Consulting Engineering Firm	
Project Number or Project Location	Project Control Number	Email Address	

Applicant

Company Name		Contact Person		
Address		City	State	Zip Code
Telephone Number		Email Address		

Comments

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Please allow at least 30 days for completion of this process
YOU MUST ATTACH A MAP or the form will be returned to you!
Print or save a copy for your own records!
Submit by email to: materialsource@nd.gov

USFWS Use Only

USFWS Property <input type="checkbox"/>	T&E Species <input type="checkbox"/>	Further Review Required <input type="checkbox"/>	USFWS Approval	Date
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USFWS Comments
