

**CASS COUNTY HIGHWAY DEPARTMENT
BIDDERS PROPOSAL & PLANS**

**FOR
COUNTY PROJECT TB1206
STRUCTURE REPLACEMENT**

Sections 16-17 Reed Township - Lake Shure Development
in Cass County, North Dakota

Date of Letting: 10:00 A.M., May 29th, 2014

Proposal of: _____

COUNTY PROJECT NUMBER TB1206

STRUCTURE REPLACEMENT

INSTRUCTIONS TO BIDDERS:

For the 2014 Construction season, Cass County Highway Department will be accepting bids as paper copies and electronically at BidExpress.com. For the 2015 Construction season and beyond, Cass County may only accept bids electronically.

The Cass County Auditor at the Auditor's Office, 211 9th Street South, Fargo, North Dakota, will receive sealed paper bids until 10:00 a.m. on May 29, 2014. Bids will be opened immediately both electronically and traditionally following the hour set for receiving bids in the Grasslands Room at the Cass County Courthouse, 211 9th Street South, Fargo, North Dakota.

Paper copies of plans and proposal may be obtained at the office of the Cass County Engineer, West Fargo, North Dakota, at \$10.00 per set, non-refundable. Digital copies are available at BidExpress.com free for viewing.

All envelopes containing bids must be clearly marked on the outside "**BID FOR LAKE SHURE STRUCTURE REPLACEMENT**", and the current North Dakota Contractors license number must be shown.

A bidder's bond in the amount of 5% of the amount bid, made payable to Cass County shall accompany each bid in a SEPARATE ENVELOPE ATTACHED TO THE OUTSIDE OF THE BID. Certified or Cashier's checks will not be accepted. **A copy of the current ND Contractor's License or certificate of renewal shall be included in the Bid Bond envelope.** No bid will be read or considered which does not comply with the bond or license requirements.

Prequalification is required for all bidders prior to obtaining a bidder's proposal. Contractors may be required to submit information detailing their ability to perform the work specific to this project. Cass County shall determine the Prequalification status of each contractor requesting a proposal, and reserves the right to deny bid documents to any contractor based on the County's responsibility determination.

The County reserves the right to reject any or all bids, and to waive any irregularities. All bidders must be qualified to bid under the laws of the State of North Dakota.

COUNTY PROJECT NUMBER TB1206

STRUCTURE REPLACEMENT

INDEX OF PROVISIONS:

North Dakota Supplemental Specifications

Supplemental Specifications dated October 1, 2013 are not included in this proposal but are available at the county engineer's office, or be downloaded from the NDDOT's website at the following website:

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

Price Schedule for Miscellaneous Items Dated March 1, 2013

Special Provision 14-1 Contractor License & Contractor Claims

Federal Project Contract Requirements

Location Map

NOT FOR BIDDING

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

PRICE SCHEDULE FOR MISCELLANEOUS ITEMS

March 1, 2013

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

Payment for items of work under this schedule performed by a Subcontract shall include an additional allowance for the Prime Contractor as specified in Section 104.03 of the Standard Specifications.

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

SECTION NO.	SECTION NAME	ITEM NAME	PRICE PER ITEM
107.05 A.1	Maintaining Traffic	Flagging	\$32 per MHR
107.05 B.1	Haul Roads	Water	\$27 per M Gal
107.05 B.7	Haul Roads	Bituminous Mix	\$42 per Ton**
107.05 B.7	Haul Roads	Bitumen for Mix	Invoice Price* + 10%
107.05 B.7	Haul Roads	Aggregate Base	\$17 per Ton**
203.01 B	Rock Excavation	Rock Excavation	\$11 per CY
203.01 C	Shale Excavation	Shale Excavation	Common Excavation Bid Price + \$1.00 per CY
203.01 D	Muck Excavation	Muck Excavation	\$9 per CY
203.02 F	Embankment Construction	Overhaul	\$1.40 per CY - Mile
407.07 B.2.a or 408.07 C.2.a	Hot Bit. Pavement (Excavated Material Hauled to Disposal Area)	Bituminous Mixture	Machine Placed: Bid or Invoice Price + \$31 per Ton Hand Placed: Bid or Invoice Price + \$48 per Ton
420.06	Bituminous Seal Coat	Blotter Sand	\$27 per Ton**
650.04 D.2 Step 3 650.05 D.2 Step 3	Repair & Overlay of PCC Bridge Decks	Low-Slump Concrete	\$335.55 per CY
708	Erosion Control	Mucking Silt Fence	\$3.90 per L.F.
708	Erosion Control	Mucking of Fiber Rolls	\$3.90 per L.F.
708	Erosion Control	Removal of Silt Fence ***	\$4.25 per L.F.
708	Erosion Control	Removal of Fiber Rolls ***	\$4.25 per L.F.

* Price paid for bituminous material will be Invoice Price plus Freight Costs.

** Price includes haul up to 10 miles. Payment for haul exceeding 10 miles will be according to Section 109.04 C of the Standard Specifications. The haul distance for Aggregate Base and Bituminous Mix will be based on the average haul. The haul distance for Blotter Sand will be from the point where the haul begins to the point where it enters the project.

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

CASS COUNTY HIGHWAY DEPARTMENT

SPECIAL PROVISION 14-1

January 1, 2014

SECTION 102.02 CONTRACTOR LICENSE

Section 102.02 of the Standard Specifications for Road and Bridge Construction, 2008 edition is deleted. All bidders must possess a current North Dakota Contractors License in accordance with § 43-07-12 of the North Dakota Century Code.

SECTION 104.06 CONTRACTOR CLAIMS

If the Contractor claims additional compensation for work or material not covered by the Contract, the Contractor is required to prosecute the claim in accordance with Standard Specifications for Road and Bridge Construction, 2008 edition, paragraph 104.06, et seq. The provisions of subparagraph 104.06 D are not applicable to this contract, nor are the provisions of North Dakota Century Code 24-02-26 et seq. as the North Dakota Department of Transportation is not a party to this contract.

References in the Standard Specifications for Road and Bridge Construction, 2008 edition, to the North Dakota Department of Transportation or Department must be construed as referring to the owner. Likewise, a reference by the same works to engineer or director must be construed as referring to the owner of the project.

NOT FOR BIDDING

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
 SPECIAL PROVISION: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
 COUNTY PROJECT TB1206 16/17 REED TOWNSHIP**

Introduction	1	Award of Contract	6
Solicitation Efforts	2	Pre-Job Conference	6
Guidelines for Submitting Quotes to Bidders .4		Contract Monitoring, Responsibilities and Reporting	6
Submitting Quotes to Dept. of Transportation	5	Maintaining Records & Tracking Payments . . .	7
Form A	5	Monitoring and Enforcement Mechanisms	7
Form B or Copies of Quotes	5	Counting DBE Participation	7
Form C	5	Sample Form A	13
Failure to Provide Required Documentation .	6	Sample Form B	15
List of DBE Participation	6	Sample Form C	17
Construction Progress Chart	6		

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 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.

The paragraph above applies to every contractor on the project, including every tier of subcontractor. It is the prime contractor's or subcontractor's responsibility to include the above paragraph 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
- The ad should 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, 701-328-1965, 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 and subcontractors over \$500,000, (excluding suppliers, brokers, vendors, regular dealers, and manufacturers), 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 an entire bid opening or the construction season are not allowed (i.e. trucking, striping, signing, etc.)
- 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, 701-328-0343 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 Form 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 Civil Rights Division at 701-328-1965, 701-328-0343 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.

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.

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 Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, fax 701-328-1965 or 701-328-0343, phone 701-328-2637 or 701-328-3116.

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 **8 through 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 14268), 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 form must be signed by a company representative. Send the record to the Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700 or fax to 701-328-0343 or 701-328-1965.

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

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.

NOT FOR BIDDING

[Blank Page]

NOT FOR BIDDING

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RN)

North Dakota Department of Transportation, Civil Rights Division
 SFN 52012 (Rev. 07-2012)

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** include the subcontractor's Form A information in the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract:
 - a. 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 entire bid item..**
 - b. 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.**
 - c. 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.)
2. 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.
3. 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.
4. The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.
5. 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

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

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) 328-0343 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
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
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 border="0"> <tr> <td>C-1</td> <td>Aggregate</td> <td>C-5</td> <td>Petroleum Products</td> </tr> <tr> <td>C-2</td> <td>Concrete</td> <td>C-6</td> <td>Pipe</td> </tr> <tr> <td>C-3</td> <td>Electrical</td> <td>C-7</td> <td>Ready Mix</td> </tr> <tr> <td>C-4</td> <td>General</td> <td></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.																

NOT FOR BIDDING

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: dlaub@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. 12-2011)

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					\$ 0.00

Comments

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

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.

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
APPENDIX A OF THE TITLE VI ASSURANCES**

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

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension or debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

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

Shall be fined under this title or imprisoned not more than 5 years or both."

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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

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

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. ND140002	PAGE 1
		DATE OF DECISION 1-3-14	
Revised 01-10-14 (Mod. No. 1)			

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W/Pensions	Vacation	App. Tr	Others
CARPENTERS	\$26.00	\$ 3.90			
CEMENT MASONS/FINISHERS	26.00	3.90			
LINE CONSTRUCTION:					
Lineman	34.15	5.00 + 29.5%			
Cable Splicer	34.15	5.00 + 29.5%			
Line Equipment Operator	30.74	5.00 + 29.5%			
Groundman	20.49	5.00 + 29.5%			
ELECTRICIANS:					
Electrician	34.06	5.00 + 29.5%			
Cable Splicer	34.46	5.00 + 29.5%			
(Adams, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, and Williams Counties)					
Electrician	26.95	11.10			
Cable Splicer	28.30	11.26			
(Barnes, Benson, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La-Moure, Logan, McIntosh, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Walsh, and Wells Counties)					
Electrician (Cass County)	14.72	3.40			
WELDERS:					
Receive rate prescribed for craft performing operation to which welding is incidental					
LABORERS:					
Group 1 Drill Runner Tender; Flaggers and Pilot Car Drivers; General Construction Laborer; Light Truck and Pickup Driver; Pipe Handler; Sack Shaker (cement and mineral filler); Salamander Heater and Blower Tender	18.40				

LABOR RATES

Page 2 of 4

1-3-14

Revised 01-10-14 (Mod. No. 1)

ND140002

Page 2

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

\$18.65

Group 3

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

18.80

Group 4

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

19.55

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

25.55

\$13.75

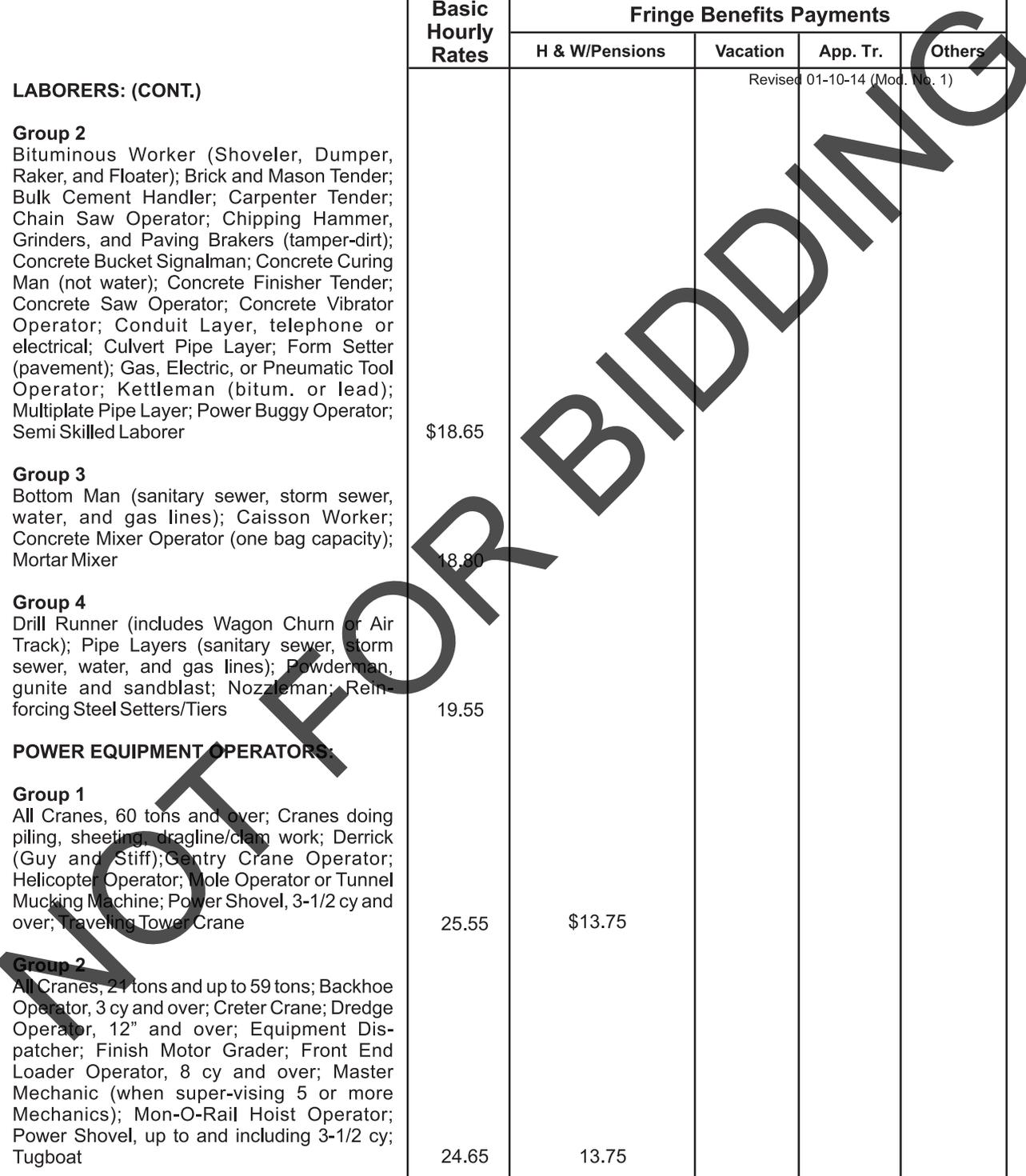
Group 2

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 super-ising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat

24.65

13.75

Basic Hourly Rates	Fringe Benefits Payments			
	H & W/Pensions	Vacation	App. Tr.	Others
			Revised 01-10-14 (Mod. No. 1)	
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				
\$18.65				
Group 3 Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Caisson Worker; Concrete Mixer Operator (one bag capacity); Mortar Mixer				
18.80				
Group 4 Drill Runner (includes Wagon Churn or Air Track); Pipe Layers (sanitary sewer, storm sewer, water, and gas lines); Powderman, gunite and sandblast; Nozzlemans; Reinforcing Steel Setters/Tiers				
19.55				
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				
25.55				\$13.75
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 super-ising 5 or more Mechanics); Mon-O-Rail Hoist Operator; Power Shovel, up to and including 3-1/2 cy; Tugboat				
24.65				13.75



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

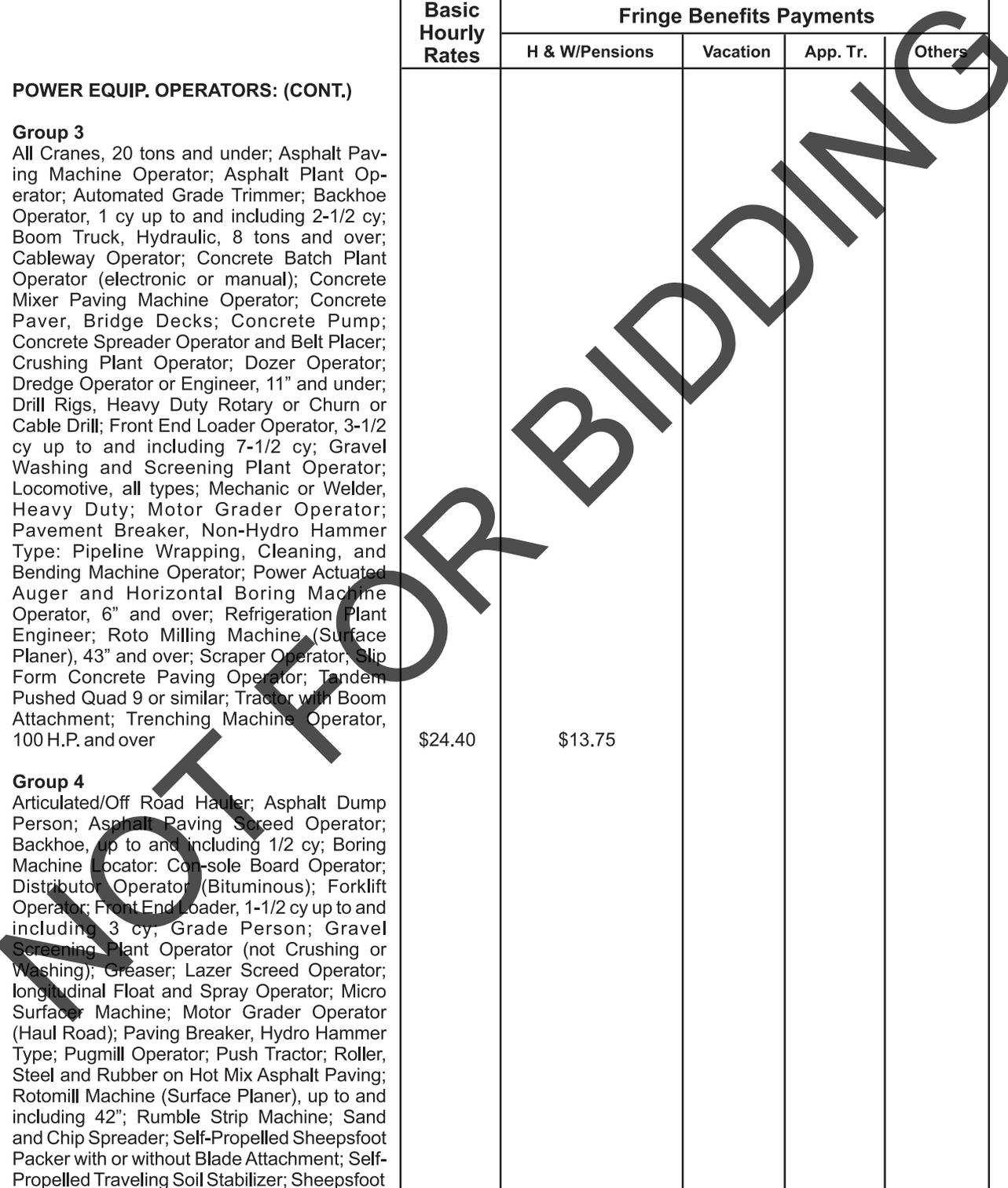
\$24.40

\$13.75

Group 4

Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Boring Machine Locator; Con-sole Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42"; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot

Basic Hourly Rates	Fringe Benefits Payments			
	H & W/Pensions	Vacation	App. Tr.	Others
<p>Group 3</p> <p>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>	\$24.40	\$13.75		
<p>Group 4</p> <p>Articulated/Off Road Hauler; Asphalt Dump Person; Asphalt Paving Screed Operator; Backhoe, up to and including 1/2 cy; Boring Machine Locator; Con-sole Board Operator; Distributor Operator (Bituminous); Forklift Operator; Front End Loader, 1-1/2 cy up to and including 3 cy; Grade Person; Gravel Screening Plant Operator (not Crushing or Washing); Greaser; Lazer Screed Operator; longitudinal Float and Spray Operator; Micro Surfacer Machine; Motor Grader Operator (Haul Road); Paving Breaker, Hydro Hammer Type; Pugmill Operator; Push Tractor; Roller, Steel and Rubber on Hot Mix Asphalt Paving; Rotomill Machine (Surface Planer), up to and including 42"; Rumble Strip Machine; Sand and Chip Spreader; Self-Propelled Sheepsfoot Packer with or without Blade Attachment; Self-Propelled Traveling Soil Stabilizer; Sheepsfoot</p>				



LABOR RATES

Page 4 of 4

1-3-14

Revised 01-10-14 (Mod. No. 1)

ND140002

Page 4

POWER EQUIP. OPERATORS: (CONT.)

Group 4 (cont.)

Packer with Dozer Attachment, 100 H.P. and over; Shouldering Machine; Slip Form, Curb and Gutter Operator; Slurry Seal Machine; Tamping Machine Operator; Tie Tamper and Ballast Machine; Trenching Machine Operator, 46 H.P. up to and including 99 H.P.; Truck Mechanic; Tub Grinder; Well Points; Fuel/Lube Operator

\$24.25

\$13.75

Group 5

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

23.40

13.75

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; Pickup Sweeper, 1 cy and over Hopper Capacity; Scissor Jack (Self-Propelled) Platform Lift; Straw Mulcher and Blower; Stump Chipper Operator; Tractor Pulling Compaction or Aerialing Equipment; Trenching Machine Operator, up to and including 45 H.P.; Assistant/Apprentice Operator

22.10

13.75

TRUCK DRIVERS:

Single-Axle Truck

24.67

10.80

Tandem- and Tri-Axle Truck

24.79

10.80

Tandem- and Tri-Axle Semi

25.10

10.80

Lowboy

25.10

10.80

Off Road Heavy Duty End Dumps, 20 Yards and Under

25.10

10.80

Euclid, Over 20 Yards

26.62

10.80

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

CONTRACTOR CLAIMS

OCTOBER 2008

CLAIM FOR EXTRA COMPENSATION

If the Contractor claims additional compensation for work or material not covered by the Contract, the Contractor is required to prosecute the claim in accordance with Standard Specifications for Road and Bridge Construction, 2008 ed., paragraph 104.06, et seq. The provisions of subparagraph 104.06 D are not applicable to this Contract, nor are the provisions of North Dakota Century Code §24-02-26 et seq. regarding arbitration applicable, as the North Dakota Department of Transportation is not a party to the Contract. References to NDDOT or Department in the Standard Specifications for Road and Bridge Construction, 2008 ed. must be construed as referring to the Owner. Likewise, a reference to "Engineer" or "Director" in the Standard Specifications for Road and Bridge Construction must be construed as referring to the Owner of the Project.

NOT FOR BIDDING

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

SPLIT SAMPLING AND TESTING REQUIREMENTS FOR AGGREGATE BASE

GENERAL

This provision defines a method to provide a split sample of aggregate base material for the contractor to compare test results. Only NDDOT test results will be used for material acceptance.

The Contractor may request, in writing, to discontinue his receipt of a portion of the sample. If a request is received, the Engineer will discontinue providing the material and this Special Provision will no longer be enforced.

The sampling and testing frequency will remain the same as required by Section 302 of the Field Sampling and Testing Manual.

PERSONNEL AND TESTING REQUIREMENTS

All Engineer and Contractor testing personnel must be certified by the Departments Testing Certification Program.

The Engineer will collect samples and perform tests as specified in the NDDOT Field Sampling and Testing Manual

The Contractor shall perform tests as specified in the NDDOT Field Sampling and Testing Manual and shall provide all test results on the proper NDDOT forms.

SAMPLE COLLECTION

The Engineer will select the location and will coordinate with the Contractor regarding the time to obtain the sample. The Contractor may request, in writing that he wishes to be present when the samples are collected. If the Contractor requests to be present and fails to meet the Engineer at the required time, the Engineer will collect the sample without the Contractor. Sampling will follow the AASHTO T 2 procedures outlined in the Field Sampling and Testing Manual.

FREQUENCY AND SPLITTING OF SAMPLES

The Engineer will split the sample into three parts. The Engineer will test one part and provide the contractor with one part. The Engineer will retain one portion of the sample for use as a check sample if the Engineer and Contractor test results are not within tolerances shown in Table 1. The third portion of the sample will be retained by the Engineer and discarded when test results are within Table 1 tolerances.

The Engineer will provide the Contractor with a portion of the sample for the first and second 1,000 tons of material placed.

Thereafter, the Engineer will provide the Contractor with a portion of the sample for every 10,000 tons, or fraction thereof, of material placed.

The Engineer will provide material from the samples obtained to perform tests per NDDOT Specifications and the NDDOT Field Sampling and Testing Manual.

COMPARISON OF TEST RESULTS

The Contractor shall provide test results to the Engineer within 2 working days. Test results shall include copies of all worksheets and final summary sheets. If the Contractor does not provide the results in the required timeframe, the split sample testing will discontinue.

The Engineer will provide his results to the Contractor upon receipt of the Contractor's results.

The following table will be used as a guide to determine correlation ranges between Contractor and acceptance sample results. If the difference in the two test results exceed the acceptable limits, the third sample may be tested by the NDDOT central lab.

Table 1

Material Requirement	Variance between Engineer and Contractor results
Percent passing on No. 4 sieve	6 percentage points
Percent passing on No. 30 sieve	4 percentage points
Percent passing on No. 200 sieve	2 percentage points
Plasticity Index	4
Lightweight pieces	3 percentage points
Fractured faces	5 percentage points

BASIS OF PAYMENT

The Contractor shall include all costs associated with performing the tests required under this Special Provision in the price bid for aggregate base course bid items.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION

FUEL COST ADJUSTMENT CLAUSE
Revision Date: 9/8/2006

Introduction

This Special Provision provides for price adjustments to the Contract when significant changes in the cost of motor fuels and burner fuels occur while completing the Contract work. Participation in fuel cost adjustment program is not mandatory. A Contractor is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment provision.

The North Dakota Department of Transportation (NDDOT) will send the low responsible bidder a "Fuel Cost Adjustment Affidavit" (SFN 58393) with the proposed Contract. The Contractor shall return a completed Fuel Adjustment Affidavit with the signed Contract as specified in Standard Specification Section 103.06, Execution and Approval of the Contract. The affidavit shall be returned on all Contracts with this provision even if the Contractor elects not to participate in the provision.

Compensation adjustments for motor fuels and burner fuels consumed in prosecuting the Contract shall be determined by the Engineer in accordance with the provisions set forth herein. Compensation adjustments will be assessed monthly for the cost of the motor fuels and burner fuels whenever the Current Fuel Index (CFI) is outside the given threshold of the Base Fuel Index (BFI) for the Contract.

If the Contractor has a fixed price for fuel for motor or burner fuels to complete the work, no fuel cost adjustments will be made for that fuel type. If there is no fixed fuel price for motor or burner fuels, participation in the Fuel Adjustment provision is the decision of the prime Contractor.

If the prime Contractor decides not to participate, no fuel cost adjustments will be made to the Contract for the Contractor or any subcontractors. If the prime Contractor elects to participate in the fuel cost adjustment provision, the prime Contractor shall include the anticipated fuel cost of subcontractors who wish to participate. If fuel cost adjustments are made to the Contract, the prime Contractor shall ensure that participating subcontractors including second and lower tier, are included in the adjustments in proportion to the percentage of work and anticipated fuel cost by that subcontractor.

Fuel Indexes

Each month, NDDOT will record the average wholesale price for No. 2 diesel fuel and the average wholesale price for unleaded gasoline (87 octane). The monthly average will be the average of the daily rack prices for the month as reported by DTN Energy for Fargo ND.

The burner fuel index will be the No. 2 diesel fuel index regardless of the type of burner fuel actually used.

The Base Fuel Index (BFI) price for motor fuels and burner fuel to be used in the Contract will be the average wholesale price for the month prior to the bid opening.

The Current Fuel Index (CFI) price for motor fuels and burner fuel to be used for each monthly adjustment will be the average wholesale price for the month prior to the adjustment month.

Fuel Ratio

For motor fuels diesel and unleaded gas, the fuel ratio of the Contract will be determined by dividing the Contractor's affidavit costs for each motor fuel by the original Contract amount.

For burner fuels, the fuel ratio of the contract will be determined by dividing the Contractor's affidavit cost for burner fuels by the original Contract amount of plant-mixed hot bituminous pavement paid by the ton. Asphalt cement, binders and other miscellaneous bituminous items shall not be included.

The fuel ratio of the contract for motor and burner fuels will remain the same throughout the length of the contract. The sum of the affidavit fuel costs shall not exceed 15% of the original Contract amount.

The fuel ratio for the three fuel types will be determined by the following equation.

Fuel Ratio_(x, y, z) = Affidavit Cost_(x, y, z) / Original Contract Amount_(x, y, z)	
(x)	= Motor Fuel (Diesel)
(y)	= Motor Fuel (Unleaded)
(z)	= Burner Fuel
Fuel Ratio _(x, y, z)	= Fuel ratio of the contract for each respective fuel type
Affidavit Cost _(x, y, z)	= Fuel costs from Fuel Adjustment Affidavit (SFN 58393)
Original Contract Amount _(x, y)	= Total of the original contract amount excluding lane rental, and Part B of the bid (when A+B bidding is used), if applicable.
Original Contract Amount _(z)	= Total original contract amount for all hot bituminous pavement bid items combined, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation.

Cost Change

The monthly change in fuel costs will be determined by the following equation:

Cost Change_(x, y, z) = (CFI_(x, y, z) - BFI_(x, y, z)) / BFI_(x, y, z)		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel (use diesel prices)
Cost Change _(x, y, z)	=	The relative change in the current CFI and the BFI for each fuel type
CFI _(x, y, z)	=	Current Fuel Index for each fuel type
BFI _(x, y, z)	=	Base Fuel Index for each fuel type

Contract Adjustments

Contract adjustments will be made for the cost of motor and burner fuels whenever the cost change exceeds a ±0.10 threshold. No fuel cost adjustment will be made for work done under liquidated damages. Adjustments will be determined for Motor Fuel (diesel), Motor Fuel (unleaded), and Burner Fuel (burner) separately and shall be computed on a monthly basis.

NOT FOR BIDDING

When the cost change is greater than 0.10, the rebate to the Contractor for each fuel type shall be computed according to the following formulas:

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} - 0.10)$		
(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
Fuel Ratio _(x, y, z)	=	Fuel Ratio for each of the fuel types
Estimate _(x, y)	=	The monthly total of work done on estimates issued in the current month excluding incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
Estimate _(z)	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
Cost Change _(x, y, z)	=	The monthly change in fuel costs for each of the fuel types

NOT FOR BIDDING

When the cost change is less than -0.10, the credit to the Department for each fuel type shall be computed according to the following formulas:

$FCA_{(x, y, z)} = \text{Fuel Ratio}_{(x, y, z)} \times \text{Estimate}_{(x, y, z)} \times (\text{Cost Change}_{(x, y, z)} + 0.10)$

(x)	=	Motor Fuel (Diesel)
(y)	=	Motor Fuel (Unleaded)
(z)	=	Burner Fuel
$FCA_{(x, y, z)}$	=	Fuel Cost Adjustment for each of the fuel types
$\text{Fuel Ratio}_{(x, y, z)}$	=	Fuel Ratio for each of the fuel types
$\text{Estimate}_{(x, y)}$	=	The monthly total of work done on estimates issued in the current month excluding any incentive or disincentive payments, pay factor adjustments and any work completed under liquidated damages.
$\text{Estimate}_{(z)}$	=	The monthly total of hot bituminous pavement work done on estimates issued in the current month, excluding bid items for asphalt cement, sawing and sealing joints, coring, etc. Only hot bituminous pavement bid items measured by the Ton will be included in the calculation. Hot bituminous pavement work completed under liquidated damages will not be included.
$\text{Cost Change}_{(x, y, z)}$	=	The monthly change in fuel costs for each of the fuel types

Payments

Adjustments will be determined by the Engineer monthly. Adjustments will be made under the following spec and code for each fuel type:

- 109 0100 Motor Fuels (Diesel)
- 109 0200 Motor Fuels (Unleaded)
- 109 0300 Burner Fuel

When significant payment adjustments are made on final estimates to account for final in-place measured quantities, the Engineer may prorate the adjustments back to the months when the work was done.

Attachments

For informational purposes, a 'Fuel Cost Adjustment Affidavit' (SFN 58393) is included as Attachment A.

FUEL COST ADJUSTMENT AFFIDAVIT

North Dakota Department of Transportation, Construction Services
SFN 58393 (08-2006)

SP Fuel Cost Adjustment Clause
6 of 6

Attachment A

Project Number _____

The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. The Contractor shall return the affidavit on all Contracts with this Provision even if the Contractor elects not to participate.

Check the box for each fuel type that has a fixed price.
No adjustments in fuel price will be made for the boxes that are checked.

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if **No** is checked.

If yes, provide the total dollars for each of the applicable fuels.

Diesel (x)	\$		
Unleaded (y)	\$		
Burner Fuel (z)	\$		
Sum (x+y+z)	\$	% of Original Contract Amount	%*

*The sum of the x, y, and z may not exceed 15% of the original contract amount.

Under the penalty of law for perjury of falsification, the undersigned,

_____, _____
Name Title

of _____, here by certifies that the documentation is submitted in good
Contractor

faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets and other data pertinent to the justification of the fuel costs shown above.

Date Signed

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, _____.

(Seal)

X

Signature of Notary Public

My Commission Expires _____

PROPOSAL

Note: The envelope containing this proposal should be marked:

“BID FOR LAKE SHURE STRUCTURE REPLACEMENT”, in Cass County

Proposal of: _____

Mailing Address

to furnish and deliver all materials and to do and perform all work, in accordance with the Standard Specifications, adopted by North Dakota Department of Transportation October 2008, Standard Drawings currently in effect, and other contract provisions submitted herewith of the North Dakota Department of Transportation except as specifically stated otherwise in the "Special Provisions" contained therein, for the improvement of a certain Public Highway in Cass County, State of North Dakota, on which proposals will be received until 10:00 o'clock A.M., on the 29th day of May, 2014, this project being known as Cass County Project No. TB1206. Said project being situated as follows: Crossing of Drain 45 on 57th Street NE 3,400' north of Cass County Highway 20 for 375', grading associated approaches and attaching guardrail.

NOT FOR BIDDING

PROPOSAL

PROJECT NO: TB1206

TYPE: STRUCTURE REPLACEMENT

LENGTH: 0.279 MILES

To The Chairman:
Cass County Board of Commissioners
Fargo, North Dakota

In accordance with the advertisement and notice to bidders from the Cass County Highway Department inviting proposals for the work on the project described above, the Bidder proposes to furnish all materials specified, and perform all work in the manner and at the time prescribed. The Bidder understands the quantities of work shown herein are approximate only, and are subject to increase or decrease. The bidder further understands that all quantities of work, whether increased or decreased, are to be performed at the unit prices proposed herein (except as otherwise provided in the contract documents).

The bid schedule, time for completion, other provisions, and bidder's affidavit follows:

NOT FOR BIDDING

PROPOSAL

BID SCHEDULE FOR COUNTY PROJECT NUMBER TB1206

BIDDER MUST TYPE OR NEATLY PRINT UNIT PRICES IN NUMERALS,
MAKE EXTENSIONS FOR EACH ITEM, AND TOTAL, DO NOT CARRY
UNIT PRICES FURTHER THAN THREE (3) DECIMAL PLACES.

CASS COUNTY HIGHWAY DEPARTMENT						
TB1206: 16-17 REED TOWNSHIP				ESTIMATED QUANTITIES		
ON 57TH AVE						
OVER DRAIN 45/LAKE SHURE						
ITEM	SPEC NO.	DESCRIPTION	UNIT	APPROX QUANTITY	UNIT COST	TOTAL
1	103	CONTRACT BOND	L SUM	1		
2	201	CLEARING & GRUBBING	L SUM	1		
3	202	REMOVAL OF STRUCTURE	EA	1		
4	202	REMOVAL OF PIPE ALL TYPES & SIZES	LF	110		
5	203	COMMON EXCAVATION-TYPE A	CY	9,827		
6	203	TOPSOIL	CY	1,097		
7	203	TOPSOIL-WETLAND	CY	476		
8	203	BORROW-EXCAVATION	CY	9,517		
9	210	CLASS 2 EXCAVATION (230 C.Y.)	L SUM	1		
10	210	CHANNEL EXCAVATION	CY	1,242		
11	210	SELECT BACKFILL (P)	TON	675		
12	210	FOUNDATION PREPARATION	L SUM	1		
13	216	WATER	M GAL	211		
14	302	AGGREGATE BASE COURSE CL 5	TON	2,973		
15	408	HOT BITUMINOUS PAVEMENT CL 27	TON	367		
16	602	CLASS AAE-3 CONCRETE	CY	331.5		
17	602	CLASS AE-3 CONCRETE	CY	255.4		
18	602	CONCRETE BRIDGE BARRIER	LF	749.3		
19	602	PENETRATING WATER REPELLENT TREATMENT	SY	1,228.4		

PROPOSAL

BID SCHEDULE FOR COUNTY PROJECT NUMBER TB1206

BIDDER MUST TYPE OR NEATLY PRINT UNIT PRICES IN NUMERALS,
MAKE EXTENSIONS FOR EACH ITEM, AND TOTAL, DO NOT CARRY
UNIT PRICES FURTHER THAN THREE (3) DECIMAL PLACES.

CASS COUNTY HIGHWAY DEPARTMENT						
TB1206: 16-17 REED TOWNSHIP				ESTIMATED QUANTITIES		TOTAL
ON 57TH AVE						
OVER DRAIN 45/LAKE SHURE						
ITEM	SPEC NO.	DESCRIPTION	UNIT	APPROX QUANTITY	UNIT COST	TOTAL
20	604	PRESTRESSED BOX BEAM-33IN	LF	1,473.3		
21	612	REINFORCING STEEL-GRADE 60	LBS	20,862		
22	612	REINFORCING STEEL-GRADE 60-EPOXY COATED	LBS	75,695		
23	616	STRUCTURAL STEEL	L SUM	1		
24	622	STEEL H-PILE TIPS 10 X 42	EA	10		
25	622	STEEL PILING HP 10 X 42	LF	850		
26	622	STEEL PILING HP 12 X 53	LF	2,100		
27	622	STEEL H-PILE TIPS 12 X 53	EA	28		
28	702	MOBILIZATION	L SUM	1		
29	704	TRAFFIC CONTROL SIGNS	UNITS	398		
30	704	TYPE III BARRICADE	EA	7		
31	708	RIPRAP-LOOSE ROCK	CY	929		
32	708	FLOTATION SILT CURTAIN	LF	555		
33	708	REMOVAL FLOTATION SILT CURTAIN	LF	555		
34	708	FIBER ROLLS 12IN	LF	1,490		
35	708	REMOVAL FIBER ROLLS 12IN	LF	745		
36	708	SEEDING-TYPE B-CL IV (P)	ACRE	3.74		
37	708	SEEDING-TYPE B-CL V (P)	ACRE	3.74		
38	708	MULCHING (P)	ACRE	7.48		

PROPOSAL

BID SCHEDULE FOR COUNTY PROJECT NUMBER TB1206

BIDDER MUST TYPE OR NEATLY PRINT UNIT PRICES IN NUMERALS, MAKE EXTENSIONS FOR EACH ITEM, AND TOTAL, DO NOT CARRY UNIT PRICES FURTHER THAN THREE (3) DECIMAL PLACES.

CASS COUNTY HIGHWAY DEPARTMENT						
TB1206: 16-17 REED TOWNSHIP				ESTIMATED QUANTITIES		
ON 57TH AVE						
OVER DRAIN 45/LAKE SHURE						
ITEM	SPEC NO.	DESCRIPTION	UNIT	APPROX QUANTITY	UNIT COST	TOTAL
39	714	HEADWALL - PRECAST CONCRETE 4IN	EA	2		
40	714	PIPE CORR STEEL .064IN 24IN	LF	90		
41	714	END SECT CORR STEEL .064IN 24IN	EA	4		
42	714	UNDERDRAIN PIPE PVC PERFORATED 4IN	LF	70		
43	714	UNDERDRAIN PIPE PVC NON-PERFORATED 4IN	LF	104		
44	764	W-BEAM GUARDRAIL	LF	233		
45	764	W-BEAM GUARDRAIL END TERMINAL	EA	4		

TOTAL: _____

RECEIPT OF ADDENDUMS NO. 1 _____ NO. 2 _____ NO. 3 _____

PROPOSAL

COUNTY PROJECT NUMBER: TB1206

TYPE: STRUCTURE REPLACEMENT

TIME FOR COMPLETION:

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

WORKING DAY CONTRACT: N/A working days, counted as provided in Standard Specification No. 108.04. Working days will be counted from N/A or from the actual date on which on-site work is started, whichever is earlier.

COMPLETION DATE CONTRACT: October 31, 2014 provided however, that a minimum of 60 working days, counted as provided in Standard Specification No. 108.04, are guaranteed for the performance of the work. Working days will be counted from July 15, 2014 or from the actual date on which onsite work is started, whichever is earlier.

NOT FOR BIDDING

PROPOSAL

COUNTY PROJECT NUMBER: TB1206

TYPE: STRUCTURE REPLACEMENT

CONTRACT EXECUTION:

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

AFFIDAVIT:

STATE OF _____

)ss.

COUNTY OF _____

The undersigned bidder, being duly sworn, does depose and say that he/she is an authorized representative

Of _____

_____, a

Mailing Address

___ Individual ___ Partnership ___ Joint Venture ___ Corporation

and that the said bidder has examined and carefully prepared its bid from the plans and specifications and has checked the same in detail before submitting said proposal or bid; and that the said bidder or its agents, office, or employees have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or bid.

_____,
Bidder must sign on this line

Title _____

Type or Print Signature

Subscribed and sworn to
before me this day

_____ County, _____
State

Notary Public

My commission expires _____

