

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION 13

PROPOSAL ADDENDUM 1

DATE AND TIME OF BID OPENING: JUNE 19, 2019 AT 2:00 PM

CONTRACT ID: I-26 HTR 2019

WBS ELEMENT NO.: 36030.3.GV4, 34232.3.GV8, 34232.3.5

FEDERAL AID NO.: NHPP-026-1(199)6, NHP-0026(015), NHPP-026-1(200)13

COUNTY: BUNCOMBE AND HENDERSON

TIP NO.: I-4700A, I-4400BB, I-4400C

MILES: N/A

ROUTE NO.: I-26, I-240, I-40, US 25, AND NC 191

LOCATION: VARIOUS

TYPE OF WORK: I-26 HEAVY TOWING AND RECOVERY PROGRAM

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. 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. NOTWITHSTANDING THESE LIMITATIONS ON BIDDING, THE BIDDER WHO IS AWARDED ANY FEDERAL - AID FUNDED PROJECT SHALL COMPLY WITH CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA FOR LICENSING REQUIREMENTS WITHIN 60 CALENDAR DAYS OF BID OPENING.

THIS IS A ROADWAY PROJECT.

BID BONDS ARE REQUIRED.

NAME OF BIDDER

ADDRESS OF BIDDER

PROPOSAL FOR I-26 HEAVY TOWING AND RECOVERY PROGRAM
CONTRACT No. I-26 HTR 2019 IN BUNCOMBE AND HENDERSON COUNTIES, NORTH CAROLINA

Date _____ 20 _____

**DEPARTMENT OF TRANSPORTATION,
ASHEVILLE, NORTH CAROLINA**

The Bidder has carefully examined the location of the proposed work to be known as Contract No. **I-26 HTR 2019**; has carefully examined the plans and specifications, which are acknowledged to be part of the proposal, the special provisions, the proposal, the form of contract, and the forms of contract payment bond and contract performance bond; and thoroughly understands the stipulations, requirements and provisions. The undersigned bidder agrees to bound upon his execution of the bid and subsequent award to him by the Department of Transportation in accordance with this proposal to provide the necessary contract payment bond and contract performance bond within fourteen days after the written notice of award is received by him. The undersigned Bidder further agrees to provide all necessary machinery, tools, labor, and other means of construction; and to do all the work and to furnish all materials, except as otherwise noted, necessary to perform and complete the said contract in accordance with *the 2018 Standard Specifications for Roads and Structures* by the dates(s) specified in the Project Special Provisions and in accordance with the requirements of the Engineer, and at the unit or lump sum prices, as the case may be, for the various items given on the sheets contained herein.

The Bidder shall provide and furnish all the materials, machinery, implements, appliances and tools, and perform the work and required labor to construct and complete State Highway Contract No. **I-26 HTR 2019** in **Buncombe and Henderson Counties**, for the unit or lump sum prices, as the case may be, bid by the Bidder in his bid and according to the proposal, plans, and specifications prepared by said Department, which proposal, plans, and specifications show the details covering this project, and hereby become a part of this contract.

The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, January 2018* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the construction and work included in this contract is to be done in accordance with the specifications contained in said volume, and amendments and supplements thereto, under the direction of the Engineer.

If the proposal is accepted and the award is made, the contract is valid only when signed either by the Contract Officer or such other person as may be designated by the Secretary to sign for the Department of Transportation. The conditions and provisions herein cannot be changed except over the signature of the said Contract Officer or Division Engineer.

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 an 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.

Accompanying this bid is a bid bond secured by a corporate surety, or certified check payable to the order of the Department of Transportation, for five percent of the total bid price, which deposit is to be forfeited as liquidated damages in case this bid is accepted and the Bidder shall fail to provide the required payment and performance bonds with the Department of Transportation, under the condition of this proposal, within 14 calendar days after the written notice of award is received by him, as provided in the Standard Specifications; otherwise said deposit will be returned to the Bidder.

TABLE OF CONTENTS

| | |
|--|-----|
| INSTRUCTIONS TO BIDDERS: | V |
| DEFINITIONS, ACRONYMS, AND ABBREVIATIONS: | VI |
| LEGISLATIVE AUTHORITY (QUICK CLEARANCE LAW) – NORTH CAROLINA GENERAL STATUTE § 20-161 (IN PART), SECTION (f): | VII |

PROJECT SPECIAL PROVISIONS

| | |
|--|------|
| PROJECT DESCRIPTION:..... | G-1 |
| MANDATORY PRE-BID CONFERENCE (Prequalifying To Bid): | G-1 |
| BIDS OVER LIMIT: | G-2 |
| DIVISION LET CONTRACT PREQUALIFICATION:..... | G-2 |
| BOND REQUIREMENTS: | G-2 |
| CONTRACT PERIOD: | G-2 |
| NON-EXCLUSIVE CONTRACT:..... | G-3 |
| METHOD OF AWARD: | G-3 |
| SUBLETTING OF CONTRACT: | G-3 |
| MEASUREMENT AND PAYMENT: | G-3 |
| INVOICES:..... | G-4 |
| CONTRACT TIME AND LIQUIDATED DAMAGES: | G-4 |
| NO MAJOR CONTRACT ITEMS:..... | G-4 |
| SPECIALTY ITEMS:..... | G-5 |
| FUEL PRICE ADJUSTMENT:..... | G-5 |
| DISADVANTAGED BUSINESS ENTERPRISE (DIVISIONS): | G-5 |
| CERTIFICATION FOR FEDERAL-AID CONTRACTS: | G-19 |
| U.S. DEPARTMENT OF TRANSPORTATION HOTLINE: | G-19 |
| CARGO PREFERENCE ACT: | G-20 |

STANDARD SPECIAL PROVISIONS

| | |
|---|--------|
| AVAILABILITY OF FUNDS – TERMINATION OF CONTRACTS..... | SSP-1 |
| TITLE VI AND NONDISCRIMINATION..... | SSP-2 |
| REQUIRED CONTRACT PROVISIONS FEDERAL - AID CONSTRUCTION CONTRACTS..... | SSP-11 |
| MINIMUM WAGES | SSP-20 |

TOWING AND RECOVERY PROGRAM (TRP) PROVISIONS

| | |
|---|-------|
| I-26 HEAVY TRP..... | HT-1 |
| Tasks..... | HT-1 |
| Types of Incidents | HT-1 |
| Project Limits | HT-3 |
| Performance Measures | HT-10 |
| Response Times..... | HT-10 |
| Roadway Clearance Time..... | HT-10 |
| Compensation..... | HT-11 |
| Monthly Service Fee | HT-11 |
| Intermediate Traffic Incident Response Incentive..... | HT-11 |
| Major Traffic Incident Response Incentive | HT-12 |
| Sale Under Lien..... | HT-12 |

| | |
|---|-------|
| Billing Vehicle Owners | HT-12 |
| Performance Disincentives | HT-13 |
| Response Requirements..... | HT-14 |
| Responding Personnel and Equipment | HT-14 |
| Request for Assistance | HT-14 |
| Incentive/Disincentive Free Periods | HT-14 |
| Contractor Supervision | HT-15 |
| Operation of Equipment | HT-15 |
| Inspection | HT-15 |
| Basis of Acceptance | HT-15 |
| Basis of Payment | HT-15 |
| Recovery Operations | HT-16 |
| Hours of Work..... | HT-16 |
| Traffic/Safety Mobility Areas, Etc. | HT-17 |
| Capability Requirements | HT-17 |
| Documentation of The Scene | HT-19 |
| Towing Management Software | HT-20 |
| Training Requirements | HT-20 |
| Incident After Action Reviews (AAR)..... | HT-20 |
| Accountability | HT-21 |
| Liability | HT-21 |
| Hazardous, Contaminated, and/or Toxic Material..... | HT-21 |
| Liens | HT-21 |
| Removal and Disposal Of Debris | HT-21 |
| Quality..... | HT-22 |
| Traffic Control and Work Zone Safety..... | HT-22 |
| PROJECT MANAGER AND CUSTOMER SERVICE..... | HT-23 |
| POST AWARD REVIEW MEETINGS | HT-23 |
| DISPUTE RESOLUTION | HT-23 |
| CONTRACTOR EXPERIENCE | HT-23 |
| BACKGROUND CHECKS..... | HT-24 |
| PERSONNEL | HT-24 |
| PERFORMANCE OF DRIVERS | HT-24 |
| CONTRACTOR'S REPRESENTATIONS | HT-25 |
| STORAGE FACILITY | HT-25 |
| ACCEPTANCE OF WORK | HT-26 |
| CERTIFICATION AND SAFETY LABELS..... | HT-27 |
| COMPLIANCE WITH LAW | HT-27 |
| COMPLIANCE WITH AGREEMENT..... | HT-28 |

ATTACHMENTS

| | |
|---|-----|
| ATTACHMENT A | A-1 |
| ATTACHMENT B | B-1 |
| Truck and Equipment Information | B-1 |
| Contract Equipment and Service Provider Information | B-3 |
| Liability Insurance..... | B-3 |
| Staff Qualifications and Experience Information..... | B-4 |

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 may cause the bid to be considered irregular and may be grounds for rejection of the bid.

TRADITIONAL PAPER BIDS:

1. Download the entire proposal from the Connect NCDOT website and return the entire proposal with your bid.
2. All entries on the itemized proposal sheet (bid form) shall be written in ink or typed.
3. The Bidder shall submit a unit price for every item on the itemized proposal sheet. The unit prices for the various contract items shall be written in figures. Unit prices shall be rounded off by the Bidder to contain no more than TWO decimal places.
4. An amount bid shall be entered on the itemized proposal 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" column of the form.
5. The total amount bid shall be written in figures in the proper place on the bid form. The total amount bid shall be determined by adding the amounts bid for each item.
6. Changes to 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. Do not use correction fluid, correction tape or similar product to make corrections.
7. The bid shall be properly executed on the included **Execution of Bid – Non-collusion, Debarment and Gift Ban Certification** form. All bids shall show the following information:
 - a. Name of corporation, partnership, Limited Liability Company, joint venture, individual or firm, submitting bid.
Corporations that have a corporate seal should include it on the bid.
 - b. Name of individual or representative submitting bid and position or title held on behalf of the bidder.
 - c. Name, signature, and position or title of witness.
8. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
9. 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.
10. **THE PROPOSAL WITH THE ITEMIZED PROPOSAL SHEET ATTACHED SHALL BE PLACED IN A SEALED ENVELOPE AND SHALL BE DELIVERED TO AND RECEIVED IN THE NCDOT DIVISION OFFICE, LOCATED AT 55 ORANGE STREET, BY 2:00 PM ON WEDNESDAY, JUNE 19, 2019.**
11. The sealed bid must display the following statement on the front of the sealed envelope:

QUOTATION FOR CONTRACT # I-26 HTR 2019 – I-26 HEAVY TOWING AND RECOVERY PROGRAM ON I-26, I-240, I-40, US-25, AND NC-191 IN BUNCOMBE AND HENDERSON COUNTIES TO BE OPENED AT 2:00 PM ON WEDNESDAY, JUNE 19, 2019.

ATTN: DAN JOHNSON

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

**N. C. DEPARTMENT OF TRANSPORTATION
ATTN: DAN JOHNSON
55 ORANGE STREET
ASHEVILLE, NC 28801**

DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a) After Action Review (AAR): The After Action Review (AAR) is the recreation of events that occurred in order to review and assess the process, procedures and operations performed, and to identify the response effectiveness and areas for improvement during the incident period and future incidents.
- b) APD: Asheville Police Department
- c) Buyer: The employee of the State or Other Eligible Entity that places an order with the Contractor.
- d) I-26 TRP Zone: A designated portion of the interstate system and surrounding road network that has been assigned to a qualified towing and recovery company.
- e) Contract Administrator: Representative of the *Department of Transportation* who corresponds with potential Contractors in order to identify and contract with that Contractor providing the greatest benefit to the State and who will administer this contract for the State.
- f) Delay of Process: When circumstances dictate that the Contractor performance measure times be suspended for unforeseen circumstances at the incident. If a circumstance dictates time suspension, the beginning of the time suspension and restart time shall be determined by the NCDOT.
- g) DWI Seizure: Refers to Motor Vehicles that have been seized solely pursuant to state laws that allow seizure of vehicles from persons charged with driving while impaired (DWI).
- h) E-Procurement Services: The program, system, and associated services through which the State conducts electronic procurement.
- i) Intermediate Traffic Incident (also defined in **Table**): Intermediate Traffic Incidents typically affect travel lanes. Full roadway closures might be needed for short periods during traffic incident clearance to allow incident responders to complete their tasks. Examples include:
 - a. Vehicle rollovers
 - b. Multi-vehicle crashes
 - c. Crashes involving personal injury
 - d. Truck or tractor-trailer crashes
- j) Lot: A grouping of similar products.
- k) Major Traffic Incident (also defined **Table**): Major Traffic Incidents typically involve hazardous materials, fatal traffic crashes, and other natural or man-made disasters. These traffic incidents typically involve closing part or all of the roadway facility. These scenarios will typically involve the need for heavy towing and recovery of large vehicles that present unique challenges. Examples include:
 - a. Overturned tractor-trailer
 - b. Full road closures in one direction on a multilane facility
 - c. Fatal or life-threatening injury crashes
 - d. HazMat situations that require evacuations, detours, or environmental issues
 - e. Incidents that involve structure damage
 - f. It is apparent to on-scene law enforcement and the NCDOT representative that the site conditions require specialized equipment
- l) Minor Traffic Incident (also defined in **Table**): Minor Traffic Incidents are typically disabled vehicles and minor crashes with minimal disruption to the flow of traffic. On-

scene responders are typically law enforcement, towing companies, and occasionally Incident Management Assistance Patrol (IMAP). Examples include:

- a. Disabled vehicles
- b. Roadway Debris
- c. Property damage only crashes
- d. Incidents that fall under the “Fender Bender” law
- m) NCAC: North Carolina Administrative Code
- n) NCDOT: North Carolina Department of Transportation
- o) NTP: Notice to Proceed
- p) PAR Meetings: Post Award Review Meetings
- q) Qualified Proposal: A responsive proposal submitted by a responsible Contractor.
- r) RFP: Request for Proposal
- s) Roadway Clearance Time: Roadway clearance time is measured from the Notice to Proceed to when travel lanes are confirmed clear.
- t) Safety Tow: Wrecker response to remove a disabled or wrecked vehicle from the roadway or shoulder of the contract tow zone and relocate it to a nearby location with services (e.g. gas station, restaurant, etc.), possibly outside project limits. In some instances, the vehicle’s owner or legal processor is requesting a specific wrecker company (e.g. owner’s request), does not want the vehicle removed and stored at the Contractor’s lot, and the vehicle’s owner or legal processor agrees to stay with the vehicle until the owner’s requested wrecker service arrives.
- u) SHP: State Highway Patrol
- v) State: The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- w) State Agency: Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
- x) STOC: Statewide Transportation Operation Center
- y) TIM: Traffic Incident Management
- z) TMC: Transportation Management Center
- aa) TRP: Towing and Recovery Program
- bb) Vehicle Owner: Registered or titled owner of the Motor Vehicle or someone authorized in writing by the Vehicle Owner to regain possession from the Tow Contract Provider.
- cc) Contractor: Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.

**LEGISLATIVE AUTHORITY (QUICK CLEARANCE LAW) – NORTH CAROLINA
GENERAL STATUTE § 20-161 (IN PART), SECTION (f)**

(f) An investigating law enforcement officer, with the concurrence of the Department of Transportation, or the Department of Transportation, with the concurrence of an investigating law enforcement officer, may immediately remove or cause to be removed from the State highway system any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report.

No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

PROJECT SPECIAL PROVISIONS**GENERAL****PROJECT DESCRIPTION:**

The I-26 Heavy Towing and Recovery Program (I-26 Heavy TRP) has been initiated by the NCDOT to ensure qualified towing and recovery companies safely, quickly, and adequately respond to and clear crash and/or incident scenes within the I-26 widening project influence area in a timely and efficient manner.

MANDATORY PRE-BID CONFERENCE (Prequalifying To Bid):

(7-18-06) (Rev. 6-19-19)

SPD 1-310

In order for all prospective bidders to have an extensive knowledge of the project, all prospective bidders shall attend a mandatory pre-bid conference on:

Tuesday June 11, 2019 at 1:00 PM

At

Skyland Fire Department
9 Miller Road South
Asheville, NC 28776

The pre-bid conference will include a thorough discussion of the plans, contract pay items, special provisions, etc.

Only bidders who have attended and properly registered at the above scheduled pre-bid conference and who have met all other prequalification requirements will be considered prequalified to bid on this project. A bid received from a bidder who has not attended and properly registered at the above scheduled pre-bid conference will not be accepted and considered for award.

Attendance at the pre-bid conference will not meet the requirements of proper registration unless the individual attending has registered at the pre-bid conference in accordance with the following:

- (A) The individual has signed his name on the official roster prior to the above noted time for the beginning of the conference.
- (B) The individual has written in the name and address of the company he or she represents.
- (C) Only one company has been shown as being represented by the individual attending.
- (D) The individual attending is an officer or permanent employee of the company they are representing.

Any individual arriving after the official roster has been received by the Engineer will not be eligible to bid. Attendance at any prior pre-bid conference will not meet the requirement of this provision.

If special accommodations are required for attendance, please notify Doug Hayes (mdhayes4@ncdot.gov) in advance of the conference date and time identifying the special accommodations required.

BIDS OVER LIMIT:

(08-01-16)

SPD 01-400

In accordance with GS 136-28.1(b), if the total bid amount of the contract exceeds \$5.0 million, the bid will not be considered for award.

DIVISION LET CONTRACT PREQUALIFICATION:

(07-01-14) (06-19-19)

SPD 01-410 (REV)

Any firm that wishes to bid as a prime contractor shall be prequalified as a Bidder or PO Prime Contractor prior to submitting a bid. Information regarding prequalification can be found at: <https://connect.ncdot.gov/business/Prequal/Pages/default.aspx>.

Prior to performing the work, the prime contractor and/or subcontractor(s) shall be prequalified in the work code(s) which are identified as work items in the prime contractor's construction progress schedule that they will complete themselves. Any contractor identified as working outside their expertise may be considered in default of contract.

The Contractor and all Subcontractors must be prequalified with the NCDOT for work type "099 – Other (Light Tow and Recovery)" AND "099 – Other (Heavy Tow and Recovery)".

BOND REQUIREMENTS:

(06-01-16)

102-8, 102-10

SPD 01-420A

A Bid Bond is required in accordance with Article 102-10 of the *2018 Standard Specifications for Roads and Structures*.

Contract Payment and Performance Bonds are required in accordance with Article 103-7 of the *2018 Standard Specifications for Roads and Structures*.

CONTRACT PERIOD:

(2-19-14) (06-19-19)

SPD 01-600 (REV)

This contract shall be effective for one (1) contract period (12 months) beginning on the contract date of availability at the earliest, the date of the NCDOT-issued Purchase Order, or as directed by the Engineer. Towing operations shall not start until approval/notification from the NCDOT. At the option of the Department and upon agreement by the Contractor, this contract may be extended for up to four (4) additional one (1) year periods for a maximum total of five (5) contract periods.

No changes in the terms, condition, etc. of this contract will be made when an extension of the contract is implemented. The Engineer will notify the Contractor in writing prior to renewal of the contract. The Contractor must notify the Engineer in writing within thirty (30) days of notification by the Engineer of his acceptance or rejection of this offer. Failure on the part of the Contractor to reply will be viewed as a rejection of the contract extension.

The sale or transfer of the controlling interest in a company shall immediately terminate the contract.

The Contractor shall provide an ACORD insurance certificate showing a minimum of \$5,000,000 Liability Insurance along with proof of all other legally required insurance for each contract period.

NON-EXCLUSIVE CONTRACT:

(6-1-15)

SPD 01-750

The Department may, as it deems to be in the best interest of the state and the Department of Transportation, execute more than one contract based on this proposal. The Contractor(s) understands and agrees, by signature on the Purchase Order Contract Bid Proposal, that this agreement **does not** constitute an exclusive contract. If awarded, the contracts will be executed with the lowest responsible bidders. The Department of Transportation reserves the right to make multiple awards for the services provided by this contract. Furthermore, the Department reserves the right to reject all bids received.

METHOD OF AWARD:

The award of the contract, if awarded, will be made to the lowest responsible Bidder(s) in accordance with Section 102 of the *2018 Standard Specifications for Roads and Structures*.

An I-26 Heavy TRP Prime Contractor may be awarded a maximum of two (2) zones.

In the event more than one Contractor has the lowest bid for a zone (i.e. a tie), consideration for the Contractor's ability to meet the needs and requirements of the contract, capabilities and available equipment, and references, as submitted in the completed ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT, will be used in selection.

Award contract does not relieve the Contractor of responsibilities with any other state or local rotational tow agreements.

SUBLETTING OF CONTRACT:

For the purposes of meeting capability requirements, the successful bidder shall not subcontract work under this contract to another individual or company not listed as a subcontractor on the submitted ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT without the written permission of the NCDOT. All subcontractors must be prequalified in the work code(s) which are identified as work items. The Contractor is responsible for the performance of its subcontractors.

MEASUREMENT AND PAYMENT:

The Contractor will be compensated at the contract unit price for monthly service fees bid on ATTACHMENT A and the performance incentives and disincentives as defined elsewhere in this contract.

INVOICES:

The Contractor shall submit invoices within fifteen (15) calendar days following the end of each month in which work was performed.

Invoices (including incentive claims) shall be submitted to:

North Carolina Department of Transportation
Kevin Sexton
55 Orange Street
Asheville, NC 28801

Invoices shall be submitted to the NCDOT Contract Administrator in hard copy on the Contractor's official letterhead stationery and shall be identified by a unique invoice number. All invoice backup reports and spreadsheets shall be provided in electronic format.

Invoices shall bear the correct contract number and purchase order number to ensure prompt payment. The Contractor's failure to include the correct purchase order number may cause delay in payment.

Invoices shall include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Contractor, and the original signature of the Contractor's project manager.

CONTRACT TIME AND LIQUIDATED DAMAGES:

(6-19-19)

108

SPD

The date of availability for this renewable contract is **August 15, 2019**.

The completion date for this renewable contract is **August 14, 2020**.

The liquidated damages for this contract will be in accordance to the performance disincentives as defined elsewhere in this contract.

NO MAJOR CONTRACT ITEMS:

(2-19-02) (Rev. 8-21-07)

104

SP1 G31

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

SPECIALTY ITEMS:

(7-1-95)(Rev. 1-17-12)

108-6

SP1 G37

Items listed below will be the specialty items for this contract (see Article 108-6 of the 2018 Standard Specifications).

| Line # | Description |
|--------|---------------------------------|
| 1 | Monthly Service Fee (Buncombe) |
| 2 | Monthly Service Fee (Henderson) |

FUEL PRICE ADJUSTMENT:

No Fuel Price Adjustment will be applied to any fees or incentives throughout the life of the contract.

DISADVANTAGED BUSINESS ENTERPRISE (DIVISIONS):

(10-16-07)(Rev.2-19-19)

102-15(J)

SP1 G62

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Additional DBE Subcontractors - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

Committed DBE Subcontractor - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of award, but not greater than the advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

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

Goal Confirmation Letter - Written documentation from the Department to the bidder confirming the Contractor's approved, committed DBE participation along with a listing of the committed DBE firms.

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

Replacement / Substitution – A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) DBE firm.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE 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.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

Forms and Websites Referenced in this Provision

DBE Payment Tracking System - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project.
<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

DBE-IS Subcontractor Payment Information - Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only.
<https://connect.ncdot.gov/business/Turnpike/Documents/Form%20DBE-IS%20Subcontractor%20Payment%20Information.pdf>

RF-1 DBE Replacement Request Form - Form for replacing a committed DBE.
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Request%20Form.pdf>

SAF Subcontract Approval Form - Form required for approval to sublet the contract.
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Subcontract%20Approval%20Form%20Rev.%202012.zip>

JC-1 Joint Check Notification Form - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.
<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

Letter of Intent - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the estimated amount (based on quantities and unit prices) listed at the time of bid.

<http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

Listing of DBE Subcontractors Form - Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.

[http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/08%20DBE%20Subcontractors%20\(Federal\).docx](http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/08%20DBE%20Subcontractors%20(Federal).docx)

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.

<http://connect.ncdot.gov/business/SmallBusiness/Documents/DBE%20Subcontractor%20Quote%20Comparison%20Example.xls>

DBE Goal

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

Disadvantaged Business Enterprises **0.0** %

- (A) *If the DBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.
- (B) *If the DBE goal is zero*, the Contractor shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to the Department.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the Department and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link. [https:// www.ebs.nc.gov/VendorDirectory/default.html](https://www.ebs.nc.gov/VendorDirectory/default.html)

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

Listing of DBE Subcontractors

At the time of bid, bidders shall submit all DBE participation that they anticipate to use during the life of the contract. Only those identified to meet the DBE goal will be considered committed,

even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the Department's overall race-neutral goal. Only those firms with current DBE certification at the time of bid opening will be 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 the electronic submittal file.

- (1) Submit the names and addresses of DBE firms identified to participate in the contract. If the bidder uses the updated listing of DBE firms shown in the electronic submittal file, the bidder may use the dropdown menu to access the name and address of the DBE firm.
- (2) Submit 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.
- (3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the DBE goal.

(B) Paper Bids

- (1) *If the DBE goal is more than zero,*
 - (a) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE Subcontractors* 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.
 - (b) If bidders have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word "None" or the number "0." 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 rejected.
 - (c) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm

is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the DBE goal.

- (2) *If the DBE goal is zero*, entries on the *Listing of DBE Subcontractors* are not required, however any DBE participation that is achieved during the project shall be reported in accordance with requirements contained elsewhere in the special provision.

DBE Prime Contractor

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE bidder and any other DBE subcontractors will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE bidder will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A or B listed under *Listing of DBE Subcontractor* just as a non-DBE bidder would.

Written Documentation – Letter of Intent

The bidder shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the bidder's commitment to use the DBE in the contract. This documentation shall be submitted on the Department's form titled *Letter of Intent*.

The documentation shall be received in the office of the Engineer no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 10:00 a.m. on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Contractor shall submit evidence of good faith efforts, completed in its entirety, to the Engineer no later than 2:00 p.m. on the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 10:00 a.m. on the next official state business day.

Submission of Good Faith Effort

If the bidder fails to meet or exceed the DBE goal the apparent lowest responsive bidder shall submit to the Department documentation of adequate good faith efforts made to reach the DBE goal.

One complete set and **three (3)** copies of this information shall be received in the office of the Engineer no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 10:00 a.m. on the next official state business day.

Note: 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. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Department will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
 - (1) Where appropriate, break out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- (2) Negotiate 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 (2nd and 3rd tier subcontractors).
- (C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (D)
 - (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
- (F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.
- (G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within 7 days from the bid opening the Business Opportunity and Work Force Development Unit at BOWD@ncdot.gov to give notification of the bidder's inability to get DBE quotes.

- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonable good faith efforts to meet the DBE goal.

In addition, the Department may take into account the following:

- (1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the DBE goal.
- (2) The bidders' past performance in meeting the DBE goals.
- (3) The performance of other bidders in meeting the DBE goal. For example, when the apparent successful bidder fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the DBE goal, but meets or exceeds the average DBE participation obtained by other bidders, the Department may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

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 to the Department that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

Non-Good Faith Appeal

The Engineer will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the Engineer. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting DBE Participation Toward Meeting DBE Goal

- (A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed 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) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through

submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal 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, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department. 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.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement 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.

(E) Suppliers

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 a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

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) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are

determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) DBE Utilization

The Contractor may count toward its contract goal 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 any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

- (1) 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.
- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) 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.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- (5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives

as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE contract requirement.

- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement 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. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

DBE Replacement

When a Contractor has relied on a commitment to a DBE subcontractor (or an approved substitute DBE subcontractor) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE subcontractor for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an affiliate.

The Contractor must give notice in writing both by certified mail and email to the DBE subcontractor, with a copy to the Engineer of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the DBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution. If the DBE subcontractor objects to the intended termination/substitution, the DBE, within five (5) business days must advise the Contractor and the Department of the reasons why the action should not be approved. The five-day notice period shall begin on the next business day after written notice is provided to the DBE subcontractor.

A committed DBE subcontractor may only be terminated after receiving the Department's written approval based upon a finding of good cause for the proposed termination and/or substitution. For purposes of this section, good cause shall include the following circumstances:

- (a) The listed DBE subcontractor fails or refuses to execute a written contract;
- (b) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (c) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

- (d) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (e) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (f) The listed DBE subcontractor is not a responsible contractor;
- (g) The listed DBE voluntarily withdraws from the project and provides written notice of withdrawal;
- (h) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (j) Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of bid may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time of bid to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE 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) A list of reasons why DBE quotes were not accepted.
- (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 the SAF (*Subcontract Approval Form*) has been received by the Department, the Department will not require the 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 goal requirement.
- (2) When a committed DBE is decertified prior to the Department receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the 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 DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (see A herein for required documentation).

All requests for replacement of a committed DBE firm shall be submitted to the Engineer for approval on Form RF-1 (*DBE Replacement Request*). If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months

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 the 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 and Documentation

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a DBE subcontractor. The Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

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

Reporting Disadvantaged Business Enterprise Participation

The Contractor shall provide the Engineer with an accounting of payments made to all DBE firms, including material suppliers and 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:

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

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 being approved for work on future projects until the required information is submitted.

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

At any time, the Engineer can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments through the Department's DBE Payment Tracking System.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2018 Standard Specifications* may be cause to disqualify the Contractor.

CERTIFICATION FOR FEDERAL-AID CONTRACTS:

(3-21-90)

SP1 G85

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.

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:

(11-22-94)

108-5

SP1 G100

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.

CARGO PREFERENCE ACT:

(2-16-16)

Privately owned United States-flag commercial vessels transporting cargoes are subject to the Cargo Preference Act (CPA) of 1954 requirements and regulations found in 46 CFR 381.7. Contractors are directed to clause (b) of 46 CFR 381.7 as follows:

- (b) Contractor and Subcontractor Clauses. "Use of United States-flag vessels: The contractor agrees-

" (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

STANDARD SPECIAL PROVISION
AVAILABILITY OF FUNDS – TERMINATION OF CONTRACTS

(5-20-08)

Z-2

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 Subarticle 108-13(D) of the *2018 Standard Specifications*.

STANDARD SPECIAL PROVISION**TITLE VI AND NONDISCRIMINATION:**

(6-28-77)(Rev 6/19/2018)

Z-6

Revise the *2018 Standard Specifications* as follows:

Replace Article 103-4(B) with the following:

The North Carolina Department of Transportation is committed to carrying out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts.

The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all North Carolina Department of Transportation (NCDOT) contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

(1) Title VI Assurances (USDOT Order 1050.2A, Appendix A)

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

(a) Compliance with Regulations

The contractor (hereinafter includes consultants) shall comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(c) Solicitations for Subcontractors, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(d) Information and Reports

The contractor shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and shall permit access to its books,

records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor shall so certify to the Recipient or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance:

In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it and/or the FHWA may determine to be appropriate, including, but not limited to:

- (i) Withholding payments to the contractor under the contract until the contractor complies; and/or
- (ii) Cancelling, terminating, or suspending a contract, in whole or in part.

(f) Incorporation of Provisions

The contractor shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(2) Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the USDOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, sex, age, or disability (including religion/creed or income-level, where applicable), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

- (a) During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. To comply with this section, the prime contractor shall:
 - 1. Post NCDOT's Notice of Nondiscrimination and the Contractor's own Equal Employment Opportunity (EEO) Policy in conspicuous locations accessible to all employees, applicants and subcontractors on the jobsite.
 - 2. Physically incorporate the required Title VI clauses into all subcontracts on federally-assisted and state-funded NCDOT projects, and ensure inclusion by subcontractors into all lower-tier subcontracts.

3. Required Solicitation Language. The Contractor shall include the following notification in all solicitations for bids and requests for work or material, regardless of funding source:

“The North Carolina Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. In accordance with other related nondiscrimination authorities, bidders and contractors will also not be discriminated against on the grounds of sex, age, disability, low-income level, creed/religion, or limited English proficiency in consideration for an award.”
 4. Physically incorporate the FHWA-1273, in its entirety, into all subcontracts and subsequent lower tier subcontracts on Federal-aid highway construction contracts only.
 5. Provide language assistance services (i.e., written translation and oral interpretation), free of charge, to LEP employees and applicants. Contact NCDOT OCR for further assistance, if needed.
 6. For assistance with these Title VI requirements, contact the NCDOT Title VI Nondiscrimination Program at 1-800-522-0453.
- (b) Subrecipients (e.g. cities, counties, LGAs, planning organizations) may be required to prepare and submit a Title VI Plan to NCDOT, including Title VI Assurances and/or agreements. Subrecipients must also ensure compliance by their contractors and subrecipients with Title VI. (23 CFR 200.9(b)(7))
 - (c) If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (23 CFR 200.9(b)(15))
 - (d) The Contractor is responsible for notifying subcontractors of NCDOT’s External Discrimination Complaints Process.
 1. Applicability

Title VI and related laws protect participants and beneficiaries (e.g., members of the public and contractors) from discrimination by NCDOT employees, subrecipients and contractors, regardless of funding source.
 2. Eligibility

Any person—or class of persons—who believes he/she has been subjected to discrimination based on race, color, national origin, Limited English Proficiency (LEP), sex, age, or disability (and religion in the context of employment, aviation, or transit) may file a written complaint. The law also prohibits intimidation or retaliation of any sort.
 3. Time Limits and Filing Options

Complaints may be filed by the affected individual(s) or a representative and must be filed no later than 180 calendar days after the following:

 - (i) The date of the alleged act of discrimination; or

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

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

- North Carolina Department of Transportation, Office of Civil Rights, Title VI Program, 1511 Mail Service Center, Raleigh, NC 27699-1511; toll free 1-800-522-0453
- Federal Highway Administration, North Carolina Division Office, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919-747-7010
- US Department of Transportation, Departmental Office of Civil Rights, External Civil Rights Programs Division, 1200 New Jersey Avenue, SE, Washington, DC 20590; 202-366-4070

4. Format for Complaints

Complaints must be in writing and signed by the complainant(s) or a representative, and include the complainant's name, address, and telephone number. Complaints received by fax or e-mail will be acknowledged and processed. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. Complaints will be accepted in other languages, including Braille.

5. Discrimination Complaint Form

Contact NCDOT Civil Rights to receive a full copy of the Discrimination Complaint Form and procedures.

6. Complaint Basis

Allegations must be based on issues involving race, color, national origin (LEP), sex, age, disability, or religion (in the context of employment, aviation or transit). "Basis" refers to the complainant's membership in a protected group category.

**TABLE 103-1
COMPLAINT BASIS**

| Protected Categories | Definition | Examples | Applicable Nondiscrimination Authorities |
|--|--|--|--|
| Race and Ethnicity | An individual belonging to one of the accepted racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group | Black/African American, Hispanic/Latino, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, White | Title VI of the Civil Rights Act of 1964; 49 CFR Part 21; 23 CFR 200; 49 U.S.C. 5332(b); 49 U.S.C. 47123. (<i>Executive Order 13166</i>) |
| Color | Color of skin, including shade of skin within a racial group | Black, White, brown, yellow, etc. | |
| National Origin (<i>Limited English Proficiency</i>) | Place of birth. Citizenship is not a factor. (<i>Discrimination based on language or a person's accent is also covered</i>) | Mexican, Cuban, Japanese, Vietnamese, Chinese | |
| Sex | Gender. The sex of an individual. | Women and Men | 1973 Federal-Aid Highway Act; 49 U.S.C. 5332(b); 49 U.S.C. 47123. |

| | | | |
|--|--|--|---|
| | <i>Note:</i> Sex under this program does not include sexual orientation. | | |
| Age | Persons of any age | 21-year-old person | Age Discrimination Act of 1975 49 U.S.C. 5332(b); 49 U.S.C. 47123. |
| Disability | Physical or mental impairment, permanent or temporary, or perceived. | Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic | Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990 |
| Religion (in the context of employment) <i>(Religion/ Creed in all aspects of any aviation or transit-related construction)</i> | An individual belonging to a religious group; or the perception, based on distinguishable characteristics that a person is a member of a religious group. In practice, actions taken as a result of the moral and ethical beliefs as to what is right and wrong, which are sincerely held with the strength of traditional religious views. <i>Note:</i> Does not have to be associated with a recognized religious group or church; if an individual sincerely holds to the belief, it is a protected religious practice. | Muslim, Christian, Sikh, Hindu, etc. | Title VII of the Civil Rights Act of 1964; 23 CFR 230; FHWA-1273 Required Contract Provisions. <i>(49 U.S.C. 5332(b); 49 U.S.C. 47123)</i> |

(3) Pertinent Nondiscrimination Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
 - (i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
 - (m) Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq., Pub. L. 88-352), (prohibits employment discrimination on the basis of race, color, religion, sex, or national origin).
- (4) **Additional Title VI Assurances**
- **The following Title VI Assurances (Appendices B, C and D) shall apply, as applicable*
- (a) **Clauses for Deeds Transferring United States Property (1050.2A, Appendix B)**
The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4.

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the North Carolina Department of Transportation (NCDOT) will accept title to the lands and maintain the project constructed thereon in accordance with the North Carolina General Assembly, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the NCDOT all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the North Carolina Department of Transportation (NCDOT) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the NCDOT, its successors and assigns.

The NCDOT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the NCDOT will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

(b) Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program (1050.2A, Appendix C)

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

- (i.) In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
 3. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. *
- (*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)
- (c) **Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program (1050.2A, Appendix D)**
- The following clauses will be included in deeds, licenses, permits, or similar instruments/ agreements entered into by the North Carolina Department of Transportation (NCDOT) pursuant to the provisions of Assurance 7(b):
1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
 2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, the NCDOT will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *

3. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, the NCDOT will there upon revert to and vest in and become the absolute property of the NCDOT and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

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

FHWA - 1273 Electronic Version - May 1, 2012

Z-8

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

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).
The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.
Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.
Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).
2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
 - a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.
8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
 - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
 - a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
 - b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

- a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents

thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. **Withholding.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Payrolls and basic records**
 - a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 - b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for

this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

4. Apprentices and trainees

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

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

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

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

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

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

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

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

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs

are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
 - a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

* * * * *

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

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

2. Instructions for Certification - Lower Tier Participants:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies

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

- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

STANDARD SPECIAL PROVISION
MINIMUM WAGES
GENERAL DECISION NC190087 01/04/2019 NC87

Z-087

Date: January 4, 2019

General Decision Number: NC190087 01/4/2019 NC87

Superseded General Decision Numbers: NC20180100

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

| | | |
|-----------|----------|-----------|
| Alexander | Caldwell | Henderson |
| Buncombe | Catawba | Madison |
| Burke | Haywood | |

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract for calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR.5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2) – (60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number
0

Publication Date
01/04/2019

SUNC2014-002 11/13/2014

| | Rates | Fringes |
|--------------------------------|-------|---------|
| BLASTER | 20.93 | |
| CARPENTER | 13.48 | |
| CEMENT MASON/CONCRETE FINISHER | 14.40 | |
| ELECTRICIAN | | |
| Electrician | 18.79 | 2.62 |
| Telecommunications Technician | 14.67 | 1.67 |

| | Rates | Fringes |
|---|-------|---------|
| IRONWORKER | 12.48 | |
| LABORER | | |
| Asphalt Raker and Spreader | 11.76 | |
| Asphalt Screed/Jackman | 15.38 | .08 |
| Carpenter Tender | 10.50 | |
| Cement Mason/Concrete Finisher Tender | 11.04 | |
| Common or General | 11.90 | |
| Guardrail/Fence Installer | 13.09 | |
| Pipelayer | 12.87 | |
| Traffic Signal/Lighting Installer | 15.33 | .22 |
| PAINTER | | |
| Bridge | 20.67 | |
| POWER EQUIPMENT OPERATORS | | |
| Asphalt Broom Tractor | 10.00 | |
| Bulldozer Fine | 16.28 | |
| Bulldozer Rough | 14.51 | |
| Concrete Grinder/Groover | 19.20 | |
| Crane Boom Trucks | 18.19 | |
| Crane Other | 18.69 | |
| Crane Rough/All-Terrain | 19.19 | |
| Drill Operator Rock | 15.00 | |
| Drill Operator Structure | 21.07 | |
| Excavator Fine | 16.02 | |
| Excavator Rough | 14.67 | |
| Grader/Blade Fine | 19.86 | |
| Grader/Blade Rough | 15.12 | |
| Loader 2 Cubic Yards or Less | 12.38 | |
| Loader Greater Than 2 Cubic Yards | 17.91 | |
| Material Transfer Vehicle (Shuttle Buggy) | 15.44 | |
| Mechanic | 17.86 | |
| Milling Machine | 15.08 | |
| Off-Road Hauler/Water Tanker | 11.95 | |
| Oiler/Greaser | 15.05 | |
| Pavement Marking Equipment | 11.99 | |
| Paver Asphalt | 17.84 | .08 |
| Paver Concrete | 18.20 | |
| Roller Asphalt Breakdown | 15.00 | .08 |
| Roller Asphalt Finish | 16.08 | .07 |
| Roller Other | 12.51 | .03 |
| Scraper Finish | 12.86 | |
| Scraper Rough | 13.83 | |
| Slip Form Machine | 20.38 | |
| Tack Truck/Distributor Operator | 14.81 | .02 |
| TRUCK DRIVER | | |
| GVWR of 26,000 Lbs or Greater | 13.65 | |
| GVWR of 26,000 Lbs or Less | 12.48 | |

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

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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

PROJECT SPECIAL PROVISIONS

TOWING AND RECOVERY PROGRAM (TRP)

I-26 HEAVY TRP:

Tasks

The I-26 Heavy TRP Contractor will be notified by the NCDOT that they have a request for a tow. **The Tower must have a supervisor/representative on site within 20 minutes after official notification from the NCDOT who is capable of determining and calling for the necessary tow and recovery equipment. Notice to Proceed (NTP) may be provided by the Law Enforcement Officer or the NCDOT. NTP can be given before all necessary equipment arrives.** The Tower will be required to clear all lanes of travel and remove all debris/vehicles/cargo from all lanes within the Maximum Roadway Clearance Times shown in *Table 2* on page HT-10.

The general incident timeline for tow requests are anticipated to follow the timeline shown in *Figure 1A*.

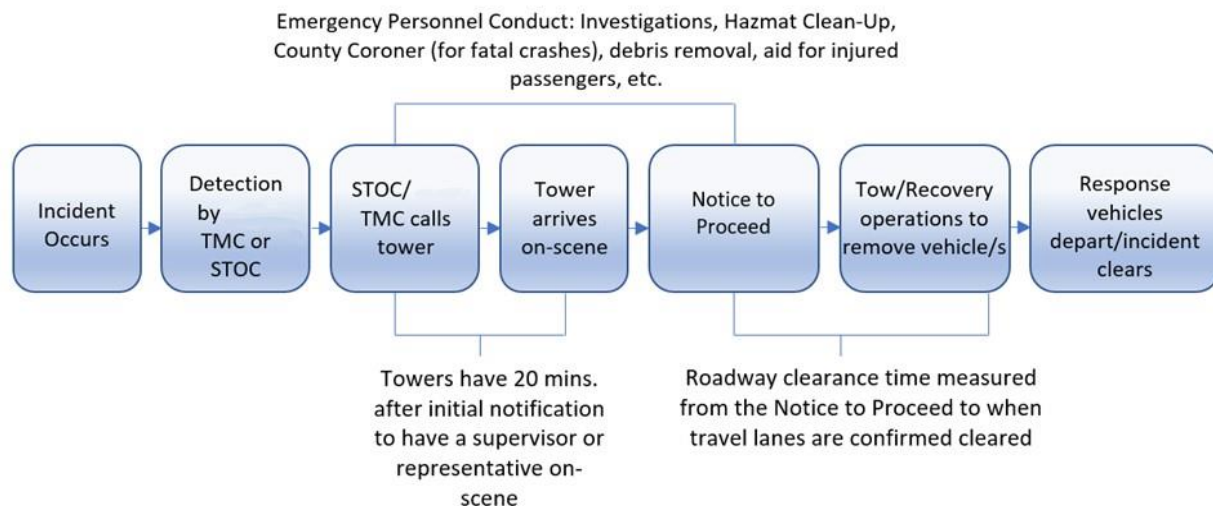


Figure 1A: Incident Timeline for Tow Requests

Types of Incidents

North Carolina General Statute §20-161 (Stopping on highway prohibited; warning signals; removal of vehicles from public highway) does not differentiate between Heavy/Commercial Vehicles and Passenger Vehicles and therefore is applicable to all incident types.

Incidents will be categorized into one of the three categories as described in *Table .*

Table 1 Incident Types

| Incident Type | Description |
|---------------------|--|
| Minor | Minor traffic incidents are typically disabled vehicles and minor crashes with minimal disruption to the flow of traffic. On-scene responders are typically law enforcement, towing companies, and occasionally Incident Management Assistance Patrol (IMAP). |
| | <i>Examples:</i> <ul style="list-style-type: none"> • Disabled vehicles • Roadway debris • Typically property damage only crashes • Incidents that fall under the “Fender Bender” law • Single vehicle fatalities that are off the roadway and do not disrupt traffic for an extended time period |
| Intermediate | Intermediate traffic incidents typically affect travel lanes for a time period. Full roadway closures might be needed for short periods during traffic incident clearance to allow traffic incident responders to accomplish their tasks. |
| | <i>Examples:</i> <ul style="list-style-type: none"> • Vehicle rollovers • Multi-vehicle crashes • Crashes involving personal injury • Truck or tractor-trailer crashes |
| Major | Major traffic incidents are typically traffic incidents involving hazardous materials, fatal traffic crashes involving numerous vehicles, and other natural or man-made disasters. These traffic incidents typically involve closing all or part of a roadway facility. |
| | <i>Examples:</i> <ul style="list-style-type: none"> • Overturn-turned tractor trailer • Fatal or life-threatening injury crashes involving numerous vehicles and lane closures • Incidents that require on-scene crash investigations • HAZMAT (any placarded substance) situations that require evacuations, detours, or environmental issues (spillage into a waterway or drainage system) • Incidents that involve structural damage • Unforeseeable incidents • Note: After incident reviews will be required for all major incidents |

The Contractor will be required to perform specialized towing within the defined project limits. The types of incidents and conditions the Contractor may be required to perform in include, but are not limited to, the following:

- Tractor-trailer combinations
- Trucks over 16,000 pounds
- Large Recreational Vehicles, Motor Homes, Motor Coaches
- Buses capable of carrying 16 or more passengers
- Aircraft
- Geographical challenges (tight spaces, minimal shoulder, slopes, heavy brush, etc.)
- Weather related (closing the road/bridges)
- Unusually large cargo (large yacht-type boats, mobile homes, etc.)

- Incidents unable to be cleared by previous responders using conventional and/or light-duty rotator towing equipment
- Unusual challenges or circumstances affecting the roadway network
- Significant off-loading or cargo spill (or potential for spill) with clearance challenges. Example cargo includes lumber and livestock
- A single incident involving multiple US DOT 5-8 vehicles that have collided with one another causing significant damage
- Excessive vehicle weight beyond Large Vehicle Wrecker capacity

The Contractor must be able to respond to and clear incidents that have a mix of vehicle types (e.g. a single crash involving two passenger cars, a loaded tractor trailer, and a box truck).

Project Limits

The Contractor is expected to be able to respond to incidents within the project limits and associated interchange ramps as defined in “Project Limits” below. The intent of this project’s towing ordinance is to apply to the mainline as well as all ramps. Vehicles and cargo located on the project ramps will be towed in accordance with the mainline towing procedure.

The project limits have been divided into two (2) zones as described below. Zone maps and project limits are shown on the following pages.

Buncombe Heavy: (*Figure 1*)

- I-40 West of Exit 44 (US-19/23) to East of Exit 51 (US-25 Alternate) including all ramps along I-40
- I-26/I-240 from Exit 1B (NC-191/Brevard Road) to East of Exit 40 (NC-280/Airport Road) and all ramps along I-26
- NC-191/Brevard Road between I-26/I-240 and the entrance ramp of I-26 East
- US-25 between Irwin Street (just North of I-40 Interchange) to Alliance Page Road near Buncombe and Henderson County line
- Buncombe Heavy Tower will also be required to respond to incidents on the Overpass of NC-191/Brevard Road, the Underpass of NC-146/Long Shoals Road, and the Overpass of NC-280/Airport Road at I-26 Interchanges

Henderson Heavy: (*Figure 2*)

- I-26 between East of the Exit 40 (NC-280/Airport Road) entrance ramp and Exit 54 (US-25) including all ramps along I-26
- US-25 from Alliance Page Road to the interchange of I-26 and US-25 at Exit 54 in Henderson County

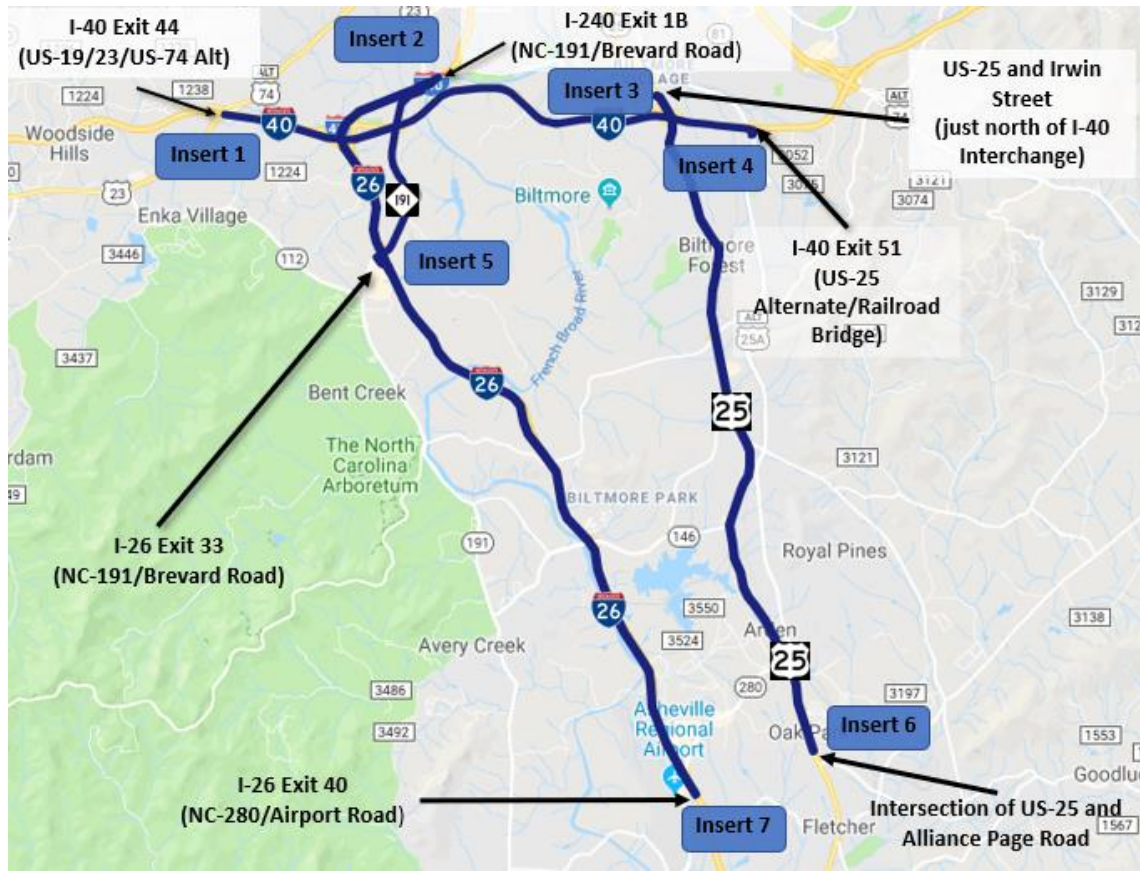
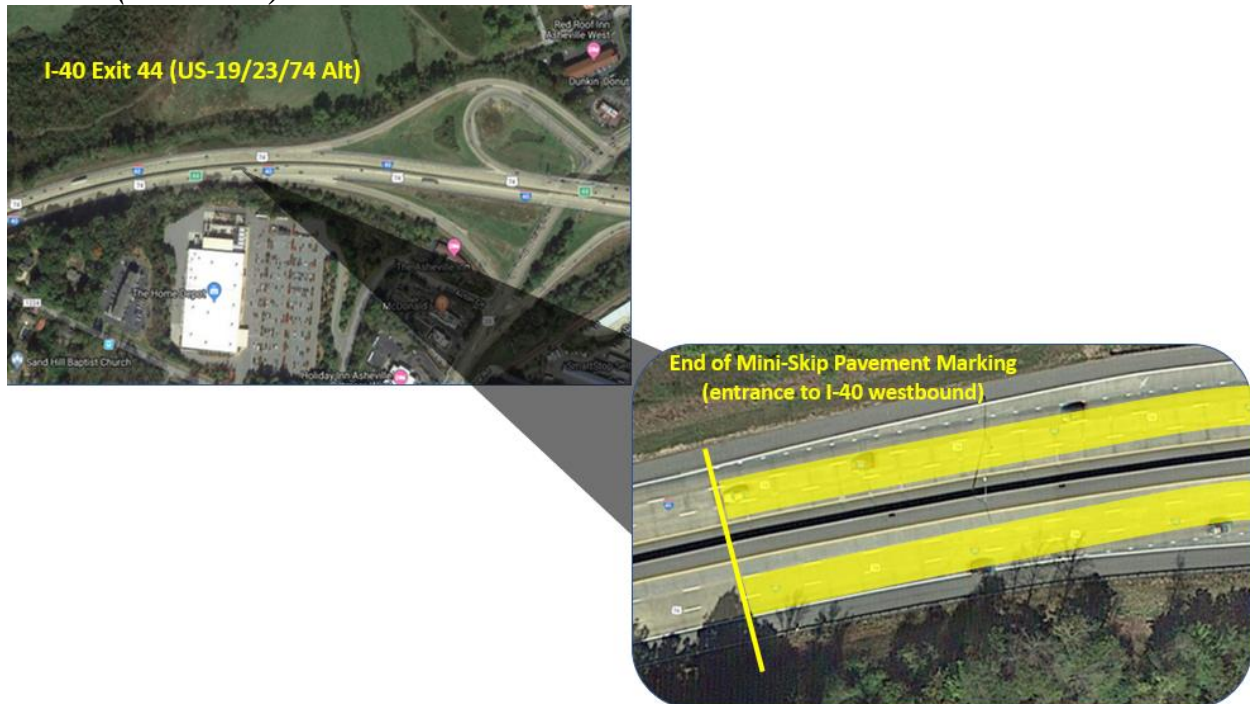


Figure 1: Buncombe Heavy Coverage Area

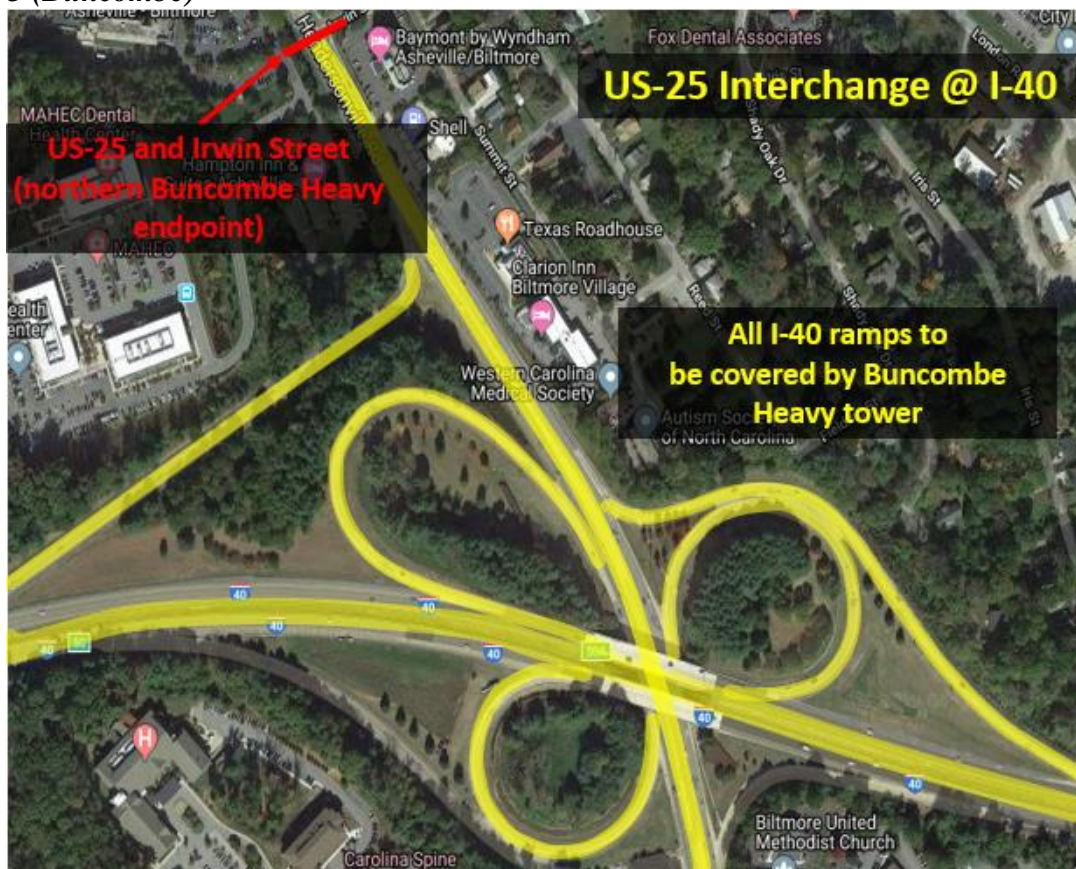
Insert 1 (Buncombe)



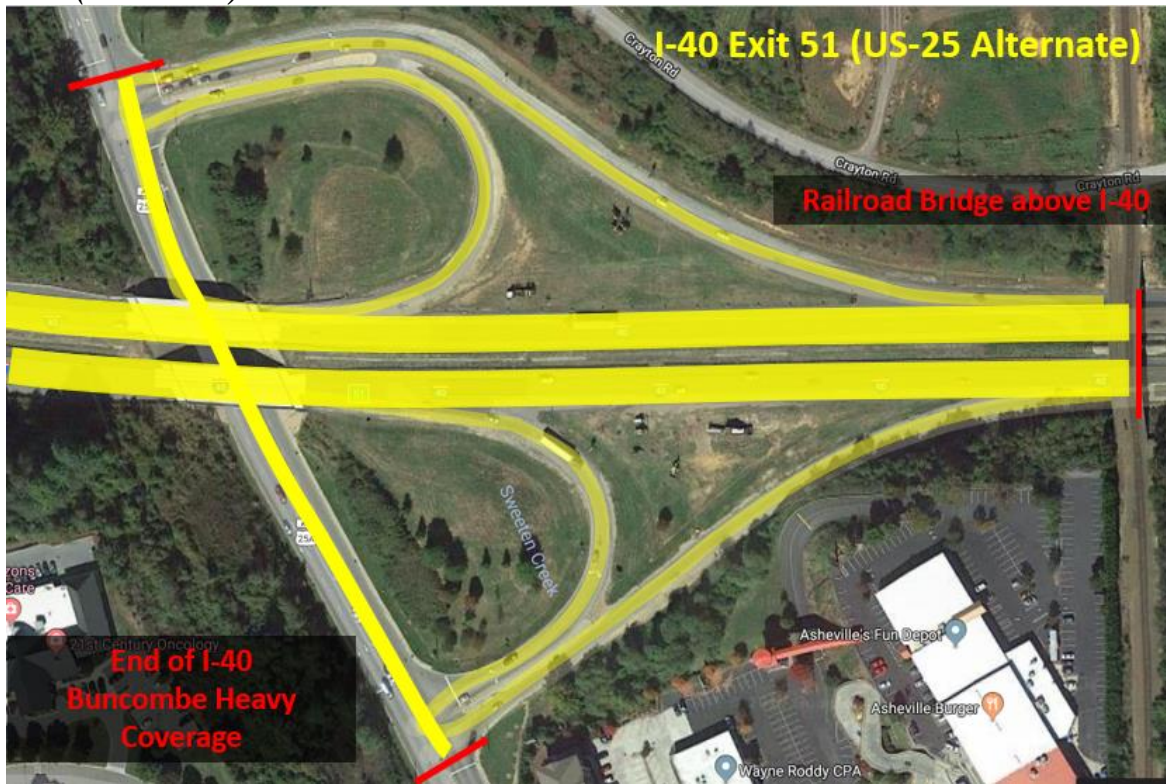
Insert 2 (Buncombe)



Insert 3 (Buncombe)



Insert 4 (Buncombe)



Insert 5 (Buncombe)



Insert 6 (Buncombe)



Insert 7 (Buncombe)

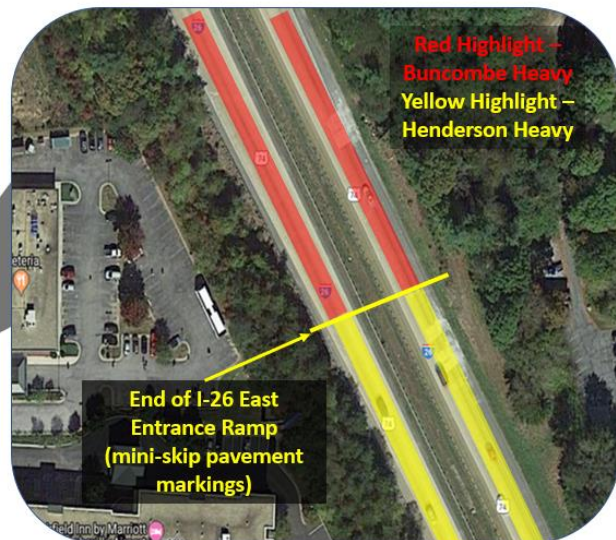
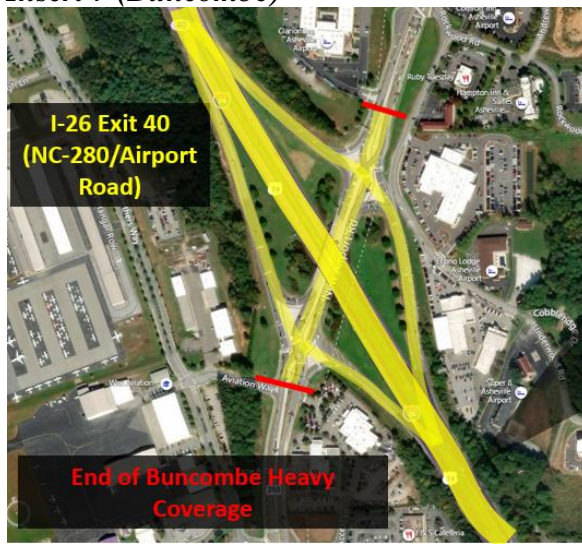




Figure 2: Henderson Heavy Coverage Area

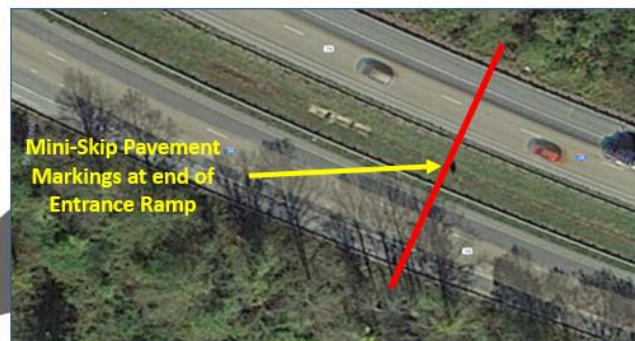
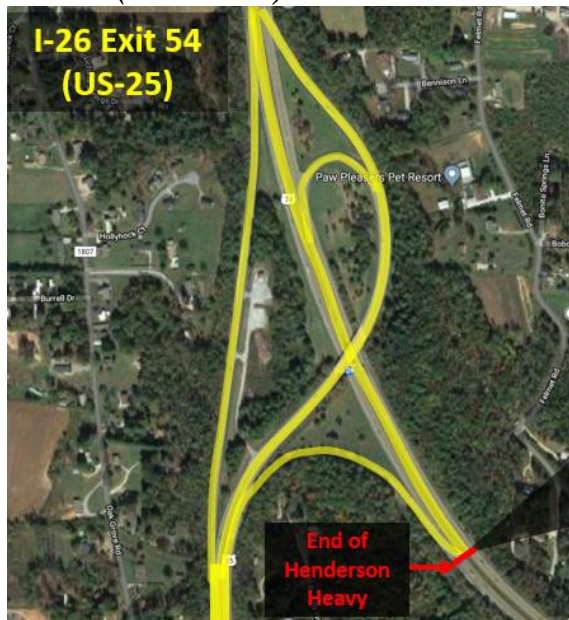
Insert 1 (Henderson)



Insert 2 (Henderson)



Insert 3 (Henderson)



Performance Measures

The incident type for each event will be determined by the NCDOT.

Performance measures apply to roadway clearance within the Contractor's pre-assigned area. In addition to the sub-sections below, the performance measure requirements and compensation mechanisms are summarized in the following table.

Table 2 - Performance Measure Requirements and Compensation

| Incident Type | Maximum Response Time | Incentive Threshold | Incentive Amount | Maximum Roadway Clearance Time | Disincentive |
|---------------|-----------------------|-------------------------------|---|--------------------------------|--|
| Minor | 20 minutes | N/A | N/A (Monthly Service Fee – Bid Item) | 30 minutes | <ul style="list-style-type: none"> • 1st offense: 10% Reduction in Monthly Service Fee • 2nd offense: 20% Reduction in Monthly Service Fee • 3rd offense: Contract termination |
| Intermediate | 20 minutes | ≤ 60 Minute Roadway Clearance | \$2,500 per incident | 90 minutes | \$10 for every minute after 60 minutes |
| Major | 20 minutes | ≤ 90 Minute Roadway Clearance | \$5,000 per incident | 120 minutes | \$10 for every minute after 90 minutes |

The Contractor is not eligible for an incentive when the travel lanes are cleared by the NCDOT. The Contractor is only eligible for an incentive when they, or their subcontractor(s), clear the incident from the travel lanes.

Response Times

The Contractor must have a supervisor/representative on site within 20 minutes after official notification from the STOC or TMC who is capable of determining and calling for the necessary equipment. NTP can be given before all necessary equipment arrives.

The Contractor will be measured on response time throughout the life of the contract.

Roadway Clearance Time

Contractors are measured on roadway clearance. All evidence of the crash or incident must be removed from all travel lanes. Evidence of the crash or incident includes response and towing vehicles and equipment.

Roadway Clearance Time is measured from the Notice to Proceed to when travel lanes are confirmed clear by the NCDOT. The Contractor is responsible for accurately documenting and logging all applicable roadway clearance times.

Minor Traffic Incidents: The Roadway Clearance Time for Minor Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be within 30 minutes of receiving NTP.

Intermediate Traffic Incidents: The Roadway Clearance Time for Intermediate Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be within 90 minutes of receiving NTP.

Major Traffic Incidents: The Roadway Clearance Time for Intermediate Traffic Incidents as described in Section DEFINITIONS, ACRONYMS, AND ABBREVIATIONS shall be 120 minutes or less.

Compensation

In addition to the sub-sections below, the pay items are summarized in Table 2 above.

Monthly Service Fee

The Contractor agrees to be paid a monthly service fee to remove abandoned vehicles, perform Safety Tows (defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS on page VII), and other tows and recoveries where a billable customer may not be present. This fee is fixed regardless of the number of Safety Tows and/or abandoned vehicles towed in the month.

Each bidder must submit a completed ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE with their proposed monthly service fee(s).

Intermediate Traffic Incident Response Incentive

Notwithstanding Sections Billing Vehicle Owners and Monthly Service Fee above, companies will receive an incentive if the Contractor is able to meet performance targets for Intermediate Traffic Incidents as set forth below. Under no circumstances will a company receive incentives corresponding to an incident not called to by the NCDOT.

See the definition for “Intermediate Traffic Incident” in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS.

NCDOT agrees to pay an **Intermediate Response and Mobilization Incentive of \$2,500 per incident** in the following situation:

1. The Contractor’s supervisor/representative is on scene within 20 minutes of a request for service by the NCDOT; **AND**
2. The Contractor clears the road within 60 minutes of receiving NTP; **AND**
3. Has the approval of the NCDOT verifying conditions 1 and 2 above were met.

Note: NCDOT documented “notice to proceed” and “all lanes open” times recorded by the NCDOT will be used to verify the request for Intermediate Response and Mobilization Incentive payment. It is imperative that these “milestone” times are communicated from the scene to the TMC.

Major Traffic Incident Response Incentive

Notwithstanding Sections Billing Vehicle Owners and Monthly Service Fee above, companies will receive an incentive if the Contractor is able to meet performance targets for Major Traffic Incidents as set forth below. Under no circumstances will a company receive incentives corresponding to an incident not called to by the NCDOT.

See the definition for “Major Traffic Incident” in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS.

NCDOT agrees to pay a **Major Response and Mobilization Incentive of \$5,000 per incident** in the following situation:

1. The Contractor’s supervisor/representative is on scene within 20 minutes of a request for service by the NCDOT; **AND**
2. The Contractor clears the road within 90 minutes of receiving NTP; **AND**
3. Has the approval of the NCDOT verifying conditions 1 and 2 above were met.

Note: NCDOT documented “notice to proceed” and “all lanes open” times recorded at the NCDOT TMC will be used to verify the request for Major Response and Mobilization Incentive payment. It is imperative that these “milestone” times are communicated from the scene by the tower to the TMC.

Sale Under Lien

No motor vehicle shall be sold by any person, firm or corporation claiming a mechanic's or storage lien except as approved by state law.

Billing Vehicle Owners

The Contractor agrees to seek compensation for actual vehicle recovery and towing services performed from the owner of the vehicle or their insurance company per any existing agreements or contracts.

Towing, storage, and related fees are to be consistent with industry practice. Contractors shall bill consistent with prior billable service for similar work and such prior billable services shall be subject to review by NCDOT representative. Contractor cost to meet the capabilities and requirements of this contract shall be figured into the Monthly Service Charge Bid for this contract. Any excessive costs to meet the contract’s requirements shall not be passed on to customer’s towing and recovery billing.

An individual (registered owner, legal possessor, or Contractor) shall not be charged a storage fee for days that he or she could not retrieve his or her vehicle as a result of an action or omission on the part of the Contractor, such as where the wrecker service was not open, did not answer the telephone, or a representative was not available to release the vehicle.

Storage fees shall not begin to accrue until the next calendar day following the initial towing of the vehicle.

Wrecker service towing fees for recovery and transport of vehicles after 5:00 p.m. and on weekends shall not exceed the towing fees by more than 10 percent for recovery and transport of vehicles charged during regular business hours.

A mileage fee shall not apply to any Safety Tows. Mileage fees can only be charged if the customer requests the vehicle to be towed to a location other than the Tow Contract Provider's storage lot and outside of the Contract Tow Zone. If a mileage fee is warranted, the driver shall inform the owner, Contractor, or legal possessor of the vehicle of any additional charge for mileage prior to towing.

The individual price list for each respective wrecker service shall be made available to customers upon request. Copies of the approved price list shall be maintained within each wrecker and shall be given to the owner, Contractor, or legal possessor of a vehicle being towed as a result of a NCDOT call by the wrecker driver, if the owner, Contractor, or legal possessor of the vehicle being towed is present at the scene. Prices indicated on this form shall be the maximum amount that will be charged for a particular service; however, this does not prevent charges of a lesser amount for said service.

The Contractor agrees that no claim for compensation will be made to NCDOT, NCSHP or any Public Safety agency or their employees or agents for any recovery or towing services, unless the Contractor is permitted to do so by NCDOT.

Performance Disincentives

If the Contractor is unable to meet the agreed performance standards, the NCDOT may, at the discretion of the NCDOT, apply financial penalties.

In addition to the paragraphs below, the performance disincentives are summarized in **Table 2** on page HT-10.

For minor traffic incidents, as defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS, the Monthly Service Fee may be reduced for one month, in increments of 10%. For example, after the 1st offense a 10% penalty and after the 2nd offense a 20% penalty. After 3 offenses of not being able to meet the performance requirements for minor traffic incidents, the contract may be immediately terminated.

For intermediate and major traffic incidents, as defined in DEFINITIONS, ACRONYMS, AND ABBREVIATIONS, if the COMPANY has not completed the removal and clearance of the

vehicles, nonhazardous cargo, debris and vehicle fluids within the Maximum Roadway Clearance time shown in **Table 2** on page HT-10, a disincentive of **\$10.00 per minute (or \$600/hour)** may be assessed for each additional minute (or hour) it takes the Contractor to completely open the roadway to traffic.

Offenses will be reviewed on a case-by-case basis to account for any extenuating circumstances. The following exemptions are allowed as part of the Liquidated Damages Provisions:

1. Incidents involving trucks hauling a Hazardous Material cargo that require special precautions by direction of the incident commanders.
2. Incidents involving damage to the roadway infrastructure that prohibit reopening the travel lanes.
3. Upon direction of the NCDOT.

Upon the combined third offense of not meeting the performance requirements for intermediate and major traffic incidents, AND performance requirements are being met on less than 90% of the combined intermediate and major traffic incidents, the contract may be immediately terminated.

Response Requirements

A Contractor/tow truck driver shall not respond to a call assigned to another Contractor or reassign a call to another tow Contractor, unless requested to do so by the NCDOT. Nothing would preclude the assigned Contractor/tow truck driver from responding to an incident to ascertain if additional assistance or equipment is required.

Responding Personnel and Equipment

Only the Contractor, their employees, or subcontractors shall respond to a call (e.g., tow truck driver bringing significant others, family members, friends, pets, etc., is not allowed). Exceptions would be transporting required personnel to a major incident, or responding with a tow truck driver trainee with an approved driver. This restriction does not apply to the occupants of a vehicle that is subsequently towed from an incident scene.

Request for Assistance

There may be times when the Contractor/tow truck driver assigned the initial call, may require assistance from another NCDOT Contractor. The approved request shall be routed through the NCDOT.

Only one bill shall be presented to the owner or Contractor of the towed/recovered vehicle and cargo for the work performed.

Incentive/Disincentive Free Periods

During the first 3-weeks of towing operations and special events (e.g. weather events, Emergency Operations Center activations, etc.), as determined by the Tow Contract Administrator, incentives

and disincentives may not be applied. During these periods, the tower is expected to have the same level of availability and staffing and perform within the spirit of the contract.

Contractor Supervision

NCDOT reserves all rights and responsibilities to make decisions affecting the orderly and efficient management and administration of the I-26 Heavy TRP.

While work is actually being performed, the Contractor shall have available on the project one competent individual who has been authorized to act in a supervisory capacity over all work. The individual who has been so authorized shall be experienced in the type of work being performed and is to be fully capable of managing, directing, and coordinating the work; of reading and thoroughly understanding the contract; and of receiving and carrying out directions from the NCDOT or its authorized representatives in English. This individual shall attend all Post Award Review Meetings and After Action Reviews (absences must be approved by the Tow Contract Administrator).

Operation of Equipment

The Contractor shall operate the equipment in a safe manner so as not to create a hazard to the traveling public. Insofar as possible, the work is to be a continuous operation with no lane closures. The equipment shall not be parked within the State Highway System right of way overnight or at other times when work has been suspended, unless approved by the NCDOT.

Inspection

All work shall be subject to inspection by the NCDOT at any time. Routinely, the NCDOT or designated representative will make inspections of the completed work. It will be the responsibility of the Contractor to submit documentation, including copies of logbooks, of work accomplished on a frequency to be determined by the NCDOT.

Basis of Acceptance

It is intended that the work will be completed in a neat, workmanlike manner. These specifications and special provisions are end-result oriented. Although the main purpose of this contract is to accomplish tow and recovery operations on State roadways as approved by the NCDOT, the Contractor will encounter objects larger than what a vacuum or mechanical sweeper can remove. Objects such as, but not limited to, tires, tire parts, hub caps, large stones, boxes, tree limbs, wood, cable, etc. may be encountered by the Contractor. At such time the Contractor shall remove these objects by hand and dispose of at approved site if vacuum or mechanical means are unsuccessful.

Basis of Payment

Being called by the NCDOT to tow a vehicle does not create a contract with or obligation on the part of the NCDOT or NCDOT personnel to pay any fee or towing charge except when towing a vehicle:

- a) owned by the NCDOT;
- b) that is later forfeited to the NCDOT; or
- c) that a court determines that the NCDOT wrongfully authorized the tow and orders the NCDOT to pay transportation and storage fees.

Incentives, measured as provided above, will be paid for at the contract unit price.

When assistance from another I-26 TRP tow and recovery service has been requested, only the initial responding service may make a claim for incentive.

Incentives and incident categories are not based on the class of tow truck utilized or responding to the call.

Recovery Operations

Recovery operations and their associated times and traffic control plans require NCDOT agreement. Recovery operations must minimize the time lanes are closed or narrowed. Lane closures and road closures for recovery operations will be reviewed on a case-by-case basis.

The contractor must provide proposed times and traffic control plans to the NCDOT for approval before recovery operations may begin. The plans should minimize impacts to traffic and may need to occur during off-peak hours, including at night. Recovery operations may not begin without NCDOT approval.

Hours of Work

The Contractor must provide a telephone number that is answered 24 hours a day, seven (7) days a week, 365 days a year. Equipment and employees to operate wreckers must also be available for response 24 hours a day, seven (7) days a week, 365 days a year.

Towing and recovery may be required at any time or day including nights, weekends, and public holidays.

Towing and recovery may be required during special events on a given night or period of time. Operations may be required to be performed during adverse weather such as heavy rain, fog, high winds, snow and ice storms, and other inclement weather conditions.

Traffic/Safety Mobility Areas, Etc.

The Contractor will be required to work in project specific locations that will be selected to aid in maintaining the movement of traffic affected by the I-26 Widening Project.

The Contractor will perform towing and recovery operations to minimize incident duration on high volume roadways and/or detour routes.

All towing operations shall be accomplished “with” or in the same direction as the traffic flow. The Contractor **SHALL NOT** tow against opposing traffic.

The towing operations shall not cause material to be thrown into a live travel lane. Material shall not be pushed or winched into a live travel lane.

The Contractor shall perform all operations to minimize negative impact to the movement of people and goods.

The Contractor further agrees that sufficient operable towing vehicles and personnel will be available to adequately service the special towing needs occasioned by special events requiring towing, including but not limited to, declared emergencies or construction projects, as determined by the NCDOT or designee. The Contractor shall have their full complement of resources and equipment in anticipation of:

- impending adverse weather;
- weekday peak hours; and
- seasonal and/or special events traffic.

Capability Requirements

In order to ensure that the I-26 Heavy TRP program remains efficient and effective, as well as ensuring that designated Zones are covered by qualified Contractors, the NCDOT may grant on a case by case basis the authority to participate in the program with exemptions to equipment requirements. Performance measures shall still be met if equipment exemptions are granted.

The Contractor shall furnish equipment of sufficient type, capacity and quantity to safely and efficiently perform the towing work as specified in NC General Statute (GS) §20-161. The Contractor shall display the company name on each piece of equipment.

Each wrecker service vehicle shall be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service. Dealer tags shall not be displayed on wreckers that respond to rotation calls.

The Contractor must demonstrate to the satisfaction of the NCDOT that the towing equipment to be used in the work is in good working condition and suitable for performing the work required. This includes records of NCDOT annual inspections. The Contractor may be subject to an initial inspection and unannounced inspections after award by the NCDOT.

Support vehicle, including safety trucks, debris transfer vehicles, pick-up trucks and any other vehicles used in towing operations, shall be equipped with revolving or strobe lights as required on the tow truck.

The safety of the public and the convenience of traffic shall be regarded as prime importance.

Signs, lights, safety and other traffic control devices are not a pay item, but are considered incidental to other contract items and the Contractor is expected to provide these items.

The Contractor's towing and recovery *team* identified in the contract must have the knowledge and capability to perform the following expedited roadway clearance and incident scene safety procedures:

- Respond to three (3) multiple-vehicle crashes at once.
- Single lane up-righting of a loaded tractor trailer (wreckers and the casualty within a 24 foot lateral space).
- Multiple techniques for the relocation of overturned heavy trucks, including tractor trailers from travel lanes while loaded (100 feet minimum).
- Safe work zone setup (for recovery operations) utilizing, at a minimum, advanced warning signs and an arrow board and traffic cones as outlined in the Manual on Uniform Traffic Control Devices (MUTCD).
- Containment and mitigation of accidental discharges of motor vehicle fluids (non-cargo)— including application of traction enhancement material.
- Clearance of non-hazardous spilled cargo and debris at crash scenes (utilizing equipment with a bucket and a broom).
- Recovery of a vehicle in areas with steep slopes.
- Uprighting a vehicle, or shock sensitive or fragile cargo, safely and securely within tight areas (e.g. not accessible by heavy equipment) or challenging topographical conditions.

To meet the above capabilities, in addition to the equipment required under NCSHP Rotation Wrecker Service Regulations, it is preferred that the Contractor have access to the following equipment at a minimum:

- Hydraulic Rotator (40-ton minimum)
- Two Hydraulic Wrecker Units combined, that equal up to 60 tons
- Tilt bed, hydraulic, lowboy semi-trailer (Landoll or equivalent) with a minimum 35-ton capacity, minimum 40 feet bed, and a winch with 75 ft. of 5/8" cable (or better) with Tractor.
- Rollback/Flatbed Wrecker
- Small Vehicle Wrecker
- Support Unit with Equipment
- Trailer Dolly
- Wheel loader, Backhoe or Skid Steer
- Digital Camera with the ability to time and date stamp images
- Minimum Five (5) person response team
- Airbag recovery system
- Extended reach knee boom (i.e. Underlift) on Heavy Hydraulic or Rotator

Each wrecker must be equipped with, at a minimum:

- Legally required lighting
- Tires
- Broom
- Shovel
- Wrecking Bar or Auto Power Machine
- Recovery Lights or Spot Lights on Rear of Wrecker
- Fire Extinguisher
- Reflectorized Safety Vest (for driver)
- Brake
- Axe
- Bolt Cutter
- Flares – Six (6)
- Snatch Blocks – two (2)
- Oil Dry (5 lb. bag)
- Amber Flashing Light
- Current State Inspection
- Air-Line Connector and Hose (Large Vehicle Wrecker Only)
- Light Hook-Up and Line (Large Vehicle Wrecker Only)
- Current City Map

All recovery trucks and equipment that will be used to qualify for the I-26 TRP must be listed in **ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT**. The Contractor must own or have access to (i.e. lease or sub-contract) all equipment listed. *Consideration will be given for equipment listed beyond the preferred minimums.*

All wreckers shall be equipped with the necessary equipment to perform emergency towing and recovery according to industry standards. All towing wreckers shall have dollies, brooms, shovels, and fire extinguishers. The Contractor shall comply with all laws, rules, and regulations of any governmental agency having jurisdiction over the Contractor's business including, but not limited to, licensing and minimum safety requirements.

Documentation of the Scene

The Contractor is expected to record times for roadway clearance performance measures by capturing digital images of the beginning, middle, and end of the incident by utilizing a digital camera that can time and date stamp each image.

The Contractor is expected to maintain the images on file and provide them upon request to law enforcement and the NCDOT.

All records relating to towing of vehicles pursuant to this Agreement shall be maintained by the Contractor at the Contractor's business address for a period of two (2) years after the completion of the I-26 Reconstruction. All records, including computer source data for those records, will be

subject to inspection and copying. All records shall be kept in a temperature and humidity controlled environment, free of insects, rodents, rodent excrement, and water damage. Records are to be provided to NCDOT upon request.

The I-26 TRP Contractor shall be responsible for the following:

- Comply with NTP process (established processes will be covered in training and kick-off meeting).
- Maintain any forms used in scene documentation in their records of the incident. In the case of an AAR of the incident, these forms will be used to confirm that all parties involved concurred with current laws and regulations.
- Forward an electronic copy of any forms to the NCDOT Contract Administrator within 10 business days of the incident.
- Take scene photos with time/date stamped: upon arrival; at NTP; during scene clearing; and after lanes are clear of all debris and/or vehicles. In the case of an AAR of the incident, these photos may be requested from the Contractor. These photos shall not be published via (internet, media, etc.)

Towing Management Software

The Contractor shall use towing management software (e.g. Towbook). The Contractor shall provide NCDOT administrator access rights at no cost to the NCDOT. Access must be provided through an internet interface.

Training Requirements

The Contractor shall ensure tow truck drivers responding to calls initiated by the NCDOT (i.e. STOC or TMCs) are competent and have completed approved tow truck driver training programs.

The awarded contractor and all personnel, including subcontractors, will be required to attend annual NCDOT pre-approved industry-specific training for a minimum of 4-hours after the award of the contract.

Additional required training may be required throughout the contract. If training needs are identified, the NCDOT Tow Contract Administrator will provide notice to the tow providers and assist with training coordination.

Incident After Action Reviews (AAR)

The ongoing process of incident evaluation allows responders to assess current program performance and identify future training and policy needs. After Action Reviews and Reports of major and significant incidents provides an opportunity to review the effectiveness of actions and procedures in their application during actual incidents. It is also an opportunity to review the overall quality of the services provided to the customers at the incident. This review is extremely valuable in improving procedures and future incident operations.

AARs are a valuable tool that does not seek to lay blame or point fingers, but to have a roundtable discussion of first responder partner responses and development of best practices. TRP activations by their very nature and potential unusual nature may be subject to an AAR.

At least one Contractor representative must **attend all AAR meetings** for incidents for which they responded.

Accountability

The Contractor will be required to participate in a kick-off and initiation meeting(s) held by the NCDOT. This may include a communications meeting with NCSHP and/or local law enforcement.

The Contractor shall submit documentation, including photos, of performance on all incidents within ten (10) business days of the incident.

At least one representative will be required to attend all Project Review meetings held by the NCDOT for their assigned zone. Additional information on Project Review meeting is provided on page HT-23 under "POST AWARD REVIEW MEETINGS".

Liability

The Contractor shall maintain a Liability Insurance Policy at the industry standard of a minimum \$1 million while participating in the program.

Hazardous, Contaminated, and/or Toxic Material

Hazardous materials consist of those materials and amounts that are required by law to be handled by local Hazardous Materials Teams. Removal of debris, other than hazardous materials, must be completed as part of the service and shall not be charged as an extra service provided.

Liens

If service, other than towing, recovery, and load salvage, is canceled by the vehicle's registered owner or agent, no lien shall arise for the service unless the Contractor has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to relevant laws and regulations.

The Contractor shall not attempt to take possession of a vehicle in order to establish a lien for any non-towing services performed, or initiated and subsequently canceled.

Removal and Disposal of Debris

Removal and disposal of all materials shall be the responsibility of the Contractor. Disposal of the materials shall be done in either a public or private sanitary landfill approved by the State of North Carolina Solid Waste Management Division.

This contract shall be immediately terminated if the Contractor is found guilty of illegal dumping. Work will be suspended if contractor is charged with illegal dumping.

Stockpiling of debris on the right-of-way shall not be permitted.

Quality

Completed work shall be clean and free of all accumulated debris immediately after towing as determined by the NCDOT.

Any deficiency in the contractor's performance shall be corrected by the Contractor no later than seventy-two (72) hours following receipt of such notice. At the discretion of the NCDOT, immediate clean up and/or removal of debris may be required.

The NCDOT shall maintain a daily log of completed work and will verify completion of the Contractor's work with the Contractor upon completion of a cycle.

Traffic Control and Work Zone Safety

Any traffic control must be provided by an NCDOT prequalified contractor. Any traffic control as part of recovery operations must be set up using the current edition of the Manual of Uniform Traffic Control Devices (MUTCD) and NCDOT compliant traffic controls.

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 their 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.

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 sub-article 108-7(2) of the *2018 Standard Specifications*.

No direct payment shall be made for traffic control and work zone safety items, as they shall be considered incidental to other contract items.

PROJECT MANAGER AND CUSTOMER SERVICE:

The Contractor shall designate and make available to the NCDOT a project manager. The project manager shall be the NCDOT's point of contact for contract related issues and issues concerning performance, progress review, scheduling, and service.

POST AWARD REVIEW MEETINGS:

The Contractor, at the request of the NCDOT, shall meet periodically (e.g., monthly) with the NCDOT for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Contractor and NCDOT performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

DISPUTE RESOLUTION:

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Contractor shall be submitted in writing to the NCDOT's Contract Administrator for resolution. A claim by the NCDOT shall be submitted in writing to the Contractor's Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

CONTRACTOR EXPERIENCE:

The Contractor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. The Contractor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

The Owner/Operations Manager must have a minimum of five (5) years of experience with the clearance of large scale incidents.

Employees working for the Owner/Operations Manager are not required to have a minimum number of years' experience.

The Contractor (and its subcontractors) holds the appropriate license issued by the North Carolina Department of Transportation for the vehicles servicing this agreement and has provided a listing of said vehicles in ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT.

BACKGROUND CHECKS:

Any personnel, agent, or subcontractor of the Contractor performing services under any contract arising from this contract may be required to undergo a background check at the expense of the Contractor, if so requested by the NCDOT.

The Contractor shall notify the NCDOT of any arrest and/or conviction of a tow truck driver, manager, or the Contractor (including subcontractors), within 24-hours of the arrest and/or conviction, whichever occurs first. *Failure to make notification may result in removal from the I-26 Heavy TRP.*

PERSONNEL:

The Contractor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the NCDOT Contract Administrator. Contractor shall notify the NCDOT Contract Administrator of any desired substitution, including the name(s) and references of Contractor's recommended substitute personnel. The NCDOT will approve or disapprove the requested substitution in a timely manner. The NCDOT may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the NCDOT may request acceptable substitute personnel or terminate the contract services provided by such personnel.

The Contractor shall maintain a current list of drivers and provide upon request the full name, current address, date of birth, and photocopy of valid driver's license, work VISA, or other INS documentation for all wrecker drivers and owner(s).

If the Operations Manager ceases to be employed by the company, the Agreement shall be immediately suspended until a new Operations Manager is approved by the NCDOT.

The NCDOT Contract Administrator shall be notified immediately by a Contractor upon a manager's or tow truck driver's separation from the rotation tow program.

The Contractor shall not allow any person to continue to be employed as a wrecker driver servicing this agreement who has been the Contractor of a wrecker service for which an agreement with the NCDOT, NCSHP, Buncombe County, City of Asheville, or any other Municipal tow rotations has been terminated for cause within the five (5) year period preceding the effective date of this agreement.

PERFORMANCE OF DRIVERS:

Completion and/or documentation of a tow truck driver's training does not indicate a sufficient level of competence. Tow truck drivers shall perform all towing and recovery operations in the safest and most expedient manner possible.

Tow truck drivers shall wear an identifiable uniform displaying the company and the driver's name while engaged in I-26 Heavy TRP tow operations.

Tow truck drivers shall wear appropriate warning garments during daylight and hours of darkness in compliance with the guidelines contained in the Federal Code of Regulations, Title 23, Highways, Chapter 1, Federal Highway Administration, Department of Transportation, Part 632, Worker Visibility, which requires high-visibility personal protective safety clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004.

CONTRACTOR'S REPRESENTATIONS:

The Contractor warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry.

The Contractor agrees that it will not enter any agreement with a third party that may abridge any rights of the NCDOT under this Contract. The Contractor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the NCDOT. Names of any third party Contractors or subcontractors of Contractor may appear for purposes of convenience in Contract documents; and shall not limit Contractor's obligations hereunder. The Contractor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Contractor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract.

Unless otherwise expressly provided herein, the Contractor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Contractor to provide and deliver the Services and Deliverables.

The Contractor warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

STORAGE FACILITY:

Upon request of the vehicle owner, the Contractor shall return personal property stored in or with a vehicle, whether or not the towing, repair, or storage fee on the vehicle has been or will be paid.

Personal property, includes any goods, wares, freight, or any other property having any value whatsoever other than the functioning vehicle itself.

Unless notified by law enforcement that the vehicle is being preserved as evidence, the Contractor shall allow insurance adjusters access to and allow inspection of the vehicle at any time during the Contractor's normal working hours.

Wrecker service facilities and equipment, including vehicles, office, telephone lines, office equipment and storage facilities shall not be shared with or otherwise located on the property of another wrecker service (unless that wrecker service has been identified as a subcontractor) and shall be independently insured. Vehicles towed at the request of the NCDOT shall be placed in the storage owned and operated by the Contractor. The Contractor shall allow vehicles to be retrieved between the hours of 8:00 a.m. and 5:00 p.m., seven days a week, excluding state holidays.

The storage facility for vehicles towed must be located within Buncombe or Henderson Counties and properly zoned for the storage of vehicles. This requirement may be met through the use of sub-contractors. Bidders using sub-contractors to meet this requirement, must note this in the "Contract Equipment and Service Provider Information" section of the required forms located in ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT.

Towed vehicles must be stored for thirty-one (31) days before being moved to storage outside of Buncombe and Henderson Counties unless authorized by the towed vehicle's owner

In the event a law enforcement officer seizes a vehicle pursuant to the DWI Seizure provisions of Chapter 20 of the North Carolina General Statutes, the vehicle shall be towed to the Service Provider's Storage Lot and shall be released only to the State of North Carolina's authorized towing service designated by the Department of Public Instruction. If release to the Vehicle Owner is authorized by court order, impounded vehicles towed under this section will be subject to statutory towing and storage fees and the owner shall pay these fees and charges.

ACCEPTANCE OF WORK:

In the event performance criteria for any work or deliverables is not described in contract documents or work orders hereunder, the NCDOT shall have the obligation to notify Contractor, in writing within ten (10) calendar days following completion of such work or deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable.

Payment by the NCDOT shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review and evaluation as applicable of the work or deliverable. Final acceptance and payment is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the NCDOT may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

CERTIFICATION AND SAFETY LABELS:

PRODUCT SAFETY LISTING: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished.

A list of acceptable marks is available on the Division of Purchase and Contract website at: <https://ncdoa.s3.amazonaws.com/s3fs-public/pandc/Inspection/SafetyLabelsChart-30Apr15.pdf>.

The CE label is not acceptable. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. **All costs for product and industry certifications and listings required to supply conforming products to the NCDOT as described in this contract are the sole responsibility of the Contractor.** The certification or safety label shall be affixed and be visible on the OUTSIDE of the all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection.

COMPLIANCE WITH LAW:

The Contractor and employees shall, at all times, comply with federal, state, and local laws and ordinances.

Any conviction of the Contractor or employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a sexual offense, a drug-related offense, felony driving while under the influence of alcohol or drugs, misdemeanor driving while under the influence of alcohol or drugs; or acts of moral turpitude should be cause for suspension or removal of an Contractor/employee, or denial of an Contractor/employee's application, or termination of the agreement.

NCDOT personnel and Contractors and their employees and subcontractors, shall not be offered nor accept gratuities. No Contractor or their employees and subcontractors shall accept any gratuities from a repair shop for the delivery of a vehicle, not owned by the repair shop or tow company, for the purpose of storage or repair.

The Contractor shall not, in the performance of this Contract, favor any automobile or truck body shop, or paint shop businesses. The Contractor hereby represents that it has no connection, association, affiliation or financial interest in any automobile or truck body shop or paint shop business. If the Contractor acquires any financial interest in such a business after the Contract has been awarded, the Contractor shall notify the NCDOT immediately in writing. A violation of this

provision during the term of the Contract shall be grounds for immediate termination of this Contract.

A Contractor shall satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the Contractor's custody. The NCDOT is not liable for damage or loss which occurs while the vehicle is in the Contractor's custody.

A Contractor or employee arrested/charged for a violation involving any of the above crimes will be suspended until the case is adjudicated.

COMPLIANCE WITH AGREEMENT:

The Contractor agrees, as a condition of inclusion in the I-26 Heavy TRP, to comply with the terms and conditions of the agreement. Furthermore, the Contractor or Contractor's agent agrees that failure to comply with these terms and conditions shall be cause for disciplinary action (i.e., written reprimand, suspension, termination, or denial of an application).

A violation of the equipment requirements, related to safety, shall be cause for immediate suspension. The suspension shall remain in effect until the suspension period is completed and the NCDOT has inspected the equipment and concluded the Contractor is in compliance.

A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck may be cause for disciplinary action, including immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when towing.

A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension. The suspension shall remain in effect until the suspension period is completed and proof of reimbursement to the aggrieved customer has been provided to the NCDOT.

Allowing an incompetent tow truck driver to respond to a NCDOT call shall be cause for disciplinary action of the Contractor.

A Contractor responding with a tow truck driver to a SHP, APD, Henderson County Sheriff's Office, other local law enforcement, or NCDOT call who has not been approved by the NCDOT, shall be cause for disciplinary action of the Contractor.

Tow Contractors shall not videotape or photograph a scene unless it is for official use by the tow company for business related reasons. The on-scene investigating officer or incident commander shall make the determination when a tow Contractor may record a scene for tow related business reasons. In the event a tow Contractor is determined to be in violation of this provision, they will immediately surrender any such recording device to an officer of the SHP.

ATTACHMENT A: PROPOSED MONTHLY SERVICE FEE

The NCDOT does not guarantee or imply any specific number of tows or other service that will occur during the life of this Contract.

Refer to “Monthly Service Fee” Section for further details on services included under the Service Fee. ***Prospective bidders must include a proposed monthly Service Fee for removing abandoned vehicles and Safety Tows and will be taken into consideration through the evaluation process.***

| Line # | Item | Amount Bid |
|--------|---------------------------------|------------|
| 1 | Monthly Service Fee (Buncombe) | \$ |
| 2 | Monthly Service Fee (Henderson) | \$ |

Subtotal Monthly Service Fees Lines 1-2: \$ _____

****TOTAL BID FOR ALL ZONES: \$ _____***

Total Bid For All Zones = 12 (Months) x Subtotal Monthly Service Fees Buncombe and Henderson Zones

***Bid bond = 5% (0.05) x TOTAL BID FOR ALL ZONES**

Contractor: _____

Address: _____

Phone: _____ Federal Id: _____

Contractor's License Number: _____

Authorized Agent: _____ Title: _____

Signature: _____ Date: _____

Witness: _____ Title: _____

Signature: _____ Date: _____

ATTACHMENT B: I-26 HEAVY TOW AND RECOVERY PROGRAM SERVICE AGREEMENT

Truck and Equipment Information

List all recovery trucks and equipment that will be used to qualify for the I-26 Heavy TRP. The Contractor should own or have access to (i.e. lease or sub-contract) all equipment listed to meet the required capabilities of the contract listed on page 17. Fill out information for each vehicle or item. Space is provided for additional vehicles and items. Consideration will be given for equipment listed above the preferred minimum.

Each wrecker shall be equipped with legally required lighting and other safety equipment to protect the public and the equipment must be in good working order.

Each wrecker listed shall be equipped with the equipment required and the equipment shall be operating properly at all times.

| Vehicle/Equipment Description | Make, Model and Year | Boom (or winch) capacity | Wrecker Tag# | VIN# |
|--|----------------------|--------------------------|--------------|------|
| Hydraulic Rotator (40-ton min.) | | | | |
| Heavy Hydraulic (i.e. Large Vehicle) Wrecker | | | | |
| Heavy Hydraulic (i.e. Large Vehicle) Wrecker | | | | |
| Tilt bed, hydraulic, lowboy semi-trailer (Landoll or equivalent) | | | | |
| Tandem-axle road tractor with a sliding fifth wheel | | | | |
| Rollback/Flatbed Wrecker | | | | |
| Small Vehicle Wrecker | | | | |
| Support Unit with Equipment | | | | |
| Wheel Loader, Backhoe, or Skid Steer | | | | |

Contract Equipment and Service Provider Information

Where applicable, list your sub-contracted service providers.

| Contract Equipment | Contract Company Name, Address, and Phone Number | Contract Location (where equipment is deployed from) |
|--|--|--|
| A traffic control contractor that can provide and set up MUTCD and NCDOT compliant traffic controls (used in Recovery Operations). | | |
| Disposal company that delivers to the incident | | |
| Vacuum or suction service | | |
| | | |
| | | |
| | | |
| | | |

Liability Insurance

Participation in the I-26 Heavy TRP requires the Contractor retain a minimum of \$5 million Liability Insurance Policy. Please list your information below.

| | |
|---|--|
| Insurance Company | |
| Insurance Company's Contact Information | |
| Date of Policy | |
| Policy Number | |
| Amount of Policy | |

Staff Qualifications and Experience Information

List all owners, supervisors and Contractors. The Contractor is responsible for ensuring that each employee who provides services under the contract meet all of the applicable Federal laws and North Carolina Statutes.

[illegible]

ADDENDUM(S)

ADDENDUM #1

I, _____
(SIGNATURE)

representing _____

Acknowledge receipt of Addendum #1.

ADDENDUM #2

I, _____
(SIGNATURE)

representing _____

Acknowledge receipt of Addendum #2.

ADDENDUM #3

I, _____
(SIGNATURE)

representing _____

Acknowledge receipt of Addendum #3.

**STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH, NC**

CONTRACT PAYMENT BOND

Date of Payment Bond Execution _____

Name of Principal Contractor _____

Name of Surety: _____

Name of Contracting Body: _____

Amount of Bond: _____

Contract ID No.: I-26 HTR 2019

County Name: Buncombe and Henderson

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACT PAYMENT BOND

Affix Seal of Surety Company

Print or type Surety Company Name

By

Print, stamp or type name of Attorney-in-Fact

Signature of Attorney-in-Fact

Signature of Witness

Print or type Signer's name

Address of Attorney-in-Fact

CONTRACT PAYMENT BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

Full name of Corporation

Address as prequalified

By

Signature of President, Vice President, Assistant Vice President
Select appropriate title

Print or type Signer's name

Affix Corporate Seal

Attest

Signature of Secretary, Assistant Secretary
Select appropriate title

Print or type Signer's name

CONTRACT PAYMENT BOND
LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Full name of Firm

Address as prequalified

By:

Signature of Member, Manager, Authorized Agent
Select appropriate title

Print or type Signer's name

CONTRACT PAYMENT BOND

INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Individual Name

Trading and doing business as

Full name of Firm

Address as prequalified

Signature of Contractor

Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

CONTRACT PAYMENT BOND

INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

SIGNATURE OF CONTRACTOR (Principal)

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

CONTRACT PAYMENT BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

Full name of Partnership

Address as prequalified

By

Signature of Partner

Print or type Signer's name

Signature of Witness

Print or type Signer's name

CONTRACT PAYMENT BOND
JOINT VENTURE (2) or (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: 2 Joint Ventures, Fill in lines (1), (2) and (3) and execute. 3 Joint Venturers Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *NCDOT Standard Specifications*. On Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

| | | |
|--------------------------------|----|-----------------------------|
| <hr/> | By | <hr/> |
| Signature of Witness or Attest | | Signature of Contractor |
| <hr/> | | <hr/> |
| Print or type Signer's name | | Print or type Signer's name |
| and | | |
| <hr/> | By | <hr/> |
| Signature of Witness or Attest | | Signature of Contractor |
| <hr/> | | <hr/> |
| Print or type Signer's name | | Print or type Signer's name |
| and | | |
| <hr/> | By | <hr/> |
| Signature of Witness or Attest | | Signature of Contractor |
| <hr/> | | <hr/> |
| Print or type Signer's name | | Print or type Signer's name |

CONTRACT PAYMENT BOND

Attach certified copy of Power of Attorney to this sheet

**STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH, NC**

BID BOND

Contract Number: I-26 HTR 2019 County: Buncombe and Henderson

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the Department of Transportation in the full and just sum of five (5) percent of the total amount bid by the Principal for the project stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is: the Principal shall not withdraw its bid within sixty (60) days after the opening of the bids, or within such other time period as may be provided in the proposal, and if the Board of Transportation shall award a contract to the Principal, the Principal shall, within fourteen (14) calendar days after written notice of award is received by him, provide bonds with good and sufficient surety, as required for the faithful performance of the contract and for the protection of all persons supplying labor, material, and equipment for the prosecution of the work. In the event the Principal requests permission to withdraw his bid due to mistake in accordance with the provisions of Article 103-3 of the *Standard Specifications for Roads and Structures*, the conditions and obligations of this Bid Bond shall remain in full force and effect until the Department of Transportation makes a final determination to either allow the bid to be withdrawn or to proceed with award of the contract. In the event a determination is made to award the contract, the Principal shall have fourteen (14) calendar days to comply with the requirements set forth above. In the event the Principal withdraws its bid after bids are opened except as provided in Article 103-3, or after award of the contract has been made fails to execute such additional documents as may be required and to provide the required bonds within the time period specified above, then the amount of the bid bond shall be immediately paid to the Department of Transportation as liquidated damages.

IN TESTIMONY WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed.

This the _____ day of _____, 20 _____

Surety

By _____

General Agent or Attorney-in-Fact Signature

Seal of Surety

Print or type Signer's Name

BID BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

Full name of Corporation

Address as prequalified

By

Signature of **President, Vice President, Assistant Vice President**
Select appropriate title

Print or type Signer's name

Affix Corporate Seal

Attest

Signature of **Secretary, Assistant Secretary**
Select appropriate title

Print or type Signer's name

BID BOND

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Full name of Firm

Address as prequalified

Signature of Member/
Manager/Authorized Agent

Individually

Print or type Signer's name

BID BOND

INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Individual Name

Trading and doing business as

Full name of Firm

Address as prequalified

Signature of Contractor

Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

BID BOND

INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

SIGNATURE OF CONTRACTOR (Principal)

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

BID BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

Full name of Partnership

Address as prequalified

By _____
Signature of Partner

Print or type Signer's name

Signature of Witness

Print or type Signer's name

BID BOND
JOINT VENTURE (2 or 3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: **2 Joint Ventures**, Fill in lines (1), (2) and (3) and execute. **3 Joint Venturers** Fill in lines (1), (2), (3), (4) and execute. Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *Specifications*. On Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

| | | |
|---|----|--------------------------------------|
| _____ Signature of Witness or Attest | By | _____ Signature of Contractor |
| _____ Print or type Signer's name | | _____ Print or type Signer's name |
| and | | |
| _____ Signature of Witness or Attest | By | _____ Signature of Contractor |
| _____ Print or type Signer's name | | _____ Print or type Signer's name |
| and | | |
| _____ Signature of Witness or Attest | By | _____ Signature of Contractor |
| _____ Print or type Signer's name | | _____ Print or type Signer's name |

EXECUTION OF BID**NON-COLLUSION, DEBARMENT AND GIFT BAN CERTIFICATION****CORPORATION**

The prequalified bidder being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. §133-24* within the last three years, and that the prequalified bidder intends to do the work with his own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

Full name of Corporation

Address as Prequalified

Attest _____ By _____
 Secretary/Assistant Secretary President/Vice President/Assistant Vice President
(Select appropriate title) *(Select appropriate title)*

Print or type Signer's name

Print or type Signer's name

CORPORATE SEAL

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

The prequalified bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the prequalified bidder intends to do the work with its own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

Full Name of
Partnership

Address as
Prequalified

Signature of Witness

Signature of Partner

Print or Type Signer's Name

Print or Type Signer's Name

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN
CERTIFICATION****LIMITED LIABILITY COMPANY**

The prequalified bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the prequalified bidder intends to do the work with its own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

Full Name of Firm

Address as Prequalified

Signature of Witness

Signature of Member/Manager/Authorized Agent
(*Select appropriate Title*)

Print or Type Signer's Name

Print or Type Signer's Name

NON-COLLUSION, DEBARMENT AND GIFT BAN CERTIFICATION**JOINT VENTURE (2) or (3)**

The prequalified bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the prequalified bidder intends to do the work with its own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

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

BY

Signature of Witness or Attest

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

BY

Signature of Witness or Attest

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

Address as Prequalified

BY

Signature of Witness or Attest

Signature of Contractor

Print or Type Signer's Name

Print or Type Signer's Name

If Corporation, affix Corporate Seal

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

INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

The prequalified bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the prequalified bidder intends to do the work with its own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

Name of Prequalified Bidder

Individual Name

Trading and Doing Business As

Full name of Firm

Address as Prequalified

Signature of Witness

Signature of Prequalified Bidder, Individual

Print or Type Signer's Name

Print or Type Signer's Name

**NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN
CERTIFICATION****INDIVIDUAL DOING BUSINESS IN HIS OWN NAME**

The prequalified bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee 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 prequalified bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the prequalified bidder intends to do the work with its own bona fide employees or subcontractors and will not bid for the benefit of another contractor.

By submitting this non-collusion, debarment and gift ban certification, the Contractor is attesting his 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 PREQUALIFIED BIDDER

Name of Prequalified Bidder

Print or Type Name_____
Address as Prequalified_____
Signature of Prequalified Bidder, Individually_____
Print or type Signer's Name_____
Signature of Witness_____
Print or type Signer's name

DEBARMENT CERTIFICATION OF PREQUALIFIED BIDDER

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 that is file 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.

Execution of Contract

Contract No: I-26 HTR 2019

County: Buncombe and Henderson

ACCEPTED BY THE DEPARTMENT

Division Project Manager

Date