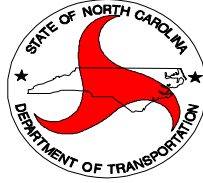


STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION



DIVISION 11 TRAFFIC

**CONTRACT PROPOSAL**

WBS ELEMENT NUMBER: 34608.2.12, etc. CONTRACT: 11-00-075  
ROUTE: Various COUNTY: Division 11  
DESCRIPTION: Installation of Four-Inch (4") Long Line (Polyurea) Pavement Markings with Glass Beads in Alleghany, Ashe, Avery, and Watauga Counties in Division Eleven

BID OPENING: April 5, 2012 @ 2:00 PM

**NOTICE:**

ALL BIDDERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA WHICH REQUIRES THE BIDDER TO BE LICENSED BY THE N.C. LICENSING BOARD FOR CONTRACTORS WHEN BIDDING ON ANY NON-FEDERAL AID PROJECT WHERE THE BID IS \$30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD OR SBE PROJECT. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA.

NAME OF BIDDER \_\_\_\_\_ N.C. CONTRACTOR'S LICENSE NUMBER \_\_\_\_\_

ADDRESS OF BIDDER \_\_\_\_\_

**RETURN BIDS TO:**

QUOTE NO: 11-00-075- POLYUREA PAVEMENT MARKINGS  
N.C. DEPARTMENT OF TRANSPORTATION  
JOE L. LAWS, PE, DIVISION PROJECT MANAGER  
801 STATESVILLE ROAD  
P.O. BOX 250  
NORTH WILKESBORO, NORTH CAROLINA 28659

## **INSTRUCTIONS TO BIDDERS**

### **PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE PREPARING AND SUBMITTING YOUR BID**

**All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.**

1. The bid sheet furnished by NCDOT with the proposal shall be used and shall not be altered in any manner. **DO NOT SEPARATE THE BID SHEET FROM THE PROPOSAL!**
2. All entries on the bid sheet, including signatures, shall be written in ink.
3. The Bidder shall submit a unit price for every item on the bid form. The unit prices for the various contract items shall be written in figures.
4. An amount bid shall be entered on the bid sheet for every item. The amount bid for each item shall be determined by multiplying each unit bid by the quantity for that item, and shall be written in figures in the "Amount Bid" column of the sheet.
5. The total amount bid shall be written in figures in the proper place on the bid sheet. The total amount shall be determined by adding the amounts bid for each item.
6. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink.
7. The bid shall be properly executed. All bids shall show the following information:
  - a. Name of individual, firm, corporation, partnership, or joint venture submitting bid.
  - b. Name and signature of individual or representative submitting bid and position or title.
  - c. Name, signature, and position or title of witness.
  - d. Federal Identification Number (or Social Security Number of Individual)
  - e. Contractor's License Number (if Applicable)
8. Bids submitted by corporations shall bear the seal of the corporation.
9. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
10. The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
11. **THE PROPOSAL WITH THE BID SHEET STILL ATTACHED SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL HAVE BEEN DELIVERED TO AND RECEIVED IN THE DIVISION ENGINEER'S OFFICE AT 801 STATESVILLE ROAD, P.O. BOX 250, NORTH WILKESBORO, NORTH CAROLINA 28659 BY 2:00 PM ON APRIL 5, 2012.**
12. The sealed bid must display the following statement on the front of the sealed envelope:

**QUOTE NO: 11-00-075- POLYUREA PAVEMENT MARKINGS**

13. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope shall be addressed as follows:

**JOE L. LAWS, PE, DIVISION PROJECT MANAGER  
N.C. DEPARTMENT OF TRANSPORTATION  
P.O. BOX 250  
801 STATESVILLE ROAD  
NORTH WILKESBORO, NORTH CAROLINA 28659**

### **AWARD OF CONTRACT**

**The award of the contract, if it be awarded, will be made to the lowest responsible Bidder in accordance with Section 102 of the 2012 Standard Specifications for Roads and Structures. The lowest responsible Bidder will be notified that his bid has been accepted and that he has been awarded the contract. NCDOT reserves the right to reject all bids.**

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# DIVISION CONTRACT

## General Provisions

### GENERAL

This contract is for the installation of four (4”) inch long line (polyurea) pavement markings with glass beads in Alleghany, Ashe, Avery, and Watauga Counties in Division Eleven of North Carolina.

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The Department of Transportation may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient. An increase or decrease in the quantity of any item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for in the contract.

All work and materials shall be in accordance with the provisions of the General Guidelines of this contract, the Project Special Provisions, the *2012 North Carolina Department of Transportation Standard Specifications for Roads and Structures*, the *2012 North Carolina Department of Transportation Roadway Standards Drawings*, the *National Electric Code*, the *National Electric Safety Code*, and the current edition of the *Manual of Uniform Traffic Control Devices (MUTCD)*. These manuals may be found on the internet at:

<http://www.ncdot.gov/doh/preconstruct/ps/specifications/2012draft.pdf>

[http://www.ncdot.gov/doh/preconstruct/ps/std\\_draw/default.html](http://www.ncdot.gov/doh/preconstruct/ps/std_draw/default.html)

<http://mutcd.fhwa.dot.gov/>

### CONTRACT TIME AND LIQUIDATED DAMAGES

**The date of availability is April 23, 2012.**

The Contractor may begin work prior to this date upon approval of the Engineer or his duly authorized representative. If such approval is given, and the Contractor begins work prior to the date of availability, the Department of Transportation will assume no responsibility for any delays caused prior to the date of availability by any reason whatsoever, and such delays, if any, will not constitute a valid reason for extending the completion date.

No work will be permitted and no contract will be executed until all required bonds and prerequisite conditions and certifications have been satisfied.

**The completion date for this project is June 29, 2012.** No extensions will be authorized except as authorized by Article 108-10 of the *2012 Standard Specifications*.

**Liquidated damages for this contract are One Thousand Dollars (\$1,000.00) per calendar day.**

When observation periods are required by the special provisions, they are not a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. Should an observation period extend beyond the final completion date, the acceptable completion of the observation period shall be a part of the work covered by the performance and payment bonds.

**INTERMEDIATE CONTRACT TIME NUMBER ONE AND LIQUIDATED DAMAGES**

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to the original traffic pattern. The Contractor shall not close or narrow a lane of traffic on **all routes** during the following time restrictions:

**DAY AND TIME RESTRICTIONS**

- \*Monday through Friday from 7:00 A.M. to 9:00 A.M.  
and/or
- \*Monday through Friday from 4:00 P.M. to 6:00 P.M.  
and/or
- \*Monday through Friday 30 minutes before and after School Begins and  
30 minutes before and after School Ends

**\*See enclosed map descriptions for specific time restrictions\***

In addition, the Contractor shall not close or narrow a lane of traffic on **any routes**, detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy, including the following schedules:

**HOLIDAY AND HOLIDAY WEEKEND LANE CLOSURE RESTRICTIONS**

1. For **unexpected occurrence** that creates unusually high traffic volumes, as directed by the Engineer.
2. For **New Year's Day**, between the hours of **3:00 P.M.** December 31st and **9:00 A.M.** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **9:00 A.M.** the following Tuesday.
3. For **Easter**, between the hours of **3:00 P.M.** Thursday and **9:00 A.M.** Monday.
4. For **Memorial Day**, between the hours of **3:00 P.M.** Friday and **9:00 A.M.** Tuesday.
5. For **Independence Day**, between the hours of **3:00 P.M.** the day before Independence Day and **9:00 A.M.** the day after Independence Day.

If **Independence Day** is on a Friday, Saturday, Sunday or Monday, then between the hours of **3:00 P.M.** the Thursday before Independence Day and **9:00 A.M.** the Tuesday after Independence Day.

6. For **Labor Day**, between the hours of **3:00 P.M.** Friday and **9:00 A.M.** Tuesday.
7. For **Thanksgiving Day**, between the hours of **3:00 A.M.** Tuesday and **8:00 P.M.** Monday.
8. For **Christmas**, between the hours of **5:00 P.M.** the Friday before the week of Christmas Day and **9:00 A.M.** the following Tuesday after the week of Christmas Day.

Holidays and holiday weekends shall include New Year's, Martin Luther King Jr. Day, Easter, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas. The Contractor shall schedule his work so that lane closures are not required during these periods, unless otherwise directed by the Engineer.

The time of availability for this intermediate contract work shall be the time the Contractor begins to install all traffic control devices for lane closures according to the time restrictions listed herein.

**The Contractor's operations are restricted to daylight hours. No work may be performed on Saturdays, Sundays and Official State Holidays without approval by the Engineer. Work shall only be performed when weather and visibility conditions allow safe operations.**

The completion time for this intermediate contract work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated herein and place traffic in the original traffic pattern. Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in Subarticle 108-7(B) of the *2012 Standard Specifications*.

**The liquidated damages are Five Hundred Dollars (\$500.00) per hour.**

### **MAJOR CONTRACT ITEMS**

None of the items included in this contract will be major items.

### **SPECIALTY ITEMS**

Items listed below will be the specialty items for this contract (See Article 108-6 of the *2006 Standard Specifications*).

<b>Line #</b>	<b>Description</b>
1	Pavement Marking Lines

## **PREPARATION AND SUBMISSION OF BIDS**

The entire bid proposal package, properly signed and executed, must be returned in order for the bid to be considered as responsive. **Incomplete proposal packages may be considered unresponsive.** Bid proposals shall be completed in ink and any corrections shall have one strike through with the correction initialed by the bidder.

**Any firm that wishes to bid on this project as the prime contractor must be prequalified for the type of work they wish to perform prior to submitting their bid.** For the purposes of prequalification, any firm that is currently prequalified as a prime or a subcontractor on centrally let contracts for the appropriate work codes is considered eligible to work and/or bid on this contract as long as other items such as bonding and license requirements for the contract are met.

Information regarding the requirements to become prequalified as a Purchase Order Contract contractor, can be found at the following website: <http://www.ncdot.org/business/howtogetstarted/>

All bids shall be prepared and submitted in accordance with the listed requirements of Article 102-8 of the *2012 Standard Specifications*.

In accordance with GS 136-28.1(b), if the total bid amount of the contract exceeds **\$1,200,000**, the bid will not be considered for award.

## **BID BOND**

**No bid bond will be required for the submission of bids for this project.**

## **EXECUTION OF SIGNATURE SHEETS AND DEBARMENT CERTIFICATION**

The Bidder's attention is directed to the various sheets in the proposal form, which are to be signed by the Bidder. A list of these sheets is shown below. The signature sheets are located behind the item sheets in the proposal form.

1. Bid Form
2. Non collusion affidavit
3. Bidder Certification of MB/WB, if applicable

The Bidder shall certify his and to the best of his knowledge all subcontractors, material suppliers and vendors utilized herein current status concerning suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency, in accordance with the "Debarment Certification" located behind the signature sheets in the proposal forms. Execution of the bid signature sheets in conjunction with any applicable statements concerning exceptions, when such statements have been made on the "Debarment Certification", constitutes the Bidders certification of "status" under penalty of perjury under the laws of the United States.



**AWARD LIMITS ON MULTIPLE PROJECTS**

It is the desire of the Proposer to be awarded contracts, the value of which will not exceed a total of \$ \_\_\_\_\_, for those projects indicated below on which bids are being opened on the same date as shown in the Proposal Form. Individual projects shall be indicated by placing the project number and county in the appropriate place below. Projects not selected will not be subject to an award limit.

(Project Number)	(County)
(Project Number)	(County)
(Project Number)	(County)

\*If a Proposer desires to limit the total amount of work awarded to him in this letting, he shall state such limit in the space provided above in the second line of this form.

It is agreed that in the event that I am (we are) the successful bidder on indicated projects, the total value of which is more that the above stipulated award limits, the Board of Transportation will award me (us) projects from among those indicated which have a total value not exceeding the award limit and which will result in the best advantage to the Department of Transportation.

\_\_\_\_\_  
\*\*Signature of Authorized Person

\*\*Only those persons authorized to sign bids under the provisions of Article 102-8, Item 8, shall be authorized to sign this form.

**CONTRACT PAYMENT AND PERFORMANCE BOND**

A performance bond in the amount of **one hundred percent (100%)** of the contract amount, conditioned upon the faithful performance of the contract in accordance with specifications and conditions of the contract is required for Construction contracts of **\$300,000.00** or more. Such bond shall be solely for the protection of the North Carolina Department of Transportation and the State of North Carolina.

A payment bond in the amount of **one hundred percent (100%)** of the contract amount, conditioned upon the prompt payment for all labor or materials for which the Contractor, or his subcontractors, is liable is required for Construction contracts greater than **\$300,000.00**. The payment bond shall be solely for the protection of persons or firms furnishing materials or performing labor for this contract for which the Contractor is liable.

The successful bidder, **within fourteen (14) days** after notice of award, shall provide the Department with a contract payment bond and a contract performance bond each in an amount equal to 100 percent of the amount of the contract.

### **LIABILITY INSURANCE**

The Contractor shall be liable for any losses resulting from a breach of the terms of this contract. The Contractor shall be liable for any losses due to the negligence or willful misconduct of its agents, assigns and employees including any sub-contractors which causes damage to others for which the Department is found liable under the Torts Claims Act, or in the General Courts of Justice, provided the Department provides prompt notice to the Contractor and that the Contractor has an opportunity to defend against such claims. The Contractor shall not be responsible for punitive damages.

**The successful bidder shall upon execution of the contract, provide evidence to the Engineer that the Contractor carry insurance of the kinds and in the amounts specified in the insurance requirements of Article 107-15 of the 2012 Standard Specifications** in addition to any other forms of insurance or bonds required under the terms of the contract, or any other insurance carried by the Contractor.

### **WORKMEN'S COMPENSATION INSURANCE**

The contractor shall defend, indemnify and hold harmless the North Carolina Department of Transportation, its officers and employees from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease, or death of persons or damage to or loss of property resulting from or in connection with the negligent performance of this contract by the contractor, its agents, employees, and subcontractors or any one for whom the contractor may be responsible. The obligations, indemnities and liabilities assumed by the contractor under this paragraph shall not extend to any liability caused by the negligence of the Department of Transportation or its employees. The contractor's liability shall not be limited by any provisions or limits of insurance set forth in this contract.

The contractor shall indemnify and hold harmless the Department of Transportation from any claim, demand, suit, liability, judgment, and expense involving damage or loss to the contractor's equipment (including vandalism, theft, fire and acts of God) arising out of or relating to work performed under this agreement. The obligations, indemnities and liabilities assumed by the contractor under this paragraph shall not extend to any liability caused by the negligence of the Department of Transportation or its employees. The contractor's liability shall not be limited by any provisions or limits of insurance set forth in this contract.

The contractor further agrees to indemnify the Department of Transportation for any damages to the roadway, highway signs, highway equipment and other property owned or in possession of the Department of Transportation, brought about by reason of the negligent operation of the leased equipment. The contractor further agrees to indemnify and save harmless the Department of

Transportation, its officers and employees from any claims or amounts recovered by any of the contractor's employees under the Worker's Compensation Act.

*Pursuant to N.C.G.S. § 97-19, all contractors of the Department of Transportation are, prior to beginning services, required to show proof of coverage issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance for self-insured subcontractors stating that it has complied with N.C.G.S. § 97-93 irrespective of whether subcontractors have regularly in service fewer than three employees in the same business within the State of North Carolina, and subcontractors shall be hereinafter liable under the Workers' Compensation Act for payment of compensation and other benefits to its employees for any injury or death due to an accident arising out of and in the course of performance of the work insured by the subcontractor.*

**Proof of insurance shall be furnished to the Engineer prior to beginning work.**

### **LICENSES**

In accordance with G.S. 136-28.14, this project is not subject to the licensing requirements of Chapter 87 of the General Statutes.

### **SUBLETTING OF CONTRACT**

The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any portion thereof; or his right, title, or interest therein; without written consent of the Engineer. Subletting of this contract or any portion of the contract shall conform to the requirements of Article of 108-6 of the *2012 Standard Specifications*.

### **DEFAULT OF CONTRACT**

The Department of Transportation shall have the right to declare a default of contract for breach by the Contractor of any material term or condition of the contract. Default of contract shall be in accordance with the terms, conditions, and procedures of Article 108-9 of the *2012 Standard Specifications*.

### **PARTIAL PAYMENT**

The Contractor may submit a request for partial payment on a monthly basis, or other interval as approved by the Engineer. The amount of partial payments will be based on the work accomplished and accepted as the last day of the approved pay period. Compensation for all pay items shall be in accordance with the *Standard Specifications*.

Requests for payment can be made on the form furnished to the Contractor by the Department of Transportation. The form shall be completely and legibly filled out with all appropriate information supplied and shall be signed by an authorized representative of the Contractor.

If the request for payment is made by Contractor's Invoice, the Invoice shall be submitted to:

**North Carolina Department of Transportation**  
**Attention: Chris Brown**  
**P. O. Box 250**  
**North Wilkesboro, NC 28659**

All invoice items and unit costs shall correspond to contract pay items. In the event of error or discrepancy in items or unit costs, the Department may return the invoice to the contractor for correction. Invoices must be "electronically scanned" by our office and the image is transmitted to the Purchasing Unit to verify payment. To avoid confusion and delay of payments each invoice should have a **Unique Invoice Number**, i.e. 1, 2, 3... In addition, the invoice should be positively identified and associated with the Purchase Order by including the **Purchase Order Number** on the Invoice.

An amount equal to **ten percent (10%)** of the total amount due on the partial payment request will be deducted and retained until such time of final completion and project acceptance.

Minority Business Enterprise (MBE), Women's Business Enterprise (WBE) and/or Disadvantage Business Enterprise (DBE) participation shall be listed on the appropriate form (DBE-IS) and shall accompany all requests for payment. If there is no participation the word "**None**" or the figure "**0**" shall be entered. Requests for payment will not be processed without the submission of the DBE-IS form. One hundred percent (100%) payment shall be made after successful completion of the work as verified by the final inspection.

## **RETAINAGE AND PROMPT PAYMENT**

### **Prompt Payment of Monies Due Subcontractors, Second Tier Subcontractors and Material Suppliers and Release of Retainage**

Contractors at all levels; prime, subcontractor, or second tier contractor, shall within seven calendar days of receipt of monies, resulting from work performed on the project or services rendered, pay subcontractors, second tier subcontractors, or material suppliers, as appropriate. This seven-day period begins upon knowledgeable receipt by the contracting firm obligated to make a subsequent periodic or final payment. These prompt payment requirements will be met if each firm mails the payment to the next level firm by evidence of postmark within the seven-day period.

This provision for prompt payment shall be incorporated into each subcontract or second tier subcontract issued for work performed on the project or for services provided.

The Contractor may withhold up to 3% retainage if any subcontractor does not obtain a payment and performance bond for their portion of the work. If any retainage is held on subcontractors, all retainage shall be released within seven calendar days of satisfactory completion of all work. For the purpose of release of retainage, satisfactory completion is defined as completion of all physical elements and corresponding documentation as defined in the contract, as well as agreement between the parties as to the final quantities for all work performed in the subcontract. The Department will provide internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontract portions of the project.

Failure of any entity to make prompt payment as defined herein may result in (1) withholding of money due to that entity in the next partial payment until such assurances are made satisfactory to this provision; or (2) removal of an approved contractor from the prequalified bidders list or the removal of other entities from the approved subcontractors list.

### **MANDATORY SUBCONTRACTOR INFORMATION**

The Contractor is to provide a list of all proposed subcontractors he or she plans to use on this project. This list shall include all subcontractors that will be used, not only MBE, WBE or DBE firms. Only pre-approved subcontractors that are registered with the NCDOT may be used. A listing of all contractors (prime or subcontractor) may be found at the following website:

<https://partner.ncdot.gov/VendorDirectory/default.html>

Subcontract Approval Form (Form SAF) must be completed for each subcontractor that will be used and returned prior to the issuance of the purchase order. This form can be found at the following website:

[http://www.ncdot.org/doh/operations/dp\\_chief\\_eng/constructionunit/saf.xls](http://www.ncdot.org/doh/operations/dp_chief_eng/constructionunit/saf.xls)

If the proposed subcontractor cannot fulfill their obligation and a substitute must be used, then an appropriate form for the replacement subcontractor must be delivered to the administering officer before the new subcontractor is used.

**Failure to provide this information (regardless of any goals in contract) may result in the contract being awarded to another contractor.**

### **AVAILABILITY OF FUNDS – TERMINATION OF CONTRACT**

*General Statute 143C-6-11. (h) Highway Appropriation* is hereby incorporated verbatim in this contract as follows:

(h) Amounts Encumbered. – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in *General Statute 143C-6-11(c)*. Payment for transportation project work performed pursuant to contract in any fiscal year other

than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

Payment will be made on any contract terminated pursuant to the special provision in accordance with Article 108-13(E), of the *North Carolina Department of Transportation Standard Specifications for Roads and Structures, dated January 2012.*

## **LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

### **Laws to be Observed**

In accordance with 107-1 of the *Standard Specifications*, The Contractor shall keep himself fully informed of all Federal and State laws, all local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority which may in any manner affect those engaged or employed in the work, or which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall indemnify and hold harmless the Board of Transportation and the Department of Transportation and their agents and employees from any claim or liability arising from or based on the violation of any such law, ordinance, regulations, order, or decree, by the Contractor or by his agents and employees.

### **Responsibility For Damage Claims**

In accordance with 107-14 of the *Standard Specifications*, The Contractor shall indemnify and save harmless the Board of Transportation and its members and the Department of Transportation and its officers, agents, and employees from all suits, actions, or claims of any character brought for any injury or damages received or sustained by any person, persons, or property by reason of any act of the Contractor, Subcontractor, its agents or employees, in the performance of the contract.

### **Safety and Accident Protection**

In accordance with 107-21 of the *Standard Specifications*, The Contractor shall comply with all applicable Federal, State, and local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on his own responsibility that are 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.

All Contractors' personnel, all subcontractors and their personnel, and any material suppliers and their personnel shall wear a reflective vest or outer garment conforming to the requirements of MUTCD at all times while on the project.

### **BANKRUPTCY**

The Department of Transportation, at its option, may terminate the contract upon the filing by the contractor of any petition for protection under the provisions of the Federal Bankruptcy Act.

### **EXTENSION OF CONTRACT TIME**

Failure on the part of the Contractor to furnish bonds or certifications or to satisfy preliminary requirements necessary to issue the purchase order will not constitute grounds for extension of the contract time. If the Contractor has fulfilled all preliminary requirements for the issuance of a purchase order, and the purchase order authorization is not available by the date of availability, the Contractor shall be granted an extension equal to the number of calendar days the purchase order authorization is delayed after the date of availability.

### **CLAIMS FOR ADDITIONAL COMPENSATION OR EXTENSION OF TIME**

Any claims for additional compensation and/or extensions of the completion date shall be submitted to the Division Engineer with detailed justification within thirty (30) days after receipt of the final invoice payment. The failure of the Contractor to submit the claim(s) within thirty days shall be a bar to recovery.

### **CONTRACTOR CLAIM SUBMITTAL FORM**

If the Contractor elects to file a written claim or requests an extension of contract time, it shall be submitted on the Contractor Claim Submittal Form (CCSF) available through the Construction Unit or [http://ncdot.org/doh/operations/dp\\_chief\\_eng/constructionunit/formsmanuals/](http://ncdot.org/doh/operations/dp_chief_eng/constructionunit/formsmanuals/).

### **SUBSURFACE INFORMATION**

There is no subsurface information available on this project. The Contractor shall make his own investigation of subsurface conditions.

## **PROSECUTION AND PROGRESS**

The Contractor will be required to prosecute the work in a continuous and uninterrupted manner from the time he begins the work until completion and final acceptance of the project. The contractor will not be permitted to suspend his operations except for reasons beyond his control except where the Engineer has authorized a suspension of the contractor's operations in writing.

The Contractor shall pursue the work diligently with workmen in sufficient numbers, abilities, and supervision, and with equipment, materials, and methods of construction as may be required to complete the work described in the contract by the completion date and in accordance with Section 108 of the *Standard Specifications*.

No work may be performed on **Saturdays, Sundays, and Official State Holidays**. Work shall only be performed when weather and visibility conditions allow safe operations. The Contractor's operations are restricted to daylight hours only. The Contractor shall not close any lane or obstruct traffic in any way during the time restrictions shown in Intermediate Contract Time and Liquidated Damages Provision contained on pages 6 and 7 of the Contract Proposal. Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in Article 108-7 of the *Standard Specifications*.

## **TEMPORARY SUSPENSION OF WORK**

In accordance with Article 108-7 of the 2012 *Standard Specifications*, the Engineer will have the authority to suspend the work wholly or in part, any written order for such periods as he may deem necessary for any of the following reasons.

1. Conditions considered unfavorable for the suitable prosecution of the work, or
2. The Contractor's failure for correct conditions unsafe for workmen or the general public, or
3. The Contractor has not carried out orders given to him by the Engineer, or
4. The Contractor's failure to perform any provisions of the contract.

No extension of the completion date will be allowed for the above suspensions except as may be provided for in Article 108-10.

## **AUTHORITY OF THE ENGINEER**

The Engineer for this project shall be the Division Engineer, Division 11, Division of Highways, North Carolina Department of Transportation, acting directly or through his duly authorized representatives.

The Engineer will decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of the work; all questions which may arise as to the interpretation of the contract; and all questions as to the acceptable fulfillment of the contract on



the part of the Contractor. His decision shall be final and he shall have executive authority to enforce and make effective such decisions and orders as the Contractor fails to carry out promptly.

### **APPROVAL OF PERSONNEL**

The State shall have the right to approve or reject the project engineer and other supervisory personnel, assigned to a project.

The Engineers or any subcontractor for the Engineers which are employed to provide engineering services for this project shall not engage the services of any person or persons, now in the employment of the State during the time of this Agreement, without written consent of the State.

In the event of engagement, the Engineers or their subcontractors shall restrict such person or persons from working on any of the Engineers' contracted projects in which the person or persons were formerly involved while employed by the State. This restriction period shall be for the duration of the contracted project with which the person or persons was involved. "Involvement" shall be defined as active participation in any of the following activities:

- Drafting the contract;
- Defining the scope of the contract;
- Selection of the Engineers' firm for services;
- Negotiation of the cost of the contract (including calculating man-hours or fees); and
- Administration of the contract.

An exception to these terms may be granted when recommended by the Secretary and approved by the Board of Transportation. Failure to comply with the terms stated above in this section shall be grounds for termination of this contract.

### **SUPERVISION BY CONTRACTOR**

At all times during the life of the project the Contractor shall provide one permanent employee who shall have the authority and capability for overall responsibility of the project and who shall be personally available at the work site within 24 hours notice. Such employee shall be fully authorized to conduct all business with the subcontractors, to negotiate and execute all supplemental agreements, and to execute the orders or directions of the Engineer.

At all times that work is actually being performed, the Contractor shall have present on the project one competent individual who is authorized to act in a supervisory capacity over all work on the project, including work subcontracted. The individual who has been so authorized shall be experienced in the type of work being performed and shall be fully capable of managing, directing, and coordinating the work; of reading and thoroughly understanding the contract; and receiving and carrying out directions from the Engineer or his authorized representatives. He shall be an employee of the Contractor unless otherwise approved by the Engineer.

The Contractor may, at his option, designate one employee to meet the requirements of both positions. However, whenever the designated employee is absent from the work site, an authorized individual qualified to act in a supervisory capacity on the project shall be present.

### **CONTRACTOR PERSONNEL**

The Department will not be responsible in any way to the Contractor's personnel for damages, destruction or loss, from any cause, to the Contractor's equipment, supplies, materials or tools or the personal property of the Contractor's personnel. The Contractor will be responsible for all repairs, regardless of cost, resulting from the negligence of the Contractor or Contractor's employees. The Department will not participate in the cost of such repairs.

### **INSPECTION**

All work shall be subject to inspection by the Engineer at any time. Routinely, the Engineer will make periodic inspections of the completed work. It will be the responsibility of the Contractor to keep the Engineer informed of his proposed work plan and to submit written reports of work accomplished on a frequency to be determined by the Engineer.

### **MATERIALS AND TESTING**

The Engineer reserves the right to perform all sampling and testing in accordance with Section 106 of the *Standard Specifications* and the Department's "Materials and Test Manual." However the Engineer may reduce the frequency of sampling and testing where he deems it appropriate for the project under construction.

The Contractor shall furnish the applicable certifications and documentation for all materials as required by the *Standard Specifications*. Material that is not properly certified will not be accepted.

### **COOPERATION BETWEEN CONTRACTORS**

The Contractor's attention is directed to Article 105-7 of the *2012 Standard Specifications*.

The Contractor on this project shall cooperate with Contractor(s) and state forces working within or adjacent to the limits of this project to the extent that the work can be carried out to the best advantage of all concerned.

### **OUTSOURCING OUTSIDE THE USA**

All work on consultant contracts, services contracts, and construction contracts shall be performed in the United States of America. No work shall be outsourced outside of the United States of America.

*Outsourcing* for the purpose of this provision is defined as the practice of subcontracting labor, work, services, staffing, or personnel to entities located outside of the United States.

The North Carolina Secretary of Transportation shall approve exceptions to this provision in writing.

### **PLAN, DETAIL AND QUANTITY ADJUSTMENTS**

The Department reserves the right to make, at any time during the progress of the work, such alterations in plans or the details of construction as may be found necessary or desirable by the Engineer to complete the project.

### **UTILITY CONFLICTS**

It shall be the responsibility of the Contractor to contact all affected utility owners and determine the precise locations of all utilities prior to beginning construction. Utility owners shall be contacted a minimum of 48 hours prior to the commencement of operations. Special care shall be used in working around or near existing utilities, protecting them when necessary to provide uninterrupted service. In the event that any utility service is interrupted, the Contractor shall notify the utility owner immediately and shall cooperate with the owner, or his representative, in the restoration of service in the shortest time possible. Existing fire hydrants shall be kept accessible to fire departments at all times.

The Contractor shall adhere to all applicable regulations and follow accepted safety procedures when working in the vicinity of utilities in order to insure the safety of construction personnel and the public.

### **GIFTS FROM VENDORS AND CONTRACTORS**

By Executive Order 24, issued by Governor Perdue, and *N.C. G.S. § 133-32*, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offer or, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and *G.S. § 133-32*.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

## Special Provisions

### NOTES TO CONTRACTOR

1. Refer to the *Standard Specifications for Roads and Structures and Roadway Standard Drawings dated January 2012* and any Special Provisions in contract for guidelines on this project.
2. All work performed by the contractor shall be in compliance with the *2012 Standard Specifications* and Workmanship/Appearance done to the satisfaction of the Engineer.
3. All work items necessary to complete the work other than listed on the "Bid Proposal Form" will be considered incidental in nature and no further compensation will be made. Any work performed in an unsatisfactory manner could be basis for cancellation of the contract.

### NOTIFICATION OF OPERATIONS

The Contractor shall notify the Engineer 48 hours in advance of beginning work on this project. If the Contractor leaves the job, he shall provide a **48-hour** notice prior to returning to the job. The Contractor shall give the Engineer sufficient notice of all operations for any sampling, inspection or acceptance testing required.

### PRECONSTRUCTION CONFERENCE

Following the award of a contract and prior to beginning work, the Contractor shall contact **Chris Brown, Assistant Division Traffic Engineer at (336) 667-9111**, to arrange a Pre-construction conference. The project superintendent is required to attend the Pre-construction conference.

### EMPLOYMENT

Revise the *2012 Standard Specifications* as follows:

**Page 1-20, Subarticle 102-15(O)**, delete and replace with the following:

(O) Failure to restrict a former Department employee as prohibited by Article 108-5.

**Page 1-65, Article 108-5 Character of Workmen, Methods, and Equipment, line 32**, delete all of line 32, the first sentence of the second paragraph and the first word of the second sentence of the second paragraph.

## **HOURS OF WORK**

The Contractor's operations are restricted to daylight hours. No work may be performed on Saturdays, Sundays, and Official State Holidays unless **approved by the Engineer**. Work shall only be performed when weather and visibility conditions allow safe operations. The Contractor shall not close any lane or obstruct traffic in any way during the time restrictions shown in Intermediate Contract Time and Liquidated Damages Provision contained on pages 6 and 7 of the Contract Proposal.

## **CONTRACT BID QUANTITIES**

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The Department of Transportation may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient.

An increase or decrease in the quantity of any item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for the contract.

Contractor's pricing shall be based on the estimated quantities per Division. These estimated amounts are submitted to assist contractors in the bidding process. Estimated quantities are not to be regarded as actual requirements. The State shall not be obligated to purchase any specific quantity.

## **DRIVEWAYS AND PRIVATE PROPERTY**

The Contractor shall maintain access to driveways for all residents and property owners throughout the life of the project.

The Contractor shall not perform work for private citizens or agencies in conjunction with this project or within the project limits of this contract.

## **MOBILIZATION**

**No direct payment** shall be made for "Mobilization", as the cost for mobilization will be considered incidental to other contract items.

## **TRAFFIC CONTROL AND WORK ZONE SAFETY**

The Contractor shall maintain traffic during construction and shall provide, install, and maintain all traffic control devices in accordance with these project guidelines, the *Project Special Provisions, 2012 North Carolina Department of Transportation Standard Specifications for*

*Roads and Structures, 2012 North Carolina Department of Transportation Roadway Standards Drawings, and the current edition of the MUTCD.*

The Contractor's attention is directed to *Section 1101.01 of the 2012 North Carolina Department of Transportation Roadway Standards Drawings*. The Contractor shall utilize complete and proper traffic control and traffic control devices during all operations. All traffic control and traffic control devices required for any operation shall be functional and in place prior to the commencement of that operation. Signs for temporary operations shall be removed during periods of inactivity. The Contractor is required to leave the project in a manner that will be safe to the traveling public and which will not impede motorists.

Traffic movements through lane closures on roads with two-way traffic shall be controlled by flaggers stationed at each end of the work zone. In situations where sight distance is limited, the Contractor shall provide additional means of controlling traffic, including, but not limited to, two-way radios, pilot vehicles, or additional flaggers. Flaggers shall be competent personnel, adequately trained in flagging procedures, and furnished with proper safety devices and equipment, including, but not limited to, safety vests and stop/slow paddles.

All personnel when working in traffic areas or areas in close proximity to traffic shall wear an approved safety vest, or shirt or jacket which meets the color requirements of the *MUTCD*.

The Contractor shall comply with all applicable Federal, State, and local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on his own responsibility that are 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.

No work may be performed on **Saturdays, Sundays, and Official State Holidays**. Work shall only be performed when weather and visibility conditions allow safe operations. The Contractor shall not close any lane or obstruct traffic in any way during the time restrictions shown in Intermediate Contract Time and Liquidated Damages Provision contained on pages 6 and 7 of the Contract Proposal.

Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in Subarticle 108-7 of the *Standard Specifications*.

**No direct payment will be made for Traffic Control and Work Zone Signing as the cost will be considered incidental to the work for installing pavement marking lines.**

## **INSTALLATION OF LONG LINE PAVEMENT MARKINGS (POLYUREA)**

### **Description**

The work covered by this provision consists of the removal of **95% (ninety-five percent)** of the existing pavement marking lines (line widths may vary) followed by the installation of 4" (four inch) Polyurea Pavement Marking Lines with Glass Beads.

### **Materials**

All materials shall meet the applicable requirements of the *North Carolina Department of Transportation 2012 Standard Specification for Roads and Structures - Section 1087*.

The Contractor shall furnish polyurea pavement markings as listed on the Traffic Engineering and Safety Systems Branch's Qualified Products List. The list may be found at:

<http://www.doh.dot.state.nc.us/preconstruct/traffic/congestion/TC/>

### **Construction Methods**

The Contractor shall remove **95% (ninety-five percent)** of the existing pavement marking lines of various widths and install 4" (four inch) Polyurea Pavement Marking Lines with Glass Beads.

The Contractor shall place pavement markings in accordance with Section 1205 of the *2012 North Carolina Department of Transportation (NCDOT) Standard Specifications for Roads and Structures, the 2012 Highway Design Branch Roadway Standard Drawings*, and their latest revision and the following provisions.

### **Pavement Marking General Requirements**

For more information contact the Traffic Control, Marking and Delineation Section of the North Carolina Department of Transportation at 919-250-4151 or

<http://www.doh.dot.state.nc.us/preconstruct/traffic/congestion/TC/>

### **Time Limitation for Replacement of Pavement Markings After Existing Markings Have Been Altered To the Following:**

All roadway markings shall be replaced on the day that the existing markings are obliterated.

### **Method of Measurement**

The quantity of pavement markings to be paid for will be the actual number of linear feet where removal of **95% (ninety-five percent)** of existing pavement marking lines followed by the installation of 4" (four inch) Polyurea Pavement Marking Lines with Glass Beads has been satisfactorily completed and accepted by the Engineer. Measurements will be made by linear foot.



## Basis of Payment

The quantity of pavement marking lines, measured as provided above, will be paid for at the contract unit price per linear foot for the following:

- **“Install 4-Inch Polyurea Pavement Marking Lines with Glass Beads”**

Such prices shall be full compensation for all work necessary to complete this item, including, but not limited to, surface preparation that includes **95% (ninety-five percent)** removal of existing pavement marking lines, furnishing and installing polyurea pavement markings with glass beads, on **centerlines, edge lines, lane lines, gore markings, all painted islands, around all concrete islands, including turn lanes, all entrance and exit ramp markings, entrance loops and exit loops markings, traffic control, mobilization,** etc. which have been satisfactorily placed and accepted by the Engineer; For all maps the Contractor shall install four inch (4”) polyurea pavement markings with glass beads along each radii and around all traffic islands for side roads to the limits that may be marked by the Engineer or his representative.

## PAVEMENT MARKING LINES

Revise the *2012 Standard Specifications* as follows:

**Page 12-2, 1205-3(D) Time Limitations for Replacement**, add the following at the beginning of the table (1205-1):

<b>Facility Type</b>	<b>Marking Type</b>	<b>Replacement Deadline</b>
Multi-lane roadways (3 or more lanes) and ramps	All markings	By the end of each workday's operation if the lane is opened to traffic
Two-lane, two-way roadways	All markings	By the end of each workday's operation if the lane is opened to traffic

## ROADWAY STANDARD DRAWINGS FOR PAVEMENT MARKINGS

Use the following in conjunction with the Standard Specifications:

### **Standard Pavement Markings**

### *Roadway Standard Drawings:*

1205.01, 1205.02, 1205.03, 1205.04, 1205.05, 1205.06, 1205.07, 1205.08, 1205.09, 1205.10, 1205.11, 1205.12, 1205.13

## **DISADVANTAGED BUSINESS ENTERPRISE**

### **Policy**

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.

### **Obligation**

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Contractor shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

### **Definitions**

*Commitment* - The approved DBE participation submitted by the prime contractor during the bidding process.

*Committed DBE* - Any DBE listed on the DBE commitment list approved by the Department at the time of bid submission or any DBE utilized as a replacement for a DBE firm listed on the commitment list.

*Department* - North Carolina Department of Transportation.

*Disadvantaged Business Enterprise (DBE)* – A firm certified as a Disadvantage Business Enterprise through the North Carolina Unified Certification Program.

*Goal* - The DBE participation specified herein.

*Letter of Intent* – Written documentation of the bidder/offeror's commitment to use a DBE subcontractor and confirmation from the DBE that it is participating in the contract.

*Manufacturer* - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

*Regular Dealer* - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution

equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

*SAF Subcontract Approval Form* - Form required for approval to sublet the contract.

*North Carolina Unified Certification Program* - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

*USDOT* - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

### **Contract Goal**

The following goal for participation by Disadvantaged Business Enterprises is established for this contract:

#### **Disadvantaged Business Enterprises = 0 %**

- (A) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in at least the percent of the contract as set forth above as the goal.
- (B) *If the goal is zero*, the Contractor shall continue to recruit the DBEs and report the use of DBEs during the construction of the project. A good faith effort will not be required with a zero goal.

### **Contract Requirement**

The approved DBE participation submitted by the Contractor shall be the **Contract Requirement**.

### **Certified Transportation Firms Directory**

Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory/> in the address bar of your web browser. Only firms identified as DBE certified in the Directory can be utilized to meet the contract goals.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

## Listing of DBE Subcontractors in Contract

Only those DBE firms with current certification are acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

### (A) Electronic Bids

Bidders shall submit a listing of DBE participation in the appropriate section of Expedite, the bidding software of Bid Express<sup>®</sup>.

- (1) The names and addresses of DBE firms committed to participate in the contract. If the bidder uses the updated listing of DBE firms shown in Expedite, the bidder may use the dropdown menu to access the name and address of the DBE firm.
- (2) The contract line numbers of work to be performed by each DBE firm. When no figures or firms are entered, the bidder will be considered to have no DBE participation.

### (B) Paper Bids

- (1) *If the goal is more than zero*, bidders at the time the bid proposal is submitted, shall submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract. If bidders have no DBE participation, they shall indicate this on the form "Listing of DBE Subcontractors" by entering the word or number zero. This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. The Department will not consider these bids for award and the proposal will be returned to the bidder.
- (2) *If the goal is zero*, bidders at the time the bid proposal is submitted, they shall enter the word "zero" or number "0" or if there is participation, add the value on the "Listing of DBE Subcontractors" (or facsimile thereof) contained elsewhere in the contract documents.

## Written Documentation – Letter of Intent

The bidder shall submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department's form titled "Letter of Intent to Perform as a Subcontractor". This letter of intent form is available at:

<http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>. It shall be received in the office of the Division Engineer no later than 12:00 noon of the sixth calendar day following opening of bids.

If the bidder fails to submit the letter of intent from each committed DBE listed in the proposal indicating their participation in the contract, the DBE participation will not count toward meeting the goal.

### **Counting DBE Participation Toward Meeting DBE Goal of Zero or More**

- (A) If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- (B) When a DBE performs as a participant in a joint venture, the Contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
- (C)
  - (1) The Contractor may count toward its DBE requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - (2) A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department for commercially useful functions. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

- (3) The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.
- (a) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
  - (b) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - (c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. The value of services performed under lease agreements between the DBE and Contractor will not count towards the contract requirement.
  - (f) For purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (D) A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.

- (E) A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:
- (1) The fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
  - (2) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

### **Good Faith Effort for Projects with Goals More Than Zero**

If the DBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the DBE contract goal, the apparent lowest responsive bidder shall submit to the Department documentation of its good faith efforts made to reach the contract goal. One complete set and 3 copies of this information shall be received in the office of the Division Engineer no later than 12:00 noon of the sixth calendar day following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Department considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the bidder has made adequate good faith effort:

- (A) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform DBEs of subcontracting opportunities.
- (B) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to bid opening. Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the DBE Directory) that the bidder will be subcontracting.
- (C) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the targeted Divisions

that specialize in the subcontracted areas, and contact the Director of Business and Opportunity Workforce Development to give notification of the bidder's inability to get DBE quotes.

- (D) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these work items with its own forces.
- (E) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (F) Whether the bidder negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.
- (G) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy contract goals.
- (H) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (I) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (J) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goal.

If a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort the Department will consider allowing the bidder to combine the DBE participation as long as the overall DBE goal value of the combined projects is achieved.

If the Department does not award the contract to the apparent lowest responsive bidder, the Department reserves the right to award the contract to the next lowest responsive bidder that can satisfy the Department that the contract goal can be met or that adequate good faith efforts have been made to meet the goal.



## **DBE Replacement**

The Contractor shall not terminate a committed DBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. If the Contractor fails to demonstrate reasonable efforts to replace a committed DBE firm that does not perform as intended with another committed DBE firm or completes the work with its own forces without the Engineer's approval, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of committed DBE.

### **(A) Performance Related Replacement**

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work as the DBE that was terminated. The Contractor is encouraged to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps they have taken to replace any DBE subcontractor who is unable to perform successfully with another DBE subcontractor. Such documentation shall include but not be limited to the following:

- (1) Copies of written notification to DBEs that their interest is solicited in subcontracting the work defaulted by the previous DBE subcontractor or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
  - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
  - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) For each DBE contacted but rejected as unqualified, the reasons for the Contractor's conclusion.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

**(B) Decertification Replacement**

- (1) When a committed DBE is decertified by the Department after a Request for Subcontract has been received by the Department, the Department will not require the Prime Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract requirement.
- (2) When a committed DBE is decertified prior to the Department receiving a Request for Subcontract for the named DBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.

**Changes in the Work**

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

**Reports**

A Subcontract Approval Form shall be submitted for all work which is to be performed by a DBE subcontractor, both committed and non-committed subcontractors. The Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by a Request for Subcontract as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

All certifications will be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.

### **Reporting Disadvantaged Business Enterprise Participation**

(A) The Contractor shall provide the Engineer with an accounting of payments made to Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (1) Withholding of money due in the next partial pay estimate; or
- (2) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

(B) Electronic Bids Reporting:

The Contractor shall report the accounting of payments through the Department's DBE Payment Tracking System, which is located at:

<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>. The Contractor shall also provide the Engineer an affidavit attesting the accuracy of the information submitted in the Payment Tracking System. This too shall be submitted for any given month by the end of the following month.

(C) Paper Bids Reporting:

The Contractor shall report the accounting of payments on the Department's DBE Subcontractor Payment Information Form DBE-IS, which is available at:

<http://www.ncdot.org/doh/forms/files/DBE-IS.xls>.

(D) Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

Prior to payment of the final estimate, the Contractor shall furnish an accounting of total payment to each DBE. A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from working on any DOT project until the required information is submitted.

### **Failure to Meet Contract Requirements**

Failure to meet contract requirements in accordance with Article 102-15(J) of the *Standard Specifications* may be cause to disqualify the Contractor.

### **ERRATA**

Revise the 2012 *Standard Specifications* as follows:

#### **Division 2**

**Page 2-7, line 31, Article 215-2 Construction Methods**, replace “Article 107-26” with “Article 107-25”.

**Page 2-17, Article 226-3, Measurement and Payment, line 2**, delete “pipe culverts,”.

**Page 2-20, Subarticle 230-4(B), Contractor Furnished Sources, change references as follows: Line 1**, replace “(4) Buffer Zone” with “(c) Buffer Zone”; **Line 12**, replace “(5) Evaluation for Potential Wetlands and Endangered Species” with “(d) Evaluation for Potential Wetlands and Endangered Species”; and **Line 33**, replace “(6) Approval” with “(4) Approval”.

#### **Division 6**

**Page 6-7, line 31, Article 609-3 Field Verification of Mixture and Job Mix Formula Adjustments**, replace “30” with “45”.

**Page 6-10, line 42, Subarticle 609-6(C)(2)**, replace “Subarticle 609-6(E)” with “Subarticle 609-6(D)”.

**Page 6-11, Table 609-1 Control Limits**, replace “Max. Spec. Limit” for the Target Source of  $P_{0.075}/P_{be}$  Ratio with “1.0”.

#### **Division 10**

**Page 10-74, Table 1056-1 Geotextile Requirements**, replace “50%” for the UV Stability (Retained Strength) of Type 5 geotextiles with “70%”.

#### **Division 12**

**Page 12-8, Table 1205-4 and 1205-5**, replace “THERMOPLASTIC” in the title of these tables with “POLYUREA”.

#### **Division 15**

**Page 15-6, Subarticle 1510-3(B), after line 21**, replace the allowable leakage formula with the following:

$$W = LD\sqrt{P} + 148,000$$

**Page 15-6, Subarticle 1510-3(B), line 32**, delete “may be performed concurrently or” and replace with “shall be performed”.

**Page 15-17, Subarticle 1540-3(E), line 27**, delete “Type 1”.

#### **Division 17**

**Page 17-26, line 42, Subarticle 1731-3(D) Termination and Splicing within Interconnect Center**, delete this subarticle.

## Federal Special Provisions

### AWARD OF CONTRACT

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”.

### MINORITY AND FEMALE EMPLOYMENT REQUIREMENTS

Z-7

#### NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (*EXECUTIVE NUMBER 11246*)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, see as shown on the attached sheet entitled “Employment Goals for Minority and Female participation”.

These goals are applicable to all the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

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

2. As used in this Notice and in the contract resulting from this solicitation, the “covered area” is the county or counties shown on the cover sheet of the proposal form and contract.

**EMPLOYMENT GOALS FOR MINORITY  
AND FEMALE PARTICIPATION**

Economic Areas

**Area 023 29.7%**

Bertie County  
Camden County  
Chowan County  
Gates County  
Hertford County  
Pasquotank County  
Perquimans County

**Area 024 31.7%**

Beaufort County  
Carteret County  
Craven County  
Dare County  
Edgecombe County  
Green County  
Halifax County  
Hyde County  
Jones County  
Lenoir County  
Martin County  
Nash County  
Northampton County  
Pamlico County  
Pitt County  
Tyrrell County  
Washington County  
Wayne County  
Wilson County

**Area 025 23.5%**

Columbus County  
Duplin County  
Onslow County  
Pender County

**Area 026 33.5%**

Bladen County  
Hoke County  
Richmond County  
Robeson County  
Sampson County  
Scotland County

**Area 027 24.7%**

Chatham County  
Franklin County  
Granville County  
Harnett County  
Johnston County  
Lee County  
Person County  
Vance County  
Warren County

**Area 028 15.5%**

Alleghany County  
Ashe County  
Caswell County  
Davie County  
Montgomery County  
Moore County  
Rockingham County  
Surry County  
Watauga County  
Wilkes County

**Area 029 15.7%**

Alexander County  
Anson County  
Burke County  
Cabarrus County  
Caldwell County  
Catawba County  
Cleveland County  
Iredell County  
Lincoln County  
Polk County  
Rowan County  
Rutherford County  
Stanly County

**Area 0480 8.5%**

Buncombe County  
Madison County

**Area 030 6.3%**

Avery County  
Cherokee County  
Clay County  
Graham County  
Haywood County  
Henderson County  
Jackson County  
McDowell County  
Macon County  
Mitchell County  
Swain County  
Transylvania County  
Yancey County

SMSA Areas

Area 5720 26.6%

Currituck County

Area 9200 20.7%

Brunswick County

New Hanover County

Area 2560 24.2%

Cumberland County

Area 6640 22.8%

Durham County

Orange County

Wake County

Area 1300 16.2%

Alamance County

Area 3120 16.4%

Davidson County

Forsyth County

Guilford County

Randolph County

Stokes County

Yadkin County

Area 1520 18.3%

Gaston County

Mecklenburg County

Union County

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Goals for Female

Participation in Each Trade

(Statewide) 6.9%

**REVISION TO FHWA-1273 CONCERNING PERSONAL INFORMATION ON PAYROLL SUBMISSIONS**

Revise the *Standard Special Provision FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts* as follows:

Section V, Paragraph 2b is replaced with the following:

The payroll records shall contain the name, and the last four digits of the social security number of each such employee, his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid.

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

FHWA - 1273 Electronic Version - March 10, 1994

Z-8

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

## **ATTACHMENTS**

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

### **I. GENERAL**

- 1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendent and to all work performed on the contract by piecework, station work, or by subcontract.
- 2. Except as otherwise provided in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
- 3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
- 4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph 2;
  - Section IV, paragraphs 1, 2, 3, 4, and 7;
  - Section V, paragraphs 1 and 2a through 2g.
- 5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
- 6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

### **II. NONDISCRIMINATION**

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

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

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



- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
  - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
  - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    - (1) The number of minority and non-minority group members and women employed in each work classification on the project;
    - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
    - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
    - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

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

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

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

- 1. **General:**
  - a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276e)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
  - b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
  - c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.
- 2. **Classification:**
  - a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
  - b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

- (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - (2) the additional classification is utilized in the area by the construction industry;
  - (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.
3. **Payment of Fringe Benefits:**
- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
  - b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
4. **Apprentices and Trainees (Programs of U.S. DOL) and Helpers:**
- a. Apprentices:
    - (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
    - (2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
    - (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
    - (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
  - b. Trainees:
    - (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
    - (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. **Helpers:**  
Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- 5. **Apprentices and Trainees (Programs of the U.S. DOT):**  
Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
- 6. **Withholding:**  
The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 7. **Overtime Requirements:**  
No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- 8. **Violation:**  
**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.
- 9. **Withholding for Unpaid Wages and Liquidated Damages:**  
The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

- (Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)
- 1. **Compliance with Copeland Regulations (29 CFR 3):**  
The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.
  - 2. **Payrolls and Payroll Records:**
    - a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
    - b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program

has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - (2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. 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 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **VI. RECORD OF MATERIALS, SUPPLIES AND LABOR THIS SECTION DELETED JUNE 4, 2007.**

#### **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### **VIII. SAFETY: ACCIDENT PREVENTION**

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

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

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

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

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

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

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

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

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

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

##### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from

participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

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

\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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



**MINIMUM WAGES GENERAL DECISION NC120097 01/16/2012 NC97**

Z-97

Date: January 6, 2012

General Decision Number: NC120097 01/06/2012 NC97

Superseded General Decision Numbers: NC20100134

State: North Carolina

Construction Type: HIGHWAY

**COUNTIES:**

Alleghany	Jackson	Surry
Ashe	Macon	Swain
Avery	McDowell	Transylvania
Cherokee	Mitchell	Watauga
Clay	Polk	Wilkes
Graham	Rutherford	Yancey

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges designed for commercial navigation, bridges involving marine construction, and other major bridges).

Modification Number  
0

Publication Date  
01/06/12

SUNC2011-078 09/16/2011

	Rates	Fringes
CARPENTER (Form Work Only)	13.29	
CEMENT MASON/CONCRETE FINISHER		
Cherokee County	13.95	
Remaining Counties	13.82	
IRONWORKER (Reinforcing)	13.81	
LABORER		
Asphalt, Asphalt Distributor, Raker, and Spreader	13.07	
Common or General		
Cherokee County	10.59	
Jackson County	10.36	
McDowell County	10.83	
Mitchell and Yancey Counties	11.17	
Remaining Counties	11.01	
Swain County	11.24	
Concrete Saw	11.61	
Landscape	9.57	
Luteman	12.24	
Mason Tender (Cement/Concrete)	10.53	
Pipelayer	9.00	
Traffic Control (Flagger)	10.31	
POWER EQUIPMENT OPERATORS		
Backhoe/Excavator/Trackhoe	14.75	

	Rates	Fringes
Broom/Sweeper	12.29	
Bulldozer	14.37	
Crane	16.75	
Grader/Blade	15.98	
Loader	14.21	
Mechanic	14.00	
Milling Machine	14.43	
Oiler	11.50	
Paver	12.00	
Roller		
Alleghany and Cherokee Counties	12.91	
Remaining Counties	13.39	
Scraper	12.29	
Screed	15.82	
Tractor	13.60	
TRUCK DRIVER		
Dump Truck	12.52	
Lowboy Truck	15.71	
Single Axle Truck	11.83	
Water Truck	13.82	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

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

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

#### Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date,

5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

## **CERTIFICATION FOR FEDERAL-AID CONTRACTS**

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

- (1) 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.
- (2) 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.

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 *Section 1352, Title 31, U.S. Code*. 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.

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

## **U.S. DEPARTMENT OF TRANSPORTATION HOTLINE**

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free *hotline* Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the *hotline* to report such activities.

The *hotline* is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

# NORTH CAROLINA DEPARTMENT OF TRANSPORTATION BID FORM

WBS Element: 34608.2.12, etc.

Contract Number: 11-00-075

DESCRIPTION: **Installation of Four-Inch (4") Long Line (Polyurea) Pavement Markings with Glass Beads in Alleghany, Ashe, Avery, and Watauga Counties in Division Eleven**

PAGE 1 OF 1

LINE	ITEM NUMBER	SECT	DESCRIPTION	QUAN	UNIT	UNIT BID	AMOUNT BID
1	4891000000-E	1205	Install 4-Inch Polyurea Pavement Marking Lines with Glass Beads	950,000	LF		

**\*ESTIMATED QUANTITIES ONLY - These quantities are for bid purposes only. Actual quantities may vary greatly from the estimated quantities.**

**TOTAL BID FOR PROJECT:** \_\_\_\_\_

---

**THIS SECTION TO BE COMPLETED BY NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

*This bid has been reviewed in accordance with Article 103-1 of the Standard Specifications for Roads and Structures 2012.*

Reviewed by \_\_\_\_\_ (date)

**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**CORPORATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

\_\_\_\_\_ Full name of Corporation

\_\_\_\_\_ Address as Prequalified

Attest \_\_\_\_\_  
Secretary/Assistant Secretary  
Select appropriate title

By \_\_\_\_\_  
President/Vice President/Assistant Vice President  
Select appropriate title

\_\_\_\_\_ Print or type Signer's name

\_\_\_\_\_ Print or type Signer's name

**CORPORATE SEAL**

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_ Signature of Notary Public

**NOTARY SEAL**

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**PARTNERSHIP**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

\_\_\_\_\_ Full Name of Partnership

\_\_\_\_\_ Address as Prequalified

\_\_\_\_\_ Signature of Witness By \_\_\_\_\_ Signature of Partner

\_\_\_\_\_ Print or type Signer's name \_\_\_\_\_ Print or type Signer's name

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ Signature of Notary Public

**NOTARY SEAL**

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**LIMITED LIABILITY COMPANY**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

\_\_\_\_\_ Full Name of Firm

\_\_\_\_\_ Address as Prequalified

\_\_\_\_\_ Signature of Manager \_\_\_\_\_

Signature of Witness

Individually

\_\_\_\_\_ Print or type Signer's name

\_\_\_\_\_ Print or type Signer's name

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ Signature of Notary Public

**NOTARY SEAL**

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**JOINT VENTURE (2) or (3)**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

Instructions: **2 Joint Venturers** Fill in lines (1), (2) and (3) and execute. **3 Joint Venturers** Fill in lines (1), (2), (3) and (4) and execute. On Line (1), fill in the name of the Joint Venture Company. On Line (2), fill in the name of one of the joint venturers and execute below in the appropriate manner. On Line (3), print or type the name of the other joint venturer and execute below in the appropriate manner. On Line (4), fill in the name of the third joint venturer, if applicable and execute below in the appropriate manner.

(1) \_\_\_\_\_  
Name of Joint Venture

(2) \_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address as Prequalified

\_\_\_\_\_  
Signature of Witness or Attest By Signature of Contractor

\_\_\_\_\_  
Print or type Signer's name Print or type Signer's name

*If Corporation, affix Corporate Seal* and

(3) \_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address as Prequalified

\_\_\_\_\_  
Signature of Witness or Attest By Signature of Contractor

\_\_\_\_\_  
Print or type Signer's name Print or type Signer's name

*If Corporation, affix Corporate Seal* and

(4) \_\_\_\_\_  
Name of Contractor (for 3 Joint Venture only)

\_\_\_\_\_  
Address as Prequalified

\_\_\_\_\_  
Signature of Witness or Attest By Signature of Contractor

\_\_\_\_\_  
Print or type Signer's name Print or type Signer's name

*If Corporation, affix Corporate Seal*

**NOTARY SEAL**

Affidavit must be notarized for Line (2)  
Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTARY SEAL**

Affidavit must be notarized for Line (3)  
Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**OTARY SEAL**

Affidavit must be notarized for Line (4)  
Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

Name of Contractor

\_\_\_\_\_

Individual Name

Trading and doing business as

\_\_\_\_\_

Full name of Firm

\_\_\_\_\_

Address as Prequalified

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Signature of Contractor, Individually

\_\_\_\_\_

Print or type Signer's name

\_\_\_\_\_

Print or type Signer's name

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Signature of Notary Public

**NOTARY SEAL**

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXECUTION OF BID**

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

**INDIVIDUAL DOING BUSINESS IN HIS OWN NAME**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

*N.C.G.S. § 133-32* and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**SIGNATURE OF CONTRACTOR**

Name of Contractor \_\_\_\_\_  
Print or type Individual Name

\_\_\_\_\_  
Address as Prequalified

\_\_\_\_\_  
Signature of Contractor, Individually

\_\_\_\_\_  
Print or type Signer's name

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print or type Signer's name

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

**NOTARY SEAL**

of \_\_\_\_\_ County.

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## DEBARMENT CERTIFICATION

Conditions for certification:

1. The prequalified bidder shall provide immediate written notice to the Department if at any time the bidder learns that his certification was erroneous when he submitted his debarment certification or explanation filed with the Department, or has become erroneous because of changed circumstances.
2. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the Contract Officer of the Department.
3. The prequalified bidder agrees by submitting this form, that he will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in NCDOT contracts, unless authorized by the Department.
4. For Federal Aid projects, the prequalified bidder further agrees that by submitting this form he will include the Federal-Aid Provision titled *Required Contract Provisions Federal-Aid Construction Contract (Form FHWA PR 1273)* provided by the Department, without subsequent modification, in all lower tier covered transactions.
5. The prequalified bidder may rely upon a certification of a participant in a lower tier covered transaction that he is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless he knows that the certification is erroneous. The bidder may decide the method and frequency by which he will determine the eligibility of his subcontractors.
6. 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 provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except as authorized in paragraph 6 herein, the Department may terminate any contract if the bidder 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 by the Federal Government.

## **DEBARMENT CERTIFICATION**

The prequalified bidder certifies to the best of his knowledge and belief, that he and his principals:

- a.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b.** Have not within a 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;
- c.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
- d.** Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- e.** Will submit a revised Debarment Certification immediately if his status changes and will show in his bid proposal an explanation for the change in status.

If the prequalified bidder cannot certify that he is not debarred, he shall provide an explanation with this submittal. An explanation will not necessarily result in denial of participation in a contract.

Failure to submit a non-collusion affidavit and debarment certification will result in the prequalified bidder's bid being considered non-responsive.

Check here if an explanation is attached to this certification.

**Contract No: 11-00-075**

**County: Division Eleven**

ACCEPTED BY THE  
DEPARTMENT OF TRANSPORTATION

---

Contract Officer

---

Date

Signature Sheet 7 (Bid - Acceptance by Department)

# LISTING OF DBE SUBCONTRACTORS

FIRM NAME AND ADDRESS	MBE OR WBE	ITEM NO.	ITEM DESCRIPTION	Sheet of	
				* AGREED UPON UNIT PRICE	**DOLLAR VOL. OF SUBLET ITEM

\* THE DOLLAR VOLUME SHOWN IN THIS COLUMN SHALL BE THE ACTUAL PRICE AGREED UPON BY THE PRIME CONTRACTOR AND THE DBE SUB-CONTRACTOR. THESE PRICES WILL BE USED TO DETERMINE THE PERCENTAGE OF DBE PARTICIPATION IN THE CONTRACT.

**\*\*DOLLAR VOLUME OF DBE SUBCONTRACTOR DBE PERCENTAGE OF TOTAL CONTRACT BID PRICE** \_\_\_\_\_

\*\* Must have entry even if figure to be entered is zero.

This form must be completed in order for the Bid to be considered responsive.

Bidders with no DBE participation must so indicate this on the form by entering the word or number zero.