

# Appendices

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# Appendix A

## Standard Special Provision Required Contract Provisions Federal-Aid Construction Contracts

**STANDARD SPECIAL PROVISION****REQUIRED CONTRACT PROVISIONS FEDERAL - AID CONSTRUCTION CONTRACTS**

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**ATTACHMENTS**

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

**I. GENERAL**

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

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

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

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

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

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

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are

incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
  - b. The contractor will accept as its operating policy the following statement:  
"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
  - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- 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.
  - 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.
  - 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.
  - 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.
- The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
- The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
  - 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.
- The records kept by the contractor shall document the following:
    - The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
    - The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
    - The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
  - 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

- All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the

Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - (ii) The classification is utilized in the area by the construction industry; and
    - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. **Withholding.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
  3. **Payrolls and basic records**
    - a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
    - b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the

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

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
    - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
  - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
  - (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
4. **Apprentices and trainees**

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

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

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

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

- In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
  - d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
  6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
  7. **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
  8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
  9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
  10. **Certification of eligibility.**
    - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

#### VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
  - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees



from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
  - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
  - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
  - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
  3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
  4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
  5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### **VII. SAFETY: ACCIDENT PREVENTION**

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

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

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
  - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
  - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. Instructions for Certification - Lower Tier Participants:**

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "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.

Appendix B  
Standard Special Provision  
Award of Contract

**STANDARD SPECIAL PROVISION****AWARD OF CONTRACT**

(6-28-77)(Rev 2/16/2016)

Z-6

“The North Carolina Department of Transportation, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the Regulations of the Department of Transportation (*49 C.F.R., Part 21*), issued pursuant to such act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, or national origin”.

**TITLE VI AND NONDISCRIMINATION****I. Title VI Assurance**

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 Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") 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, or national origin 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 Subcontractors, 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, or national origin.

**(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 Carolina Department of Transportation (NCDOT) or the Federal Highway Administration (FHWA) 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 NCDOT, or the FHWA 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 NCDOT shall impose such contract sanctions as it or the FHWA 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 subcontractor procurement as the NCDOT or the FHWA 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 with a subcontractor or supplier as a result of such direction, the contractor may request the NCDOT to enter into such litigation to protect the interests of the NCDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **II. Title VI Nondiscrimination Program**

Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, provides that: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The broader application of nondiscrimination law is found in other statutes, executive orders, and regulations (see Section III, Pertinent Nondiscrimination Authorities), which provide additional protections based on age, sex, disability and religion. In addition, the 1987 Civil Rights Restoration Act extends nondiscrimination coverage to all programs and activities of federal-aid recipients and contractors, including those that are not federally-funded.

### *Nondiscrimination Assurance*

The North Carolina Department of Transportation (NCDOT) hereby gives assurance that no person shall on the ground of race, color, national origin, sex, age, and disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and any other related Civil Rights authorities, whether those programs and activities are federally funded or not.

### *Obligation*

During the performance of this contract, the Contractor and its subcontractors are responsible for complying with NCDOT's Title VI Program. The Contractor must ensure that NCDOT's Notice of Nondiscrimination is posted in conspicuous locations accessible to all employees and subcontractors on the jobsite, along with the Contractor's own Equal Employment Opportunity (EEO) Policy Statement. The Contractor shall physically incorporate this "**TITLE VI AND NONDISCRIMINATION**" language, in its entirety, into all its subcontracts on federally-assisted and state-funded NCDOT-owned projects, and ensure its inclusion by subcontractors into all subsequent lower tier subcontracts. The Contractor and its subcontractors shall also physically incorporate the **FHWA-1273**, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only. The Contractor is also responsible for making its subcontractors aware of NCDOT's Discrimination Complaints Process, as follows:

### **FILING OF COMPLAINTS**

- 1. Applicability** – These complaint procedures apply to the beneficiaries of the NCDOT's programs, activities, and services, including, but not limited to, members of the public, contractors, subcontractors, consultants, and other sub-recipients of federal and state funds.
- 2. Eligibility** – Any person or class of persons who believes he/she has been subjected to discrimination or retaliation prohibited by any of the Civil Rights authorities, based upon race, color, sex, age, national origin, or disability, may file a written complaint with NCDOT's Civil Rights office. The law prohibits intimidation or retaliation of any sort. The complaint may be filed by the affected individual or a representative, and must be in writing.
- 3. Time Limits and Filing Options** – A complaint must be filed no later than 180 calendar days after the following:
  - The date of the alleged act of discrimination; or

- The date when the person(s) became aware of the alleged discrimination; or
- Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

Title VI and other discrimination complaints may be submitted to the following entities:

- **North Carolina Department of Transportation**, Office of Equal Opportunity & Workforce Services (EOWS), External Civil Rights Section, 1511 Mail Service Center, Raleigh, NC 27699-1511; 919-508-1808 or toll free 800-522-0453
- **US Department of Transportation**, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070

**Federal Highway Administration**, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010

**Federal Highway Administration**, Office of Civil Rights, 1200 New Jersey Avenue, SE, 8<sup>th</sup> Floor, E81-314, Washington, DC 20590, 202-366-0693 / 366-0752

**Federal Transit Administration**, Office of Civil Rights, ATTN: Title VI Program Coordinator, East Bldg. 5<sup>th</sup> Floor – TCR, 1200 New Jersey Avenue, SE, Washington, DC 20590

**Federal Aviation Administration**, Office of Civil Rights, 800 Independence Avenue, SW, Washington, DC 20591, 202-267-3258

- **US Department of Justice**, Special Litigation Section, Civil Rights Division, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202-514-6255 or toll free 877-218-5228

4. **Format for Complaints** – Complaints must be in **writing** and **signed** by the complainant(s) or a representative and include the complainant’s name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages including Braille.
5. **Discrimination Complaint Form** – Contact NCDOT EOWS at the phone number above to receive a full copy of the Discrimination Complaint Form and procedures.
6. **Complaint Basis** – Allegations must be based on issues involving race, color, national origin, sex, age, or disability. The term “basis” refers to the complainant’s membership in a protected group category. Contact this office to receive a Discrimination Complaint Form.



Protected Categories	Definition	Examples	Applicable Statutes and Regulations	
			FHWA	FTA
Race	An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group	Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White	Title VI of the Civil Rights Act of 1964;  49 CFR Part 21;	Title VI of the Civil Rights Act of 1964;  49 CFR Part 21;
Color	Color of skin, including shade of skin within a racial group	Black, White, brown, yellow, etc.	23 CFR 200	Circular 4702.1B
National Origin	Place of birth. Citizenship is not a factor. Discrimination based on language or a person's accent is also covered.	Mexican, Cuban, Japanese, Vietnamese, Chinese		
Sex	Gender	Women and Men	1973 Federal-Aid Highway Act	Title IX of the Education Amendments of 1972
Age	Persons of any age	21 year old person	Age Discrimination Act of 1975	
Disability	Physical or mental impairment, permanent or temporary, or perceived.	Blind, alcoholic, paraplegic, epileptic, diabetic, arthritic	Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990	

### III. Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities,

including, but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).
- Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*, Pub. L. 88-352), (prohibits employment discrimination on the basis of race, color, religion, sex, or national origin);

- 49 CFR Part 26, regulation to ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs, as regards the use of Disadvantaged Business Enterprises (DBEs);
- Form FHWA-1273, “Required Contract Provisions,” a collection of contract provisions and proposal notices that are generally applicable to *all Federal-aid construction projects* and must be made a part of, and physically incorporated into, *all federally-assisted contracts*, as well as appropriate subcontracts and purchase orders, particularly Sections II (Nondiscrimination) and III (Nonsegregated Facilities).

## Appendix C

# North Carolina Turnpike Authority Policies and Procedures for the Procurement of Commodities and Services (February 2009)

## NORTH CAROLINA TURNPIKE AUTHORITY POLICIES AND PROCEDURES FOR THE PROCUREMENT OF COMMODITIES AND SERVICES

### **RESPONSIBILITY**

The North Carolina Turnpike Authority (hereinafter referred to as the “NCTA” or “Authority”) is responsible for administering the agency program for procuring commodities, goods, information technology and services. These policies and procedures shall apply to the acquisition of all equipment, materials, supplies, printing, and services, through outright purchase, rental, lease, lease-purchase, or installment purchase

The Executive Director is hereby authorized to develop administrative controls and operation manuals to implement the authority and responsibilities for implementing the policies and procedures promulgated herein.

### **POLICY STATEMENT AND SCOPE**

It is the Authority’s policy to administer its procurement program in a manner that ensures and encourages free and open competition and based upon sound procurement procedures and management. Unless an exception is approved by NCTA Board of Directors to meet special needs or emergency circumstances, NCTA procurements shall comply with the policies and procedures as prescribed herein.

It is the Authority’s policy to encourage and promote the use of historically underutilized businesses, including but not limited to small contractors, minority contractors, physically handicapped contractors and women contractors in the procurement of general commodities and services, information technology and consultant services. In promoting the use of historically underutilized businesses, the Authority will be guided by statutory provisions set forth in Article 3 of Chapter 143 of the North Carolina General Statutes and guidance set forth by the Department of Transportation and DOA. When federal aid funds are utilized on turnpike projects, the Authority will adhere to the Disadvantaged Business Enterprise (“DBE”) requirements as those may be applicable to the Authority’s procurement program.

## **PROCUREMENT PROCEDURES**

### **I. PROCUREMENT PROCEDURES FOR GENERAL COMMODITIES AND SERVICES**

a) Small Purchases:

A small purchase is defined as the purchase of commodities (equipment, materials and supplies), services or printing, not covered by a State or Authority term contract, involving an expenditure of funds of five thousand dollars (\$5,000) or less. The Executive Director, or his designee, shall set forth, in writing, purchasing procedures for making small purchases. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested.

b) Purchases Between Five Thousand Dollars and Ten Thousand Dollars:

For purchases involving an expenditure of funds over five thousand dollars (\$5,000) but less than ten thousand dollars (\$10,000), such expenditures shall be approved in the Annual Plan of Work, in the Authority budget or by the Board. The NCTA shall solicit three written quotes. If the NCTA is unable to obtain three written quotes, written justification will be provided to the Executive Director or his or her designee for approval prior to purchase. The Executive Director shall keep an account of all such expenditures and make such reports to the Board of as may be requested.

c) Purchases Over Ten Thousand Dollars:

For purchases involving an expenditure of funds over ten thousand dollars (\$10,000), such expenditures shall be authorized in the Annual Plan of Work, in the Authority budget or by the Board. The NCTA shall adhere to the following procedures:

- i) Competition shall be solicited;
- ii) Solicitation documents requesting or inviting offers shall be issued; and
- iii) Mailing lists may be used also for the purpose of soliciting competition.

**Competitive Bidding Procedure for Purchases Over Ten Thousand Dollars:**

- (1) Where the total requirements for commodities, services or printing jobs involve an expenditure of funds in excess of \$10,000, a competitive bidding procedure shall be utilized as follows:

- (a) Sealed offers for commodities and printing shall be solicited via advertisement, and

- (b) After opening and evaluating the offers received, the Authority shall award contracts.
- (2) For service contracts, the NCTA shall prepare a task description of the services requested and the desired results. Task descriptions shall contain all of the following:
- (a) The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of the Authority Board);
  - (b) Detailed specifications or type and level of work required;
  - (c) What the NCTA shall furnish;
  - (d) What the Contractor shall furnish;
  - (e) The method, schedule, and procedures for billing and payments; and
  - (f) Other subject matters bearing on the conduct of the work.
- (3) Evaluation:
- (a) In determining the award of contracts, bona fide offers shall be considered and evaluated as provided by this Policy. The evaluation criteria to be used in determining the award of contract shall be identified in the procurement document.
  - (b) An unexecuted offer or an offer without a delivery time shall be rejected.
  - (c) During the period of evaluation and prior to award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the NCTA who are responsible for handling the offers and accompanying information, and to others determined necessary by the NCTA, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by persons in the NCTA who are responsible for handling the offers and accompanying information. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets.

## **II. PROCUREMENT PROCEDURES FOR INFORMATION TECHNOLOGY AND IT SERVICES**

Information technology (IT) purchases shall be in accordance generally with "Best Value" information technology procurements (G.S. 143-135.9) as follows:

"Best Value procurement means the selection of a contractor based on a determination of which proposal offers the best trade-off between price and

performance where quality is considered an integral performance factor. The award decision will be based on multiple factors, including: total costs of ownership; cost of acquiring, operating, maintaining and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.”

Unless an exception is approved by NCTA Board of Directors for special needs or emergency circumstances, information technology procurements by the NCTA shall comply with the following delegations and procedures:

- a) Purchases of Less than \$5,000.00:  
A small purchase is defined as the purchase of IT goods and services, where the expenditure of funds is five thousand dollars (\$5,000) or less. The Executive Director, or his designee, shall set forth in writing purchasing procedures for making small purchases consistent with the documentation required pursuant to the Authority's administrative policies. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested.
- b) Purchases of More than \$5,000.00:  
For purchases involving an expenditure of funds over five thousand dollars (\$5,000), such expenditures shall be approved in the Annual Plan of Work, in the Authority budget or by the Board. The Executive Director shall keep an account of all such expenditures and make such reports to the Board as may be requested. The Executive Director will utilize the following methodologies to encourage competition:
  - i) The Executive Director or his or her designee will issue a solicitation document requesting or inviting offers;
  - ii) The solicitation document will include terms and conditions for the procurement of the goods and services; and
  - iii) The NCTA may request a distribution list, if available from State Information Technology Services (ITS), and use the ITS list in addition to any distribution list developed and maintained by the NCTA for the purpose of soliciting competition.
- c) Types of solicitations:  
The following types of solicitation methods may be used:



- (1) One-step Request for Proposals (RFP) – The Technical and Price Proposal is submitted in a single document.
  - (1) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.
  - (2) If the trade off or ranking method of source selection is used, communications may be established to clarify competitive ranges or to negotiation final price.
  
- (2) Two-step RFP – The Technical Proposal (step one) and the Price Proposal (step two) are submitted in separate documents.
  - (1) If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.
  - (2) If the ranking method of source selection is used, Technical Proposals (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with offerors may be allowed as specified in the solicitation document. Price Proposals (step two) will be requested only from offerors placed in the competitive range after the technical evaluation and discussion phase is concluded. Subsequent negotiations may be conducted with offerors after receipt of Price Proposals. Final price adjustments or best and final offers may be allowed.
  
- d) Authorized Procurement Methods for Competitive Source Selection for IT and IT Services:
  - i) “Best Value” Source Selection method:
    - (1) The appropriate best value bidding method will be determined by the Executive Director, or his or her designee.
    - (2) A conference or site visit may be scheduled, as deemed necessary and specified in the solicitation document.
    - (3) A public bid opening will be conducted following receipt of offers. For solicitations that allow for negotiation after receipt of offers, only the names of responding bidders will be revealed. Price information will be made public after evaluation and award.
    - (4) The NCTA will establish a technical evaluation committee to evaluate the offers in accordance with the evaluation factors specified in the solicitation document. For solicitations that include a best value ranking process, scoring and ranking may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings. Relative strengths, deficiencies, weaknesses, and

- risks supporting the evaluation will be documented in the contract file. Evaluation factors may include but are not limited
- (a) to quality factors;
  - (b) delivery and implementation schedule;
  - (c) maximum facilitation of data exchange and systems integration;
  - (d) warranties, guarantees, and return policies;
  - (e) vendor financial stability;
  - (f) consistency of the proposed solution with the states strategic program direction;
  - (g) effectiveness of business solution and approach;
  - (h) industry and program experience; prior record of vendor performance;
  - (i) vendor expertise with similar projects;
  - (j) proven development methodologies and tools; and
  - (k) innovative use of technologies.
- (5) Clarifications, communications to establish a competitive range, or negotiations may be conducted with offerors after receipt of offers in accordance with instructions and procedures set forth in the solicitation document and as appropriate to the method of source selection chosen. In those cases where negotiation is permitted by procedures set forth in the solicitation document, offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.
- (6) The technical evaluation committee will determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. The offerors will be ranked from most advantageous to least advantageous to the NCTA.
- (7) Award will be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous to the NCTA, using the evaluation factors set forth in the solicitation. If the lowest price technically acceptable method is used, award will be made to the responding and responsible offeror with the lowest price.
- ii) A “Trade-off method” of source selection may be utilized when it is in the best interest of the NCTA to consider award to other than the lowest priced offer or other than the highest technically qualified offer. For a solicitation using a trade off source selection method, the following will apply:
- (1) All evaluation factors that will affect the contract award decision and their relative importance will be clearly stated in the solicitation.
  - (2) Price will be considered as an evaluation factor in the selection process. The solicitation will state the importance or numerical weight of all evaluation factors including price.
  - (3) Offers will be ranked using the evaluation factors and their relative importance or weight as defined in the solicitation document. The

relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.

(4) Clarifications are permitted. If specified in the solicitation, communications and negotiations may be permitted after receipt of offer.

iii) The “Lowest Price Technically Acceptable” source selection method may be used when best value is expected to result from selection of the technically acceptable offer with the lowest evaluated price. When using the lowest price technically acceptable method, the following will apply:

(1) The evaluation factors that establish the requirements of acceptability will be set forth in the solicitation. Solicitations will specify that award will be made on the basis of the lowest evaluated price of those proposals that meet or exceed the acceptability requirements for non-price factors.

(2) Trade offs between price and non-price factors will not be permitted.

(3) Proposals will be evaluated for acceptability but will not be ranked using the non-price factors.

(4) Only clarifications will be permitted.

iv) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the NCTA and are approved for use by the Executive Director or his or her designee.

### **III. PROCUREMENT PROCEDURES FOR CONSULTANT SERVICES**

Consultant services shall mean work or task(s) performed by State employees or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services.

a) Contracting Procedures for Consultants:

The NCTA shall acquire consultant services only when the contract is in the best interests of the Authority and the State. In acquiring such services, competition shall be sought whenever practicable.

- b) Consultant Contract with other Agencies:  
Consultant services shall be obtained from other agencies when such services substantially would meet the reasonable specifications of the project.
- c) Request for Authority to Contract with Consultants:  
Before receiving authorization to seek consultant services, an agency shall submit to the written justification for its request for consultant services to the Office of the Governor of North Carolina in compliance with Article 3C of GS 143. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, and what potential sources of consultant services if any the agency has identified. If the NCTA is requesting authority to contract for consulting services outside of State government, it shall also detail what potential sources of those services exist within State government and explain why the desired services were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the Executive Director or his designee.

The NCTA may be required by the Governor or designee, to:

- i) canvass additional sources within state government;
  - ii) solicit proposals from private contractors;
  - iii) execute a negotiated contract(s) without competitive proposals if the Governor determines that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
  - iv) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the NCTA or State relative to the potential expenditure of funds.
- d) Competitive Proposals:  
If the NCTA receives approval from the Office of the Governor to solicit proposals for consultant services, the NCTA shall:

- i) Prepare a request for proposals in accordance with these policies and disseminate among prospective service providers;
  - ii) Circulate the request for proposals to such sources of consultant services;
  - iii) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable;
  - iv) Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received;
  - v) Prepare a file memorandum citing criteria for selection and contract award.
- e) **Negotiated Consultant Contracts:**  
If the NCTA enters into a negotiated contract(s) for consultant services without soliciting competitive proposals, the NCTA shall submit the proposed contract(s) to the Office of the Governor for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed.
- f) **Consultant Contract Modification:**  
Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process of reviewing requests for contract modifications, waive any of the provisions of this Policy.
- g) **Format:**  
All contracts for consultant services shall be in writing and shall be executed by the Executive Director.
- h) **Relationship of Consultant to State:**  
No contract for consultant services shall create an employer-employee relationship between the State of North Carolina and the consultant.

### **ELECTRONIC, TELEGRAPH, FACSIMILE, AND TELEPHONE OFFERS**

Electronic, telegraph, facsimile, and telephone offers shall not be accepted in response to solicitations that are required to be sealed.

### **RECALL OF OFFERS**

Offers may be recalled prior to opening upon signed request from an authorized

agent of the company.

### **PUBLIC OPENING**

Advertised procurements shall be publicly opened at the time, date, and place identified in the procurement document. At the time of opening, the names of the companies, the manufacturer(s) and catalog number(s) of the item(s) they have offered and the prices, deliveries and payment terms they have submitted shall be tabulated and this tabulation shall become public record, except as provided in this Policy.

Under a two step process, the cost/price offer(s) shall not become public record until the technical offer(s) are evaluated (first step) and then only those offerors determined to have acceptable technical offers shall have their cost/price offers opened (second step). The cost/price offers from offerors whose technical offers were deemed unacceptable shall remain unopened. The remaining cost/price offers shall be publicly opened, and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. At least two agency working days notice shall be given prior to the opening. In addition, there shall be at least two agency employees present at the opening.

### **LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS**

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of NCTA personnel directly serving the procurement process. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

### **ERROR/CLARIFICATION**

When an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the procurement document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

**EXTENSION OF ACCEPTANCE TIME**

When in the public interest, companies may be requested to extend the time offered for the acceptance of offers.

**NOTIFICATION OF AWARD**

The Authority shall post a notice of the resulting contract award via the NCTA website or through the State Division of Purchasing and Contract when utilizing said services.

**LACK OF COMPETITION**

The purpose of soliciting offers is both to seek and to obtain competition; the responsibility is dual. Where only a single offer or a single acceptable offer is received or, otherwise, where reasonable and available competition is not obtained, the reason shall be ascertained and made a matter of record.

**TABULATIONS AND ABSTRACTS**

Telephone, electronic, and written requests for detailed or written tabulations and abstracts of offers shall not be honored.

**SOLICITATION DOCUMENTS**

A solicitation document is defined as a written Request for Quotes, Request for Proposals (RFP) or an Invitation for Bids (IFB). The NCTA shall use the IFB or RFP document, whichever is applicable, when soliciting competition on contracts valued over ten thousand dollars (\$10,000). The IFB and RFP solicitation documents shall require bidders or offerors to certify that each bid or offer is submitted competitively and without collusion.

**DIVISION OF REQUIREMENTS**

The NCTA shall not divide requirements in order to keep the expenditure under its \$5,000 small purchase limit and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

## **ADVERTISEMENT REQUIREMENTS**

Solicitation documents shall be advertised at least once and at least 10 days prior to the date designated for opening. This Policy does not prevent solicitation of offers by additional direct mailings or additional advertisement.

The solicitation documents shall include such relevant information as specifications and requirements; terms and conditions; a short description of the commodity, service or printing requirement; and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.

Within three agency working days from the award of a contract, the NCTA shall post an award notice directly to the NCTA website on the internet. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

## **MANDATORY CONFERENCES/SITE VISITS**

- (1) When a solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, the date, time, location, and other pertinent details of the conference or site visit shall be given in the solicitation document, and in the advertisement.
- (2) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may continue to be conducted, but the solicitation shall be canceled immediately following the conference or site visit. If this occurs, the NCTA shall investigate why only one potential offeror was in attendance and ascertain if there is any competition available. If it is determined that competition is available, the NCTA shall again attempt to obtain competition by following this Policy. If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by this Policy.
- (3) Any and all questions by a potential offeror regarding a solicitation document shall be addressed to the persons in the NCTA who are responsible for handling the offers and accompanying information. Any and all revisions to the solicitation document shall be made only by written addendum. Verbal communications from whatever source are of no effect.

## **REJECTION OF OFFERS**

In soliciting offers, any and all offers received may be rejected in whole or in part.



Basis for rejection shall include, but not be limited to, the offer being deemed unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying with conditions of the procurement document or with the intent of the proposed contract; lack of competitiveness by reason of collusion or otherwise or knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; any determination that rejection would be to the best interest of the NCTA or the State. Action in rejecting offers in whole or in part shall be made a matter of record.

### **NEGOTIATION**

If the NCTA does not receive a satisfactory offer in response to a solicitation and all offers are rejected, negotiations may be conducted with all known sources of supply that may be capable of satisfying the requirement; if it is determined that soliciting offers again would serve no purpose. Negotiations shall be conducted in writing. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition, or in other situations that are advantageous as determined by the Authority Board.

### **PURCHASE OF USED ITEMS**

The Policy stated herein regarding seeking competition shall be followed wherever feasible, when it appears that the acquisition of used commodities is in the public interest.

Solicitation documents on used items may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of that which is considered most advantageous for the intended purpose.

### **REMOVAL OF CERTAIN ITEMS FROM GENERAL CONSTRUCTION**

The NCTA shall review the items being included in a construction/renovation

project and remove any items that it considers are non-related to the actual construction/renovation of the building. Items that are considered commodities or just furnishings, and that would complete the project for use by the Authority, shall be handled in accordance with this Policy. Items that are usually removed for construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If the NCTA determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, the Authority's justification shall be documented in writing for public record.

### **INSPECTION AND TESTING**

In general, it is the responsibility of the NCTA to inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications. The NCTA is responsible to insure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements.

### **SAMPLES**

When samples are required in response to a solicitation document issued, the NCTA shall test, or have tested, those samples.

### **SPECIFICATIONS**

When it is determined to be advantageous, the NCTA may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration, regardless of initial contract award.

### **REPORT OF DISCREPANCY**

Where the goods, supplies, materials equipment, services or printing delivered fails to meet the specifications or contract requirements, the discrepancy shall be resolved by the Executive Director or his or her designee.

### **ENFORCEMENT OF GUARANTEES AND WARRANTIES**

The NCTA shall enforce the contractual guarantee or warranty applying to the goods, supplies, materials, and equipment purchased. If the NCTA has difficulty in

obtaining satisfactory performance including service as provided for in a guarantee or warranty, the vendor will be notified promptly. The NCTA shall notify the vendor promptly when latent or other defects are discovered.

### **TERM CONTRACTS**

- (1) Term contracts, known also as indefinite quantity or requirements contracts, are used generally to establish suppliers and prices of a given commodity, group of commodities, printing, or services for a period of time without guaranteed quantities being specified.
- (2) A term contract is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices.
- (3) A term contract shall be based upon competition.
- (4) The NCTA may issue solicitation documents for an agency specific term contracts for use by the Authority if the commodity, printing, or service **is not covered by a statewide term contract**.

### **DETERMINING FACTORS FOR ISSUING TERM CONTRACTS**

In determining whether a product should be on an agency specific term contract, the NCTA shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs.

### **SPECIAL ITEMS**

In situations where a general type of item is covered by a statewide term contract but a special type item is needed for a particular application, the NCTA may proceed with the purchase of the special type item under this Policy. The need for the special type item in lieu of the general type item shall be justified by the NCTA in writing and documented in the agency file for public record.

### **EXTENSION OF CONTRACT TERMINATION DATES**

When in the public interest, contractors may be requested to extend the scheduled termination dates of contracts.

### **PARTIAL AND MULTIPLE AWARDS**

Partial, progressive or multiple awards may be made by reason of insufficient funds, legislative mandates, where it is advantageous to award separately by items or where

more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service(s) or geographical areas.

Notwithstanding the necessity for awards to more than one supplier in the case of some indefinite quantity contracts, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care shall be exercised to protect the character and principles of competition. Quantities shall not be divided among companies on definite quantity requirements unless and except as provided in the procurement document.

### **WAIVER OF COMPETITION**

Under conditions listed in this Policy, and otherwise if deemed to be in the public interest by the Authority Board, upon recommendation of the Executive Director, competition may be waived. Conditions permitting waiver include cases where:

- performance or price competition is not available;
- a needed product or service is available from only one source of supply;
- emergency action is indicated;
- competition has been solicited but no satisfactory offers received;
- standardization or compatibility is the overriding consideration;
- a donation predicates the source of supply;
- personal or particular professional services are required;
- a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;
- additional products or services are needed to complete an ongoing job or task;
- products are bought for "over the counter" resale;
- a particular product or service is desired for educational, training, experimental, developmental or research work;
- equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- items are subject to rapid price fluctuation or immediate acceptance;
- there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures;
- the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract;
- the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and
- a used item(s) is available on short notice and subject to prior sale.

Although competition may be waived, competition is required wherever practicable.

Where waiver is contemplated, the NCTA may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. Under an emergency or pressing need situation, a solicitation document requesting or inviting an offer(s) shall be issued, unless circumstances prohibit their use.

### **CONFIDENTIALITY**

All information and documentation relative to the development of a contractual document (Request for Quotes, Request for Proposals, Waiver of Competition, Negotiation, etc.) for a proposed procurement or contract shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract.

This includes all information and documentation relative to the development of a specification until the adoption of that specification or an award of contract if developed for a specific procurement or contract, whichever is later.

During the period of evaluating offers and prior to award, only the information provided in the tabulation is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the NCTA who are responsible for handling the offers and accompanying information, and to others determined necessary by the Executive Director, for the purpose of evaluation and award of contract. Offeror participation in the evaluation process shall not be permitted. Any communication with an offeror that may be necessary for purpose of clarification of its offer shall be conducted by the Executive Director or his or her designee. After award of the contract, or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets, subject to the following:

To promote maximum competition and to protect the public competitive procedure from being used to obtain information which would normally not be available otherwise, the NCTA may maintain the confidentiality of certain types of information. Such information includes trade secrets, as determined by North Carolina law, and like information as the Executive Director or his or her designee may determine to insure the integrity of the public purchasing process. Trade secrets which the offeror does not wish disclosed shall be identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Cost information shall not be deemed confidential.

## **PAYMENT PLANS**

Purchase contracts may provide for payment over a period of time. Such instances, however, shall be fully justified, kept to a minimum and carry written prior approval of the Executive Director. The intended plan of payment shall be included in the procurement document.

## **FUNDS FROM DIFFERENT SOURCES**

All public funds irrespective of source, whether special, federal, local, gifts, bequests, receipts, fees, or State appropriated, used for the purchase, rental, lease, installment purchase and lease/purchase of commodities, printing and services shall be handled in accordance with applicable General Statute.

## **CONDITIONAL GRANTS ETC IN PUBLIC PURCHASING**

Where a grant, donation or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the Executive Director. Prior to approval, the Executive Director shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the Authority and the State, the cost of agreeing to such conditions, and the market place conditions. When a donation from private sources is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the Executive Director.

## **CHANGE IN CORPORATE STRUCTURE**

In cases where contractors are involved in corporate consolidations, acquisitions or mergers, the NCTA may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures but with the understanding that the contracts are not instruments for sale and shall not be assigned.

## **PURCHASES FOR ACROSS THE COUNTER RESALE**

Purchases of items for "across the counter" resale shall be in accordance with policies adopted by the Authority Board.

## **PURCHASING FROM OR THROUGH AGENCY EMPLOYEES**

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the Executive Director is required in any instance which may develop of doing business with such personnel. In deciding whether to grant approval, the Executive Director shall consider the type item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

### **USE OF PURCHASING POWER FOR PRIVATE GAIN**

The purchasing power of the state or the NCTA shall not be used for private advantage or gain. Purchases under contracts made by the State or the NCTA shall not be allowed for personal use out of private funds nor shall NCTA place orders for articles for ownership by employees or other individuals.

### **ANTITRUST VIOLATIONS**

In instances of identical offers or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the NCTA's best interest. Instances of suspected antitrust violation shall be reported to appropriate law enforcement authorities.

### **COOPERATIVE PURCHASING**

The NCTA is authorized to utilize cooperative purchasing with another governmental agency or charitable non-profit organization. Where the NCTA is a participant in an authorized cooperative project with another governmental agency or with a charitable non-profit organization, goods and services necessary to the project shall be acquired according to this Policy; provided, however, that the interest of the NCTA and the State would not be better served by one of the following acquisition methods:

- (1) by making acquisition on behalf of such governmental activity or charitable non-profit organization; or
- (2) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given to the differences in purchasing rules, regulations and procedures of the contracting entity.

### **PROTEST PROCEDURES**

To insure fairness to all offerors and to promote open competition, the NCTA shall actively follow-up and be consistent in responding to an offeror's protest over contract awards.

When an offeror desires to protest a contract awarded by the NCTA, the NCTA and the offeror shall comply with the following:

- (1) The offeror shall submit a written request for a protest meeting to the Executive Director which shall be received within 30 consecutive calendar days from the date of the contract award. The offeror's letter shall contain specific reasons and any supporting documentation for why it has a concern with the award. If the letter does not contain this information or if the Executive Director determines that a meeting would serve no purpose, the Executive Director may, within 10 consecutive calendar days from the date of receipt of the letter, respond in writing to the offeror and refuse the protest meeting request.
- (2) If the protest meeting is granted, the Executive Director shall attempt to schedule the meeting within 30 consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 consecutive calendar days from the date of the protest meeting, the Executive Director shall respond to the offeror in writing with the Executive Director's decision.
- (3) The Executive Director may appoint a designee to act on the Executive Director's behalf under this Policy.

### **DEFAULT PROCEEDINGS; DEBARMENT**

The NCTA may find a contractor in default of a contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor is found in default of contract, the NCTA may take action, immediately if necessary, to purchase the needed commodities, printing or services on the open market and charge any additional cost for the commodities, printing or services and expense for doing so to the defaulting contractor.

### **FAITHFUL PERFORMANCE**

A bond, or other suitable means of insuring faithful performance, may be required of the contractor at the contractor's expense. Liquidated damages, in the form of a monetary penalty for late delivery, may be provided for in the contract, as a means of ensuring faithful performance from the contractor.

### **RECIPROCAL PREFERENCE**



Each solicitation document used to obtain contracts for equipment, materials, supplies, and services that exceed twenty-five thousand dollars (\$25,000) in value shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the NCTA from investigating this information and concluding that the principal place of business is different.

### **PROCUREMENT CARDS**

The NCTA may utilize procurement cards (organizational charge cards). Procurement cards are for official use only and shall be used in accordance with the policies and procedures of the Office of State Treasurer and other applicable, established state policies and procedures. As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the NCTA.

### **PRESSING NEEDS AND EMERGENCIES**

The NCTA may make purchases of commodities or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. An emergency is defined as a situation which endangers lives, property or the continuation of a vital program and which can be rectified only by immediate, on-the-spot purchases or rental of commodities or services.

The NCTA may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, unless circumstances prohibit their use.

A pressing need or emergency purchase in excess of \$10,000 shall be approved by the Executive Director, the Chief Financial Officer and the Chair of the Board. Pressing need or emergency purchase in excess of \$25,000 shall be reported to the Authority Board.

### **INVENTORIES AND STORES**

The North Carolina Department of Administration, Division of Purchase & Contract

has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

In the event the NCTA is required to maintain centralized warehouse facilities, the Authority Board shall have inventory control procedures in place which insure at a minimum, written inventory count of contents, written records of receipts and issues, economical ordering and efficient level of inventories, safe storage of hazardous materials, and security.

### **RECORD MAINTENANCE**

Except where State law provides to the contrary, after the award of a contract, the purchasing records of the NCTA are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract.

Each contract file shall be identified individually so it can be readily located and referenced. All purchase transactions shall be documented. As applicable, each file shall include:

- (1) Original offers if in writing, or written documentation of verbal offers received;
- (2) Reasons for award or cancellation;
- (3) Worksheets/evaluations;
- (4) Mailing list, if used;
- (5) Written justification for waiver or emergency purchase;
- (6) Tabulation of offers received;
- (7) Copy of purchase order(s);
- (8) Related correspondence;
- (9) Reason(s) for receiving only one offer in response to a solicitation;
- (10) Negotiated contracts; and
- (11) Reasons for not accepting technical proposals.

After award of contract all material in the file, except confidential information, shall be open to interested persons during normal office hours, and may be hand copied or copies shall be furnished in accordance with the Public Records Act.

### **HISTORICALLY UNDERUTILIZED BUSINESS, MINORITY BUSINESS, SMALL BUSINESS AND DISADVANTAGED BUSINESS**

As applicable to expenditures made pursuant to these policies and procedures, the

NCTA will comply fully with the North Carolina Department of Transportation's ("NCDOT") Disadvantaged Business Enterprise ("DBE") Program, unless the NCTA establishes a separate program as approved by the United States Department of Transportation. The NCTA will comply with the DBE goals and good faith effort requirements established in conjunction with NCDOT. The NCTA will keep account of its utilization of historically underutilized businesses, small businesses and disadvantaged businesses and incorporate such utilization in reports to NCDOT or such other State or federal agencies as required.

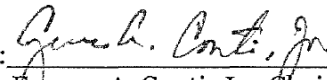
### **RECYCLED PAPER**

The NCTA will comply with the State's goals to purchase recycled content paper and paper products as established in G.S. 143-58.3.

### **ADOPTION**

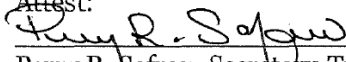
The Policies and Procedures for the Procurement of Commodities and Services is adopted on this 18th day of February 2009.

Signed: \_\_\_\_\_



Eugene A. Conti, Jr., Chairman  
North Carolina Turnpike Authority Board

Attest: \_\_\_\_\_



Perry R. Safran, Secretary-Treasurer  
North Carolina Turnpike Authority Board

# Appendix D

## North Carolina Turnpike Authority Business Policies

**DRAFT**



*North Carolina Turnpike Authority*

*Customer Service Center Business Policies*

*Version 3.0*

*September 2017*

***DRAFT***

## DOCUMENT HISTORY

<b>Version</b>	<b>Date</b>	<b>Modification</b>	<b>Author</b>
1.0	October 2, 2008	Original – Utilized for TCS RFP	NCTA / HNTB / PBS&J
1.1	February 25, 2014	Addition of Reciprocity / Reconciliation Process	NCTA / AECOM
2.0	November 1, 2016	Updated and Verified, Reformatted	NCTA / RS&H / HNTB
2.1	March 2017	Add Exempt Vehicle Business Rules	NCTA/Atkins/HNTB
2.2	July 2017	Add new account and transponder types, policies for HOV declaration and Express Lanes and revised document organization	NCTA/Atkins/HNTB
3.0	September 2017	Merged and formatted document	HNTB

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## **APPENDICES (TO BE ADDED)**

- A – Definitions, Acronyms, and Abbreviations
- B – North Carolina General Statutes
- C – NC Quick Pass Applications and Terms and Conditions
- D – NCTA/EZG Interoperability Agreement
- E – EZG Reciprocity Document
- F – FTE Interoperability Agreement
- G – FTE Interoperability Agreement Amendment: SRTA Interoperability
- H – Invoice Escalation Process Form and samples
- I – HOV Declaration Application Procedures
- J – Business Policy Modification Form

## I. INTRODUCTION

This document is the compilation and record of the North Carolina Turnpike Authority's (NCTA) Business Policies. These policies serve to govern the operation of NCTA's NC Quick Pass Customer Service Center (CSC) and remote storefronts, Bill by Mail (BBM) invoicing, and Interoperability with other agencies in accordance with North Carolina's toll legislation.

This document is supplemented by ten appendices. They are described below.

- **Appendix A** contains definitions, acronyms and abbreviations used within this document.
- **Appendix B** contains the North Carolina toll legislation upon which these policies are based.
- **Appendix C** contains the current NC Quick Pass Applications and Terms and Conditions.
- **Appendix D** contains the Interoperability agreement between NCTA and the E-ZPass Group (EZG).
- **Appendix E** contains the Reciprocity agreement between NCTA and the EZG.
- **Appendix F** contains the agreement between NCTA and Florida's Turnpike Enterprise (FTE).
- **Appendix G** contains the amendment to the agreement between NCTA and FTE to allow for interoperability and reciprocity with the State Road and Tollway Authority (SRTA) in Georgia.
- **Appendix H** contains the Invoice Escalation Process Form and samples
- **Appendix I** contains the procedures for registering and account and declaring HOV vehicle status using the HOV Declaration application.
- **Appendix J** contains the Business Policy Modification Form.

The policies within this document are grouped into eleven overarching topics each containing individual policies relating to the specific topic.

- Policy 1 NC Quick Pass Account
- Policy 2 Transponders
- Policy 3 Registered Video Account
- Policy 4 Bill by Mail
- Policy 5 Account Conversion
- Policy 6 Disputes
- Policy 7 Administrative Hearing and Judicial Review
- Policy 8 Interoperability for Out of State Agencies
- Policy 9 Express Lanes and HOV Declaration
- Policy 10 Account Privacy Information
- Policy 11 Business Policy Modification Process

## II. NORTH CAROLINA TURNPIKE AUTHORITY OVERVIEW

The North Carolina Turnpike Authority (NCTA), a business unit of the North Carolina Department of Transportation, was formed in 2002 by the North Carolina General Assembly. The mission of NCTA is to supplement the traditional non-toll transportation system by accelerating the delivery of roadway projects using alternative financing options and facilitating the development, delivery and operation of toll roads. NCTA is authorized to study, plan, develop, and undertake preliminary design work on Turnpike Projects.

**Customer Service Center and Toll Facilities** - NCTA is responsible for the operation of a central Customer Service Center (CSC) located in Morrisville, NC along with smaller walk-in storefront CSCs located near toll facilities in the state. The CSC is responsible for toll transaction processing and maintaining customer accounts. NCTA is also responsible for the operation of NC toll facilities unless the toll facility is operated by a private developer in conjunction with the NC Department of Transportation

**Toll Systems** - NCTA toll systems are comprehensive, all-electronic tolling (AET) systems that allow motorists to drive through toll zones and pay their tolls without having to stop. When customers travel the toll facilities, tolls are collected from customer accounts using a transponder mounted in the vehicle and/or by identifying the license plate number attached to the vehicle and invoicing the vehicle's owner for the toll due.

**Express Lane Facilities** - Some of the toll facilities in North Carolina are a special type of toll facility called Express Lanes where high occupancy vehicles travel for free and single occupant vehicles can choose to use the facility by paying a toll that varies with the level of traffic congestion. The goal is to keep traffic in the express lanes moving at a minimum speed of 45 mph while maximizing throughput for the entire facility.

**Toll-Free Passage** - North Carolina's enabling legislation allows for toll-free passage for certain vehicles under specific circumstances. These circumstances could allow for toll-free passage statewide, for example, an emergency services vehicle or may allow for toll-free passage only on Express Lane facilities, for example, a transit bus or a vehicle with the required number of occupants to declare HOV status for the facility.

### III. CUSTOMER SERVICE CENTER OVERVIEW

The NC Quick Pass CSC, operated by a third-party, under an agreement with NCTA, using the Back Office System (BOS), performs toll transaction processing, invoicing, customer service and account management. NC Quick Pass is interoperable with toll programs in Florida, Georgia and E-ZPass which is in the northeast, which are collectively referred to as the “Interoperable Agencies”. NCTA also provides CSC services to the interoperable, developer-operated Interstate 77 Express Lanes in Charlotte, NC scheduled to open in mid-2018. The CSC complies with Payment Card Industry Data Security Standards (PCI DSS) as a Level 1 Merchant.

#### Account Types

**Table III-1: Account Types** provides an overview of accounts which NCTA offers and the policy which governs them. This table also indicates whether the account requires prepayment and how the customer is identified.

<b>TABLE III-1: Account Types</b>			
<b>Account</b>	<b>Payment</b>	<b>Identified by....</b>	<b>Policy #</b>
NC Quick Pass – Personal	Prepaid	Transponder (License Plate as a back-up)	Policy #1
NC Quick Pass – Business	Prepaid	Transponder (License Plate as a back-up)	Policy #1
NC Quick Pass – HOV Only	Prepaid	Transponder (License Plate as a back-up)	Policy #1
Registered Video Account – Personal	Prepaid	License Plate	Policy #3
Registered Video Account – Business	Prepaid	License Plate	Policy #3
Bill By Mail (BBM) Account	Postpaid	License Plate	Policy #4

#### Transaction Types

**Table III-2: Types of Transactions** describes transaction types in the BOS for all toll transactions depending on the account and transponder status as applicable.

<b>TABLE III-2: Types of Transactions</b>	
<b>Transaction Type</b>	<b>Description</b>
NC Quick Pass	Transaction with a valid, pre-paid electronic toll collection (ETC) transponder either an NC Quick Pass or a transponder from and Interoperable Agency.
NC Quick Pass Delinquent	Transaction from a transponder associated with an NC Quick Pass account with insufficient funds at the time of usage at the toll facility will be invoiced through the BBM process.
Invalid Transponder	Transaction from a transponder which was invalid (lost, stolen, or damaged, etc.) at the time of usage at the toll facility will be invoiced through the BBM process.
Registered Video	Transaction processed as a pre-paid, registered video account using the vehicle’s captured license plate image.
BBM	Transaction processed as a post-paid, unregistered customer through license plate image processing and the BBM process.
Exempt	Transaction associated with a transponder which allows for toll-free passage on the particular facility. This implies that the vehicle meets the criteria for toll-free passage as defined by NC statute and toll facility type. A zero-dollar toll will be posted on the customer’s NC Quick Pass account.

## Payment Channels

NCTA accepts payments by cash, check, money order, cashier's check and credit/debit (pin-less) card (Visa, MasterCard and American Express). Payments are made for account establishment and replenishment, BBM invoice payments, and payments for fees on delinquent accounts and invoices. The same credit/debit (pin-less) card can be used for multiple accounts. Customers are permitted to make the various types of payments via the channels shown in **Table III-3: Payment Types by Channel**. Cash is only accepted at the walk-in center and checks are only accepted via mail or at the walk-in center.

<b>TABLE III-3: Payment Types by Channel</b>				
<b>Channel</b>	<b>Prepaid</b>			<b>Post Paid</b>
	<b>Open Account (NC Quick Pass)</b>	<b>Open Account (Registered Video)</b>	<b>Account Replenishment/ Fees</b>	<b>BBM Invoice Payment/Fees</b>
Web	✓		✓	✓
Phone, Interactive Voice Response			✓	✓
Phone, Customer Service Rep.	✓		✓	✓
Walk-in Center	✓	✓	✓	✓
Mail	✓		✓	✓
Fax	✓		✓	✓
Email	✓			

## Fees

NCTA will apply fees for reasons summarized in **Table III-4: Fees and Penalties Schedule**. The listed fees are subject to change at the discretion of the North Carolina Legislature and NCTA.

<b>TABLE III-4: Fees and Penalties Schedule</b>		
<b>Fee</b>	<b>Fee Amount</b>	<b>Reason for Fee</b>
Inactive Account	\$1.00/Month	Charged per month after 12 months of no toll transactions Cost to maintain an inactive account
Statement Fee - Quarterly	\$5.00	Request for paper statement to be generated and mailed
Statement Fee - Special Run	\$5.00	One-time request for a paper statement to be generated and mailed to the customer
Non-sufficient Funds Fee (NSF)	\$25.00	Returned checks
Invoice Processing Fee	\$6.00 (maximum of \$48.00 for a 12-month period for a single individual)	Invoices unpaid after 30 days from invoice date
Civil Penalty	\$25.00 (maximum of \$25.00 for a 6-month period for a single individual)	Invoices unpaid after 60 days from invoice date

TABLE III-4: Fees and Penalties Schedule		
Fee	Fee Amount	Reason for Fee
I-Toll Fee	\$5.00/Month	Minimum of ten I-toll transactions in a month or I-Toll transactions in excess of 15% of the transactions on a monthly basis

## IV. CUSTOMER SERVICE CENTER BUSINESS POLICIES

### POLICY 1: NC QUICK PASS ACCOUNTS

NC Quick Pass accounts are pre-paid toll accounts collected through ETC. These accounts require the acquisition and the proper installation of a transponder in a vehicle. The transponder is detected when the vehicle travels through a toll zone. The appropriate toll amount due, if any, for the transaction is automatically collected from the customer's account by the BOS.

NC Quick Pass toll rates are the same for both personal and business accounts and are based on vehicle classification. NCTA has 3 vehicle classifications: Class 1 for 2-axles vehicle; class 2 for vehicles with 3 axles and class 3 for vehicles with 4 or more axles.

Accounts can have multiple vehicles but each vehicle listed on the account requires its own transponder. The account may have more transponders than vehicles. The number of transponders allowed on an account depends on the type of account, personal (limit of five) or business (unlimited). Customers must provide NCTA with details of all vehicles that will be used on their NC Quick Pass account.

#### Policy 1.1: Account Types

NCTA offers the following NC Quick Pass account types.

- **Private** (pre-paid tolls) – This account type is limited to five transponders/vehicles on the account at any given time. The number of vehicles cannot exceed the number of transponders on the account. Personal accounts allow for an additional contact person that would have access to the account. This account type requires the purchase of transponder(s).
- **Business** (pre-paid tolls) – This account type may have an unlimited number of transponders. The number of vehicles on the account cannot exceed the number of transponders. A business account requires two contact persons on the account. If a private individual requires more than five transponders, they must open a business account. This account type requires the purchase of transponder(s).
- **Non-Revenue** – This account type provides toll free passage on all toll facilities in North Carolina pursuant to NCTA's Business Policies and North Carolina General Statutes §136-89.211(2). All trips post to the account at zero-dollars. This account does not allow for travel on interoperable toll facilities either paid or toll free. An authorized NCTA Representative must approve all Non-Revenue accounts.

- **Rental Car Fleet** – This account type is for rental car companies with large fleets of vehicles. At its discretion, NCTA may contract with rental car companies to establish either an NC Quick Pass account or registered video account. All license plates in their databases will be uploaded onto the account and the customer must maintain the database through the website on a weekly basis after account establishment. All accounts must be backed by an agreed upon automated replenishment method and must remain in good standing. These accounts will follow all additional applicable Policies as described in this document. This account type is not currently being used by NCTA.

### Policy 1.2: Account Plan Types

There are a variety of account plans that can be applied to Personal and Business accounts. A customer can select the account plans that best suits the intended use. Some account plans require the customer to prepay their tolls while others do not and some plans apply to ALL transponders on the account (account-level plans) while others apply to individual transponders (transponder level plans). Some account plans are subject to NCTA approval prior to being established. NCTA offers the following plans for NC Quick Pass accounts.

- **Standard** (pre-paid tolls)
- **Government** (qualified government entities post-paid tolls)
- **Non-Revenue** (toll-free passage for qualifying vehicles aka “First Responder”)
- **Express Lane Toll Exempt** (toll-free passage for qualifying vehicles on express lanes aka “Transit”)
- **Express Lane HOV Only** – (Express Lanes use only with required number of occupants)
- **Express Lane Motorcycle** – (toll-free passage for motorcycles on express lanes)

The relationship between account types and plan types is summarized in **Table 1-1: Account and Plan Relationship** for NC Quick Pass plans and accounts.

Account Type	Business	Gov’t	Non-Rev / First Responder	Transit	HOV-Only	Motorcycle	Standard
Business	X	X		X	X	X	
Private					X	X	X
Non-Revenue			X				

#### Policy 1.2.1: Standard Plan

The Standard Plan is the default plan and is applied to all Private accounts unless the account has another plan such as the Transit, Motorcycle or HOV-Only plans. This plan is used to identify the account requirements for initial prepaid toll deposit, rebill threshold and maximum of 5 transponders.



**Policy 1.2.2: Government Plan**

Some governmental agencies are not allowed to prepay toll costs. These agencies may add a Government Plan to their NC Quick Pass. This plan allows the customer to post pay their tolls. NCTA automatically invoices these agencies on a monthly basis for the tolls incurred. The agencies have 30 days to pay NCTA from the date of the invoice. The BOS reconciles agency payments to amounts invoiced. Unpaid invoices do not follow the BBM escalation process. Government invoices will be escalated operationally through NCTA if necessary to collect the tolls due. This plan can be added to an account with a Transit Plan.

Agencies establishing an account using a Government Plan must purchase a transponder for each vehicle that will be included on the account. Agencies must designate at least two points of contact and update contact information annually or as account information changes whichever occurs first. An authorized NCTA Representative must approve the Government Plan.

Accounts with Government Plans are not subject to **Policy 1.8: I-Toll Postings**. The CSC runs a report that identifies I-Tolls on Government accounts and will handle accounts with I-Tolls operationally by contacting the account holder to determine if transponders are defective. The Government plan's postpaid billing only applies to travel on North Carolina toll facilities so if the customer intends to travel on interoperable facilities in other states, prepaid tolls must be provided.

**Policy 1.2.3: Non-Revenue Plan**

The Non-Revenue plan is assigned to accounts with qualified "Exempt" service vehicles pursuant to NCTA's Business Policies and North Carolina General Statutes §136-89.211(2). Service vehicles are limited to law enforcement, emergency fire or rescue, or emergency medical services. Vehicles that fit into this category and wish to utilize the toll road for responding to official situations are required to submit a Non-Revenue application for review and approval by NCTA.

Agencies establishing an account using a Non-Revenue Plan must purchase or acquire a transponder for each vehicle that will be included on the account. There are no limitations as to the number of transponders/vehicles assigned to an account with a Non-Revenue Plan on it. All vehicles with the Non-Revenue Plan must be eligible law enforcement, emergency fire or rescue, or emergency medical services vehicles and must be officially registered to the service organization applying for the account. NCTA may request a copy of the vehicle registration for any vehicles with Non-Revenue transponders. Any vehicles not officially registered to the service organization will not be entitled to Non-Revenue transponders and NCTA may charge the organization for any tolls incurred by these unauthorized vehicles. Unauthorized use of Non-Revenue transponders may also subject the account to suspension or permanent closure by NCTA. NCTA may terminate an account at any time as a result of non-compliance or misuse of the account.

All trips post to the account at zero-dollars. Agencies must designate at least two points of contact and update contact information annually or as account information changes whichever occurs first.

Accounts with Non-Revenue Plans are not subject to **Policy 1.8: I-Toll Postings**. The CSC runs a report that identifies I-Tolls on Non-Revenue accounts and will handle accounts with I-Tolls operationally by contacting the account holder to determine if transponders are defective. Non-Revenue plan transactions are only valid on NCTA facilities. This account does not allow for travel on interoperable toll facilities either paid or toll free.

Emergency response vehicles which are not part of an established Account with the Non-Revenue plan that are responding to a call within the project boundaries may submit a Toll Dispute form for review by NCTA to dispute the incurred toll.

#### **Policy 1.2.4: Express Lane Toll Exempt Plan**

This plan is differentiated from the Non-Revenue Plan in that certain types of vehicles are exempt from paying a toll when traveling on a designated express lane facility. This plan is assigned to accounts with qualified transit vehicles pursuant to NCTA's Business Policies and as set forth in North Carolina General Statutes §136-89.211(2). Under this plan, all trips on express lane facilities are toll-free. All trips post to the account at zero-dollars. An authorized NCTA Representative must approve the Express Lane Toll Exempt Plan.

Agencies establishing an account using an Express Lane Toll Exempt Plan must purchase or acquire a transponder for each vehicle that will be included on the account. There are no limitations as to the number of transponders/vehicles assigned to an account with an Express Lane Toll Exempt Plan on it. Agencies must designate at least two points of contact and update contact information annually or as account information changes whichever occurs first.

Accounts with Express Lane Toll Exempt Plans are not subject to **Policy 1.8: I-Toll Postings**. The CSC runs a report that identifies I-Tolls on Express Lane Toll Exempt accounts and will handle accounts with I-Tolls operationally by contacting the account holder to determine if transponders are defective. The Express Lane Toll Exempt Plan is only valid on North Carolina toll facilities.

#### **Policy 1.2.5: Express Lane HOV Only Plan**

Express Lanes, although generally tolled, have provisions for non-tolled passage if the vehicle has the required number of occupants as posted prior to entrance into the Express Lanes. The Express Lane HOV Only plan has been created for customers that will ONLY use North Carolina Express Lanes with the required number of occupants in the vehicle to meet the occupancy requirement of HOV. This type of customer plan means that the customer does not intend to use any NCTA non-Express Lane toll facility. Customers with this plan do not have to fund their account with pre-paid tolls. This plan does not allow for travel on NCTA's non-Managed Lane toll facilities or interoperable toll facilities.

#### **Policy 1.2.6: Express Lane Motorcycle Plan**

Express Lanes, although generally tolled, have provisions for non-tolled passage if the vehicle has the required number of occupants as posted prior to entrance into the Express Lanes. The Express Lane HOV Only plan has been created for customers that will use North Carolina Express Lanes with the required number of occupants in the vehicle to meet the occupancy requirement of HOV. This type of customer plan means that the customer does not intend to

use any NCTA non-Express Lane toll facilities or interoperable toll facilities. Customers with this type of account plan do not have to fund their account with pre-paid tolls but they may fund the account if they wish to.

### **Policy 1.3: Agreement & Registration**

Customers can open an NC Quick Pass account utilizing the following channels:

- Online via the NC Quick Pass website
- In person at the Walk-In Center
- Mail-In
- Fax
- Phone
- Email

When signing up for a valid NC Quick Pass account online at [www.ncquickpass.com](http://www.ncquickpass.com), the customer completes the application, accepts the customer agreement through proper acknowledgement and makes payment. When signing up in person at the Walk-In Center, through the mail, email or fax, the customer application is signed and transmitted to the CSC with payment. When signing up by phone, the customer's verbal agreement to customer agreement is recorded for Quality Assurance/Quality Control. All transponders include packaging which states that use of the device constitutes acceptance of the customer agreement. **Appendix C, NC Quick Pass Applications and Terms and Conditions** includes the personal and business applications.

Customers provide all information required, per the NC Quick Pass customer agreement, when opening an account. Information includes at a minimum the customer's name, address, contact information, license plate number(s), vehicle information (year, model, number of axles), payment method (cash, check, money order, or credit/debit card), and payment information indicating automatic or manual replenishment.

Once an account is established, the CSC mails an Account Profile/Welcome Letter to the customer along with the transponder(s). If the customer signs up on the website, a confirmation page is sent via email. The profile welcomes the customer to the NC Quick Pass program and requests that the customer review pertinent account information provided in the letter for its accuracy. If the customer determines that any information is incorrect they are asked to update the account information immediately through the NC Quick Pass website, phone, or in person at the Walk-In Center.

### **Policy 1.4: Opening Account Balance Requirement**

The customer is required to provide a specified amount in pre-paid tolls in order to open an NC Quick Pass Account. This amount varies depending on the type of account, any account plans and number of transponders included on the account. **Table 1-2: NC Quick Pass Account Balance Requirements** illustrates the opening balance and account threshold requirements when opening a NC Quick Pass account:

<b>TABLE 1-2: NC Quick Pass Account Balance Requirements</b>				
<b>Account Type</b>	<b>Replenishment Method Selected</b>	<b>Allowable Account Plans</b>	<b>Opening Balance and Initial Replenishment Amount</b>	<b>Threshold Amount*</b>
Personal	Manual	Standard	\$20.00 for first transponder \$20.00 for second transponder, \$10.00 per additional transponder	\$50.00
	Auto-Replenishment (requires credit/debit card)	Standard	\$20.00 for first transponder \$20.00 for second transponder, \$10.00 per additional transponder	\$25.00
	N/A	HOV-Only and Motorcycle	\$0.00	N/A
Business	Manual		\$20.00 for each transponder	\$50.00
	Auto-Replenishment (requires credit/debit card)		\$20.00 for each transponder	\$25.00
	N/A	Government	\$0.00	N/A
	N/A	Non-Revenue	\$0.00	N/A
	N/A	Express Lane Toll Exempt	\$0.00	N/A
Non-Revenue	N/A		\$0.00	N/A
Rental Car/Fleet	Not used currently	N/A	N/A	N/A

\* or a \$10.00 minimum

## **Policy 1.5: Account Replenishment and Threshold**

### **Policy 1.5.1: Account Replenishment Requirements**

NC Quick Pass customers are required to prepay their tolls so the account must be replenished as the funds are used to pay tolls. The customer may elect to provide a credit/debit card so that the account can automatically be replenished by the BOS or customer may make periodic payments as necessary by check, cash, money order or credit/debit card. In either case, the

customer is required to make payment once the account balance goes below the replenishment threshold.

### **Policy 1.5.2: Threshold Amount**

For Auto-Replenishment accounts, the Threshold Amount is the account balance at which the BOS will automatically re-bill the credit/debit card in order to restore the account balance to the original balance or a proper operating level. When the account balance reaches the Threshold Amount, the BOS will automatically charge the calculated replenishment amount to the customer's credit/debit card. For manually replenished accounts, the threshold is the amount at which the BOS will send a Low Balance Notification. These customers are encouraged to monitor their accounts for low balance.

The initial Threshold Amounts are shown in **Table 1-2: NC Quick Pass Account Balance Requirements** and vary depending on the type of account (personal or business), the number of transponders, and replenishment method on the account.

The BOS will automatically adjust the Threshold Amount quarterly based on the adjustments to the replenishment amount. The minimum Threshold Amount for any account is \$10.00. The Threshold Amount will continue to be the same percentage of the Replenishment Amount as outlined in **Table 1-2**.

### **Policy 1.5.3: Auto-Replenishment – Credit Card or Debit Card**

The Auto-Replenishment feature allows the customer to provide a credit/debit card number to NCTA and authorizes NCTA to automatically replenish the account periodically by charging the credit/debit card, refer to **Table 1-2: NC Quick Pass Account Balance Requirements**. Customers selecting this feature will be encouraged to provide a secondary credit/debit card number to NCTA to be used in the event the preferred card expires or is denied. NCTA will notify customers if the credit/debit card has expired or was denied on two consecutive days, and will require the customer to provide a new card number immediately upon notification from the CSC to avoid possible fees and/or service disruptions. Customers will be notified based on the communication option (email or mail) they select at the time of opening the account.

The Auto-Replenishment Amount is the amount the BOS will automatically charge to the credit/debit card in order to restore the account balance to the original balance or to a proper operating level depending on the type of account (personal or business) as shown in **Table 1-1**.

After the first 30 days from the date of the account opening, the BOS will evaluate the toll usage on the account and adjust the replenishment amount based on the customer's initial usage. Thereafter, every ninety 90 days the BOS will automatically calculate the average monthly toll usage and adjust the Auto-Replenishment Amount to correspond with the average usage rate. The Auto-Replenishment Amount is charged to a customer's credit/debit card approximately once a month. If a customer requests a lower Auto-Replenishment Amount it can be lowered by contacting a CSR. However, it will continue to be recalculated by the BOS as scheduled in the future. When an Auto-Replenishment Amount is increased or decreased,

the customer will be notified via the communication method (email or mail) they selected at account opening.

**Policy 1.5.4: Manual Replenishment – Cash, Check, Money Order or Credit/Debit Card**

Account Replenishment is also required for accounts which are not set up for Auto-Replenishment as defined in **Table 1-2: NC Quick Pass Account Balance Requirements**. When the account balance reaches the Threshold Amount, the BOS will automatically notify customers via their preferred notification method (mail or email). The account holder must replenish the account prior to the account reaching a zero balance. If the account reaches a negative balance, **Policy 1.10: Negative Account Balance** will be applied.

The Manual Replenishment Amount will be adjusted in the same manner as for Auto-Replenishment customers. After the first 30 days from the date of the account opening, the BOS will evaluate the toll usage on the account and adjust the Replenishment Amount based on the customer's initial usage. Thereafter, every 90 days the BOS will automatically calculate the average monthly toll usage and adjust the Replenishment Amount based on average toll usage. If a customer requests a lower Replenishment Amount, it can be lowered by contacting a CSR. However, it will be recalculated by the BOS as scheduled in the future. When a Replenishment Amount is increased or decreased, the customer will be notified via the communication method (email or mail) they selected. This will assure that the cash, check, or money order customers will continue to receive sufficient notice to replenish their accounts.

**Policy 1.6: Statement Options**

**Online Statements** – Statements are available at any time at no charge on the NC Quick Pass website. The period for statements can be no more than one year prior to the date the statement is generated.

**Monthly Electronic Statements** – Customers may elect to receive automatic email statements on a monthly basis at no cost. If any special processing is involved, such as a request for an archived statement to be retrieved the customer must contact the CSC. A fee is charged to the customer's account for this service. Refer to **Table III-4: Fees and Penalties Schedule** for the fee amount.

**Quarterly Mailed Statements** – Customers may elect to receive paper statements on a quarterly basis. A fee is charged to the customer's account for this service. Refer to **Table III-4: Fees and Penalties Schedule** for the fee amount.

**Special Run Statements** – Special Run Statements are paper copies of statements generated manually pursuant to a customer request. Special Run Statements may be requested by a customer through mail, email, by calling the CSC or visiting the Walk-In Center. A fee is charged to the customer's account for this service. Refer to **Table III-4: Fees and Penalties Schedule** for the fee amount.

**Policy 1.7: Account Maintenance**

It is the customer's responsibility to notify the CSC of any changes in their account information. NCTA will provide secure account access for customers to:

- Update their information



- Make replenishment payments
- Order new transponders
- Obtain a statement
- Review the status of their account
- Report a transponder lost or stolen
- Request account closure

Customers may change/update their account information online through the NC Quick Pass website or by calling the CSC and using the IVR, and in person at the Walk-In Center. Customers may also contact a customer service representative (CSR) with questions or comments. CSRs encourage customers to utilize self-service methods for account maintenance.

Accounts that are in good financial standing are not charged monthly account maintenance fees. However, a monthly maintenance fee will be charged directly to accounts that are classified as inactive by NCTA. Refer to **Policy 1.9: Inactive Accounts** for further details on Inactive Accounts.

When the information is available, the BOS automatically updates credit card expiration dates on a monthly basis for all cards due to expire the following month. The BOS generates a report on the first business day of the month for all credit cards that were not able to be updated. The CSC notifies these customers through their choice of communication method (email or mail) that their credit card is expiring and requesting updated information or a new credit card. If the customer does not provide the updated information, transactions continue to be charged until the account reaches a negative balance and then **Policy 1.10: Negative Account Balance** will be applied.

Administrative fees and tolls are deducted directly from the customer's account. The customer may contest the imposition of tolls or fees by phone, in writing or via email to the NC Quick Pass CSC. If the charge or fee is rescinded, their account will be credited the amount deducted.

### **Policy 1.8: I-Toll Postings**

Because of various circumstances, such as broken or defective transponders and problematic windshields, or the failure of a customer to correctly affix the transponder to the vehicle, transponders sometimes fail to read when the customer uses the toll facilities. Video image transactions that are matched to an NC Quick Pass account in good standing via license plate identification are posted to the account upon processing the video image data. These transactions are posted as I-Tolls at the NC Quick Pass toll rate.

Since processing image-based transactions is costlier to NCTA, NCTA accounts with a number of I-Tolls deemed excessive will be notified and those customers may be charged a fee. For accounts with at least ten monthly transactions, the BOS will review NC Quick Pass accounts for I-Tolls posted and flag those accounts that have I-Toll transactions in excess of 15 percent on a monthly basis. Customers will be contacted via mail or email requesting that they visit the Walk-In Center to see that the customer's transponder is working and is properly mounted on their vehicle.

Sixty days after opening an account, accounts with at least ten monthly transactions and I-Tolls in excess of 15 percent on a monthly basis will be charged a fee applicable to that month. Refer to **Table III-4, Fees and Penalties Schedule** for fee amount. This fee may be waived by the NCTA if the transponder is defective and under warranty, and/or the toll zone malfunctioned.

If the transponder tests as malfunctioning, the customer will be provided with a new transponder based on the NCTA Transponder Warranty Policy.

Accounts with Government, Transit and Non-Revenue Plans are not subject to I-Toll fees. The CSC will review these accounts on a regular basis. I-Toll issues will be handled operationally by contacting the account holder.

### **Policy 1.9: Inactive Accounts**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts

Accounts with no transactions for a period of 12 consecutive months or 365 days from the last toll recorded are considered inactive. This triggers a series of communications depending on the account balance.

First, customers with inactive accounts will be notified of their account status. If no tolls are posted to the account within 30 days of the date of the notification, the account will be charged a monthly account maintenance fee.

The account remains in an inactive status until a toll is posted to the account. Customers are able to make manual payments and utilize Auto-Replenishment while the account is in inactive status. Nothing further occurs as long as a positive balance is maintained.

Once the inactive account reaches a zero balance, the customer is notified again. If the customer does not take any action to fund or close the account within 30 days the account will be closed. An account that reaches a zero-balance due to the monthly maintenance fee will be processed per **Policy 1.12: Closing an Account**. An account that has a positive balance in between \$0.01 and \$0.99 will have the balance deducted from their account and their account will be closed under **Policy 1.12.2: Account Closure Process (Positive Balance)**.

Customers are sent another notification requesting payment if the account's balance reaches a negative balance between \$0.01 and \$10.00.

Once the account balance exceeds negative \$10.00, the account enters the Negative Balance process. See **Policy 1.10: Negative Account Balance**.

### **Policy 1.10: Negative Account Balance**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts



When a customer's account balance exceeds negative \$10.00, the account is placed in Negative Account Balance status. When this occurs, the transponder(s) is deactivated and the NC Quick Pass account is suspended. The account is converted to a BBM account in accordance with **Policy 4: Bill By Mail**. Notification is sent to the account holder informing them of the changes to their account.

The first invoice sent to the new BBM Account will include any unpaid tolls or fees from the converted NC Quick Pass account. The associated transponders are sent as invalid in the transponder files to interoperable agencies.

Accounts with Government, Transit and Non-Revenue Plan will not be set to Negative Account Balance status. The CSC will review these accounts on a regular basis. Negative Balance issues will be handled operationally by contacting the account holder.

### **Policy 1.11: Uncollectible Accounts**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts
- BBM

Write-offs will be determined by the North Carolina Department of Transportation (NCDOT) Fiscal Unit. An account is deemed as an uncollectible account if it has monies owed two years after the last financial activity. The funds identified as uncollectible are marked as unlikely to be received, but remain accounted for in the general ledger in the event they are paid off in the future. The following rules apply to uncollectible accounts:

- Accounts considered to be uncollectible can still be in NCDMV hold
- Uncollectible accounts cannot be assigned to a Collections Agency
- Nixie and Skip Trace accounts are eligible as uncollectible accounts
- Uncollectible designation is applicable for accounts with either in state and out of state plates
- No additional or special customer notifications will be sent related to accounts considered to be uncollectible
- Accounts considered as uncollectible will be automatically marked as such at the end of each fiscal year quarter

**Policy 1.12: Closing an Account**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts

A customer desiring to close their account may make the request via the website, fax, by sending a letter or email to the CSC and by visiting the Walk-In Center and completing a form. The letter or email must be sent from the account holder containing their account number and clearly state their intention to close the account. A CSR will process the request within two business days. The account closure process is initiated upon receipt of the request and the transponder(s) on the account is deactivated within two business days. The associated transponders are sent as invalid in the transponder files to interoperable agencies.

There is a waiting period of 60 calendar days before a refund is issued. This ensures that all transactions are processed through the account before it is closed. All account closures are confirmed and documented by a CSR with the request documentation scanned and associated with the account in the BOS. Before the account can be closed automatically the account balance must be zero, and the plates/vehicles and transponders removed. Any remaining balance on the account is processed according to **Policy 1.15: Refunds**. Refund checks are sent within 30 days after the 60-day waiting period.

**Policy 1.12.1: Closed Pending Period Tolls**

When a customer requests that their account be closed, the account is placed in Closed Pending status. A 60-day waiting period is initiated to allow for tolls from interoperable agencies and outstanding tolls incurred on a North Carolina toll facility to post to the account. The following applies to the posting of tolls to accounts in Closed Pending status:

- Unprocessed tolls (incurred before a request to close the account) will post to the account for up to 60 days after the account is placed in Closed Pending status.
- New tolls (incurred after a request to close the account) will post to a newly created BBM account.
- Delayed tolls from an interoperable agency (incurred before a request to close the account) that are received after the account is closed will not be charged to the account but will be the responsibility of NCTA to pay the Away Agency.

**Policy 1.12.2: Account Closure Process (Positive Balance)**

At the end of the 60-day waiting period, NCTA will refund the remaining balance. Once the refund occurs, the BOS system will automatically close the account.

**Policy 1.12.3: Account Closure Process (Negative Balance)**

Accounts with a Negative Balance will not automatically go to a closed status. Accounts with credit/debit cards on the account will be charged the negative balance. If the charge is not able to be processed then the account will be closed. Accounts that do not have a credit/debit card to charge the negative balance to will remain Closed Pending. The CSC will contact the

customer to collect the additional fees/tolls, or waive the debt, based on current waiver policies. The account will then be closed manually. If a Closed Pending account reaches negative \$10.00 or below, it will be converted to a BBM account subject to **Policy 4: Bill By Mail**.

### **Policy 1.13: Account Reinstatement**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts

Accounts that are suspended due to a negative balance may be reinstated upon payment of all unpaid tolls, processing fees, civil penalties and other fees applicable to the suspended account including the prepaid toll deposit. Refer to **Table III-4: Fees and Penalties Schedule**. A customer will be unable to open a new account if there are outstanding balances owed on another NC Quick Pass or Registered Video Account with the same license plate(s) or identical address(es). Closed Accounts cannot be reinstated; therefore, a new account must be created.

### **Policy 1.14: Returned Check Fee**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts
- BBM

NCTA is authorized by policy to charge a returned check fee. Refer to **Table III-4: Fees and Penalties Schedule** for fee amount. This fee will be charged when payment by check has been refused by the customer's bank. This fee will be deducted from the customer's account. If deduction of the fee results in a negative account balance, **Policy 1.10: Negative Account Balance** will be imposed. The customer will be notified of the fee for nonsufficient funds (NSF) through the choice of communication method (email or mail) they selected. After two NSF fees within one year, the BOS will flag the account and the NCTA will not accept check payments for the account.

### **Policy 1.15: Refunds**

This policy applies to the following refund situations:

- Closure Request – NC Quick Pass and Registered Video Accounts
- Overpayment – BBM

All account closures will receive a full refund less any tolls that have been applied to the account since the refund request was received. Upon receipt of the account closure request there will be a 60-day grace period before processing to assure all applicable tolls have posted to the account. Refund checks will be sent within three days after the expiration of the 60-day waiting period.

If the account was an Automatic Replenishment Account, the refund will be issued to the primary credit/debit card on the account. Should that attempt fail, the refund shall be issued to any secondary cards listed on the account. If there is no secondary card and all credit/debit card

attempts fail, the refund shall be processed as if the account were a cash, check, or money order. Cash/check/money order accounts, or accounts where the credit card is no longer valid, will have a refund letter generated and matched with the checks provided by the North Carolina Department of Transportation (NCDOT) Fiscal Unit.

If a customer over pays their BBM account, the funds stay there as overpayment / credit until the customer either uses the facility again or the customer requests a refund.

### **Policy 1.16: Bankruptcies**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts
- BBM

When the CSC receives notification regarding a customer bankruptcy, the CSR will verify that the notification is an official Bankruptcy Court order and will document the proper information in the customer's account. A proof of claim may be filed by NCTA with the Bankruptcy Court in some cases. NCTA will determine which claims to pursue. All documentation is retained within the account.

While awaiting the outcome of the bankruptcy proceeding, NCTA cannot make any attempt to collect on debt owed prior to the date of the bankruptcy filing nor can NCTA send customers to North Carolina Division of Motor Vehicles (NCDMV) Hold or Collections for any tolls incurred prior to the date the Bankruptcy Petition was filed. These tolls and fees incurred prior to the date of the Petition filing must remain on the account until the bankruptcy case is resolved.

The Bankruptcy Court will notify NCTA in writing of a Discharge or Dismissal of the customer's pending bankruptcy proceeding. A Discharge means that the transactions during the period covered by the Bankruptcy Petition are dismissed. Any new tolls that occurred after that date are the responsibility of the customer. A Dismissal reinstates the customer's responsibility for paying the toll.

### **Policy 1.17: Returned Mail**

This policy applies to the following accounts:

- NC Quick Pass
- Registered Video Accounts
- BBM

#### **Policy 1.17.1: Forwarding Address Available**

The CSC, upon notification from the Post Office of a forwarding or new address, updates the account with the correct address. Any returned correspondence with a new address is forwarded manually to the corrected address once the BOS has been updated.

**Policy 1.17.2: Forwarding Address Not Available (Nixies)**

Any returned correspondence without a forwarding address is flagged by the CSC as a bad address on the applicable account. The BOS suppresses any future mailings until a new address is obtained and the bad address flag removed. Invoice escalation stops and fees and penalties are not added.

If there is an email address on the account, the BOS sends a notice via email informing the account holder that the mailing address on record is no longer valid and must be updated to avoid any possible fees or penalties. Once a new address has been obtained, all correspondence shall continue from the date the address was updated and the bad address flag removed. There will be no processing of retroactive correspondence or fees to avoid possible conflicts within the escalation process.

**Policy 1.17.3: Undeliverable Electronic Correspondence**

Accounts selecting email as their preferred correspondence delivery method may get returned messages due to their address becoming invalid. Any returned Electronic Correspondence is flagged as a bad address in the BOS and a letter is sent to the mailing address on record informing the account holder that they must update their electronic address to avoid any possible fees or penalties. The BOS suppresses any future correspondence from being sent via email until a new email address can be obtained and the bad email address flag removed. The correspondence delivery method will be changed to U.S. mail until the new email address is obtained by the CSC, so that all BOS processes may continue such as invoice escalations and account management.

## POLICY 2: TRANSPONDERS

### Policy 2.1: Transponder Options

**Transponder Options** – NCTA will provide the transponder options listed in **Table 2-1, Transponder Options** to its NC Quick Pass customers.

TABLE 2-1: Transponder Options				
Marketing Name	Vendor Nomenclature	Protocol	Description	Sales Price
<b>Interior Transponders</b>				
	eGo Plus*	6B	Sticker	
	Kapsch	6C	Sticker**	
	eZGo Anywhere EZG Std OBU*	TDM/6B	Hard Case	
	Kapsch	TDM/6B	Hard Case	
	Kapsch	TDM/6B	Hard Case – HOV Declarable (Switchable)	
<b>Exterior Transponders</b>				
	eZGo Anywhere Exterior*	TDM/6B	Exterior	
	Kapsch	TDM/6B	Exterior	
	Kapsch	6C	Motorcycle Sticker	

\*NC Quick Pass is no longer issuing these transponders although they remain in circulation.

\*\*The 6C sticker transponder will be available in three different colored facings that represent: 1) General Public - white facing and gray backing, 2) Transit – blue facing and blue back, and 3) First Responders – Red facing and red back.

**Transponder Costs** – NC Quick Pass customers are required to purchase transponders at a cost established by the NCTA plus the applicable state and county sales tax. Upon completion of the sale, the transponder becomes the property of the customer.

**Government Plans** – Government agencies may be required to purchase transponders at a cost established by NCTA. Sales taxes will be waived upon presentation of a sales tax exemption certificate. This certificate should be included with the application.

**Discounts** – Individual transponder purchases are not eligible for discounts and the purchase of multiple transponders does not qualify a customer for a discount.

**Promotions** – NCTA reserves the right to waive or discount the transponder purchase cost for promotional or other operational purposes.

### Policy 2.2: Testing Upon Delivery from Manufacturer

The CSC tests **x** percent of the transponders upon receipt from the manufacturer to assure they are functioning properly prior to their sale to the public. In addition, the CSC monitors all transponders returned due to failure and/or malfunction and will use this information to evaluate the success of the testing program.

**Policy 2.3: Lost or Stolen**

NC Quick Pass customers may report Lost or Stolen Transponder(s) via the NC Quick Pass website, email, mail, fax, or by calling or visiting the Walk-In Center. The NCTA will deactivate the transponder immediately following proper notification. The customer is liable for all toll transactions that occurred prior to notifying the CSC. The replacement cost for a Lost or Stolen Transponder shall be the cost of the transponder plus the applicable state and county sales tax at the time of replacement payable by the customer. During the interim time, when the NC Quick Pass customer does not have a transponder, toll transactions will be processed as I-Tolls and follow I-Toll policies defined in **Policy 1.8, I-Toll Postings**.

**Policy 2.4: Malfunctioning**

New transponders will have a two-year warranty from the date of customer purchase. If for any reason the transponder malfunctions within the two-year warranty period, customers may return the malfunctioning transponder to the Walk-In Center. NCTA will test the transponder and if it is determined that the transponder is malfunctioning and has not been damaged by the customer, the customer will receive a replacement transponder at no charge. If the transponder malfunctions beyond the warranty period, the replacement cost for a malfunctioning transponder shall be the cost of the new transponder plus the applicable sales tax. If the transponder test reveals that the Transponder is malfunctioning the following actions will be taken by the Walk-In Center:

- If the transponder (other than the sticker transponders) is under manufacturer's warranty, the transponder will be returned to the manufacturer for replacement
- Sticker transponders do not have a manufacturer warranty.
- If the transponder is beyond the manufacturer's warranty the transponder will be disposed of properly

**Policy 2.5: Damaged**

Damage is defined as the rendering of the transponder defective or inoperable due to tampering, improper use, defacement, or accidental destruction. Damaged transponders are not covered under the NCTA transponder warranty. Removing a sticker transponder from the vehicle's windshield damages the transponder rendering it unusable. Hard case transponders can be moved between vehicles without damage.

**Policy 2.6: Return/Exchange**

Any purchased transponder may be returned to the Walk-In Center in person or via mail within ten business days of purchase for a full refund. For transponders purchased on the web or through the mail, the customer has ten business days from the postmark of the received tag kit to return the transponder. If returning a transponder via mail, the postmark date must be within the ten business days. Proof of purchase (e.g., receipt) with a written request including the account number must be included with the returned transponder. The transponder must be in the same condition as when purchased. All refunds will be in the form of a credit to the account. If the account is closed, the refund will be issued as part of the normal refund process as outlined in **Policy 1.15, Refunds**.

Unused Transponders may also be exchanged at the Walk-In Center for another type of transponder within ten business days of purchase. The difference in transponder cost will be determined at the time of the exchange. Credits or additional payment must take place at the time

of the exchange. NCTA reserves the right to approve returns/exchanges beyond the ten-day time period.

Sticker transponders may only be returned or exchanged if the transponder has not been adhered to the vehicle. Once the sticker has been adhered to the vehicle, it may not be returned or exchanged.



### POLICY 3: REGISTERED VIDEO ACCOUNT

Registered Video Accounts are pre-paid toll accounts which use license plate information for video toll collection. These accounts do not require the customer to purchase a transponder. Instead Registered Video Account customers provide vehicle information and license plate numbers/letters, jurisdiction of issuance and license plate type, if applicable to open the account.

#### Policy 3.1: Account Types and Plans

NCTA offers the following Registered Video Account types and plans.

Account Types:

- **Private** (pre-paid tolls) – This account type is limited to five vehicles on the account at any given time. Personal accounts allow for an additional contact person that would have access to the account.
- **Business** (pre-paid tolls) – This account type may have an unlimited number of vehicles. A business account requires two contact persons on the account. If a private individual has more than five vehicles, they must open a business account.

Account Plans:

- Non-Revenue (no toll charged on NC toll facilities)

The relationship between account types and plan types is summarized in **Table 3-1: Registered Video Account and Plan Relationship** for Registered Video (RV) plans and accounts.

TABLE 3-1: Registered Video Account and Plan Relationship							
Account Type	Business	Gov't	Non-Rev / First Responder	Transit	HOV-Only	Motorcycle	Standard
Business			X				
Private			X				

#### Policy 3.2: Agreement and Registration

Registered Video Accounts can be established using cash, check, money order, credit card or debit card. The same credit card can be used on multiple accounts. Personal accounts are limited to five license plates/vehicles on the account at any given time. Business accounts do not have a license plate/vehicle limit. An authorized NCTA Representative must approve all Registered Video Accounts.

Registered Video Account customers are required to provide the same information and payment types as with an NC Quick Pass account customer. It is the customer’s responsibility to keep account information up-to-date, especially license plate/vehicle information. A credit or debit card is required to establish an auto-replenishment Registered Video Account. Customers are encouraged to provide a secondary credit/debit card number to NCTA to be used in the event the preferred card expires or is denied.

Payment information must also be provided to cover account opening costs/fees as shown in **Table 3-2: NC Quick Pass Registered Video Account Balance Requirements**. When a registered license plate is captured in a toll zone, and it is matched to an account, the toll amount due for the transaction is automatically collected from the customer's account. Registered Video Account tolls are assessed at the BBM toll rate. An authorized NCTA Representative must approve all Registered Video Accounts.

<b>TABLE 3-2: NC Quick Pass Registered Video Account Balance Requirements</b>				
<b>Account Type</b>	<b>Replenishment Method Selected</b>	<b>Allowable Account Plans</b>	<b>Opening Balance and Initial Replenishment Amount</b>	<b>Threshold Amount*</b>
Personal	Manual	None	\$30.00 for first license plate \$30.00 for the second license plate \$15.00 for each additional license plates <i>(up to 5 license plates in total)</i>	\$50.00
	Auto-Replenishment (requires credit/debit card)	None	\$30.00 for first license plate \$30.00 for the second license plate \$15.00 for each additional license plates <i>(up to 5 license plates in total)</i>	\$25.00
Business	Manual	None	\$30.00 for each license plate	\$50.00
	Auto-Replenishment (requires credit/debit card)	None	\$30.00 for each license plate	\$25.00
	N/A	Non-Revenue	\$0.00	N/A

\* or a \$10.00 minimum

**Table 3-3, Registered Video Account Opening Policies** summarizes the rules associated with the opening of a Registered Video Account. Registered Video Accounts are only for travel on North Carolina toll facilities so if the customer intends to travel on interoperable facilities in other states, a Quick Pass account must be opened.

<b>TABLE 3-3: Registered Video Account Opening Policies</b>	
<b>Situation</b>	<b>Policy</b>
License plate Registered to Active NC Quick Pass Account or Interoperable Accounts	Account cannot be opened due to existing active NC Quick Pass account
License Plate Registered to Active Registered Video Account	Account cannot be opened due to existing active registered video account
Active Outstanding Delinquent Invoice Exists Against the License Plate	Account cannot be opened due to existing active delinquent account status. All delinquency fees must be paid before the account can be opened. Customer must call CSC or pay on line to resolve the issue

### **Policy 3.2.1: Account Balances & Replenishment**

The opening balance and threshold amount for Registered Video Accounts are presented in **Table 3-2: NC Quick Pass Registered Video Account Balance Requirements**. These amounts are based on account type and on the number of license plates/vehicles assigned to the account. The policies associated with these balances and thresholds are the same as those outlined under **NC Quick Pass Account Policy 1.5**.

### **Policy 3.2.2: Account Balance, Threshold and Replenishment**

The prepaid account balance for Fleet account holders is \$10,500. When the account balance reaches a 25 percent threshold, the BOS will automatically charge the calculated replenishment amount to the account holder's credit or debit card. The initial replenishment amount is set at \$2,500. The BOS will automatically adjust the threshold amount quarterly based on the adjustments to the replenishment amount. Refer to **Policy 1.5: Account Replenishment and Threshold**, for more information.

### **Policy 3.3: General Policies**

In addition to the above, the following General Policies are applicable to Registered Video Accounts:

- Policy 1.6: Statement Options
- Policy 1.7: Account Maintenance
- Policy 1.8: I-Toll Postings
- Policy 1.9: Inactive Accounts
- Policy 1.10: Negative Account Balance
- Policy 1.11: Uncollectible Accounts
- Policy 1.12: Closing an Account
- Policy 1.13: Account Reinstatement
- Policy 1.14: Returned Check Fee
- Policy 1.15: Refunds
- Policy 1.16: Bankruptcies
- Policy 1.17: Returned Mail

## POLICY 4: BILL BY MAIL

The NCTA toll system automatically detects users that do not have pre-established transponder accounts with NCTA or other interoperable agencies and captures digital images of vehicles and their license plate number. The system transfers the images and information to the BOS for Bill By Mail (BBM) invoicing, collection activities, and other escalation if the tolls due go unpaid.

The BBM policies are established in accordance with the NC General Statutes. These statutes provide that the registered owner of the motor vehicle is liable for payment of tolls unless the owner establishes that the motor vehicle was in the care, custody, and control of another person when the vehicle traveled on a North Carolina toll facility per NC G.S. 136-89.212. These policies are applicable to the specific motor vehicle/license plate combination identified as using a NCTA toll facility.

NCTA is authorized to obtain and exchange vehicle owner registration information from the North Carolina Division of Motor Vehicles (NCDMV), other states, other toll operators, or official toll collection organizations. The information obtained is not a public record and is subject to the disclosure limitation in 18 U.S.C. § 2721 Federal Driver's Privacy Protection Act.

NCTA utilizes national lookup databases and establishes NCDMV agreements with other states to obtain information about the registered owner of a vehicle.

NCTA invoices unpaid tolls through BBM accounts.

### Policy 4.1: Account Types and Plans

NCTA offers the following BBM (Unregistered Video) Account types and plans.

Account Types:

- **Private** (postpaid tolls) – a Private BBM account will be established by the BOS when the registered owner is an individual.
- **Business** (postpaid tolls) – a Business BBM account will be established by the BOS when the vehicle is registered in a business name.

Account Plans:

There are no BBM account plans

### Policy 4.2: Agreement and Registration

BBM accounts are established by the BOS when one of the following occurs:

- Upon identification of a first-time user that does not have a pre-paid account through license plate image capture, image review, and registered owner identification;
- When a delinquent or suspended NC Quick Pass account has a negative balance of \$10.00 or more; and
- When tolls are accrued after a NC Quick Pass or interoperable account is closed.

Since BBM accounts are proactively established by the BOS and not by the customer, there is no Customer Agreement. Once a BBM account is established, the registered owner will continue to be billed for any toll trips processed by the BOS unless the registered owner changes or a prepaid account is established.

### Policy 4.3: Image Review

An image is captured and retained by the roadside toll collection system (RTCS) when a valid NC Quick Pass or interoperable transponder is not detected. Images are processed through an optical character recognition software to determine the license plate numbers/letters, jurisdiction of issuance and license plate type, if applicable. A predetermined accuracy threshold (confidence level) is established in the software to allow successfully determined license plate data to automatically proceed for checking against existing matching accounts.

The images that do not meet the accuracy threshold are sent to a separate queue and are processed by manual (human) review to obtain the license plate data. When a license plate is listed on an NC Quick Pass, Registered Video or interoperable account in good standing, the transaction is processed as an I-Toll. When no account in good standing is associated with the transaction, the license plate data is sent to in-state or out-of-state DMV or another recognized source to obtain owner information for use in establishing a BBM account. **Table 4-1: Image Review Outcomes** summarizes NCTA's the outcome for image-based transactions depending on transponder and account status as applicable.

Table 4-1: Image Review Outcomes					
Transponder Status	Image Retained	Transaction Type (RTCS)	Account Type	Account Status	Result
No transponder	Yes	BBM	None	N/A	BBM invoice
No transponder	Yes	BBM	Unregistered	N/A	BBM invoice
No transponder – LP matches NC Quick Pass account	Yes	BBM	Personal/ Business/ Non-Revenue	Autopay/Good / Low	I-Toll
No transponder – LP matches Interoperable account	Yes	BBM	Interoperable	Good/ Low	I-Toll
No transponder – LP matches NC Quick Pass account	Yes	BBM	Personal/ Business/ Non-Revenue	Invalid	BBM invoice
No transponder – LP matches Interoperable account	Yes	BBM	Interoperable	Invalid	BBM invoice
Lost/Stolen/ Invalid	Yes	BBM	N/A	N/A	BBM invoice
No transponder	Yes	BBM	Registered	Active	I-Toll
No transponder	Yes	BBM	Registered	Negative Balance	BBM invoice

**Policy 4.4: Unpaid Toll – Pre-Invoice Payment Option**

A customer who travels on a NCTA toll facility without an account may choose to notify NCTA of their use of the facility within 30 days after traveling on the facility and provide the necessary payment associated with the unpaid toll. The CSC accommodates these pre-payments by creating a BBM account with the appropriate license plate. The tolls will then be applied to this account when they are fully processed. The BBM customers are also offered the opportunity to open an NC Quick Pass account at the time of payment. Future tolls will be charged at the rate based on the type of account the customer selects.

**Policy 4.5: BBM Invoice**

If the Owner or person who had care, custody and control of the vehicle, does not pay the toll(s) due within 30 days from the date of the first transaction, the NCTA sends the first BBM invoice to the Owner of the motor vehicle by first-class mail. The invoice is mailed to the address associated with the motor vehicle registration. This address is provided by the NC DMV, an out-of-state DMV or another recognized source. The first BBM invoice will include any tolls incurred and processed prior to the issuance of the invoice.

**Policy 4.5.1: Limitations**

The NCTA must send the first BBM invoice to the Owner within 90 days of the date the toll occurred. The NCTA waives the right to collect a toll if it fails to send the first BBM invoice to the Owner within 90 days of the transaction. If the vehicle was in the care or custody of another, NCTA must send the invoice within 90 days of receipt of sworn affidavit as required by G.S. 136-89.212(b).

**Policy 4.5.2: Invoicing Period**

By statute, the NCTA's billing period cannot be shorter than 15 days. The billing period for the first BBM invoice is set at 30 days from the date of the first transaction to reduce the number of small invoices being mailed out. All subsequent billing periods are set at approximately 30 days. The BBM invoice for each billing period will include all unpaid tolls incurred by the same registered Owner during the billing period. This could include toll due from multiple vehicles/license plates belonging to that Owner using NCTA toll facilities during the billing period if the information provided by the NC DMV, an out-of-state DMV or another recognized source matches.

**Policy 4.5.3: Vehicle Registration Information**

NCTA will submit a request for Owner information (name and mailing address) to the NCDMV, out-of-state DMV or other recognized source, as needed, using the license plate numbers/letters, jurisdiction of issuance and license plate type, if applicable, garnered from the processed image. Once the registration information is received, NCTA may begin generating the first BBM invoice.

**Policy 4.5.4: Invoice Requirements**

The BBM invoice for each billing period includes the following items at a minimum:

- Name and address of the Owner of the motor vehicle that traveled on the NCTA toll facility or of the person identified in the Owner's affidavit as having care, custody and control of the vehicle when it was driven on the NCTA toll facility.
- The date and time the travel occurred.
- Gantry description for each toll zone of the NCTA toll facility on which vehicle passage occurred.
- An image of the license plate from one of the trips (all images related to an invoice will be available to the customer through the NC Quick Pass website or upon request from the CSC).
- The amount of the toll due at the BBM toll rate and an explanation of how payment may be made.
- The date by which the toll/invoice must be paid to avoid the imposition of a processing fee and the amount of the fee.
- A statement that an Owner who has unpaid tolls may be subject to a possible civil penalty, processing fee and may have vehicle registration blocked or be submitted to a collection agency until all amounts owed to NCTA are paid.
- A clear and concise explanation of how to contest liability for the toll.
- If applicable, a copy of the affidavit submitted by the Owner identifying the person with care, custody and control of the motor vehicle when the travel occurred.

#### **Policy 4.5.5: Invoice Mailing**

Upon the end of the 30-day period, NCTA generates the first invoice to the Owner for delivery by first-class mail to the address provided under **Policy 4.3.3: Vehicle Registration Information**, on the motor vehicle registration. NCTA allows a minimum of 30 days from the date of invoice for the customer to pay the invoice. Subsequent invoices shall be sent by first class mail to the most current address on file at NCTA.

#### **Policy 4.5.6: Invoice Emailing**

This program is under development by NCTA. After receiving and paying at least one BBM invoice, the customer may elect receive subsequent invoices for that vehicle(s) by email. In order to do so, the customer must opt in, provide their email address and a contact phone number and agree to the Bill By Email Terms and Conditions. Subsequent invoices shall be sent by email to the email address on file at NCTA.

#### **Policy 4.5.7: Owner's Actions**

An Owner who receives a first BBM invoice for an unpaid toll must take one of the following actions within 30 days of the date on the BBM invoice:

- Pay the first BBM invoice.
- Complete and submit an Informal Review form with the required information and signatures pursuant to **Policy 6: Disputes**.



#### **Policy 4.6: Invoice Payments**

NCTA accepts cash, check, money orders, and credit/debit cards for payment, and provides four ways for customers to submit their payment:

- Website – Access the NC Quick Pass website [www.ncquickpass.com](http://www.ncquickpass.com) (invoice number and an associated license plate number is required).
- Phone – Call the CSC at 1-877-7MY-PASS and select from the menu options provided (invoice number is required).
- Walk-In Center Location(s) – Customer may visit the Walk-In Center.
- Mail – Customer can complete the payment form included with the invoice and mail it with their payment to the CSC. Customers cannot send cash.

NCTA accepts overpayment; however, the overpayment will be applied to the account for future use by the customer. In this situation, a refund will not be generated unless the customer specifically requests it. The customer will also not receive invoices if there are no new transactions posted to the account, even if there is a positive balance. If the customer requests a refund, but continues to drive on the road, the refund amount will be less the outstanding transactions.

NCTA accepts partial payments; however, full payment is required to eliminate invoice escalation. Partial payments will be applied to the foremost past due invoice balance, whether it applies to satisfying unpaid outstanding tolls, unpaid outstanding processing fees, and/or unpaid outstanding civil penalties.

#### **Policy 4.7: Invoice Escalation**

In the event that a BBM invoice is not paid in a timely manner, NCTA has established an invoice process that defines the sequence of escalating an unpaid invoice and the fees and penalties associated with each incremental step. The invoice escalation process is illustrated in **Appendix H, Invoice Escalation Process Form**.

##### **Policy 4.7.1 BBM Account – No Previous Balance**

An account without a previous balance at time of invoice is considered current. The invoice will only contain the new activity on a current account.

##### **Policy 4.7.2 BBM Account – With Previous Balance**

An account with a previous balance at time of invoice is considered delinquent. The invoice for an account with a previous balance which is delinquent less than 30 days, will contain the following:

- Previous balance
- Current toll amount (if applicable)
- Processing fee

##### **Policy 4.7.3 BBM Account – Delinquent 30 Days to 59 Days**

An account that is delinquent between 30 days and 59 days will be invoiced for the following:

- Previous balance
- Current toll amount (if applicable)



- Processing fee
- Civil penalty

#### **Policy 4.7.4 BBM Account – Delinquent 60 Days to 89 Days**

Accounts delinquent between 60 days and 89 days will be invoiced for the following:

- Previous balance
- Current toll amount (if applicable)
- Processing fee

#### **Policy 4.7.5 BBM Account – Delinquent 90 Days or More**

Accounts with tolls, fees, and/or penalties delinquent for 90 days or more are subject to DMV hold and/or collections. In-State accounts will be placed on DMV hold and accounts \$500 and over will be sent to collections. Out-of-State accounts will be sent to collections. No additional invoice will be sent unless additional toll activity occurs.

#### **Policy 4.7.6 Processing Fees**

A processing fee, as listed in **Table III-4: Fees and Penalties Schedule**, is added to the customer's next billing cycle if the prior invoice had a financial transaction and the Owner has not requested an informal review of the toll nor paid the outstanding balance in full. Each invoice includes all unpaid tolls incurred by the Owner during the billing period. Therefore, the processing fee is to be assessed for each invoice not paid within 30 days. By Statute, the processing fee cannot exceed \$48.00 in a 12-month period for a single individual. Each invoice also includes a failure to pay statement explaining the invoice escalation and the consequences of non-payment.

A one-time waiver of the processing fee may be made upon request from a customer after a complete review of the account has been made verifying that this is the customer's first processing fee. Only the first processing fee may be waived without prior NCTA approval. The waiver request must be made prior to the due date for the processing fee. The waiver does not eliminate the customer's responsibility for the payment of tolls and any future processing fees. The waiver shall be documented in the BOS and the fee removed from the account.

#### **Policy 4.7.7: Civil Penalty**

A Civil Penalty, as listed in **Table III-4: Fees and Penalties Schedule**, will be assessed to a delinquent account that is 30 days or more in arrears. A maximum of one Civil Penalty may be assessed within a six-month period.

The invoice assessing the Civil Penalty shall clearly state the total amount due as identified above and the manner in which it may be paid. The total amount due must be paid to NC Quick Pass within 30 days of the invoice date. Any waivers must be pre-approved by NCTA.

When NCTA collects a Civil Penalty imposed for unpaid tolls it will credit the clear proceeds to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. The guidelines used by the Office of State Budget and Management to determine an agency's actual costs of collecting a Civil Penalty and the clear proceeds of the Civil Penalty apply to the determination of the clear proceeds of a Civil Penalty imposed.

**Policy 4.7.8 Account Reset: Collections or NCDMV Hold**

Once an account is sent to collections or placed on NCDMV Hold, the account will be “reset” as follows:

- Account Balance = \$0 (assuming no new toll activity)
- Account Status set back to “current”

**Policy 4.7.9 Payment Order of Precedence**

The following is the order of precedence for payments to be applied to delinquent BBM accounts:

- previous invoice amounts (toll, fees, penalties)
- current tolls
- current fees
- current civil penalty

Subsequent invoices will provide a total of all unpaid transactions and/or fees from the prior invoice(s) and all detailed transactions that occurred during the current billing period.

**Policy 4.8: Collection Process**

NC Quick Pass and Registered Video Account Customers with delinquent accounts and BBM accounts with unpaid tolls/fees/penalties that are over 90 days past due (120 days from original invoice) enter the collection process. The delinquent amount (including tolls, fees and penalties) is the required payment amount to end the collection process. The Collection Process consists of two primary elements:

- NCDMV Registration Hold for In State Customers
- Collection Agency Placement (In State and Out of State)

**Policy 4.8.1: Collection Agency**

NC Quick Pass and Registered Video Account Customers with delinquent accounts will be pursued through a Collection Agency in accordance with the NCDOT’s Cash Management Plan. BBM accounts with unpaid tolls, fees, and penalties that are over 90 days past due are also subject to collection placement. In addition, all fees and penalties invoiced but not yet aged to past due are also eligible for collections. The collection agency will initiate letters for all past due accounts received from NCTA.

In state accounts with debt greater than \$500.00 will also be sent to the Collection Agency when the debt reaches 90 days past due. In state accounts with debt less than \$500.00 will be sent to collections after being in NCDMV Hold status for 12 months. Out of state accounts are not subject to NCDMV hold and advance directly to collections. The Collection Agency will have one (1) year to collect the debt. After one year the account reverts back to NCTA.

In some instances, an account may be on NCDMV Hold and in collections due to unpaid invoice balances. In these situations, the collections agency and the CSC will coordinate with

the customer to be certain all monies owed are collected prior to removing the account from collections and/or NCDMV Hold. Transfer of payment due to a Collection Agency is not noted on any subsequent invoices sent to the customer. Customers do not have web or phone access through NCTA for invoices submitted to a Collection Agency and the customer will need to deal directly with the Collection Agency regarding these invoices and debt. The CSC and the Collection Agency make every attempt to collect all tolls, fees, and penalties due. All amounts past due are required to be paid for the account to be settled and completely resolved.

**Policy 4.8.2: NC Vehicle Registration Hold and Release**

Failure to pay tolls, processing fees and any civil penalty in full is grounds for the NCDMV to withhold an Owner's ability to renew their vehicle registration. The potential for Registration Hold is noted on the invoices sent to the Owner for unpaid tolls, fees, and penalties. Owners having multiple vehicles registered to them are subject to have their registration for all their NC registered vehicles placed on hold.

Vehicle registration will be held from renewal until all of the owner's unpaid tolls, fees, and penalties are satisfied and paid in full. When attempting to register a vehicle on hold, the NCDMV will provide the Owner with a Vehicle Registration Release Instruction Sheet.

The Registration Hold cannot be released until full payment is received. Payment can only be made with credit card (phone), or by cash, check, money order, or credit card payment at the Walk-In Center. Once the full payment is verified and approved the release is processed.

The Registration Hold remains in effect until all tolls, fees, and civil penalties assessed are paid in full to the NCTA Customer Accounts for outstanding invoices.

Walk-In Center removes the Registration Hold within two business days of receipt of the payment with the exception of check payments over \$250.00. In the event payment is made by check in the amount of \$250.00 or more, the CSC removes the registration hold within ten business days to verify clearance of the check. In the event a check of any amount is returned, the NCDMV Hold is re-established.

## POLICY 5: ACCOUNT CONVERSION

### Policy 5.1: Account Conversion Requested by Customer

#### Policy 5.1.1: Registered Video Account Converted to NC Quick Pass

A Registered Video Account customer may convert to an NC Quick Pass account at any time by visiting the Walk-In Center or calling the CSC. The customer is required to purchase a transponder for each vehicle/license plate registered to the customer's registered video account. When converting the Registered Video Account to an NC Quick Pass account, all currently listed vehicles/license plates under the Registered Video Account will be added to the NC Quick Pass account. Customer must comply with all NC Quick Pass policies listed in **Policy 1: NC Quick Pass Accounts**. Tolls posting to the account with a transaction date prior to the conversion date will be posted at the BBM toll rate.

#### Policy 5.1.2: Bill by Mail Converted to NC Quick Pass

A BBM customer may establish an NC Quick Pass account by visiting the Walk-In Center or calling the CSC. When converting their account, the customer will be required to:

- Pay all unpaid tolls and fees
- Complete an application
- Pay the appropriate pre-paid toll balance
- Purchase a transponder(s)
- Provide all required information
- Agree to NCTA terms and conditions

When converting from BBM to an NC Quick Pass account, all currently listed license plates on the BBM invoices will be added to the NC Quick Pass account. Customers converting to an NC Quick Pass Account must comply with all policies listed in **Policy 1: NC Quick Pass Accounts**.

There is no way to stop a customer with outstanding BBM invoices from opening an account if the license plates on the new transponder account do not match the license plates on the BBM account. The only time the customer is restricted is if they use the same license plate that is on the outstanding BBM invoice.

#### Policy 5.1.3: Bill by Mail Converted to Registered Video Account

A BBM customer may establish a Registered Video Account through the CSC after receiving authorization from NCTA. The customer will be required to:

- Pay all unpaid tolls and fees
- Complete an application
- Pay the appropriate pre-paid toll balance
- Provide all required information
- Sign and agree to the terms and conditions agreement

When converting BBM to a Registered Video Account, all currently listed vehicles/license plates on the BBM invoices will be added to the converted Registered Video Account. Registered Video Accounts must be approved by NCTA and can only be established at the Walk-In Center. Customers approved for a Registered Video Account must comply with all NC Quick Pass policies listed in **Policy 3: Registered Video Account**.

### **Policy 5.2: Delinquent Account Conversion/Suspension by BOS**

NC Quick Pass and Registered Video Accounts will be converted to a delinquent status when an account balance is below negative \$10.00. On this occurrence, the customer will be notified that the account has been suspended. If replenishment is not received by the CSC, the BOS will proceed with converting the account to BBM as defined under **Policy 5: Account Conversion**.

### **Policy 5.3: Account Conversion Summary**

A summary of account conversions is included in **Table 5-1: Account Conversions**.

<b>TABLE 5-1: Account Conversions</b>			
<b>From Account</b>	<b>To Account</b>	<b>Option</b>	<b>Description</b>
BBM	Registered Video Account	Walk in	Customer initiated. All outstanding invoices are paid at the time of account conversion. NCTA approval required.
BBM	NC Quick Pass	Web Phone in Walk in	Customer initiated. All outstanding invoices are paid at the time of account conversion. Transponder purchase required for each vehicle on account.
Registered Video Account	NC Quick Pass	Web Phone in Walk in	Customer initiated. Positive account balance and account information is rolled over to NC Quick Pass Account. Transponder purchase required for each vehicle on account.
Registered Video Account Delinquent	BBM	BOS	System initiated if tolls cannot be posted due to account suspension.
NC Quick Pass	Registered Video Account	Walk in	Customer initiated. Positive account balance and account information is rolled over to Registered Video Account. Transponders deactivated. NCTA approval required.
NC Quick Pass Delinquent	BBM	BOS	System initiated if tolls cannot be posted due to account suspension. Transponders deactivated.

## POLICY 6: DISPUTES

Under North Carolina law, the registered owner of the motor vehicle is responsible for payment of tolls incurred unless the registered owner establishes that the motor vehicle was in the care, custody, and control of another person when it was driven on the toll facility. A customer of any North Carolina toll facility is entitled to dispute any toll transaction(s) incurred in North Carolina through the completion and submittal of Request for Informal Review – Toll Dispute form to the NC Quick Pass Customer Service Center (CSC) via mail, email, fax or in-person. Depending on the circumstances, some disputes require a notarized affidavit.

In order to dispute toll on away agency toll roads, the customer must contact the applicable agency directly regarding their dispute process. Contact information for each agency can be found on the NCTA website.

There are many reasons why a customer may dispute a toll transaction. The most common reasons are described below:

1. Vehicle was in the Care/Custody of another person - A Request for Informal Review – Toll Dispute containing a sworn affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle signed by both parties must be submitted.
2. Vehicle was stolen – Request for Informal Review – Toll Dispute containing a sworn affidavit stating that the vehicle involved was, at the time, stolen must be submitted. The Dispute Form must include evidence that supports the affidavit, including insurance or police report information,
3. Vehicle was Rented/Leased/Sold – A Request for Informal Review – Toll Dispute containing a sworn affidavit stating that the vehicle involved, at the time, had been sold or transferred by the registered owner served to another person prior to the date of the alleged unpaid toll must be submitted. The affidavit must be supported with evidence that supports the affidavit that may include a copy of the certificate of title or insurance information.
4. License Plate Image Identification Error: image does not match vehicle registration (affidavit not required).
5. Overcharged: The toll transaction was too high based on the based on the number of axles (affidavit not required).
6. Duplicate charge: Customer’s account was charged more than once for the same transaction (affidavit not required).
7. NC Quick Pass customer: An NC Quick Pass account holder received a Bill-by-Mail invoice (affidavit not required).
8. Interoperable agency customer: An E-ZPass®, Peach Pass, E-Pass or SunPass® account holder received a Bill-by-Mail invoice (affidavit not required).
9. Other: A customer may also dispute an invoice for other reasons (affidavit not required).

### **Policy 6.1: Request for Informal Review**

The Owner of a vehicle may contest liability for the toll by requesting an Informal Review with the NCTA. A request for an Informal Review of a toll transaction(s) and fees must be submitted within 30 days of the date of the BBM Invoice or the Owner waives the right to dispute the invoice.

- The Owner shall have 30 days from the date of the first invoice to submit a request for an Informal Review with the NCTA for tolls incurred within the current billing period using the form that can be obtained either on the web or at a Walk-In Center.
- Disputes may be filed via email, US Mail or in person. In the event the dispute is filed by US Mail, the request must be postmarked within 30 days of the invoice date.
- If the request for an Informal Review is received after the 30-day period, the request will be denied and the CSC sends an Informal Review Determination Reject letter to the customer stating that the time to request a review has expired.
- Recipients of a BBM Invoice in error because a misidentified vehicle, may contest liability for the toll and associated fees at any time in writing, in person or by phone and are not subject to the 30-day limit.
- A customer who did not receive an invoice (verified by returned mail status or proof of alternate address, **Policy 1.17.2, Forwarding Address Not Available**) must contest liability for the toll within 30 days of receipt of a subsequent invoice by mail.

### **Policy 6.2: Sworn Affidavit**

An Owner may establish that a motor vehicle was in the care, custody and control of another person when it was driven on a toll facility by submitting a Sworn Affidavit as described below:

- A sworn affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence, including insurance or police report information
- A sworn affidavit stating that prior to the time the vehicle was driven on the toll facility, it had been sold, transferred, or leased/rented by the registered owner to another person prior to the date of the alleged unpaid toll. The affidavit must be supported by a copy of the certificate of title, a copy of the lease/rental agreement, or other evidence of the transfer

A sworn affidavit providing the name and address of the person or company that had the care, custody, and control of the vehicle when it was driven on the toll facility. The toll dispute form requires signature of both parties in order for CSC management to review the disputed toll. NCTA pursues, as provided by State law, the responsible person/company liable for the toll.

### **Policy 6.3: NCTA's Receipt of Informal Review Request**

CSC management reviews written disputes and makes a decision based on the information provided by the Owner within five business days of receipt of the request for an Informal Review. When NCTA receives a request for informal review, collection of the toll and fees, as applicable, is placed on hold pending a decision. The escalation process will be suspended for the disputed toll(s) and fees until a final decision is rendered. NCTA will not collect any processing fees until the conclusion of the toll appeal process (i.e. Informal Review, Administrative Hearing and Judicial Review).

### **Policy 6.4: Informal Review Determination**

The outcomes of an informal review are:

- The Owner is liable for the disputed toll and the Owner may file with the Office of Administrative Hearings (OAH). Once the decision is recorded in the BOS, a denied notification will be sent to the Owner informing them of the determination, or
- The Owner is liable for the disputed toll and the disputed toll is charged to an NC Quick Pass account or an Interoperable Agency account, or
- The Owner is not liable for the disputed toll(s), the determination will be documented in the BOS and a waived notification will be sent to the Owner informing them of the decision and no payment will be required from the Owner, or
- The Owner is not liable and a transfer of liability is required, the correct license plate, Owner, or responsible party (driver) will be resubmitted for invoice processing. Under G.S. 136-89.212(c), NCTA may send a bill to the person with care, custody, or control of the car (driver). The Driver has the right to contest the toll. The invoice sent to the Driver must include a copy of the Affidavit submitted by the Owner stating that the Driver incurred the toll.



## **POLICY 7: ADMINISTRATIVE HEARING & JUDICIAL REVIEW**

### **Policy 7.1: Administrative Hearing**

If through the Informal Review process, NC Quick Pass determines a customer is responsible for the toll(s) (denied the dispute), then by North Carolina Statute, a customer has 60 days from the date of the notice to appeal the Informal Toll Review decision by filing a petition for contested case hearing with the Office of Administrative Hearings (OAH).

The Owner may contest the Informal Review determination by filing a Petition for a contested case hearing with the OAH (G.S. 136-89.218[b]). To file a Petition, Steps 1 through 4 must be followed:

- Step 1: Requesting the Form – The form can be obtained by phone, or online at [www.ncoah.com](http://www.ncoah.com). The Certificate of Service is included on the bottom of the Petition form. OAH will also include a page titled “Instructions for Form H-06, ‘Petition for a Contested Case’ and ‘Certificate of Service’”.
- Step 2: Filling out the Form – Once the Owner receives the Petition and instruction sheet, they complete the top and bottom portions of the form.
- Step 3: Submitting the Copies – The ORIGINAL PLUS ONE COPY of the Petition and Certificate of Service must be received by the OAH within 60 days after the informal review determination. If a petition is not filed within this timeframe, the right to appeal may be lost. A copy of the completed Petition and Certificate of Service must also be mailed, delivered, or faxed to the NCDOT Process Agent for the NCDOT. FAILURE TO DO SO MAY RESULT IN THE DISMISSAL OF THE APPEAL.
- Step 4: Filing Fee – There is a \$20.00 filing fee for each Petition filed. The escalation process will be suspended for the disputed toll(s) in the same manner as described in **Policy 6.3: Receipt of Informal Review Request** and **Policy 6.4: Informal Review Documentation** until the OAH decision is rendered. Once the outcome of an OAH decision is entered into the BOS, the escalation process will begin following the Informal Review Determination policy.

### **Policy 7.2: Judicial Review**

An Owner may contest the decision made at the Administrative Hearing by filing a Petition for Judicial Review in Superior Court (G.S. 136-89.218[c]). The Petition must be filed within 30 days after the Owner is served with the OAH Final Decision in accordance with Article 4 of Chapter 150B of the General Statutes. The escalation process is suspended for the disputed toll(s) in the same manner as described in **Policy 6.3** and **Policy 6.4** until the court judgment is rendered. NCDOT’s Attorney General’s Office will inform NCTA of the outcome of the various levels of appeal. Once the outcome of the court proceeding is entered into the BOS the escalation process will follow the process outlined in **Policy 6.4**.

## POLICY 8: INTEROPERABILITY FOR OUT OF STATE TOLL FACILITIES AND CUSTOMERS

NC Quick Pass customers are allowed use their transponders to pay for travel on Interoperable Agency roadways (i.e., E-ZPass®, SunPass®, and Peach Pass) and Interoperable customers are allowed to use their transponders to pay for travel on NC roadways. In the interoperability process, customers might dispute their travel, receive an invoice, or have questions regarding usage. This section establishes procedures for how staff should address such issues and inquiries. This policy outlines the responsibilities and obligations of the NCTA and NC Quick Pass for Interoperability based on interoperable agreements between NCTA and the out-of-state toll entity.

### Policy 8.1: NC Quick Pass Interoperability Toll Program

NCTA's roadside toll collection and back office systems are capable of reading and processing NC Quick Pass transponders, as well as transponders issued by E-ZPass®, SunPass® and Peach Pass.

#### Policy 8.1.1: Transponder Usage

NC Quick Pass customers are automatically be enrolled in the NCTA's interoperability program, which will allow customers to pay tolls on facilities accepting E-ZPass®, SunPass® and Peach Pass, based on transponder selection as illustrated in **Table 8-1: Interoperable Transponder Summary**.

By establishing an NC Quick Pass account and agreeing to the Terms and Conditions, the customer agrees to the release of their transponder and license plate number to be shared with states participating in the NCTA interoperability program.

<b>TABLE 8-1: Interoperable Transponder Summary</b>		
<b>Vendor Name</b>	<b>NC Quick Pass</b>	<b>Interoperable Program</b>
<b>Non-Feedback Interior Transponders</b>		
eZGo® Plus	Sticker	SunPass®/Peach Pass
Kapsch 6-C	Sticker	Peach Pass
eZGo Anywhere™ IAG Std OBU	Hard Case	E-ZPass® and SunPass®/Peach Pass
Kapsch	Hard Case	E-ZPass® and SunPass®/Peach Pass
Kapsch	Hard Case HOV Declarable	E-ZPass® and SunPass®/Peach Pass
<b>Exterior Transponders</b>		
eZGo Anywhere Exterior™	Exterior	E-ZPass® and SunPass®/Peach Pass
Kapsch	Exterior	E-ZPass® and SunPass®/Peach Pass
Kapsch	Exterior Sticker Motorcycle	Peach Pass

**Policy 8.1.3: Transponders/License Plate Files**

NCTA exchanges transponder status files, which will include transponder number and license plate information, on a daily basis with the interoperable agencies. The determination of the daily transponder and license plate status is based on the following criteria:

- Auto-Replenishment Accounts – All NC Quick Pass transponders associated with accounts in good financial standing with auto-replenishment will be sent as valid in the transponder status file.
- Manual Replenishment Accounts – All transponders associated with accounts in good financial standing will be sent as valid in the transponder status file.
- Negative Balance Accounts – Transponders associated with accounts that are in a negative status, as established in **Policy 1.10: Negative Account Balance**, will be sent as invalid in the transponder status file and therefore, will not be considered interoperable. The NC Quick Pass customer will be required to pay the interoperable agencies directly until the account is adequately replenished. NC Quick Pass customers may be subject to potential violation charges and/or video invoicing for unpaid tolls according to the out of state agencies business policies and procedures.
- Closed Accounts – Upon closing an NC Quick Pass account, NCTA shall notify interoperable agencies showing the customer's transponder as invalid in the transponder status file.
- Lost/Stolen Transponders – NC Quick Pass transponders reported lost or stolen will be sent as lost in the transponder status file. The vehicle carrying a transponder with a lost status shall be considered a Video Account and/or Violator on out of state toll roads. The transponder will be changed back to valid in the transponder status file upon notification of the transponder being recovered if the account is still in good status.

**Policy 8.1.4: Away Interoperable Transponder Toll Rates**

Away customers, those that have accounts with entities that have an interoperable agreement with NCTA, travelling on an NCTA facility with an interoperable transponder will be charged a toll based on the existing NC Video rate for that facility.

**Policy 8.1.5: Non-Revenue and Government Accounts Not Interoperable**

NC Quick Pass customers that are enrolled as Non-Revenue and/or Government Accounts will not be considered interoperable accounts.

**Policy 8.1.6: Disputes and Refunds for Out-of-State Transactions**

NC Quick Pass customers desiring to dispute a toll or request a refund for tolls charged to their account by an out of state agency, must notify the NC Quick Pass CSC of any disputed toll with proper justification for the dispute. NCTA may seek verification from the out of state toll operator of the toll(s) in question. If the toll is verified, the customer will remain liable for the tolls. If the toll is waived by the out of state agency, the tolls shall be reversed and the customer's account credited.

### **Policy 8.1.7: Out-of-State Customer Disputes and Refunds for NC Transactions**

Out of state customers dispute NC tolls through their home agency's service center. The service center will contact the NCTA reciprocity contact who will research the toll in dispute and resolve according to our toll dispute policy.

The dispute process shall follow **Policy 6: Disputes**. All other disputes shall include the claim(s) as to why the toll should not have been assigned to the out of state customer.

Upon verification by NC Quick Pass that the dispute is valid, the away agency shall properly credit the customer's account for the appropriate amount. Should NC Quick Pass find that the dispute is not valid, all contested tolls will remain and the customer shall have the option to adhere to the dispute policies in **Policy 6**. Any toll adjustments will be sent in a correction file and settled accordingly.

### **Policy 8.1.8: Out-of-State Enforcement**

Pursuant to G.S. 136-89.220, NCTA may enter into reciprocal agreements with other tolling jurisdictions to enforce toll violations, unpaid tolls, fees, and/or penalties generally known as violations in other tolling jurisdictions. Such an agreement shall provide that, when another toll agency certifies that the registered owner of a vehicle registered in this State has failed to pay a toll, processing fee, or civil penalty due to that toll agency, the unpaid toll, processing fee, or civil penalty may be enforced by the Authority placing a renewal block as if it were an unpaid toll, processing fee, or civil penalty owed to this State under G.S. 136-89.217. Such agreement shall only be enforceable if all of the following are true.

- The other toll agency has its own effective reciprocal procedure for toll violation enforcement and does, in fact, reciprocate in enforcing toll violations within this State by withholding the registration renewal of registered owners of motor vehicles from the state of the other toll agency.
- The other toll agency provides due process and appeal protections to avoid the likelihood that a false, mistaken, or unjustified claim will be pursued against the owner of a vehicle registered in this State.
- The owner of a vehicle registered in this State may present evidence to the other toll agency by mail or other means to invoke rights of due process without having to appear personally in the jurisdiction where the violation allegedly occurred.
- The reciprocal violation enforcement arrangement between the NCTA and the other toll agency provides that each party shall charge the other for costs associated with registration holds in their respective jurisdictions.

### **Policy 8.2: Interoperability with the E-ZPass® Toll Program**

The E-ZPass® Electronic Toll Collection System is a regional system of toll collection agencies. The goal of these agencies is to offer interoperability to their customers including a single account statement reflecting tolls incurred on all participating agency facilities. The Interoperability Agreement between NCTA and the E-ZPass® Group (EZG) is located in **Appendix D: NCTA/EZG Interoperability Agreement**. Additional EZG documents that also comprise portions of the Interoperability Agreement are available on the EZG website: <http://e-zpassiag.com/interoperability>.

**Policy 8.2.1: Fees**

Various fees charged by the EZG include:

- Transaction Fees – A customer’s Home Agency shall be reimbursed by the Away Agency a fee per transaction, if applicable, as established by the EZG agreement. Reimbursement shall be made no less than monthly or as otherwise agreed to in writing between two or more affected EZG member or National Affiliate members.
- Credit Card Fees – A Home Agency transferring toll revenues to an Away Agency shall be reimbursed by that Away Agency for the proportionate share of credit card fees incurred in the replenishment of customer accounts. The Home Agency shall be responsible for determining amounts due from the Away Agency for credit card fees associated with account reimbursements, and shall include a statement which sets forth reasonable details of the calculation. All credit card reimbursement fees shall be computed using the then current credit card formula provided by the EZG Executive Management Committee.

**Policy 8.2.2: Reciprocity**

**Appendix E: EZG Reciprocity Document** is the document that enables interoperability between members. The following reciprocity requirements have been established.

Valid Tag Transactions:

- Upon receipt of transaction records, the Home Agency where the E-ZPass® account is held will post transactions to the proper accounts.
- Settlement of a Valid Tag Transaction shall not be dependent on transaction posting; i.e., the Home Agency’s obligation to pay the NCTA (Away Agency) is not contingent upon the Home Agency posting the transactions to the customer’s account.
- So long as the NCTA transfers Valid Tag Transactions to the Home Agency within 60 days, the Home Agency will honor the same if the account is open.
- The Home Agency is not responsible to honor the Valid Tag Transaction if the transaction is received more than 10 days after the transaction occurred and the account is closed.

Customer Disputed Transactions:

- NCTA will inform the other Agencies of its guidelines for handling customer disputed transactions. When, due to cost/benefit or other considerations, customer accounts are credited for the disputed amount without further research, such credits will not affect Settlement or Reconciliation between Agencies.
- When a customer disputes a transaction that occurred on an NCTA facility, and such transactions are researched, acknowledged and agreed to be an error of NCTA, the resulting adjustment will become part of the Reconciliation and Settlement between the two agencies and no payments will be made for such transactions.
- In order to enable proper researching of customer complaints, all agencies will maintain records related to tolls for a minimum period of 120 days.

#### Settlement & Revenue Reconciliation:

- The Home Agency will transfer the gross toll amount due for Valid Tag Transactions as reported by NCTA in United States dollars. All transfers will be calculated on a gross basis.
- The Home Agency will settle in a manner and frequency as determined by agreement between the Home Agency and NCTA, but at least monthly. Final settlement will be based on Valid Tag Transactions as reported by NCTA regardless of account status at time of posting.
- Actual or estimated revenue as reported by NCTA may be used as a basis for Conditional Settlement as agreed between the Home Agency and NCTA.
- Valid Tag Transactions obligate the Home Agency to remit the correct toll to NCTA at the time of Settlement regardless of the status of the Home Agency account at the time of posting. In the case of lost or stolen tags, the Home Agency is no longer obligated for transactions that occur after notification to NCTA.
- An Agency which does not act as a Home Agency may notify the other Agencies that all transactions relating to such Agency's facilities shall be transmitted to and settled with a Home Agency designated by such Agency.

#### Violations:

- Processing of E-ZPass® customer violations at the NC Quick Pass CSC when the tag is reported as lost/stolen by the Home Agency will be pursuant to the Business Policies of the NCTA
- The Agencies agree to facilitate the identification of violators by the sharing of appropriate information or files to the extent permitted by law
- The Agencies will share customer account information only for the purpose of collecting tolls, the enforcement of toll policies or as otherwise required by law
- The Agencies will process toll evasion violation images in such a manner as to identify customers' accounts in good standing and thereby create a Valid Transaction
- Non-customer toll evasion violators will be processed pursuant to the rules and regulations of the Agency where the violation occurred

#### **Policy 8.2.3: Tag Validation File**

The Tag Validation File exchanged between Interoperable Agencies provides transponder tag information to member agencies to help them properly charge the appropriate toll amount. They include the following statuses:

- Valid
- Low Balance
- Invalid
- Lost/Stolen

#### **Policy 8.3: Interoperability with the SunPass® Toll Program**

NCTA is interoperable with the SunPass® System in Florida. The Interoperability Agreement between NCTA and the Florida Turnpike Enterprise (FTE) SunPass®/Peach Pass program is located

in **Appendix F: FTE Interoperability Agreement**. This program follows the InterAgency Group (IAG) interoperability process as defined within **Policy 8.2: Interoperability with E-ZPass® Toll Program** with the exception of the following:

- Transaction Fees – There are no transaction fees
- Credit Card Fees – Credit card fees will be reconciled on a monthly basis rather than quarterly as per the IAG

#### **Policy 8.4: Interoperability with the PeachPass Toll Program**

As part of Florida's interoperability with Georgia's State Road and Tollway Authority (SRTA), FTE includes SRTA license plates and tags in their FTE file consolidations and reconciles funds with NCTA via the same process used for the other FL agencies. The Interoperability Agreement for Georgia is actually an amendment to the FTE Agreement with NCTA which is found in **Appendix G: FTE interoperability Agreement Amendment: SRTA Interoperability**. This program follows the interoperability process as defined within **Policy 8.3: Interoperability with SunPass® Toll Program**. FTE sends SRTA transponders in their tag file to NCTA And SRTA follows all FTE business rules. All settlements are done through NCTA and FTE, and FTE then settles with SRTA.



## **POLICY 9: EXPRESS LANES AND HOV DECLARATION**

Under normal toll transaction processing all users of a tolled facility in North Carolina, except non-revenue vehicles as approved by NCTA, must pay the toll due as registered either by a transponder or video image of the vehicle license plate. The NCDOT has initiated several projects that will have managed lanes that restrict the type of vehicle that can use the lanes. These managed lanes, hereinafter referred to as Express Lanes, have been operationally designed to provide reliable trip times for users through the deployment of variable tolls to control express lane usage as compared to the general-purpose lanes which are free. In order to encourage use Express Lanes are currently being restricted to two-axle and transit vehicles. The volume and speed of traffic in the Express Lanes is monitored so that the toll rate may be dynamically changed in order to meet and maintain specified performance requirements.

### **Policy 9.1: Express Lane Facilities**

Express Lane facilities in North Carolina shall be clearly identified as “Express Lanes” prior to entrance into the express lanes. Use of Express Lanes is optional for vehicles that meet the vehicle classifications set forth in **Policy 9.2: Express Lane Vehicle Classifications**.

### **Policy 9.2: Express Lane Vehicle Classifications**

The following vehicle classifications will be allowed to use the Express Lanes if they meet criteria:

- “Low Occupancy Vehicles” or LOV means 2-axle motor vehicles, other than Motorcycles, without trailers, not larger than 20 feet in length, eight and a half feet in width and twelve feet in height, which do not have occupancy declaration information or that do not meet the occupancy requirement to declare HOV as signed on the Express Lane facility.
- “High Occupancy Vehicles” or HOV means motor vehicles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with three persons or more as occupants that also have a Transponder that provides occupancy declaration information.
- “Motorcycles” means motor vehicles with two or three wheels not larger than a Low Occupancy Vehicle.
- “Transit Vehicles” means recognized, non-profit transit agency buses, rubber-wheeled trolleys, and vans used for mass transportation under applicable Laws.

### **Policy 9.3: Exempt Vehicles - No Toll Due**

Certain vehicles, called Exempt Vehicles, are not required to pay a toll provided they meet the following criteria:

- a) Transponder-equipped, 2-axle vehicles that declare themselves as HOV through a NC Quick Pass HOV Declarable Transponder or via the NCTA HOV Declaration App that is linked to an NCTA Quick Pass Transponder account;
- b) Transit Vehicles;
- c) Transponder-equipped motorcycles; and
- d) Law enforcement vehicles, emergency fire and rescue vehicles and emergency medical service vehicles, and as set forth in North Carolina General Statutes §136-89.211(2).



Exempt Vehicles shall receive a discount of 100% of the applicable toll rate. However, a toll is applied without discount for an HOV if the vehicle is not equipped with a Transponder, regardless of occupancy. If the vehicle is (a) a Transit Vehicle; (b) a Motorcycle; or (c) a law enforcement vehicle, emergency fire and rescue vehicle or emergency medical service vehicle, and as set forth in North Carolina General Statutes §136-89.211(2) the discount will be applied.

#### **Policy 9.4: HOV Declaration**

With the implementation of Express Lane facilities and in accordance with North Carolina General Statute § 136-89.199, *Designation of high-occupancy toll and managed lanes*, NCTA customers shall be able to declare their HOV occupancy to take advantage of HOV benefits.

##### **Policy 9.4.1: NC Quick Pass Transponders Required for HOV**

Only NC Quick Pass transponders shall support HOV declaration as posted on signs at the entry to the Express Lane facilities.

##### **Policy 9.4.2: Vehicles Without NC Quick Pass Transponders**

A toll will be applied without a discount for any vehicle meeting HOV requirements if the vehicle is not equipped with a valid, properly installed NC Quick Pass Transponder, regardless of the number of occupants in the vehicle.

##### **Policy 9.4.3: Vehicles With NC Quick Pass Transponders – Non-valid Status**

NC Quick Pass customers whose accounts are not in good financial standing and/or have been put in any status other than “Good/Valid,” and whose transponder(s) as a result is set to any other status than “valid” is subject to the Bill by Mail policies as described in **Policy 4: Bill by Mail** of the NCTA Customers Service Center Business Policies document.

#### **Policy 9.5: Occupancy Requirements for HOV Declaration**

Each vehicle that declares HOV status when traveling on an Express Lane facility must carry the minimum number of occupants posted at the facility entrance signs (e.g. 3+). Each adult and child passenger in a vehicle counts as one (1) occupant each, but pets, infants still in the womb, and other inanimate objects shall not be considered valid occupants. Violators caught traveling in an Express Lane with an incorrectly declared occupancy status are subject to a fine by North Carolina law enforcement.

#### **Policy 9.6: Customer Mechanisms for HOV Occupancy Declaration**

NCTA provides two options for valid NC Quick Pass Account holders to declare their occupancy status for Express Lane usage.

- One option is the HOV Declaration Transponder which can be switched from SOV to HOV if the required number of occupants are in the vehicle
  - The second option is to have an NC Quick Pass Transponder and also have the NCTA HOV Declaration App linked to the transponder account. Online
    - Via the HOV declaration website
    - Via the HOV declaration mobile application
  - Walk-In (in person at the NC Quick Pass Customer Service Center(s)/Storefront(s))
  - Phone call by calling the NC Quick Pass Customer Service Center(s)

**Table 9-1: HOV Occupancy Declaration Channels** depicts the various ways NC Quick Pass customers may declare their occupancy.

TABLE 9-1 HOV Occupancy Declaration Channels				
Declarable Transponder	Other NCTA Transponders Online	Other NCTA Transponders Walk-in	Other NCTA Transponders Phone	Policy
✓	✓	✓	✓	An NC Quick Pass account and transponder is required to declare HOV occupancy and receive HOV occupancy-related benefits.
	✓	✓	✓	Registration with the HOV Declaration Application is necessary to declare HOV occupancy status.
	✓	✓	✓	HOV Declaration Application registration is required to schedule HOV Declaration in advance
✓				HOV occupancy declaration status can be set indefinitely
	✓	✓	✓	HOV occupancy using the HOV Declaration App must be declared and submitted 15 minutes in advance of travel on a North Carolina Express Lane

### **Policy 9.7: NC Quick Pass Account Required for HOV Declaration**

In order to declare HOV occupancy status on North Carolina Express Lanes, customers will need to open an NC Quick Pass account per **Policy 1: NC Quick Pass Accounts** and either obtain a switchable NC Quick Pass transponder, or obtain one of the other transponder types as described in **Policy 2: Transponders**.

Customers that choose a standard (non-switchable) NC Quick Pass transponder must register with the HOV Declaration Application and declare an occupancy status prior to their user of an Express Lanes facility to be eligible for HOV benefits and/or discounts (should NCTA elect to offer them), or they will be tolled at the SOV toll rate regardless of occupancy.

#### **Policy 9.7.1 Switchable Transponders**

Switchable Transponders allow customers to declare the number of occupants required for HOV status (i.e. <3 or 3+) by changing the transponder's switch position.

Before a customer can declare their HOV occupancy on a North Carolina Express Lane using a switchable transponder and be eligible for HOV benefits and/or discounts, they must have a registered NC Quick Pass account in good financial standing with a valid, switchable transponder properly installed in their vehicle. Customers must have their switchable transponder set to the HOV eligible setting in order to receive any HOV benefits and/or discounts.

A customer using a switchable transponder will not need to register with the HOV declaration application in order to travel on a North Carolina Express Lane.

**Policy 9.7.2 HOV Declaration Application**

Before a customer can register with the HOV Declaration Application, they must have an NC Quick Pass account in good financial standing with a valid transponder mounted in or on their vehicle. Once a customer has opened an NC Quick Pass account and received their transponder, they can open and register with the HOV Declaration Application. The HOV Declaration Application allows a customer to declare HOV status prior to using an Express Lane provided that the vehicle contains the required occupancy rate to qualify for HOV. Procedures for opening an account on NCTA's HOV Declaration Application are contained in **Appendix I: NCTA HOV Declaration Application Procedures**.

## **POLICY 10: PRIVACY**

NC Quick Pass, Registered Video Accounts and BBM account information will not be disclosed to third parties without prior written consent from the primary account holder except as permissible by state and federal law.

Pursuant to G.S. 136-89.213, identifying information obtained by the NCTA through an agreement is not a public record and is subject to the disclosure limitations in 18 U.S.C. § 2721, the Federal Driver's Privacy Protection Act. NCTA shall maintain the confidentiality of all information required which is kept confidential under 18 U.S.C. § 2721(a), as well as any financial information, transaction history, and information related to the collection of a toll or user fee from a person, including, but not limited to, photographs or other recorded images or automatic vehicle identification or driver account information generated by radio-frequency identification or other electronic means.

NCTA may use account information only for the purpose of collecting and enforcing tolls. NCTA may disclose customer account information to other interoperable agencies for the purpose of toll collection. The customers' name and address shall not be provided to any agency or company with whom NCTA has established interoperability agreements. Requests for this data shall follow the disclosure limitations in 18 U.S.C. § 2721 (Federal Driver's Privacy Protection Act) and shall only be provided to agencies in which NCTA has reciprocal agreements. Driver/customer information will not be made available for any reason other than to support payment of toll transactions or comply with a valid order of a court of competent jurisdiction. Account information may be disclosed to the public if such disclosure is required by law or by court order from a court of competent jurisdiction.

## **POLICY 11: BUSINESS POLICY MODIFICATION PROCESS**

NCTA will complete an annual review of its Business Policies at the end of each fiscal year. A redline version of the Business Policies will be created by the Director of Toll Operations (DTO) that indicates revisions and distributed to the NCTA Policy Committee. The Committee will come together to review the redline document and make any final decisions/edits. The Business Policies will be finalized by the DTO and will be retained in electronic and hard copy format. The file naming convention will be “NCTA Business Policies v#.# <year><month><day>.docx

The need for modification of these policies may be identified through day-to-day toll operations, toll program growth or legislative changes. Policies should be focused on providing greater efficiency, improving customer service and/or adding new toll facilities/expanding current facilities. A policy modification can be identified by any NCTA staff member. All modifications shall be processed through the DTO. The NCTA staff member requesting a modification is required to complete the Business Policy Modification Form (BPMF) and submit the completed form to the DTO for further action.

Upon review, the DTO will distribute the modification form to the NCTA Review Committee. The scope of the proposed modification will identify the staff required to review the material. A meeting will be scheduled to discuss the modifications submitted and make any further adjustments to finalize the change in policy. The Committee will then make a recommendation to the Executive Director. The Business Policy Review/Approval form will be used to document the meeting and the final determination by the Executive Director.

The DTO will update the BPMF (if applicable) and incorporate the approved modifications into a revised Business Policy document (redline and clean versions). Once the Business Policy version is finalized with signatures, the revised Business Policy document will be scanned and uploaded by the DBA into NCTA’S document retention system and the original securely filed for NCTA.