STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION 14

# PROPOSAL

**DATE AND TIME OF BID OPENING: February 24, 2014 AT 2:00 PM**

**CONTRACT ID: DN00401**

**WBS ELEMENT NO.: 51003.73.4.STT2; 51003.74.5.STT2; 51003.74.5.STT3; 51003.71.5.STT2; 51003.71.5.STT3**

**FEDERAL AID NO.: NC-86-X001-01**

**COUNTY: Haywood, Jackson and Swain Counties**

**TIP NO.: N/A**

**MILES: 0 MILES**
**ROUTE NO.: SR 1513, ETC.**
**LOCATION: MAP #1: BIBLE BAPTIST DRIVE AT US 74 IN HAYWOOD**
**MAP #2: SR 1513 AT US 74 IN JACKSON COUNTY**
**MAP #3 SR 1532 AT US 441 IN JACKSON COUNTY**
**MAP #4: SR 1113 AT US 74 IN SWAIN COUNTY**
**MAP #5: SR 1121 AT NC 28 IN SWAIN COUNTY**
**TYPE OF WORK: GRADING, PAVE, PAVEMENT MARKINGS, SIGNING, TRAFFIC CONTROL**

**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 BOND ARE REQUIRED.**

**NAME OF BIDDER**

**ADDRESS OF BIDDER**

**PROPOSAL FOR THE CONSTRUCTION OF**

**CONTRACT No. DN00401 IN HAYWOOD, JACKSON, SWAIN COUNTIES, NORTH CAROLINA**

**Date** 1/29/2015 **20_____**

**DEPARTMENT OF TRANSPORTATION,**

**RALEIGH, NORTH CAROLINA**

The Bidder has carefully examined the location of the proposed work to be known as Contract No. **DN00401**; 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 Board 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 2012 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. **DN00401** in **HAYWOOD, JACKSON, SWAIN 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 2012* 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.

NORTH CAROLINA PROFESSIONAL SEAL 025536 ENGINEER Wanda H Austin

DocuSigned by: Wanda H. Austin 0684A7BF1E34LA53...

*Division 14 Contract Officer*

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# 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. **ALL BIDDERS SHALL CONTACT THE DIVISION 14 CONTRACTING OFFICE VIA EMAIL D14CONTRACTS@NCDOT.GOV PRIOR TO NOON THE DAY OF LETTING TO RECEIVE A VALIDATION EMAIL. Proposals submitted without the validation email may be rejected.**
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 FOUR 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 Affidavit, Debarment Certification 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.
   d. Completed attestation by Notary Public
   **Note: Signer, Witness and Notary Public must be different individuals.**
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 14 OFFICE, LOCATED AT 253 Webster Road, 253 Webster Road, by 2:00 PM on, Tuesday, February 24, 2014.**
11. The sealed bid must display the following statement on the front of the sealed envelope:

**QUOTATION FOR DN00401 – HAYWOOD, JACKSON, SWAIN PARK N RIDE LOTS , TO BE OPENED AT 2:00 PM ON, Tuesday, February 24, 2015.**

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: Jeffrey E. Alspaugh, EI**
**253 Webster Road**
**Sylva, NC 28779**

**OPTIONAL COMPUTER BID PREPARATION:**

1. All instructions given above for completing and returning TRADITIONAL PAPER BIDS apply, except as modified by the provision "**Computer Bid Preparation (Optional)**", if applicable.
2. Expedite software necessary for electronic bid preparation may be downloaded from the Connect NCDOT website at: https://connect.ncdot.gov/letting/Pages/EBS-Information.aspx

## PROJECT SPECIAL PROVISIONS

## GENERAL

### COMPUTER BID PREPARATION WITH EMAIL (OPTIONAL):

(3-4-14) 102 SPD 01-050B

The bidder may elect to prepare his bid and MBE/WBE or DBE participation electronically by means of a personal computer. For electronic bid preparation the Contractor shall download the Expedite program from the NCDOT "Project Letting" website. Then download the appropriate .ebs electronic file of line items and quantities unique to each project from the Division's website.

The only entries into the program which will be permitted by the Bidder are the appropriate unit or lump sum prices for those items which must be bid in order to provide a complete bid for the project, and any MBE/WBE or DBE participation in the appropriate section of the Expedite program. When these entries have been made, the program will automatically prepare a complete set of itemized proposal sheets which will include the amount bid for the various items and the total amount bid for the project in addition to the unit or lump sum prices bid. The computer generated itemized proposal sheets shall be printed and signed by a duly authorized representative in accordance with Subarticle 102-8(A)(8). This set of itemized proposal sheets, when submitted together with the appropriate proposal, will constitute the bid and shall be delivered to the appropriate Division Office or location specified in the INSTRUCTIONS TO BIDDERS. If the Bidder submits his bid on computer generated itemized proposal sheets, bid prices shall not be written on the itemized proposal sheets bound in the proposal. The computer generated itemized proposal sheets (.ebs bid file) may also be copied to a compact disk (CD) furnished by the Contractor and shall be submitted to the Department with the bid or emailed to the Division Proposals Engineer at the time of Letting.

In the case of a discrepancy between the unit or lump sum prices submitted on the itemized proposal sheets and those contained on the CD or email attachment furnished by the Contractor, the unit or lump sum prices submitted on the printed and signed itemized proposal sheets shall prevail.

The requirements of the INSTRUCTIONS TO BIDDERS will apply to the preparation of bids except that a bid may be submitted on computer generated itemized proposal sheets in which case the entries on the itemized proposal sheets will not be required to be in ink. Changes to any entry on the computer generated itemized proposal sheets shall be made in accordance with requirement Number (6) of the INSTRUCTIONS TO BIDDERS. When the computer generated itemized proposal sheets are not signed and received with the proposal, the bid will be considered irregular.

### CONTRACT TIME AND LIQUIDATED DAMAGES:

(7-1-95) (Rev. 12-18-07) 108 SP1 G10 A

The date of availability for this contract is **March 23, 2015**.

The completion date for this contract is **June 19, 2015**.

Except where otherwise provided by the contract, observation periods required by the contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are **Seven Hundred Dollars ($ 700.00)** per calendar day.

## INTERMEDIATE CONTRACT TIME NUMBER 1 AND LIQUIDATED DAMAGES:

(2-20-07) 108 SP1 G14 B

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

HOLIDAY AND HOLIDAY WEEKEND LANE CLOSURE RESTRICTIONS

1. For **unexpected occurrence** that creates unusually high traffic volumes, as directed by the Engineer.

2. For **New Year's Day**, between the hours of **4:00 PM** December 31st and **7:00 AM** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **7:00 AM** the following Tuesday.

3. For **Easter**, between the hours of **4:00 PM** Thursday and **7:00 AM** Monday.

4. For **Memorial Day**, between the hours of **4:00 PM** Friday and **7:00 AM** Tuesday.

5. For **Independence Day**, between the hours of **4:00 PM** the day before Independence Day and **7:00 AM** the day after Independence Day.

   If **Independence Day** is on a Friday, Saturday, Sunday or Monday, then between the hours of **4:00 PM** the Thursday before Independence Day and **7:00 AM** the Tuesday after Independence Day.

6. For **Labor Day**, between the hours of **4:00 PM** Friday and **7:00 AM** Tuesday.

7. For **Thanksgiving Day**, between the hours of **4:00 PM** Tuesday and **7:00 AM** Monday.

8. For **Christmas**, between the hours of **4:00 PM** the Friday before the week of Christmas Day and **7:00 AM** the following Tuesday after the week of Christmas Day.

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

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

The completion time for this intermediate contract work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated herein and place traffic in the existing traffic pattern.

The liquidated damages are **Two Hundred Fifty Dollars ($ 250.00**) per hour.

## 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.

## NO SPECIALTY ITEMS:

(7-1-95) 108-6 SP1 G34

None of the items included in this contract will be specialty items (see Article 108-6 of the *2012 Standard Specifications*).

## FUEL PRICE ADJUSTMENT:

(11-15-05) (Rev. 2-18-14) 109-8 SP1 G43

Revise the *2012 Standard Specifications* as follows:

**Page 1-83, Article 109-8, Fuel Price Adjustments,** add the following:

The base index price for DIESEL #2 FUEL is **$ 2.0538** per gallon. Where any of the following are included as pay items in the contract, they will be eligible for fuel price adjustment.

The pay items and the fuel factor used in calculating adjustments to be made will be as follows:

| Description | Units | Fuel Usage Factor Diesel |
|---|---|---|
| Unclassified Excavation | Gal/CY | 0.29 |
| Borrow Excavation | Gal/CY | 0.29 |
| Class IV Subgrade Stabilization | Gal/Ton | 0.55 |
| Aggregate Base Course | Gal/Ton | 0.55 |
| Sub-Ballast | Gal/Ton | 0.55 |
| Asphalt Concrete Base Course, Type ____ | Gal/Ton | 2.90 |
| Asphalt Concrete Intermediate Course, Type ____ | Gal/Ton | 2.90 |
| Asphalt Concrete Surface Course, Type ____ | Gal/Ton | 2.90 |
| Open-Graded Asphalt Friction Course | Gal/Ton | 2.90 |
| Permeable Asphalt Drainage Course, Type ____ | Gal/Ton | 2.90 |
| Sand Asphalt Surface Course, Type ____ | Gal/Ton | 2.90 |
| Aggregate for Cement Treated Base Course | Gal/Ton | 0.55 |
| Portland Cement for Cement Treated Base Course | Gal/Ton | 0.55 |
| __" Portland Cement Concrete Pavement | Gal/SY | 0.245 |
| Concrete Shoulders Adjacent to __" Pavement | Gal/SY | 0.245 |

## SCHEDULE OF ESTIMATED COMPLETION PROGRESS:

(7-15-08) (Rev. 5-20-14) 108-2 SP1 G58

The Contractor's attention is directed to the Standard Special Provision entitled *Availability of Funds Termination of Contracts* included elsewhere in this proposal. The Department of Transportation's schedule of estimated completion progress for this project as required by that Standard Special Provision is as follows:

| | | |
|---|---|---|
| 2015 | (7/01/14 - 6/30/15) | **100** % of Total Amount Bid |

The Contractor shall also furnish his own progress schedule in accordance with Article 108-2 of the *2012 Standard Specifications*. Any acceleration of the progress as shown by the Contractor's progress schedule over the progress as shown above shall be subject to the approval of the Engineer.

## DISADVANTAGED BUSINESS ENTERPRISE (DIVISIONS):

(10-16-07)(Rev.12-17-13) 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.

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

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 amount 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).doc

*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 **3.0 %**

(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://partner.ncdot.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) *If the DBE goal is more than zero,*

(1) 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.

(2) 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.

(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) *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 12:00 noon of the sixth calendar day following opening of bids, unless the sixth 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 12:00 noon 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 12:00 noon 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 12:00 noon 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 **2** copies of this information shall be received in the office of the Engineer no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth 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 12:00 noon 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 Development Manager in the Business Opportunity and Work Force Development Unit 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 firm (or an approved substitute DBE firm) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE 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. A DBE may only be terminated after receiving the Engineer's written approval based upon a finding of good cause for the termination.

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.

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).

**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 on the Department's DBE-IS *(Subcontractor Payment Information)* with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

**Failure to Meet Contract Requirements**

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2012 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.

## ARRA CONTRACT PROVISIONS AND

## REPORTING REQUIREMENT CERTIFICATION

By submission of a proposal or bid, the Contractor agrees to comply with the following provisions. Failure to comply with any or all of the provisions herein may be cause for the contracting agency to issue a cancellation notice to a Contractor.

The Contractor is hereby notified that this project will be financed with *American Recovery and Reinvestment Act of 2009 (ARRA)* Funds. The Contractor shall assure that all subcontracts, and other contracts for services for an ARRA funded project shall also have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the Department shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created and/or jobs retained by this contract from the Contractor's own workforce and any subcontractors. No direct payment will be made for providing said reports as the cost for same shall be included in the various items in the contract.

(1) INTEGRITY: The Contractor agrees that all data submitted to NCDOT, FTA in compliance with the Recovery Act requirements will be accurate, objective, and of the highest integrity.

**Posting with the Local Employment Security Commission**

In addition to any other job postings the Contractor normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Contractor shall post with the local Employment Security Commission Office, all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semi-skilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and any Subcontractor shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI. The NC ESC Homepage can be found at www.ncesc.com.

**Required Contract Provision to Implement ARRA Section 902**

*Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009* requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section

shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

**Authority of the Inspector General**

*Section 1515(a) of the ARRA* provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

**Office of State Budget and Management Access to Records**

OERI requires that the Contractor and Subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

**Buy America Provision**

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects must be manufactured in the United States. The Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies.

**Wage Rate Provision (applies to all construction, alteration or repair projects)**

Section 1606 of the ARRA requires that all laborers and mechanics employed by Contractors and Subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The Contractor agrees that be the submission of a proposal/bid in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the
Davis-Bacon Act. This applies to all construction contracts that exceed $2,000.

**Availability and Use of Funds**

Contractors understand and acknowledge that any all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

**Outsourcing outside the USA without Specific Prior Approval Provision**

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

**Federal, State and Local Tax Obligations**

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

**Anti-Discrimination and Equal Opportunity**

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

**Reports of Fraud or Waste**

Contractors must report to the Inspector General any suspected incidence of waste, fraud and abuse related to ARRA funds, and should notify FTA regional offices of any problems encountered as they occur.

**Whistleblower Provisions**

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Contractors or Agencies cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a
Federal agency or their representative, information that the employee reasonably believes is evidence of:

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds*.

*covered funds: “any contract, grant, or other payment received by any non-federal employer if a) the Federal Government provides any portion of the money or property that is provided, requested or demanded; and b) at least some of the funds are appropriated or otherwise made available by this Act” 1553 (g)(2).

Contractor agrees to post notice of the rights and remedies as required by the ARRA.

**Emblems**

The Contractor agrees to use signs and materials that display both the American Recovery and Reinvestment Act (Recovery Act) emblem and the Transportation Investment Generating Economic Recovery (TIGER) program emblem to identify its Project(s) financed with Recovery Act funds as directed by NCDOT. This provision is to be included in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project(s).

**CONTRACTOR RESPONSIBILITIES AND REPORTING REQUIREMENTS UNDER ARRA**

Contractors are required to complete projects or activities which are funded under the ARRA and to report on use of the funds provided through this award as directed. Information from these reports will be made available to the public.

Contractors are not responsible for reporting ARRA requirements directly to FTA. The Contractors responsibilities for reporting are as follows:

**ARRA Section 1512**

- Obtaining a D-U-N-S number or the Contractor may use their name and zip code of their Headquarters.
- Expenditure amount (amount of payment)
- Expenditure description (what was exchanged for the payment)
- A brief description of the types of jobs created and jobs retained. “Jobs or positions created” mean those new positions created and filled, or previously existing unfilled positions that are filled, as a result of Recovery Act funding. ‘‘Jobs or positions retained’’ mean those previously existing filled positions that are retained as a result of Recovery Act funding.
- An estimate of the number of jobs created and jobs retained. At a minimum, this estimate shall include any new positions created and any existing filled positions that were retained to support or carry out Recovery Act projects. The number shall be expressed as ‘‘full-time equivalent’’ (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.
- A job cannot be reported as both created and retained.
- This information must be reported on a quarterly basis, due to the Prime Recipient within 3 days after the end of the quarter.

**ARRA Section 1201 (c)**

- This data will be required **monthly until September 2012 or until the contract is complete** and reported to the Prime Recipient within 3 days after the end of the month.

- Contractors will need to report the number of direct on-site job hours associated with the ARRA funds awarded as of the end of the reporting period.

  - Contractors will not be expected to estimate employment data other than the direct on-site jobs (for example, construction workers building a maintenance facility, or transit agency workers doing preventive maintenance). DOT economists will compute the number of indirect jobs (for example at bus

manufacturing plants) or induced jobs (for example, jobs at suppliers or in unrelated industries as a result of the money flowing through the economy.)

- Contractors and consultants will need to provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their ARRA funded project(s) for the reporting month. **These reports are required monthly until the contract is completed or September 2012 whichever occurs first.**

The Contractor hereby agrees to comply with the Contract Provisions and Reporting Requirements as indicated in the American Recovery and Reinvestment Act of 2009 and any amendments thereto. The Contractor also agrees to comply with any additional reporting requirements that may be requested by NCDOT, FTA, USDOT, the Inspector General (IG), the Government Accountability Office (GAO), or other entities, for example Congressional committees or individual members of Congress. The Contractor hereby agrees to inspections or audits that may occur at any time from the any of the above referenced federal or state agencies. Contractors are requested to provide a copy of any such reports to NCDOT on any responses to such requests for information or as a result of an inspection or audit.

By the submission of this proposal or bid, the Contractor hereby certifies and affirms to the truthfulness and accuracy of each of the above statements of this certification.

## FEDERAL AND STATE REQUIREMENTS

## AND SPECIAL CONDITIONS

*for CONSTRUCTION*

1. **General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (20), dated October 1, 2013; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:**
**"BIDDER" AND "CONTRACTOR"**
**"PURCHASER", PROCURING AGENCY" AND "OWNER"**

**2. Federal Changes**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time

to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FTA's new authorizing legislation, MAP-21 made significant changes to FTA's public transportation programs. FTA has determined that:
(1) MAP-21 requirements apply to:
a. New grants and cooperative agreements for which FTA awarded FY 2013 or a later fiscal year funds appropriated or made available to carry out MAP-21 programs,
b. Amendments to existing grants and cooperative agreements for which FTA awarded funds made available or appropriated to carry out MAP-21 programs, and
c. All "recoveries" funds FTA awards, irrespective of the fiscal year for which those funds were appropriated,

(2) Fiscal Year 2012 and previous fiscal year funding requirements apply as follows:
a. In some instances, as determined by FTA, previous program requirements apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds, but
b. In other instances, as determined by FTA, MAP-21 program requirements (including MAP-21 "cross-cutting requirements" identified in section 49 of this Master Agreement) apply or will apply to grants and cooperative agreements for which FTA awarded Fiscal Year 2012 or a previous fiscal year funds.

3. **Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, 20.519, 20.521, 20.525, and 20.526. Federal funding assistance up to eighty (80%) percent may be provided.

**4. Definitions**

*Third Party Agreement,* in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as:

(1) Third party contracts,
(2) Leases,
(3) Third party subcontracts; and
(4) Other similar arrangements or agreements.

*Third Party Participant*, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as:

(1) Third party contractors,
(2) Lessees,
(3)Third party subcontractors, and
(4) Other participants in the Project

5. **Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

6. **Lobbying**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601,et seq.). Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions o the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

***The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of $100,000 or more and prior to the award of the contract.***

7. **Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004, all amendments thereto.

a. This contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 *[U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)],* and Section 1101(b) of MAP-21, 23 U.S.C. U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **6.1%.** A separate contract goal of __ **% DBE participation** has been established for this construction procurement.

b. The contractor 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 this DOT-assisted contract. 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 **Procuring Agency** deems appropriate. Each subcontract the contractor signs with a

subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying a sealed bid:

1. The names and addresses of DBE firms that will participate in this contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

**Bidders/Offerors** must present the information required above as a matter of responsiveness (see 49 CFR 26.53(3)).

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Procuring Agency**.** In addition, these may apply:

- **the contractor may not hold retainage from its subcontractors; or**
- **is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or**
- **is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.**

d. The contractor must promptly notify the **Procuring Agency** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Procuring Agency.**

8. **Civil Rights**

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor race,

color, religion, national origin, sex, disability, or age, In addition, the Contractor implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4702.1 “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”, issued October 1, 2012.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Religion, Sex, Disability, Age, or National Origin - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act, 28 C.F.R. § 50.3, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) **Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

(1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;

(2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F. R. Part 38;

(4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services,"28 C.F.R. Part 35;

(5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;

(6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;

(9) U.S. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards.” 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) **Access to Services for Persons with Limited English Proficiency**. The Contractor agrees to comply with Executive Order No. 13166,"Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg*. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) **Environmental Justice**. (According to the Master Agreement, this section is now under Environmental and applicable for Environmental Studies)

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections**. To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws**. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(11) Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

9. **Clean Air Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal Assistance provided by FTA.

10. **Clean Water Act**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

11. **Environmental Protection**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5323(c)(2) ), as amended by MAP-21, ; U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622 were published in the Federal Register, 78 Fed. Reg. 8963, February 7, 2013; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq*. November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

12. **Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

13. **Recycled Products**

The Recycled Products requirement applies to all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000. These requirements flow down to all contractor and subcontractor tiers.

To the extent possible the contractor agrees to comply with U. S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962. The contractor agrees to provide competitive preference for products and services that conserve natural resources, protect the environment and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.
These items include, but may not be limited too:

***Paper and paper products***, excluding building and construction paper grades.
***Construction products*:**

(a) Building insulation products, including the following items:
  (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
  (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
  (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
  (4) Spray-in-place insulation, including but not limited to foam-in- place polyurethane and polyisocyanurate, and spray-on cellulose.
(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
(c) Cement and concrete, including concrete products such as pipe and block containing:
  (1) Coal fly ash;
  (2) Ground granulated blast furnace slag (GGBF);
  (3) Cenospheres; or
  (4) Silica fume from silicon and ferrosilicon metal production.
(d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
(e) Floor tiles and patio blocks containing recovered rubber or plastic.
(f) Shower and restroom dividers/partitions containing recovered plastic or steel.
(g) (1) Consolidated latex paint used for covering graffiti; and
  (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
(h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
(i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
(j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
(k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
(l) Nonpressure pipe containing recovered steel, plastic, or cement.
(m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

***Transportation products:***

(a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
(b) Parking stops made from concrete or containing recovered plastic or rubber.
(c) Channelizers containing recovered plastic or rubber.
(d) Delineators containing recovered plastic, rubber, or steel.
(e) Flexible delineators containing recovered plastic.

***Miscellaneous products:***

(a) Pallets containing recovered wood, plastic, or paperboard.
(b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
(c) Industrial drums containing recovered steel, plastic, or paper.
(d) Awards and plaques containing recovered glass, wood, paper, or plastic.
(e) Mats containing recovered rubber and/or plastic.
(f) (1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
(2) Sign supports and posts containing recovered plastic or steel.
(g) Manual-grade strapping containing recovered steel or plastic.
(h) Bike racks containing recovered steel or plastic.
(i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

***Park and recreation products:***

(a) Playground surfaces and running tracks containing recovered rubber or plastic.
(b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
(c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
(d) Playground equipment containing recovered plastic, steel, or aluminum.

***Landscaping products:***

(a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
(b) Compost made from yard trimmings, leaves, grass clippings, and/ or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
(c) Garden and soaker hoses containing recovered plastic or rubber.
(d) Lawn and garden edging containing recovered plastic or rubber.
(e) Plastic lumber landscaping timbers and posts containing recovered materials.

***Non-paper office products:***

(a) Office recycling containers and office waste receptacles.
(b) Plastic desktop accessories.
(c) Toner cartridges.
(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
(e) Plastic trash bags.
(f) Printer ribbons.
(g) Plastic envelopes.
(h) Plastic clipboards containing recovered plastic.
(i) Plastic file folders containing recovered plastic.
(j) Plastic clip portfolios containing recovered plastic.
(k) Plastic presentation folders containing recovered plastic.

(l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

14. **Cargo Preference**

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform the Owner, so that additional requirements and clauses may be attached to this Contract.

15. **Buy America**

The contractor agrees to comply with 49 U.S.C. § 5323(j), as amended by MAP-21 and 49 C.F.R. part 661, to the extent consistent with MAP-21,and subsequent amendments to those regulations that may be promulgated. The Contractor also agrees to comply with FTA directives to the extent those directives are consistent with MAP-21, except to the extent that FTA determines otherwise in writing. Buy America requirements state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waiver requirements are listed in 49 CFR 661.7. Appendix A grants a general public interest waiver from the Buy America requirements that apply to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Small purchases (currently less than $100,000) made with capital, operating, or planning funds are also exempt from the Buy America requirements.

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Effective July 24, 1995 small purchases (under the $100,000 threshold) made with FTA funds will not be subject to the Buy America requirement. The value of small purchases should be determined by using "contract price" and not "unit price".**

***These regulations require, as a matter of responsiveness, that the Bidder or Contractor submit to the purchaser the appropriate Buy America certification (Attachment B or C) with all bids where FTA funds are provided*, *except those subject to a general waiver or less than $100,000.***

***BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID; ONLY ONE CERTIFICATION (either B or C) SHALL BE SUBMITTED.*** The certification requirement does not apply to lower tier subcontractors.

16. **Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

17. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency.** If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "Excluded Parties Listing System" at https://www.sam.gov before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at https://www.sam.gov before entering into any contracts.

If the Procuring Agency, recipient, or subrecipient suspends, debars, or takes similar action against a Third Party Participant or individual, the Agency, recipient, or subrecipient will provide immediate written notice to the:

(a) NCDOT/Public Transportation Division,
(b) FTA Regional Counsel for the Region in which the Agency is located or implements the Project,
(c) FTA Project Manager if the Project is administered by FTA Headquarters Office, or

(d) FTA Chief Counsel.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT D (attach additional statement if necessary) and must be executed for contracts of $25,000 or more and prior to the award of the contract.***

18. **Termination or Cancellation of Contract**

Termination or cancellation of the contract, in whole or in part, may be determined by the project if it is in the best interest of the project. A notice of termination shall be delivered to the Contractor, specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Contractor shall be paid for work that has been performed and completed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid. A 30-day notice of termination shall be required.

19. **Breach of Contract**

**Breach or Default** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Owner may terminate this contract for default. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Owner may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.
The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-
1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor, within [10] days from the beginning of any delay, notifies the Owner in writing of the causes of delay. If in the judgment of the Owner, the delay is excusable, the time for completing the work shall be extended. The judgment of the Owner shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Owner.

The Owner in its sole discretion may, in the case of breach of contract, allow the Contractor a specified period of time in which to correct the defect. In such case, the notice of termination will state the time period in which the correction is permitted and other appropriate conditions.

If Contractor fails to remedy to the project's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within twenty (20) days after written notice from the project setting forth the nature of said breach or default, the project shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the project from also pursuing all available remedies against Contractor and its sureties for said breach or default.

If there is credible evidence that a Third Party Participant (Contractor) has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq*., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required.

If a legal matter as described above emerges, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region in which the Recipient is located and the NCDOT.

20. **Resolution of Disputes**

*Disputes* - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the project. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the project. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the project shall be binding upon the Contractor and the Contractor shall abide be the decision.

*Performance During Dispute* - Unless otherwise directed by project, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

*Claims for Damages* - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

*Remedies* - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

*Rights and Remedies* - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

21. **Protest Procedures**

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDoT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDoT. Reviews of protests by the NCDoT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDoT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

22. **Davis-Bacon Act**

Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Davis-Bacon and Copeland Anti-Kickback Acts
(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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)(iv) 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 Part 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 classifications and wage rates conformed under paragraph (1)(ii) 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.

(ii)(A) 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:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) 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.

(C) 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 Administrator for determination. The 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) 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.

(iii) 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.

(iv) 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.
(v)(A) The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:

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

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

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

(B) 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, 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.

(C) 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 Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) 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.

(2) Withholding - The [insert *name of grantee*] 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert ***name of grantee]*** may, after written notice to the contractor, sponsor, applicant, or owner, 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 - (i) 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert ***name of grantee***] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) 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: (1) That the payroll for the payroll period contains the information required to be

maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) 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;

(3) 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.

(C) 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 (a)(3)(ii)(B) of this section.

(D) 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration 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 Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, 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 - (i) Apprentices - 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor 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.

(ii) Trainees - 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.

(iii) 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.

(5) Compliance with requirements of the Copeland “Anti-Kickback” Act, as amended - The contractor shall comply with the requirements of 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses 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 - (i) 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).

(ii) 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).

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

23. **Contract Work Hours and Safety Standards Act**

Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.,* specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

Pursuant to Section 102 (Overtime):
(These clauses are specifically mandated under DOL regulation 29 C.F.R. §5.5 and when preparing a construction contract in excess of $2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously.)

(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 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 Owner/grantee 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 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 this section.

(5) Payrolls and basic records - (i) 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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.

Section 107 (OSHA):
Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 3704, and applicable DOL regulations, "Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

24. **Project Labor Agreements (formerly Neutrality in Labor Relations)**

As a condition of contract award, the Owner may require a third party contractor or subcontractor to have an affiliation with a labor organization such as a project labor agreement, consistent with Executive Order No. 13502, “Use of Project Labor Agreements [PLA] for Federal Construction Projects,” February 6, 2009, 41 U.S.C. ch. 39, Refs & Annos., except as the Federal Government determines otherwise in writing.

25. **Geographic Preference**

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws.

26. **No Federal Government Obligations to Third Parties**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

27. **False or Fraudulent Statements or Claims**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

28. **Exclusionary or Discriminatory Specifications or Requirements**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support sub-contracts using exclusionary or discriminatory specifications or requirements.

29. **Access to Records and Reports**

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. **http://www.records.ncdcr.gov/local/publicTransporationSystems_2006.pdf**

**30. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**31. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq*., and the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, specifically, 49 C.F.R. § 41.117. The contractor also agrees to certify to the extent required by the regulation to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and that the certification of compliance issued on the project and will facilitate and follow Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, except as the Federal Government determines otherwise in writing.

**32. Supervision of Construction**

Competent and adequate engineering supervision will be maintained at the construction site of the Project to ensure that the completed work conforms to the approved plans and specifications.

**33. Liquidated Damages**

Liquidated damages are a specific sum (or a sum readily determinable) of money stipulated by the contracting parties as the amount to be recovered for each day of delay in delivery of the product; typically, the actual damage amount is unknown or difficult to estimate and is liquidated by the mutual agreement to the rate.

Any liquidated damages recovered shall be credited to the Project account involved unless the Federal Government permits otherwise.

**34. Bonding**

Contractors and subcontractors agree to comply with the bid guarantee, performance, and payment bonding provisions of 49 C.F.R. Sect. 18.36(h) or 49 C.F.R. Sect. 19.48(c), as applicable and with any guidance FTA may issue.

For construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the State of North Carolina provided that they meet the minimum requirements for construction contracts as follows:

**Bid Bond Requirements**

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to the Owner and in compliance with the bonding requirements for the State of North Carolina and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Owner to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the Owner.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of the Owner, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Owner’s damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Owner as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Owner for the damages occasioned by default, then the undersigned bidder agrees to indemnify the Owner and pay over to the Owner the difference between the bid security and Owner's total damages, so as to make Owner whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Payment Bonding Requirements**

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Owner determines that a lesser amount would be adequate for the protection of the Owner.

2. The Owner may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Owner may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the Owner may require additional protection as required by subparagraph 1 if the contract price is increased.

**Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to the Owner, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the Owner, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the Owner and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Owner. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the Owner written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

35. **State and Local Disclaimer**

The uses of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in

the grantees procurement documents, the grantees should consult with their local attorney.

36. **Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

37. **Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Purchaser/Owner of this Purchase Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Purchaser or it's agents who are involved in the delivery or processing of contractor goods to the Purchaser. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

38. **Safe Operation of Motor Vehicles**

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this

provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

d. Definitions

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

39. **National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards requirements of 23 U.S.C. § 517(d), as amended by MAP-21,, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq*., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. *(applicable to ITS projects)*

**40. North Carolina State Ethic's Requirement**

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S.§ 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce,

Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

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

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

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

To be added near the signature portion of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

"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."

**41. <u>Sensitive Security Information</u>**

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with "The Homeland Security Act", as amended, specifically 49 U.S.C. Section 40119(b), The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 15, and U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 1520.

**42. <u>NC E-Verify Requirements</u>**

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as Attachment E.

## ATTACHMENT A

CERTIFICATION REGARDING LOBBYING
***(To be submitted with each bid or offer exceeding $100,000)***

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq* .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq*. apply to this certification and disclosure, if any.

_____ _____
Date Signature of Contractor's Authorized Official

_____
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this ___ day of _____, 20__, in the State of _____; and the County of _____.

Notary Public _____
My Appointment Expires _____

ATTACHMENT B

CERTIFICATE OF COMPLIANCE
WITH BUY AMERICA REQUIREMENTS

***(To be submitted with all bids exceeding $100,000. A bid, which does not include this certification or the certification under Attachment C, will not be eligible for award.)***

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

## ATTACHMENT C

CERTIFICATE OF NON-COMPLIANCE
WITH BUY AMERICA REQUIREMENTS

***(To be submitted with all bids exceeding $100,000. A bid, which does not include this certification or the certification under Attachment B, will not be eligible for award.)***

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulation in 49 CFR Part 661.7.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public _____

My Appointment Expires _____

ATTACHMENT D

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

***(To be submitted with all bids exceeding $25,000.)***

(1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20___.

Notary Public _____

My Appointment Expires _____

ATTACHMENT E

STATE OF NORTH CAROLINA
COUNTY OF WAKE

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES

***(To be submitted with all quotes/bids)***

I, _____ (hereinafter the "Affiant"), duly authorized by and on behalf of _____ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.

2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

3. ☐ Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

   ☐ Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.

4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.

5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This _____day of _____, 20____.

_____
Signature of Affiant

_____
Printed Name and Title

State of _____

County of _____

Subscribed and sworn to before me this ___ day of _____, 20___.

Notary Public _____

(SEAL)

My Appointment Expires _____

## 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.

## SUBSURFACE INFORMATION:

(7-1-95) 450 SP1 G112 A

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

## LOCATING EXISTING UNDERGROUND UTILITIES:

(3-20-12) 105 SP1 G115

Revise the *2012 Standard Specifications* as follows:

**Page 1-43, Article 105-8, line 28, after the first sentence,** add the following:

Identify excavation locations by means of pre-marking with white paint, flags, or stakes or provide a specific written description of the location in the locate request.

## RESOURCE CONSERVATION:

(5-21-13) 104-13 SP1 G118

In accordance with North Carolina Executive Order 156, NCGS 130A-309.14(2), and NCGS 136-28.8, it is the policy of the Department to aid in the reduction of materials that become a part of our solid waste stream, to divert materials from landfills, and to find ways to recycle and reuse materials for the benefit of the Citizens of North Carolina.

Initiate, develop and use products and construction methods that incorporate the use of recycled or solid waste products in accordance with Article 104-13 of the *2012 Standard Specifications*. Report the quantities of reused or recycled materials either incorporated in the project or diverted from landfills on the Project Construction Reuse and Recycling Reporting Form.

A location-based tool for finding local recycling facilities and the Project Construction Reuse and Recycling Reporting Form are available at:

http://connect.ncdot.gov/resources/Environmental/Pages/North-Carolina-Recycling-Locations.aspx

## DOMESTIC STEEL:

(4-16-13) 106 SP1 G120

Revise the *2012 Standard Specifications* as follows:

P**age 1-49, Subarticle 106-1(B) Domestic Steel, lines 2-7,** replace the first paragraph with the following:

All steel and iron products that are permanently incorporated into this project shall be produced in the United States except minimal amounts of foreign steel and iron products may be used provided the combined material cost of the items involved does not exceed 0.1% of the total amount bid for the entire project or $2,500, whichever is greater. If invoices showing the cost of the material are not provided, the amount of the bid item involving the foreign material will be used for calculations. This minimal amount of foreign produced steel and iron products permitted for use is not applicable to high strength fasteners. Domestically produced high strength fasteners are required.

## MAINTENANCE OF THE PROJECT:

(11-20-07) (Rev. 1-17-12) 104-10 SP1 G125

Revise the *2012 Standard Specifications* as follows:

**Page 1-35, Article 104-10 Maintenance of the Project, line 25,** add the following after the first sentence of the first paragraph:

All guardrail/guiderail within the project limits shall be included in this maintenance.

**Page 1-35, Article 104-10 Maintenance of the Project, line 30,** add the following as the last sentence of the first paragraph:

The Contractor shall perform weekly inspections of guardrail and guiderail and shall report damages to the Engineer on the same day of the weekly inspection. *Where damaged guardrail or guiderail is repaired or replaced as a result of maintaining the project in* accordance with this article, such repair or replacement shall be performed within 7 consecutive calendar days of such inspection report.

**Page 1-35, Article 104-10 Maintenance of the Project, lines 42-44,** replace the last sentence of the last paragraph with the following:

The Contractor will not be directly compensated for any maintenance operations necessary, except for maintenance of guardrail/guiderail, as this work will be considered incidental to the work covered by the various contract items. The provisions of Article 104-7, Extra Work, and Article 104-8, Compensation and Record Keeping will apply to authorized maintenance of guardrail/guiderail. Performance of weekly inspections of guardrail/guiderail, and the damage reports required as described above, will be considered to be an incidental part of the work being paid for by the various contract items.

## GIFTS FROM VENDORS AND CONTRACTORS:

(12-15-09) 107-1 SP1 G152

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

(A) Have a contract with a governmental agency; or
(B) Have performed under such a contract within the past year; or
(C) Anticipate bidding on such a contract in the future.

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

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

## LIABILITY INSURANCE:

(5-20-14) SP1 G160

Revise the *2012 Standard Specifications* as follows:

**Page 1-60, Article 107-15 LIABILITY INSURANCE, line 16,** add the following as the second sentence of the third paragraph:

Prior to beginning services, all contractors shall provide proof of coverage issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance for self-insured subcontractors, irrespective of whether having regularly in service fewer than three employees.

## EROSION AND SEDIMENT CONTROL/STORMWATER CERTIFICATION:

(1-16-07) (Rev 9-18-12) 105-16, 225-2, 16 SP1 G180

**General**

Schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting sedimentation and turbidity of surface waters. Comply with the requirements herein regardless of whether or not a National Pollution discharge Elimination System (NPDES) permit for the work is required.

Establish a chain of responsibility for operations and subcontractors' operations to ensure that the *Erosion and Sediment Control/Stormwater Pollution Prevention Plan* is implemented and maintained over the life of the contract.

(A) *Certified Supervisor* - Provide a certified Erosion and Sediment Control/Stormwater Supervisor to manage the Contractor and subcontractor operations, insure compliance with Federal, State and Local ordinances and regulations, and manage the Quality Control Program.

(B) *Certified Foreman* - Provide a certified, trained foreman for each construction operation that increases the potential for soil erosion or the possible sedimentation and turbidity of surface waters.

(C) *Certified Installer* - Provide a certified installer to install or direct the installation for erosion or sediment/stormwater control practices.

(D) *Certified Designer* - Provide a certified designer for the design of the erosion and sediment control/stormwater component of reclamation plans and, if applicable, for the design of the project erosion and sediment control/stormwater plan.

**Roles and Responsibilities**

(A) *Certified Erosion and Sediment Control/Stormwater Supervisor* - The Certified Supervisor shall be Level II and responsible for ensuring the erosion and sediment control/stormwater plan is adequately implemented and maintained on the project and for conducting the quality control program. The Certified Supervisor shall be on the project within 24 hours notice from initial exposure of an erodible surface to the project's final acceptance. Perform the following duties:

(1) Manage Operations - Coordinate and schedule the work of subcontractors so that erosion and sediment control/stormwater measures are fully executed for each operation and in a timely manner over the duration of the contract.

(a) Oversee the work of subcontractors so that appropriate erosion and sediment control/stormwater preventive measures are conformed to at each stage of the work.
(b) Prepare the required National Pollutant Discharge Elimination System (NPDES) Inspection Record and submit to the Engineer.
(c) Attend all weekly or monthly construction meetings to discuss the findings of the NPDES inspection and other related issues.
(d) Implement the erosion and sediment control/stormwater site plans requested.
(e) Provide any needed erosion and sediment control/stormwater practices for the Contractor's temporary work not shown on the plans, such as, but not limited to work platforms, temporary construction, pumping operations, plant and storage yards, and cofferdams.
(f) Acquire applicable permits and comply with requirements for borrow pits, dewatering, and any temporary work conducted by the Contractor in jurisdictional areas.
(g) Conduct all erosion and sediment control/stormwater work in a timely and workmanlike manner.
(h) Fully perform and install erosion and sediment control/stormwater work prior to any suspension of the work.
(i) Coordinate with Department, Federal, State and Local Regulatory agencies on resolution of erosion and sediment control/stormwater issues due to the Contractor's operations.
(j) Ensure that proper cleanup occurs from vehicle tracking on paved surfaces or any location where sediment leaves the Right-of-Way.
(k) Have available a set of erosion and sediment control/stormwater plans that are initialed and include the installation date of Best Management Practices. These practices shall include temporary and permanent groundcover and be properly updated to reflect necessary plan and field changes for use and review by Department personnel as well as regulatory agencies.

(2) Requirements set forth under the NPDES Permit - The Department's NPDES Stormwater permit (NCS000250) outlines certain objectives and management measures pertaining to construction activities. The permit references *NCG010000, General Permit to Discharge Stormwater* under the NPDES, and states that the Department shall incorporate the applicable requirements into its delegated Erosion and Sediment Control Program for construction activities disturbing one or more acres of land. The Department further incorporates these requirements on all contracted bridge and culvert work at jurisdictional waters, regardless of size. Some of the requirements are, but are not limited to:

(a) Control project site waste to prevent contamination of surface or ground waters of the state, i.e. from equipment operation/maintenance, construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste.

(b) Inspect erosion and sediment control/stormwater devices and stormwater discharge outfalls at least once every 7 calendar days, twice weekly for construction related *Federal Clean Water Act, Section 303(d)* impaired streams with turbidity violations, and within 24 hours after a significant rainfall event of 0.5 inch that occurs within a 24 hour period.

(c) Maintain an onsite rain gauge or use the Department's Multi-Sensor Precipitation Estimate website to maintain a daily record of rainfall amounts and dates.

(d) Maintain erosion and sediment control/stormwater inspection records for review by Department and Regulatory personnel upon request.

(e) Implement approved reclamation plans on all borrow pits, waste sites and staging areas.

(f) Maintain a log of turbidity test results as outlined in the Department's Procedure for Monitoring Borrow Pit Discharge.

(g) Provide secondary containment for bulk storage of liquid materials.

(h) Provide training for employees concerning general erosion and sediment control/stormwater awareness, the Department's NPDES Stormwater Permit NCS000250 requirements, and the applicable requirements of the *General Permit, NCG010000*.

(i) Report violations of the NPDES permit to the Engineer immediately who will notify the Division of Water Quality Regional Office within 24 hours of becoming aware of the violation.

(3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions/conditions of permits. The quality control program shall:

(a) Follow permit requirements related to the Contractor and subcontractors' construction activities.

(b) Ensure that all operators and subcontractors on site have the proper erosion and sediment control/stormwater certification.

(c) Notify the Engineer when the required certified erosion and sediment control/stormwater personnel are not available on the job site when needed.

(d) Conduct the inspections required by the NPDES permit.

(e) Take corrective actions in the proper timeframe as required by the NPDES permit for problem areas identified during the NPDES inspections.

(f) Incorporate erosion control into the work in a timely manner and stabilize disturbed areas with mulch/seed or vegetative cover on a section-by-section basis.

(g) Use flocculants approved by state regulatory authorities where appropriate and where required for turbidity and sedimentation reduction.

(h) Ensure proper installation and maintenance of temporary erosion and sediment control devices.

(i) Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.

(j) The Contractor's quality control and inspection procedures shall be subject to review by the Engineer. Maintain NPDES inspection records and make records available at all times for verification by the Engineer.

(B) *Certified Foreman* - At least one Certified Foreman shall be onsite for each type of work listed herein during the respective construction activities to control erosion, prevent sedimentation and follow permit provisions:

(1) Foreman in charge of grading activities
(2) Foreman in charge of bridge or culvert construction over jurisdictional areas
(3) Foreman in charge of utility activities

The Contractor may request to use the same person as the Level II Supervisor and Level II Foreman. This person shall be onsite whenever construction activities as described above are taking place. This request shall be approved by the Engineer prior to work beginning.

The Contractor may request to name a single Level II Foreman to oversee multiple construction activities on small bridge or culvert replacement projects. This request shall be approved by the Engineer prior to work beginning.

(C) *Certified Installers* - Provide at least one onsite, Level I Certified Installer for each of the following erosion and sediment control/stormwater crew:

(1) Seeding and Mulching
(2) Temporary Seeding
(3) Temporary Mulching
(4) Sodding
(5) Silt fence or other perimeter erosion/sediment control device installations
(6) Erosion control blanket installation
(7) Hydraulic tackifier installation
(8) Turbidity curtain installation
(9) Rock ditch check/sediment dam installation
(10) Ditch liner/matting installation
(11) Inlet protection
(12) Riprap placement
(13) Stormwater BMP installations (such as but not limited to level spreaders, retention/detention devices)
(14) Pipe installations within jurisdictional areas

If a Level I *Certified Installer* is not onsite, the Contractor may substitute a Level II Foreman for a Level I Installer, provided the Level II Foreman is not tasked to another crew requiring Level II Foreman oversight.

(D) *Certified Designer* - Include the certification number of the Level III Certified Designer on the erosion and sediment control/stormwater component of all reclamation plans and if applicable, the certification number of the Level III Certified Designer on the design of the project erosion and sediment control/stormwater plan.

**Preconstruction Meeting**

Furnish the names of the *Certified Erosion and Sediment Control/Stormwater Supervisor, Certified Foremen, Certified Installers* and *Certified Designer* and notify the Engineer of changes in certified personnel over the life of the contract within 2 days of change.

**Ethical Responsibility**

Any company performing work for the North Carolina Department of Transportation has the ethical responsibility to fully disclose any reprimand or dismissal of an employee resulting from improper testing or falsification of records.

**Revocation or Suspension of Certification**

Upon recommendation of the Chief Engineer to the certification entity, certification for *Supervisor, Certified Foremen, Certified Installers* and *Certified Designer* may be revoked or suspended with the issuance of an *Immediate Corrective Action (ICA), Notice of Violation (NOV),* or C*ease and Desist Order* for erosion and sediment control/stormwater related issues.

The Chief Engineer may recommend suspension or permanent revocation of certification due to the following:

(A) Failure to adequately perform the duties as defined within this certification provision.
(B) Issuance of an ICA, NOV, or Cease and Desist Order.
(C) Failure to fully perform environmental commitments as detailed within the permit conditions and specifications.
(D) Demonstration of erroneous documentation or reporting techniques.
(E) Cheating or copying another candidate's work on an examination.
(F) Intentional falsification of records.
(G) Directing a subordinate under direct or indirect supervision to perform any of the above actions.
(H) Dismissal from a company for any of the above reasons.
(I) Suspension or revocation of one's certification by another entity.

Suspension or revocation of a certification will be sent by certified mail to the certificant and the Corporate Head of the company that employs the certificant.

A certificant has the right to appeal any adverse action which results in suspension or permanent revocation of certification by responding, in writing, to the Chief Engineer within 10 calendar days after receiving notice of the proposed adverse action.

Chief Engineer
1536 Mail Service Center
Raleigh, NC 27699-1536

Failure to appeal within 10 calendar days will result in the proposed adverse action becoming effective on the date specified on the certified notice. Failure to appeal within the time specified will result in a waiver of all future appeal rights regarding the adverse action taken. The certificant will not be allowed to perform duties associated with the certification during the appeal process.

The Chief Engineer will hear the appeal and make a decision within 7 days of hearing the appeal. Decision of the Chief Engineer will be final and will be made in writing to the certificant.

If a certification is temporarily suspended, the certificant shall pass any applicable written examination and any proficiency examination, at the conclusion of the specified suspension period, prior to having the certification reinstated.

**Measurement and Payment**

*Certified Erosion and Sediment Control/Stormwater Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* will be incidental to the project for which no direct compensation will be made.

## PROCEDURE FOR MONITORING BORROW PIT DISCHARGE:

(2-20-07) (Rev. 3-19-13) 105-16, 230, 801 SP1 G181

Water discharge from borrow pit sites shall not cause surface waters to exceed 50 NTUs (nephelometric turbidity unit) in streams not designated as trout waters and 10 NTUs in streams, lakes or reservoirs designated as trout waters. For lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTUs. If the turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased.

If during any operating day, the downstream water quality exceeds the standard, the Contractor shall do all of the following:

(A) Either cease discharge or modify the discharge volume or turbidity levels to bring the downstream turbidity levels into compliance, or

(B) Evaluate the upstream conditions to determine if the exceedance of the standard is due to natural background conditions. If the background turbidity measurements exceed the standard, operation of the pit and discharge can continue as long as the stream turbidity levels are not increased due to the discharge.

(C) Measure and record the turbidity test results (time, date and sampler) at all defined sampling locations 30 minutes after startup and at a minimum, one additional sampling of all sampling locations during that 24-hour period in which the borrow pit is discharging.

(D) Notify DWQ within 24 hours of any stream turbidity standard exceedances that are not brought into compliance.

During the Environmental Assessment required by Article 230-4 of the *2012 Standard Specifications*, the Contractor shall define the point at which the discharge enters into the State's surface waters and the appropriate sampling locations. Sampling locations shall include points upstream and downstream from the point at which the discharge enters these waters. Upstream sampling location shall be located so that it is not influenced by backwater conditions and represents natural background conditions. Downstream sampling location shall be located at the point where complete mixing of the discharge and receiving water has occurred.

The discharge shall be closely monitored when water from the dewatering activities is introduced into jurisdictional wetlands. Any time visible sedimentation (deposition of sediment) on the wetland surface is observed, the dewatering activity will be suspended until turbidity levels in the stilling basin can be reduced to a level where sediment deposition does not occur. Staining of wetland surfaces from suspended clay particles, occurring after evaporation or infiltration, does not constitute sedimentation. No activities shall occur in wetlands that adversely affect the functioning of a wetland. Visible sedimentation will be considered an indication of possible adverse impacts on wetland use.

The Engineer will perform independent turbidity tests on a random basis. These results will be maintained in a log within the project records. Records will include, at a minimum, turbidity test results, time, date and name of sampler. Should the Department's test results exceed those of the Contractor's test results, an immediate test shall be performed jointly with the results superseding the previous test results of both the Department and the Contractor.

The Contractor shall use the *NCDOT Turbidity Reduction Options for Borrow Pits Matrix*, available at http://www.ncdot.gov/doh/operations/dp_chief_eng/roadside/fieldops/downloads/Files/TurbidityReductionOptionSheet.pdf to plan, design, construct, and maintain BMPs to address water quality standards. Tier I Methods include stilling basins which are standard compensatory BMPs. Other Tier I methods are noncompensatory and shall be used when needed to meet the stream turbidity standards. Tier II Methods are also noncompensatory and are options that may be needed for protection of rare or unique resources or where special environmental conditions exist at the site which have led to additional requirements being placed in the DWQ's 401 Certifications and approval letters, Isolated Wetland Permits, Riparian Buffer Authorization or a DOT Reclamation Plan's Environmental Assessment for the specific site. Should the Contractor exhaust all Tier I Methods on a site exclusive of rare or unique resources or special environmental conditions, Tier II Methods may be required by regulators on a case by case basis per supplemental agreement.

The Contractor may use cation exchange capacity (CEC) values from proposed site borings to plan and develop the bid for the project. CEC values exceeding 15 milliequivalents per 100 grams of soil may indicate a high potential for turbidity and should be avoided when dewatering into surface water is proposed.

No additional compensation for monitoring borrow pit discharge will be paid.

## EMPLOYMENT:

(11-15-11) (Rev. 1-17-12) 108, 102 SP1 G184

Revise the *2012 Standard Specifications* as follows:

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

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

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

## STATE HIGHWAY ADMINISTRATOR TITLE CHANGE:

(9-18-12) SP1 G185

Revise the *2012 Standard Specifications* as follows:

Replace all references to "State Highway Administrator" with "Chief Engineer".

## SUBLETTING OF CONTRACT:

(11-18-2014) 108-6 SP1 G186

Revise the *2012 Standard Specifications* as follows:

**Page 1-66, Article 108-6 Subletting of Contract, line 37**, add the following as the second sentence of the first paragraph:

All requests to sublet work shall be submitted within 30 days of the date of availability or prior to expiration of 20% of the contract time, whichever date is later, unless otherwise approved by the Engineer.

**Page 1-67, Article 108-6 Subletting of Contract, line 7**, add the following as the second sentence of the fourth paragraph:

Purchasing materials for subcontractors is not included in the percentage of work required to be performed by the Contractor. If the Contractor sublets items of work but elects to purchase material for the subcontractor, the value of the material purchased will be included in the total dollar amount considered to have been sublet.

## DIVISION LET CONTRACT PREQUALIFICATION:

(07-01-14) SPD 01-410

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.

## PROJECT SPECIAL PROVISIONS

## ROADWAY

### CLEARING AND GRUBBING - METHOD II:

(9-17-02) (Rev. 1-17-12) 200 SP2 R02A

Perform clearing on this project to the limits established by Method "II" shown on Standard Drawing No. 200.02 of the *2012 Roadway Standard Drawings*.

### SHOULDER AND FILL SLOPE MATERIAL:

(5-21-02) 235, 560 SP2 R45 A

**Description**

Perform the required shoulder and slope construction for this project in accordance with the applicable requirements of Section 560 and Section 235 of the *2012 Standard Specifications*.

**Measurement and Payment**

Where the material has been obtained from an authorized stockpile or from a borrow source and *Borrow Excavation* is not included in the contract, no direct payment will be made for this work, as the cost of this work will be part of the work being paid at the contract lump sum price for *Grading*. If *Borrow Excavation* is included in this contract and the material has been obtained from an authorized stockpile or from a borrow source, measurement and payment will be as provided in Section 230 of the *2012 Standard Specifications* for *Borrow Excavation*.

### PIPE INSTALLATION:

(11-20-12) 300 SP3 R01

Revise the *2012 Standard Specifications* as follows:

**Page 3-1, Article 300-2, Materials,** line 23-24, replace sentence with:

Provide foundation conditioning geotextile in accordance with Section 1056 for Type 4 geotextile.

### ASPHALT PAVEMENTS - SUPERPAVE:

(6-19-12) (Rev. 10-21-14) 605, 609, 610, 650, 660 SP6 R01

Revise the *2012 Standard Specifications* as follows:

**Page 6-3, Article 605-7 APPLICATION RATES AND TEMPERATURES,** replace this article, including Table 601-1, with the following:

Apply tack coat uniformly across the existing surface at target application rates shown in Table 605-1.

**TABLE 605-1**
**APPLICATION RATES FOR TACK COAT**

| Existing Surface | Target Rate (gal/sy) |
|---|---|
| | Emulsified Asphalt |
| New Asphalt | 0.04 ± 0.01 |
| Oxidized or Milled Asphalt | 0.06 ± 0.01 |
| Concrete | 0.08 ± 0.01 |

Apply tack coat at a temperature within the ranges shown in Table 605-2. Tack coat shall not be overheated during storage, transport or at application.

| TABLE 605-2<br>APPLICATION TEMPERATURE FOR TACK COAT | |
|---|---|
| **Asphalt Material** | **Temperature Range** |
| Asphalt Binder, Grade PG 64-22 | 350 - 400°F |
| Emulsified Asphalt, Grade RS-1H | 130 - 160°F |
| Emulsified Asphalt, Grade CRS-1 | 130 - 160°F |
| Emulsified Asphalt, Grade CRS-1H | 130 - 160°F |
| Emulsified Asphalt, Grade HFMS-1 | 130 - 160°F |
| Emulsified Asphalt, Grade CRS-2 | 130 - 160°F |

**Page 6-7, Article 609-3 FIELD VERIFICATION OF MIXTURE AND JOB MIX FORMULA ADJUSTMENTS**, lines 35-37, delete the second sentence of the second paragraph.

**Page 6-18, Article 610-1 DESCRIPTION**, lines 40-41, delete the last sentence of the last paragraph.

**Page 6-19, Subarticle 610-3(A) Mix Design-General**, line 5, add the following as the first paragraph:

Warm mix asphalt (WMA) is allowed for use at the Contractor's option in accordance with the NCDOT Approved Products List for WMA Technologies available at:

**https://connect.ncdot.gov/resources/Materials/MaterialsResources/Warm%20Mix%20Asphalt%20Approved%20List.pdf**

**Page 6-21, Subarticle 610-3(C) Job Mix Formula (JMF)**, replace Table 610-1 with the following:

| TABLE 610-1<br>DESIGN MIXING TEMPERATURE AT THE ASPHALT PLANT[A] | | |
|---|---|---|
| **Binder Grade** | **HMA<br>JMF Temperature** | **WMA<br>JMF Temperature Range** |
| PG 64-22 | 300ºF | 225 - 275ºF |
| PG 70-22 | 315ºF | 240 - 290ºF |
| PG 76-22 | 335ºF | 260 - 310ºF |

**A.** The mix temperature, when checked in the truck at the roadway, shall be within plus 15º and minus 25º of the temperature specified on the JMF.

**Page 6-21, Subarticle 610-3(C) Job Mix Formula (JMF)**, lines 4-6, delete first sentence of the second paragraph. Line 7, in the second sentence of the second paragraph, replace "275ºF" with "275ºF or greater."

**Page 6-22, Article 610-4 WEATHER, TEMPERATURE AND SEASONAL LIMITATIONS FOR PRODUCING AND PLACING ASPHALT MIXTURES**, lines 15-17, replace the second sentence of the first paragraph with the following:

Do not place asphalt material when the air or surface temperatures, measured at the location of the paving operation away from artificial heat, do not meet Table 610-5.

**Page 6-23, Article 610-4 WEATHER, TEMPERATURE AND SEASONAL LIMITATIONS FOR PRODUCING AND PLACING ASPHALT MIXTURES**, replace Table 610-5 with the following:

| TABLE 610-5<br>PLACEMENT TEMPERATURES FOR ASPHALT | |
|---|---|
| **Asphalt Concrete Mix Type** | **Minimum Surface and Air Temperature** |
| B25.0B, C | 35°F |
| I19.0B, C, D | 35°F |
| SF9.5A, S9.5B | 40°F[A] |
| S9.5C, S12.5C | 45°F[A] |
| S9.5D, S12.5D | 50°F |

**A.** For the final layer of surface mixes containing recycled asphalt shingles (RAS), the minimum surface and air temperature shall be 50ºF.

**Page 6-26, Article 610-7 HAULING OF ASPHALT MIXTURE**, lines 22-23, in the fourth sentence of the first paragraph replace "so as to overlap the top of the truck bed and" with "to".

**Page 6-41, Subarticle 650-3(B) Mix Design Criteria**, replace Table 650-1 with the following:

| TABLE 650-1<br>OGAFC GRADATION CRITERIA | | | |
|---|---|---|---|
| *Sieve Size (mm)* | *Type FC-1* | *Type FC-1 Modified* | *Type FC-2 Modified* |
| 19.0 | - | - | 100 |
| 12.5 | 100 | 100 | **80** - 100 |
| 9.50 | 75 - 100 | 75 - 100 | 55 - **80** |
| 4.75 | 25 - 45 | 25 - 45 | 15 - **30** |
| 2.36 | 5 - 15 | 5 - 15 | 5 - **15** |
| 0.075 | 1.0 - 3.0 | 1.0 - 3.0 | 2.0 - 4.0 |

**Page 6-50, Table 660-1 MATERIAL APPLICATION RATES AND TEMPERATURES**, lines 1-2, replace Note A in Table 660-1 with the following:

A. Use No. 6M, No. 67, No. 5 and No. 78M aggregate for retreatment before an asphalt overlay on existing pavement based on the width of the cracks in the existing pavement. Choose No. 78M for sections of roadway where the average width of existing cracks is 1/4" or less in width, No. 67 for sections of roadway where the average width of existing cracks are 1/4" to 5/8" in width and choose No. 5 for sections of roadway where the existing crack widths are greater than 5/8".

**ASPHALT PAVER - FIXED AND MOBILE STRING LINE:**

(10-21-03) (Rev. 1-17-12) 610 SP6 R06B

A mobile string line consisting of a 30 to 40 foot long ski is required for the widening and resurfacing on this project. A fixed string line is required for the new pavement construction on this project.

**ASPHALT BINDER CONTENT OF ASPHALT PLANT MIXES:**

(11-21-00) (Rev. 7-17-12) 609 SP6 R15

The approximate asphalt binder content of the asphalt concrete plant mixtures used on this project will be as follows:

| | | |
|---|---|---|
| Asphalt Concrete Base Course | Type B 25.0__ | 4.4% |
| Asphalt Concrete Intermediate Course | Type I 19.0__ | 4.8% |
| Asphalt Concrete Surface Course | Type S 4.75A | 6.8% |
| Asphalt Concrete Surface Course | Type SA-1 | 6.8% |
| Asphalt Concrete Surface Course | Type SF 9.5A | 6.7% |
| Asphalt Concrete Surface Course | Type S 9.5__ | 6.0% |

| | | |
|---|---|---|
| Asphalt Concrete Surface Course | Type S 12.5__ | 5.6% |

The actual asphalt binder content will be established during construction by the Engineer within the limits established in the *2012 Standard Specifications*.

**PRICE ADJUSTMENT - ASPHALT BINDER FOR PLANT MIX:**
(11-21-00) 620 SP6 R25

Price adjustments for asphalt binder for plant mix will be made in accordance with Section 620 of the *2012 Standard Specifications.*

The base price index for asphalt binder for plant mix is **$ 578.85** per ton.

This base price index represents an average of F.O.B. selling prices of asphalt binder at supplier's terminals on **January 1, 2015**.

**MATERIALS:**

(2-21-12) (Rev. 3-17-15) 1000, 1002, 1005, 1024, 1050, 1056, 1074, 1078, 1080, 1081, 1086, 1084, 1087, 1092 SP10 R01

Revise the *2012 Standard Specifications* as follows:

**Page 10-1, Article 1000-1, DESCRIPTION, lines 9-10,** replace the last sentence of the first paragraph with the following:

Type IL, IP, IS or IT blended cement may be used instead of Portland cement.

**Page 10-1, Article 1000-1, DESCRIPTION, line 14,** add the following:

Use materials which do not produce a mottled appearance through rusting or other staining of the finished concrete surface.

**Page 10-5, Table 1000-1, REQUIREMENTS FOR CONCRETE,** replace with the following:

**TABLE 1000-1**
**REQUIREMENTS FOR CONCRETE**

| Class of Concrete | Min. Comp. Strength at 28 days | Maximum Water-Cement Ratio | | | | Consistency Max. Slump | | Cement Content | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Air-Entrained Concrete | | Non Air-Entrained Concrete | | Vibrated | Non-Vibrated | Vibrated | | Non- Vibrated | |
| | | Rounded Aggregate | Angular Aggre-gate | Rounded Aggregate | Angular Aggre-gate | | | Min. | Max. | Min. | Max. |
| *Units* | *psi* | | | | | *inch* | *inch* | *lb/cy* | *lb/cy* | *lb/cy* | *lb/cy* |
| AA | 4,500 | 0.381 | 0.426 | - | - | 3.5 | - | 639 | 715 | - | - |
| AA Slip Form | 4,500 | 0.381 | 0.426 | - | - | 1.5 | - | 639 | 715 | - | - |
| Drilled Pier | 4,500 | - | - | 0.450 | 0.450 | - | 5-7 dry<br>7-9 wet | - | - | 640 | 800 |
| A | 3,000 | 0.488 | 0.532 | 0.550 | 0.594 | 3.5 | 4 | 564 | - | 602 | - |
| B | 2,500 | 0.488 | 0.567 | 0.559 | 0.630 | 1.5 machine-placed<br>2.5 hand-placed | 4 | 508 | - | 545 | - |
| Sand Light-weight | 4,500 | - | 0.420 | - | - | 4 | - | 715 | - | - | - |
| Latex Modified | 3,000 7 day | 0.400 | 0.400 | - | - | 6 | - | 658 | - | - | - |
| Flowable Fill excavatable | 150 max. at 56 days | as needed | as needed | as needed | as needed | - | Flow-able | - | - | 40 | 100 |
| Flowable Fill non-excavatable | 125 | as needed | as needed | as needed | as needed | - | Flow-able | - | - | 100 | as needed |
| Pavement | 4,500 design, field<br>650 flexural, design only | 0.559 | 0.559 | - | - | 1.5 slip form<br>3.0 hand place | - | 526 | - | - | - |
| Precast | See Table 1077-1 | as needed | as needed | - | - | 6 | as needed | as needed | as needed | as needed | as needed |
| Prestress | per contract | See Table 1078-1 | See Table 1078-1 | - | - | 8 | - | 564 | as needed | - | - |

**Page 10-1, Article 1000-2, MATERIALS, line 16; Page 10-8, Subarticle 1000-7(A), MATERIALS, line 8; and Page 10-18, Article 1002-2, MATERIALS, line 9,** add the following to the table of item references:

**Item** **Section**

Type IL Blended Cement 1024-1

**Page 10-7, Table 1000-3, MAXIMUM WATER-CEMENTITIOUS MATERIAL RATIO,** replace with the following:

| Class of Concrete | Rounded Aggregate | Angular Aggregate |
|---|---|---|
| AA and AA Slip Form | .366 | .410 |
| A | .469 | .512 |
| B | .469 | .545 |
| Pavement | .538 | .538 |

**Page 10-7, Article 1000-5, HIGH EARLY STRENGTH PORTLAND CEMENT CONCRETE, lines 30-31,** delete the second sentence of the third paragraph.

**Page 10-23, Table 1005-1, AGGREGATE GRADATION-COARSE AGGREGATE,** replace with the following:

**TABLE 1005-1**
**AGGREGATE GRADATION - COARSE AGGREGATE**

| Std. Size # | 2" | 1 1/2" | 1" | 3/4" | 1/2" | 3/8" | #4 | #8 | #10 | #16 | #40 | #200 | Remarks |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Percentage of Total by Weight Passing** | | | | | | | | | | | | |
| 4 | 100 | 90-100 | 20-55 | 0-15 | - | 0-5 | - | - | - | - | - | **A** | Asphalt Plant Mix |
| 467M | 100 | 95-100 | - | 35-70 | - | 0-30 | 0-5 | - | - | - | - | **A** | Asphalt Plant Mix |
| 5 | - | 100 | 90-100 | 20-55 | 0-10 | 0-5 | - | - | - | - | - | **A** | AST, Sediment Control Stone |
| 57 | - | 100 | 95-100 | - | 25-60 | - | 0-10 | 0-5 | - | - | - | **A** | AST, Str. Concrete, Shoulder Drain, Sediment Control Stone |
| 57M | - | 100 | 95-100 | - | 25-45 | - | 0-10 | 0-5 | - | - | - | **A** | AST, Concrete Pavement |
| 6M | - | - | 100 | 90-100 | 20-55 | 0-20 | 0-8 | - | - | - | - | **A** | AST |
| 67 | - | - | 100 | 90-100 | - | 20-55 | 0-10 | 0-5 | - | - | - | **A** | AST, Str. Concrete, Asphalt Plant Mix |
| 78M | - | - | - | 100 | 98-100 | 75-100 | 20-45 | 0-15 | - | - | - | **A** | Asphalt Plant Mix, AST, Str. Conc, Weep Hole Drains |
| 14M | - | - | - | - | - | 100 | 35-70 | 5-20 | - | 0-8 | - | **A** | Asphalt Plant Mix, AST, Weep Hole Drains, Str. Concrete |
| 9 | - | - | - | - | - | 100 | 85-100 | 10-40 | - | 0-10 | - | **A** | AST |
| ABC | - | 100 | 75-97 | - | 55-80 | - | 35-55 | - | 25-45 | - | 14-30 | 4-12[B] | Aggregate Base Course, Aggregate Stabilization |
| ABC (M) | - | 100 | 75-100 | - | 45-79 | - | 20-40 | - | 0-25 | - | - | 0-12[B] | Maintenance Stabilization |
| Light-weight[C] | - | - | - | - | 100 | 80-100 | 5-40 | 0-20 | - | 0-10 | - | 0-2.5 | AST |

**A.** See Subarticle 1005-4(A).
**B.** See Subarticle 1005-4(B).
**C.** For Lightweight Aggregate used in Structural Concrete, see Subarticle 1014-2(E)(6).

**Page 10-46, Article 1024-1, PORTLAND CEMENT, line 33,** add the following as the ninth paragraph:

Use Type IL blended cement that meets AASHTO M 240, except that the limestone content is limited to between 5 and 12% by weight and the constituents shall be interground. Class F fly ash can replace a portion of Type IL blended cement and shall be replaced as outlined in Subarticle 1000-4(I) for Portland cement. For mixes that contain cement with alkali content between 0.6% and 1.0% and for mixes that contain a reactive aggregate documented by the Department, use a pozzolan in the amount shown in Table 1024-1.

**Page 10-47, Subarticle 1024-3(B), Approved Sources, lines 16-18,** replace the second sentence of the second paragraph with the following:

Tests shall be performed by AASHTO's designated National Transportation Product Evaluation Program (NTPEP) laboratory for concrete admixture testing.

**Page 10-65, Article 1050-1, GENERAL, line 41,** replace the first sentence with the following:

All fencing material and accessories shall meet Section 106.

**Page 10-73, Article 1056-1 DESCRIPTION, lines 7-8**, delete the first sentence of the second paragraph and replace with the following:

Use geotextile fabrics that are on the NCDOT Approved Products List.

**Page 10-73, Article 1056-2 HANDLING AND STORING, line 17**, replace "mechanically stabilized earth (MSE) wall faces" with "temporary wall faces".

**Page 10-74, TABLE 1056-1 GEOTEXTILE REQUIREMENTS**, replace table with the following:

**TABLE 1056-1**
**GEOTEXTILE REQUIREMENTS**

| **Property** | **Requirement (MARV[A])** | | | | | **Test Method** |
|---|---|---|---|---|---|---|
| | **Type 1** | **Type 2** | **Type 3[B]** | **Type 4** | **Type 5[C]** | |
| *Typical Application* | *Shoulder Drains* | *Under Rip Rap* | *Temporary Silt Fence* | *Soil Stabilization* | *Temporary Walls* | |
| Elongation (MD & CD) | ≥ 50% | ≥ 50% | ≤ 25% | < 50% | < 50% | ASTM D4632 |
| Grab Strength (MD & CD) | Table 1[D], Class 3 | Table 1[D], Class 1 | 100 lb | Table 1[D], Class 3 | - | ASTM D4632 |
| Tear Strength (MD & CD) | | | - | | - | ASTM D4533 |
| Puncture Strength | | | - | | - | ASTM D6241 |
| Ultimate Tensile Strength (MD & CD) | - | - | - | - | 2,400 lb/ft (unless required otherwise in the contract) | ASTM D4595 |
| Permittivity | Table 2[D], 15% to 50% *in Situ* Soil Passing No. 200[E] | | Table 7[D] | Table 5[D] | 0.20 $sec^{-1}$ | ASTM D4491 |
| Apparent Opening Size | | | | | No. 30[E] | ASTM D4751 |
| UV Stability (Retained Strength) | | | | | 70% | ASTM D4355 |

**A.** MARV does not apply to elongation
**B.** Minimum roll width of 36" required
**C.** Minimum roll width of 13 ft required
**D.** AASHTO M 288
**E.** US Sieve No. per AASHTO M 92

**Page 10-115, Subarticle 1074-7(B), Gray Iron Castings, lines 10-11,** replace with the first two sentences with the following:

Supply gray iron castings meeting all facets of AASHTO M 306 excluding proof load. Proof load testing will only be required for new casting designs during the design process, and conformance to M306 loading (40,000 lbs.) will be required only when noted on the design documents.

**Page 10-126, Table 1078-1, REQUIREMENTS FOR CONCRETE,** replace with the following:

| **TABLE 1078-1<br>REQUIREMENTS FOR CONCRETE** | | |
|---|---|---|
| **Property** | **28 Day Design Compressive Strength 6,000 psi or less** | **28 Day Design Compressive Strength greater than 6,000 psi** |
| Maximum Water/Cementitious Material Ratio | 0.45 | 0.40 |
| Maximum Slump without HRWR | 3.5" | 3.5" |
| Maximum Slump with HRWR | 8" | 8" |
| Air Content (upon discharge into forms) | 5 + 2% | 5 + 2% |

**Page 10-151, Article 1080-4 Inspection and Sampling, lines 18-22,** replace (B), (C) and (D) with the following:

(B) At least 3 panels prepared as specified in 5.5.10 of AASHTO M 300, Bullet Hole Immersion Test.

(C) At least 3 panels of 4"x6"x1/4" for the Elcometer Adhesion Pull Off Test, ASTM D4541.

(D) A certified test report from an approved independent testing laboratory for the Salt Fog Resistance Test, Cyclic Weathering Resistance Test, and Bullet Hole Immersion Test as specified in AASHTO M 300.

(E) A certified test report from an approved independent testing laboratory that the product has been tested for slip coefficient and meets AASHTO M253, Class B.

**Page 10-161, Subarticle 1081-1(A) Classifications, lines 29-33,** delete first 3 sentences of the description for Type 2 and replace with the following:

**Type 2 -** A low-modulus, general-purpose adhesive used in epoxy mortar repairs. It may be used to patch spalled, cracked or broken concrete where vibration, shock or expansion and contraction are expected.

**Page 10-162, Subarticle 1081-1(A) Classifications, lines 4-7,** delete the second and third sentences of the description for Type 3A. **Lines 16-22,** delete Types 6A, 6B and 6C.

**Page 10-162, Subarticle 1081-1(B) Requirements, lines 26-30,** replace the second paragraph with the following:

For epoxy resin systems used for embedding dowel bars, threaded rods, rebar, anchor bolts and other fixtures in hardened concrete, the manufacturer shall submit test results showing that the bonding system will obtain 125% of the specified required yield strength of the fixture. Furnish certification that, for the particular bolt grade, diameter and embedment depth required, the anchor system will not fail by adhesive failure and that there is no movement of the anchor bolt. For certification and anchorage, use 3,000 psi as

the minimum Portland cement concrete compressive strength used in this test. Use adhesives that meet Section 1081.

List the properties of the adhesive on the container and include density, minimum and maximum temperature application, setting time, shelf life, pot life, shear strength and compressive strength.

**Page 10-163, Table 1081-1 Properties of Mixed Epoxy Resin Systems,** replace table with the following:

**TABLE 1081-1**
**PROPERTIES OF MIXED EPOXY RESIN SYSTEMS**

| Property | Type 1 | Type 2 | Type 3 | Type 3A | Type 4A | Type 4B | Type 5 |
|---|---|---|---|---|---|---|---|
| Viscosity-Poises at 77°F ± 2°F | Gel | 10-30 | 25-75 | Gel | 40-150 | 40-150 | 1-6 |
| Spindle No. | - | 3 | 4 | -- | 4 | 4 | 2 |
| Speed (RPM) | - | 20 | 20 | -- | 10 | 10 | 50 |
| Pot Life (Minutes) | 20-50 | 30-60 | 20-50 | 5-50 | 40-80 | 40-80 | 20-60 |
| Minimum Tensile Strength at 7 days (psi) | 1,500 | 2,000 | 4,000 | 4,000 | 1,500 | 1,500 | 4,000 |
| Tensile Elongation at 7 days (%) | 30 min. | 30 min. | 2-5 | 2-5 | 5-15 | 5-15 | 2-5 |
| Min. Compressive Strength of 2". mortar cubes at 24 hours | 3,000 (Neat) | 4,000- | 6,000- | 6,000 (Neat) | 3,000 | 3,000 | 6,000 |
| Min. Compressive Strength of 2" mortar cubes at 7 days | 5,000 (Neat) | - | - | - | - | 5,000 | - |
| Maximum Water Absorption (%) | 1.5 | 1.0 | 1.0 | 1.5 | 1.0 | 1.0 | 1.0 |
| Min. Bond Strength Slant Shear Test at 14 days (psi) | 1,500 | 1,500 | 2,000 | 2,000 | 1,500 | 1,500 | 1,500 |

**Page 10-164, Subarticle 1081-1(E) Prequalification, lines 31-33,** replace the second sentence of the first paragraph with the following:

Manufacturers choosing to supply material for Department jobs must submit an application through the Value Management Unit with the following information for each type and brand name:

**Page 10-164, Subarticle 1081-1(E)(3), line 37,** replace this subarticle with the following:

(3) Type of the material in accordance with Articles 1081-1 and 1081-4,

**Page 10-165, Subarticle 1081-1(E)(6), line 1,** in the first sentence of the first paragraph replace "AASHTO M 237" with "the specifications".

**Page 10-165, Subarticle 1081-1(E) Prequalification, line 9-10,** delete the second sentence of the last paragraph.

**Page 10-165, Subarticle 1081-1(F) Acceptance, line 14,** in the first sentence of the first paragraph replace "Type 1" with "Type 3".

**Page 10-169, Subarticle 1081-3(G) Anchor Bolt Adhesives,** delete this subarticle.

**Page 10-170, Article 1081-3 Hot Bitumen, line 9,** add the following at the end of Section 1081:

**1081-4 EPOXY RESIN ADHESIVE FOR BONDING TRAFFIC MARKINGS**

**(A) General**

This section covers epoxy resin adhesive for bonding traffic markers to pavement surfaces.

**(B) Classification**

The types of epoxies and their uses are as shown below:

**Type I –** Rapid Setting, High Viscosity, Epoxy Adhesive. This type of adhesive provides rapid adherence to traffic markers to the surface of pavement.

**Type II –** Standard Setting, High Viscosity, Epoxy Adhesive. This type of adhesive is recommended for adherence of traffic markers to pavement surfaces when rapid set is not required.

**Type III –** Rapid Setting, Low Viscosity, Water Resistant, Epoxy Adhesive. This type of rapid setting adhesive, due to its low viscosity, is appropriate only for use with embedded traffic markers.

**Type IV –** Standard Set Epoxy for Blade Deflecting-Type Plowable Markers.

**(C) Requirements**

Epoxies shall conform to the requirements set forth in AASHTO M 237.

**(D) Prequalification**

Refer to Subarticle 1081-1(E).

**(E) Acceptance**

Refer to Subarticle 1081-1(F).

**Page 10-173, Article 1084-2 STEEL SHEET PILES, lines 37-38,** replace first paragraph with the following:

Steel sheet piles detailed for permanent applications shall be hot rolled and meet ASTM A572 or ASTM A690 unless otherwise required by the plans. Steel sheet piles shall be coated as required by the plans. Galvanized sheet piles shall be coated in accordance with Section 1076. Metallized sheet piles shall be metallized in accordance to the Project Special Provision "Thermal Sprayed Coatings (Metallization)" with an 8 mil, 99.9% aluminum alloy coating and a 0.5 mil seal coating. Any portion of the metallized sheet piling encased in concrete shall receive a barrier coat. The barrier coat shall be an approved waterborne coating with a low-viscosity which readily absorbs into the pores of the aluminum thermal sprayed coating. The waterborne coating shall be applied at a spreading rate that results in a theoretical 1.5 mil dry film thickness. The manufacturer shall issue a letter of certification that the resin chemistry of

the waterborne coating is compatible with the 99.9% aluminum thermal sprayed alloy and suitable for tidal water applications.

**Page 10-174, Subarticle 1086-1(B)(1) Epoxy, lines 18-24**, replace this subarticle with the following:

The epoxy shall meet Article 1081-4.

The 2 types of epoxy adhesive which may be used are Type I, Rapid Setting, and Type II, Standard Setting. Use Type II when the pavement temperature is above 60°F or per the manufacturer's recommendations whichever is more stringent. Use Type I when the pavement temperature is between 50°F and 60°F or per the manufacturer's recommendations whichever is more stringent. Epoxy adhesive Type I, Cold Set, may be used to attach temporary pavement markers to the pavement surface when the pavement temperature is between 32°F and 50°F or per the manufacturer's recommendations whichever is more stringent.

**Page 10-175, Subarticle 1086-2(E) Epoxy Adhesives, line 27**, replace "Section 1081" with "Article 1081-4".

**Page 10-177, Subarticle 1086-3(E) Epoxy Adhesives, line 22**, replace "Section 1081" with "Article 1081-4".

**Page 10-179, Subarticle 1087-4(A) Composition, lines 39-41**, replace the third paragraph with the following:

All intermixed and drop-on glass beads shall not contain more than 75 ppm arsenic or 200 ppm lead.

**Page 10-180, Subarticle 1087-4(B) Physical Characteristics, line 8**, replace the second paragraph with the following:

All intermixed and drop-on glass beads shall comply with NCGS § 136-30.2 and 23 USC § 109(r).

**Page 10-181, Subarticle 1087-7(A) Intermixed and Drop-on Glass Beads, line 24**, add the following after the first paragraph:

Use X-ray Fluorescence for the normal sampling procedure for intermixed and drop-on beads, without crushing, to check for any levels of arsenic and lead. If any arsenic or lead is detected, the sample shall be crushed and repeat the test using X-ray Fluorescence. If the X-ray Fluorescence test shows more than a LOD of 5 ppm, test the beads using United States Environmental Protection Agency Method 6010B, 6010C or 3052 for no more than 75 ppm arsenic or 200 ppm lead.

**Page 10-204, Subarticle 1092-2(A) Performance and Test Requirements,** replace **Table 1092-3 Minimum Coefficient of Retroreflection for NC Grade A** with the following:

**TABLE 1092-3**
**MINIMUM COEFFICIENT OF RETROREFLECTION FOR NC GRADE A**
**(Candelas Per Lux Per Square Meter)**

| Observation Angle, degrees | Entrance Angle, degrees | White | Yellow | Green | Red | Blue | Fluorescent Yellow Green | Fluorescent Yellow |
|---|---|---|---|---|---|---|---|---|
| 0.2 | -4.0 | 525 | 395 | 52 | 95 | 30 | 420 | 315 |
| 0.2 | 30.0 | 215 | 162 | 22 | 43 | 10 | 170 | 130 |
| 0.5 | -4.0 | 310 | 230 | 31 | 56 | 18 | 245 | 185 |
| 0.5 | 30.0 | 135 | 100 | 14 | 27 | 6 | 110 | 81 |
| 1.0 | -4.0 | **120** | 60 | 8 | 16 | 3.6 | 64 | 48 |
| 1.0 | 30.0 | 45 | 34 | 4.5 | 9 | 2 | 36 | 27 |

**SHOULDER AND SLOPE BORROW:**
(3-19-13) 1019 SP10 R10

Use soil in accordance with Section 1019 of the *2012 Standard Specifications.* Use soil consisting of loose, friable, sandy material with a PI greater than 6 and less than 25 and a pH ranging from 5.5 to 7.0.

Soil with a pH ranging from 4.0 to 5.5 will be accepted without further testing if additional limestone is provided in accordance with the application rates shown in Table 1019-1A. Soil type is identified during the soil analysis. Soils with a pH above 7.0 require acidic amendments to be added. Submit proposed acidic amendments to the Engineer for review and approval. Soils with a pH below 4.0 or that do not meet the PI requirements shall not be used.

| pH TEST RESULT | Sandy Soils Additional Rate (lbs. / Acre) | Silt Loam Soils Additional Rate (lbs. / Acre) | Clay Loam Soils Additional Rate (lbs. / Acre) |
|---|---|---|---|
| 4.0 - 4.4 | 1,000 | 4,000 | 6,000 |
| 4.5 - 4.9 | 500 | 3,000 | 5,000 |
| 5.0 - 5.4 | NA | 2,000 | 4,000 |

Note: Limestone application rates shown in this table are in addition to the standard rate of 4000 lbs. / acre required for seeding and mulching.

No direct payment will be made for providing additional lime or acidic amendments for Ph adjustment.

**TEMPORARY TRAFFIC CONTROL DEVICES:**
(1-17-12) 1105 SP11 R05

Revise the *2012 Standard Specifications* as follows:

**Page 11-5, Article 1105-6 Measurement and Payment,** add the following paragraph after line 24:

Partial payments will be made on each payment estimate based on the following: 50% of the contract lump sum price bid will be paid on the first monthly estimate and the remaining 50% of the contract lump sum price bid will be paid on each subsequent estimate based on the percent of the project completed.

**TRUCK MOUNTED CHANGEABLE MESSAGE SIGNS:**
(8-21-12) 1101.02 SP11 R10

Revise the *2012 Roadway Standard Drawings* as follows:

**Drawing No. 1101.02, Sheet 12, TEMPORARY LANE CLOSURES,** replace General Note #11 with the following:

11- TRUCK MOUNTED CHANGEABLE MESSAGE SIGNS (TMCMS) USED ON SHADOW VEHICLES FOR “IN LANE” ACTIVITIES SHALL BE A MINIMUM OF 43" X 73". THE DISPLAY PANEL SHALL HAVE FULL MATRIX CAPABILITY WITH THE CAPABILITY TO PROVIDE 2 MESSAGE LINES WITH 7 CHARACTERS PER LINE WITH A MINIMUM CHARACTER HEIGHT OF 18". FOR ADDITIONAL MESSAGING, CONTACT THE WORK ZONE TRAFFIC CONTROL SECTION.

12- TMCMS USED FOR ADVANCED WARNING ON VEHICLES LOCATED ON THE SHOULDER MAY BE SMALLER THAN 43" X 73". THE DISPLAY PANEL SHALL HAVE THE CAPABILITY TO PROVIDE 2 MESSAGE LINES WITH 7 CHARACTERS PER LINE WITH A MINIMUM CHARACTER HEIGHT OF 18". FOR ADDITIONAL MESSAGING, CONTACT THE WORK ZONE TRAFFIC CONTROL SECTION.

**Drawing No. 1101.02, Sheet 13, TEMPORARY LANE CLOSURES,** replace General Note #12 with the following:

12- TRUCK MOUNTED CHANGEABLE MESSAGE SIGNS (TMCMS) USED ON SHADOW VEHICLES FOR “IN LANE” ACTIVITIES SHALL BE A MINIMUM OF 43" X 73". THE DISPLAY PANEL SHALL HAVE FULL MATRIX CAPABILITY WITH THE CAPABILITY TO PROVIDE 2 MESSAGE LINES WITH 7 CHARACTERS PER LINE WITH A MINIMUM CHARACTER HEIGHT OF 18". FOR ADDITIONAL MESSAGING, CONTACT THE WORK ZONE TRAFFIC CONTROL SECTION.

13- TMCMS USED FOR ADVANCED WARNING ON VEHICLES LOCATED ON THE SHOULDER MAY BE SMALLER THAN 43" X 73". THE DISPLAY PANEL SHALL HAVE THE CAPABILITY TO PROVIDE 2 MESSAGE LINES WITH 7 CHARACTERS PER LINE WITH A MINIMUM CHARACTER HEIGHT OF 18". FOR ADDITIONAL MESSAGING, CONTACT THE WORK ZONE TRAFFIC CONTROL SECTION.

**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(E) of the *2012 Standard Specifications*.

**STANDARD SPECIAL PROVISION**

NCDOT GENERAL SEED SPECIFICATION FOR SEED QUALITY

(5-17-11) Z-3

Seed shall be sampled and tested by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory. When said samples are collected, the vendor shall supply an independent laboratory report for each lot to be tested. Results from seed so sampled shall be final. Seed not meeting the specifications shall be rejected by the Department of Transportation and shall not be delivered to North Carolina Department of Transportation warehouses. If seed has been delivered it shall be available for pickup and replacement at the supplier's expense.

Any re-labeling required by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory, that would cause the label to reflect as otherwise specified herein shall be rejected by the North Carolina Department of Transportation.

Seed shall be free from seeds of the noxious weeds Johnsongrass, Balloonvine, Jimsonweed, Witchweed, Itchgrass, Serrated Tussock, Showy Crotalaria, Smooth Crotalaria, Sicklepod, Sandbur, Wild Onion, and Wild Garlic. Seed shall not be labeled with the above weed species on the seed analysis label. Tolerances as applied by the Association of Official Seed Analysts will NOT be allowed for the above noxious weeds except for Wild Onion and Wild Garlic.

Tolerances established by the Association of Official Seed Analysts will generally be recognized. However, for the purpose of figuring pure live seed, the found pure seed and found germination percentages as reported by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory will be used. Allowances, as established by the NCDOT, will be recognized for minimum pure live seed as listed on the following pages.

The specifications for restricted noxious weed seed refers to the number per pound as follows:

| Restricted Noxious **Weed** | Limitations per Lb. Of Seed | Restricted Noxious **Weed** | Limitations per Lb. of Seed |
|---|---|---|---|
| Blessed Thistle | 4 seeds | Cornflower (Ragged Robin) | 27 seeds |
| Cocklebur | 4 seeds | Texas Panicum | 27 seeds |
| Spurred Anoda | 4 seeds | Bracted Plantain | 54 seeds |
| Velvetleaf | 4 seeds | Buckhorn Plantain | 54 seeds |
| Morning-glory | 8 seeds | Broadleaf Dock | 54 seeds |
| Corn Cockle | 10 seeds | Curly Dock | 54 seeds |
| Wild Radish | 12 seeds | Dodder | 54 seeds |
| Purple Nutsedge | 27 seeds | Giant Foxtail | 54 seeds |
| Yellow Nutsedge | 27 seeds | Horsenettle | 54 seeds |
| Canada Thistle | 27 seeds | Quackgrass | 54 seeds |
| Field Bindweed | 27 seeds | Wild Mustard | 54 seeds |
| Hedge Bindweed | 27 seeds | | |

Seed of Pensacola Bahiagrass shall not contain more than 7% inert matter, Kentucky Bluegrass, Centipede and Fine or Hard Fescue shall not contain more than 5% inert matter whereas a maximum of 2% inert matter will be allowed on all other kinds of seed. In addition, all seed shall not contain more than 2% other crop seed nor more than 1% total weed seed. The germination rate as tested by the North Carolina Department of Agriculture shall not fall below 70%, which includes both dormant and hard seed. Seed shall be labeled with not more than 7%, 5% or 2% inert matter (according to above specifications), 2% other crop seed and 1% total weed seed.

Exceptions may be made for minimum pure live seed allowances when cases of seed variety shortages are verified. Pure live seed percentages will be applied in a verified shortage situation. Those purchase orders of deficient seed lots will be credited with the percentage that the seed is deficient.

FURTHER SPECIFICATIONS FOR EACH SEED GROUP ARE GIVEN BELOW:

Minimum 85% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 83% pure live seed will not be approved.

Sericea Lespedeza
Oats (seeds)

Minimum 80% pure live seed; maximum 1% total weed seed; maximum 2% total other crop; maximum 144 restricted noxious weed seed per pound. Seed less than 78% pure live seed will not be approved.

Tall Fescue (all approved varieties)
Kobe Lespedeza
Korean Lespedeza
Weeping Lovegrass
Carpetgrass
Bermudagrass
Browntop Millet
German Millet – Strain R
Clover – Red/White/Crimson

Minimum 78% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 76% pure live seed will not be approved.

Common or Sweet Sundangrass

Minimum 76% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 74% pure live seed will not be approved.

Rye (grain; all varieties)
Kentucky Bluegrass (all approved varieties)
Hard Fescue (all approved varieties)
Shrub (bicolor) Lespedeza

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 noxious weed seed per pound. Seed less than 70% pure live seed will not be approved.

Centipedegrass
Crownvetch
Pensacola Bahiagrass
Creeping Red Fescue
Japanese Millet
Reed Canary Grass
Zoysia

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 5% inert matter; maximum 144 restricted noxious weed seed per pound.

Barnyard Grass
Big Bluestem
Little Bluestem
Bristly Locust
Birdsfoot Trefoil
Indiangrass
Orchardgrass
Switchgrass

Yellow Blossom Sweet Clover

**STANDARD SPECIAL PROVISION**

ERRATA

(1-17-12) (Rev. 11-18-14) Z-4

Revise the *2012 Standard Specifications* as follows:

**Division 2**

**Page 2-7, line 31, Article 215-2 Construction Methods,** replace "Article 107-26" with "Article 107-25".
**Page 2-17, Article 226-3, Measurement and Payment, line 2,** delete "pipe culverts,".
**Page 2-20, Subarticle 230-4(B), Contractor Furnished Sources, change references as follows: Line 1,** replace "(4) Buffer Zone" with "(c) Buffer Zone"; **Line 12,** replace "(5) Evaluation for Potential Wetlands and Endangered Species" with "(d) Evaluation for Potential Wetlands and Endangered Species"; and **Line 33,** replace "(6) Approval" with "(4) Approval".

**Division 3**

**Page 3-1, after line 15, Article 300-2 Materials,** replace "1032-9(F)" with "1032-6(F)".

**Division 4**

**Page 4-77, line 27, Subarticle 452-3(C) Concrete Coping,** replace "sheet pile" with "reinforcement".

**Division 6**

**Page 6-7, line 31, Article 609-3 Field Verification of Mixture and Job Mix Formula Adjustments,** replace "30" with "45".
**Page 6-10, line 42, Subarticle 609-6(C)(2),** replace "Subarticle 609-6(E)" with "Subarticle 609-6(D)".
**Page 6-11, Table 609-1 Control Limits,** replace "Max. Spec. Limit" for the Target Source of $P_{0.075}/P_{be}$ Ratio with "1.0".
**Page 6-40, Article 650-2 Materials,** replace "Subarticle 1012-1(F)" with "Subarticle 1012-1(E)"

**Division 8**

**Page 8-23, line 10, Article 838-2 Materials,** replace "Portland Cement Concrete, Class B" with "Portland Cement Concrete, Class A".

**Division 10**

**Page 10-166, Article 1081-3 Hot Bitumen,** replace "Table 1081-16" with "Table 1081-2", replace "Table 1081-17" with "Table 1081-3", and replace "Table 1081-18" with "Table 1081-4".

**Division 12**

**Page 12-7, Table 1205-3,** add "FOR THERMOPLASTIC" to the end of the title.
**Page 12-8, Subarticle 1205-5(B), line 13,** replace "Table 1205-2" with "Table 1205-4".
**Page 12-8, Table 1205-4 and 1205-5,** replace "THERMOPLASTIC" in the title of these tables with "POLYUREA".
**Page 12-9, Subarticle 1205-6(B), line 21,** replace "Table 1205-4" with "Table 1205-6".
**Page 12-11, Subarticle 1205-8(C), line 25,** replace "Table 1205-5" with "Table 1205-7".

**Division 15**

**Page 15-4, Subarticle 1505-3(F) Backfilling, line 26,** replace "Subarticle 235-4(C)" with "Subarticle 235-3(C)".

**Page 15-6, Subarticle 1510-3(B), after line 21,** replace the allowable leakage formula with the following: **W=LD√P ÷ 148,000**

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

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

**Division 17**

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

Revise the *2012 Roadway Standard Drawings* as follows:

**1633.01 Sheet 1 of 1, English Standard Drawing for Matting Installation,** replace "1633.01" with "1631.01".

**STANDARD SPECIAL PROVISION**

# PLANT AND PEST QUARANTINES

**(Imported Fire Ant, Gypsy Moth, Witchweed, And Other Noxious Weeds)**

(3-18-03) (Rev. 10-15-13) Z-04a

**Within Quarantined Area**

This project may be within a county regulated for plant and/or pests. If the project or any part of the Contractor's operations is located within a quarantined area, thoroughly clean all equipment prior to moving out of the quarantined area. Comply with federal/state regulations by obtaining a certificate or limited permit for any regulated article moving from the quarantined area.

**Originating in a Quarantined County**

Obtain a certificate or limited permit issued by the N.C. Department of Agriculture/United States Department of Agriculture. Have the certificate or limited permit accompany the article when it arrives at the project site.

**Contact**

Contact the N.C. Department of Agriculture/United States Department of Agriculture at 1-800-206-9333, 919-733-6932, or *http://www.ncagr.gov/plantind/* to determine those specific project sites located in the quarantined area or for any regulated article used on this project originating in a quarantined county.

**Regulated Articles Include**

1. Soil, sand, gravel, compost, peat, humus, muck, and decomposed manure, separately or with other articles. This includes movement of articles listed above that may be associated with cut/waste, ditch pulling, and shoulder cutting.
2. Plants with roots including grass sod.
3. Plant crowns and roots.
4. Bulbs, corms, rhizomes, and tubers of ornamental plants.
5. Hay, straw, fodder, and plant litter of any kind.
6. Clearing and grubbing debris.
7. Used agricultural cultivating and harvesting equipment.
8. Used earth-moving equipment.
9. Any other products, articles, or means of conveyance, of any character, if determined by an inspector to present a hazard of spreading imported fire ant, gypsy moth, witchweed or other noxious weeds.

## STANDARD SPECIAL PROVISION

### AWARD OF CONTRACT

(6-28-77) Z-6

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

**STANDARD SPECIAL PROVISION**

MINORITY AND FEMALE EMPLOYMENT REQUIREMENTS

Z-7

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

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

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

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

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

## EMPLOYMENT GOALS FOR MINORITY AND FEMALE PARTICIPATION

Economic Areas

***Area 023 29.7%***
Bertie County
Camden County
Chowan County
Gates County
Hertford County
Pasquotank County
Perquimans County

***Area 024 31.7%***
Beaufort County
Carteret County
Craven County
Dare County
Edgecombe County
Green County
Halifax County
Hyde County
Jones County
Lenoir County
Martin County
Nash County
Northampton County
Pamlico County
Pitt County
Tyrrell County
Washington County
Wayne County
Wilson County

***Area 025 23.5%***
Columbus County
Duplin County
Onslow County
Pender County

***Area 026 33.5%***
Bladen County
Hoke County
Richmond County
Robeson County
Sampson County
Scotland County

***Area 027 24.7%***
Chatham County
Franklin County
Granville County
Harnett County
Johnston County
Lee County
Person County
Vance County
Warren County

***Area 028 15.5%***
Alleghany County
Ashe County
Caswell County
Davie County
Montgomery County
Moore County
Rockingham County
Surry County
Watauga County
Wilkes County

***Area 029 15.7%***
Alexander County
Anson County
Burke County
Cabarrus County
Caldwell County
Catawba County
Cleveland County
Iredell County
Lincoln County
Polk County
Rowan County
Rutherford County
Stanly County

***Area 0480 8.5%***
Buncombe County
Madison County

***Area 030 6.3%***
Avery County
Cherokee County
Clay County
Graham County
Haywood County
Henderson County
Jackson County
McDowell County
Macon County
Mitchell County
Swain County
Transylvania County
Yancey County

**SMSA Areas**

***Area 5720 26.6%***
Currituck County

***Area 9200 20.7%***
Brunswick County
New Hanover County

***Area 2560 24.2%***
Cumberland County

***Area 6640 22.8%***
Durham County
Orange County
Wake County

***Area 1300 16.2%***
Alamance County

***Area 3120 16.4%***
Davidson County
Forsyth County
Guilford County
Randolph County
Stokes County
Yadkin County

***Area 1520 18.3%***
Gaston County
Mecklenburg County
Union County

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Goals for Female

Participation in Each Trade

(Statewide) 6.9%

# 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 contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
    a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    (2) the prime contractor remains responsible for the quality of the work of the leased employees;
    (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
    b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

**VII. SAFETY: ACCIDENT PREVENTION**

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

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

**VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **Instructions for Certification – First Tier Participants:**
   a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
   c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
   d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
   e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.
h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.
i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**
   a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
      (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
      (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
      (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
      (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
   b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
2. **Instructions for Certification - Lower Tier Participants:**
   (Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)
   a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
   b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
   c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
   d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
   e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
   f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.
   g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.
   h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
   i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this

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

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**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.

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**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**

# ON-THE-JOB TRAINING

(10-16-07) (Rev. 5-21-13) Z-10

## Description

The North Carolina Department of Transportation will administer a custom version of the Federal On-the-Job Training (OJT) Program, commonly referred to as the Alternate OJT Program. All contractors (existing and newcomers) will be automatically placed in the Alternate Program. Standard OJT requirements typically associated with individual projects will no longer be applied at the project level. Instead, these requirements will be applicable on an annual basis for each contractor administered by the OJT Program Manager.

On the Job Training shall meet the requirements of 23 CFR 230.107 (b), 23 USC – Section 140, this provision and the On-the-Job Training Program Manual.

The Alternate OJT Program will allow a contractor to train employees on Federal, State and privately funded projects located in North Carolina. However, priority shall be given to training employees on NCDOT Federal-Aid funded projects.

## Minorities and Women

Developing, training and upgrading of minorities and women toward journeyman level status is a primary objective of this special training provision. Accordingly, the Contractor shall make every effort to enroll minority and women as trainees to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

## Assigning Training Goals

The Department, through the OJT Program Manager, will assign training goals for a calendar year based on the contractors' past three years' activity and the contractors' anticipated upcoming year's activity with the Department. At the beginning of each year, all contractors eligible will be contacted by the Department to determine the number of trainees that will be assigned for the upcoming calendar year. At that time the Contractor shall enter into an agreement with the Department to provide a self-imposed on-the-job training program for the calendar year. This agreement will include a specific number of annual training goals agreed to by both parties. The number of training assignments may range from 1 to 15 per contractor per calendar year. The Contractor shall sign an agreement to fulfill their annual goal for the year. A sample agreement is available at www.ncbowd.com/section/on-the-job-training.

## Training Classifications

The Contractor shall provide on-the-job training aimed at developing full journeyman level workers in the construction craft/operator positions. Preference shall be given to providing training in the following skilled work classifications:

| | |
|---|---|
| Equipment Operators | Office Engineers |
| Truck Drivers | Estimators |
| Carpenters | Iron / Reinforcing Steel Workers |
| Concrete Finishers | Mechanics |
| Pipe Layers | Welders |

The Department has established common training classifications and their respective training requirements that may be used by the contractors. However, the classifications established are not all-inclusive. Where the training is oriented toward construction applications, training will be allowed in lower-level management positions such as office engineers and estimators. Contractors shall submit new classifications for specific job functions that their employees are performing. The Department will review and recommend for acceptance to FHWA the new classifications proposed by contractors, if applicable. New classifications shall meet the following requirements:

> Proposed training classifications are reasonable and realistic based on the job skill classification needs, and
>
> The number of training hours specified in the training classification is consistent with common practices and provides enough time for the trainee to obtain journeyman level status.

The Contractor may allow trainees to be trained by a subcontractor provided that the Contractor retains primary responsibility for meeting the training and this provision is made applicable to the subcontract. However, only the Contractor will receive credit towards the annual goal for the trainee.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman level status or in which they have been employed as a journeyman.

**Records and Reports**

The Contractor shall maintain enrollment, monthly and completion reports documenting company compliance under these contract documents. These documents and any other information as requested shall be submitted to the OJT Program Manager.

Upon completion and graduation of the program, the Contractor shall provide each trainee with a certification Certificate showing the type and length of training satisfactorily completed.

**Trainee Interviews**

All trainees enrolled in the program will receive an initial and Trainee/Post graduate interview conducted by the OJT program staff.

**Trainee Wages**

Contractors shall compensate trainees on a graduating pay scale based upon a percentage of the prevailing minimum journeyman wages (Davis-Bacon Act). Minimum pay shall be as follows:

| | |
|---|---|
| 60 percent | of the journeyman wage for the first half of the training period |
| 75 percent | of the journeyman wage for the third quarter of the training period |
| 90 percent | of the journeyman wage for the last quarter of the training period |

In no instance shall a trainee be paid less than the local minimum wage. The Contractor shall adhere to the minimum hourly wage rate that will satisfy both the NC Department of Labor (NCDOL) and the Department.

**Achieving or Failing to Meet Training Goals**

The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and who receives training for at least 50 percent of the specific program requirement. Trainees will be allowed to be transferred between projects if required by the Contractor's scheduled workload to meet training goals.

If a contractor fails to attain their training assignments for the calendar year, they may be taken off the NCDOT's Bidders List.

**Measurement and Payment**

No compensation will be made for providing required training in accordance with these contract documents.

**STANDARD SPECIAL PROVISION**
MINIMUM WAGES
**GENERAL DECISION NC150099 01/02/2015 NC99**

Z-099

Date: January 2, 2015

General Decision Number: NC150099 01/02/2015 NC99

Superseded General Decision Numbers: NC20140099

State: North Carolina

Construction Type: HIGHWAY

**COUNTIES:**

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

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: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is 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 $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| Modification Number | Publication Date |
|---|---|
| 0 | 01/02/2015 |

SUNC2014-001 11/13/2014

| | Rates | Fringes |
|---|---|---|
| BLASTER | 21.83 | |
| CARPENTER | 12.54 | |
| CEMENT MASON/CONCRETE FINISHER | 14.10 | |
| ELECTRICIAN | | |
| Electrician | 19.19 | 2.39 |
| Telecommunications Technician | 15.13 | |
| IRONWORKER | 14.53 | |
| LABORER | | |
| Asphalt Raker and Spreader | 12.23 | |
| Asphalt Screed/Jackman | 15.22 | |
| Carpenter Tender | 10.00 | |

| | Rates | Fringes |
|---|---|---|
| Cement Mason/Concrete Finisher Tender | 12.26 | |
| Common or General | 10.68 | |
| Guardrail/Fence Installer | 13.43 | |
| Pipelayer | 12.22 | |
| Traffic Signal/Lighting Installer | 15.85 | |
| PAINTER | | |
| Bridge | 19.62 | |
| POWER EQUIPMENT OPERATORS | | |
| Asphalt Broom Tractor | 11.00 | |
| Bulldozer Fine | 16.20 | |
| Bulldozer Rough | 13.89 | |
| Concrete Grinder/Groover | 24.66 | |
| Crane Boom Trucks | 14.44 | .53 |
| Crane Other | 19.59 | |
| Crane Rough/All-Terrain | 21.25 | |
| Drill Operator Rock | 15.25 | |
| Drill Operator Structure | 20.92 | |
| Excavator Fine | 16.11 | |
| Excavator Rough | 13.10 | |
| Grader/Blade Fine | 19.24 | |
| Grader/Blade Rough | 13.07 | |
| Loader 2 Cubic Yards or Less | 13.38 | |
| Loader Greater Than 2 Cubic Yards | 16.01 | |
| Material Transfer Vehicle (Shuttle Buggy) | 17.39 | |
| Mechanic | 18.51 | |
| Milling Machine | 13.88 | |
| Off-Road Hauler/Water Tanker | 13.87 | |
| Oiler/Greaser | 14.98 | |
| Pavement Marking Equipment | 13.33 | |
| Paver Asphalt | 15.68 | .05 |
| Roller Asphalt Breakdown | 14.05 | .06 |
| Roller Asphalt Finish | 14.98 | .04 |
| Roller Other | 11.75 | |
| Scraper Finish | 13.87 | |
| Scraper Rough | 11.53 | |
| Slip Form Machine | 20.79 | |
| Tack Truck/Distributor Operator | 14.67 | .06 |
| TRUCK DRIVER | | |
| GVWR of 26,000 Lbs or Greater | 11.72 | |
| GVWR of 26,000 Lbs or Less | 13.50 | |

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

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

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

**STANDARD SPECIAL PROVISION**
MINIMUM WAGES
**GENERAL DECISION NC150100 01/23/2015 NC100**

Z-100

Date: January 23, 2015

General Decision Number: NC150100 01/23/2015 NC100

Superseded General Decision Numbers: NC20140100

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: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is 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 $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| Modification Number | Publication Date |
|---|---|
| 0 | 01/02/2015 |
| 1 | 01/23/2015 |

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 |
| 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 | |

| | Rates | Fringes |
|---|---|---|
| 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.

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)).

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WAGE DETERMINATION APPEALS PROCESS

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

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* a survey underlying a wage determination
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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:

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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:

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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

## MINIMIZE REMOVAL OF VEGETATION:

The Contractor shall minimize removal of vegetation within project limits to the maximum extent practicable. Vegetation along stream banks and adjacent to other jurisdictional resources outside the construction limits shall only be removed upon approval of Engineer. No additional payment will be made for this minimization work.

## STABILIZATION REQUIREMENTS:

Stabilization for this project shall comply with the time frame guidelines as specified by the NCG-010000 general construction permit effective August 3, 2011 issued by the North Carolina Department of Environment and Natural Resources Division of Water Quality. Temporary or permanent ground cover stabilization shall occur within 7 calendar days from the last land-disturbing activity, with the following exceptions in which temporary or permanent ground cover shall be provided in 14 calendar days from the last land-disturbing activity:

- Slopes between 2:1 and 3:1, with a slope length of 10 ft. or less
- Slopes 3:1 or flatter, with a slope of length of 50 ft. or less
- Slopes 4:1 or flatter

The stabilization timeframe for High Quality Water (HQW) Zones shall be 7 calendar days with no exceptions for slope grades or lengths. High Quality Water Zones (HQW) Zones are defined by North Carolina Administrative Code 15A NCAC 04A.0105 (25). Temporary and permanent ground cover stabilization shall be achieved in accordance with the provisions in this contract and as directed.

**SEEDING AND MULCHING:** **(WestEd)**

The kinds of seed and fertilizer, and the rates of application of seed, fertilizer, and limestone, shall be as stated below. During periods of overlapping dates, the kind of seed to be used shall be determined. All rates are in pounds per acre.

Shoulder and Median Areas

| **August 1 - June 1** | | **May 1 - September 1** | |
|---|---|---|---|
| 20# | Kentucky Bluegrass | 20# | Kentucky Bluegrass |
| 75# | Hard Fescue | 75# | Hard Fescue |
| 25# | Rye Grain | 10# | German or Browntop Millet |
| 500# | Fertilizer | 500# | Fertilizer |
| 4000# | Limestone | 4000# | Limestone |

Areas Beyond the Mowing Pattern, Waste and Borrow Areas:

| **August 1 - June 1** | | **May 1 - September 1** | |
|---|---|---|---|
| 100# | Tall Fescue | 100# | Tall Fescue |
| 15# | Kentucky Bluegrass | 15# | Kentucky Bluegrass |
| 30# | Hard Fescue | 30# | Hard Fescue |
| 25# | Rye Grain | 10# | German or Browntop Millet |
| 500# | Fertilizer | 500# | Fertilizer |
| 4000# | Limestone | 4000# | Limestone |

Approved Tall Fescue Cultivars

| | | | |
|---|---|---|---|
| 2nd Millennium | Duster | Magellan | Rendition |
| Avenger | Endeavor | Masterpiece | Scorpion |
| Barlexas | Escalade | Matador | Shelby |
| Barlexas II | Falcon II, III, IV & V | Matador GT | Signia |
| Barrera | Fidelity | Millennium | Silverstar |
| Barrington | Finesse II | Montauk | Southern Choice II |
| Biltmore | Firebird | Mustang 3 | Stetson |
| Bingo | Focus | Olympic Gold | Tarheel |
| Bravo | Grande II | Padre | Titan Ltd |
| Cayenne | Greenkeeper | Paraiso | Titanium |
| Chapel Hill | Greystone | Picasso | Tomahawk |
| Chesapeake | Inferno | Piedmont | Tacer |
| Constitution | Justice | Pure Gold | Trooper |
| Chipper | Jaguar 3 | Prospect | Turbo |
| Coronado | Kalahari | Quest | Ultimate |
| Coyote | Kentucky 31 | Rebel Exeda | Watchdog |
| Davinci | Kitty Hawk | Rebel Sentry | Wolfpack |
| Dynasty | Kitty Hawk 2000 | Regiment II | |
| Dominion | Lexington | Rembrandt | |

Approved Kentucky Bluegrass Cultivars:

| | | | |
|---|---|---|---|
| Alpine | Bariris | Envicta | Rugby |
| Apollo | Bedazzled | Impact | Rugby II |
| Arcadia | Bordeaux | Kenblue | Showcase |
| Arrow | Champagne | Midnight | Sonoma |
| Award | Chicago II | Midnight II | |

Approved Hard Fescue Cultivars:

| | | | |
|---|---|---|---|
| Chariot | Nordic | Rhino | Warwick |
| Firefly | Oxford | Scaldis II | |
| Heron | Reliant II | Spartan II | |
| Minotaur | Reliant IV | Stonehenge | |

On cut and fill slopes 2:1 or steeper add 20# Sericea Lespedeza and 15# Crown Vetch January 1 - December 31.

The Crown Vetch Seed should be double inoculated if applied with a hand seeder. Four times the normal rate of inoculant should be used if applied with a hydroseeder. If a fertilizer-seed slurry is used, the required limestone should also be included to prevent fertilizer acidity from killing the inoculant bacteria. Caution should be used to keep the inoculant below 80° F to prevent harm to the bacteria. The rates and grades of fertilizer and limestone shall be the same as specified for *Seeding and Mulching*.

Fertilizer shall be 10-20-20 analysis. A different analysis of fertilizer may be used provided the 1-2-2 ratio is maintained and the rate of application adjusted to provide the same amount of plant food as a 10-20-20 analysis and as directed.

**TEMPORARY SEEDING:**

Fertilizer shall be the same analysis as specified for *Seeding and Mulching* and applied at the rate of 400 pounds and seeded at the rate of 50 pounds per acre. German Millet, or Browntop Millet shall be used in summer months and rye grain during the remainder of the year. The Engineer will determine the exact dates for using each kind of seed.

**FERTILIZER TOPDRESSING:**

Fertilizer used for topdressing shall be 16-8-8 grade and shall be applied at the rate of 500 pounds per acre. A different analysis of fertilizer may be used provided the 2-1-1 ratio is maintained and the rate of application adjusted to provide the same amount of plant food as 16-8-8 analysis and as directed.

**SUPPLEMENTAL SEEDING:**

The kinds of seed and proportions shall be the same as specified for *Seeding and Mulching*, and the rate of application may vary from 25# to 75# per acre. The actual rate per acre will be determined prior to the time of topdressing and the Contractor will be notified in writing of the rate per acre, total quantity needed, and areas on which to apply the supplemental seed. Minimum tillage equipment, consisting of a sod seeder shall be used for incorporating seed into the soil as to prevent disturbance of existing vegetation. A clodbuster (ball and chain) may be used where degree of slope prevents the use of a sod seeder.

**MOWING:**

The minimum mowing height on this project shall be six inches.

## STOCKPILE AREAS:

The Contractor shall install and maintain erosion control devices sufficient to contain sediment around any erodible material stockpile areas as directed.

## ACCESS AND HAUL ROADS:

At the end of each working day, the Contractor shall install or re-establish temporary diversions or earth berms across access/haul roads to direct runoff into sediment devices. Silt fence sections that are temporarily removed shall be reinstalled across access/haul roads at the end of each working day.

## WASTE AND BORROW SOURCES:

Payment for temporary erosion control measures, except those made necessary by the Contractor's own negligence or for his own convenience, will be paid for at the appropriate contract unit price for the devices or measures utilized in borrow sources and waste areas.

No additional payment will be made for erosion control devices or permanent seeding and mulching in any commercial borrow or waste pit. All erosion and sediment control practices that may be required on a commercial borrow or waste site will be done at the Contractor's expense.

All offsite Staging Areas, Borrow and Waste sites shall be in accordance with "Borrow and Waste Site Reclamation Procedures for Contracted Projects" located at:

http://www.ncdot.gov/doh/operations/dp_chief_eng/roadside/fieldops/downloads/Files/ContractedReclamationProcedures.pdf

All forms and documents referenced in the "Borrow and Waste Site Reclamation Procedures for Contracted Projects" shall be included with the reclamation plans for offsite staging areas, and borrow and waste sites.

County : Swain, Haywood, Jackson

| Line # | Item Number | Sec # | Description | Quantity | Unit Cost | Amount |
|---|---|---|---|---|---|---|
| | | | **FORCE ACCOUNTS** | | | |
| 0001 | 0000100000-N | 800 | MOBILIZATION | Lump Sum | L.S. | |
| 0002 | 0043000000-N | 226 | GRADING | Lump Sum | L.S. | |
| 0003 | 1121000000-E | 520 | AGGREGATE BASE COURSE | 1,010 TON | | |
| 0004 | 1519000000-E | 610 | ASPHALT CONC SURFACE COURSE, TYPE S9.5B | 257 TON | | |
| 0005 | 1575000000-E | 620 | ASPHALT BINDER FOR PLANT MIX | 15 TON | | |
| 0006 | 3503000000-E | 866 | WOVEN WIRE FENCE, 47" FABRIC | 250 LF | | |
| 0007 | 3515000000-E | 866 | 5" TIMBER FENCE POSTS, 8'-0" LONG | 30 EA | | |
| 0008 | 3580000000-E | 866 | GENERIC FENCING ITEM (FENCE REMOVAL) | 165 LF | | |
| 0009 | 4048000000-E | 902 | REINFORCED CONCRETE SIGN FOUN-DATIONS | 7 CY | | |
| 0010 | 4060000000-E | 903 | SUPPORTS, BREAKAWAY STEEL BEAM | 4,200 LB | | |
| 0011 | 4072000000-E | 903 | SUPPORTS, 3-LB STEEL U-CHANNEL | 312 LF | | |
| 0012 | 4096000000-N | 904 | SIGN ERECTION, TYPE D | 12 EA | | |
| 0013 | 4110000000-N | 904 | SIGN ERECTION, TYPE *** (GROUND MOUNTED) (A) | 10 EA | | |
| 0014 | 4399000000-N | 1105 | TEMPORARY TRAFFIC CONTROL | Lump Sum | L.S. | |
| 0015 | 4810000000-E | 1205 | PAINT PAVEMENT MARKING LINES (4") | 4,120 LF | | |
| 0016 | 6000000000-E | 1605 | TEMPORARY SILT FENCE | 1,840 LF | | |
| 0017 | 6084000000-E | 1660 | SEEDING & MULCHING | 1.03 ACR | | |
| 0018 | 6090000000-E | 1661 | SEED FOR REPAIR SEEDING | 100 LB | | |
| 0019 | 6093000000-E | 1661 | FERTILIZER FOR REPAIR SEEDING | 0.5 TON | | |

County : Swain, Haywood, Jackson

| Line # | Item Number | Sec # | Description | Quantity | Unit Cost | Amount |
|---|---|---|---|---|---|---|
| 0020 | 6096000000-E | 1662 | SEED FOR SUPPLEMENTAL SEEDING | 100 LB | | |

1537/Jan29/Q12432.53/D74814100000/E20 Total Amount Of Bid For Entire Project :

| Firm Name and Address | Item No. | Item Description | * Agreed upon Unit Price | ** Dollar Volume of Item |
|---|---|---|---|---|
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |

***** The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

** Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

*If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.*

*If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.*

| Firm Name and Address | Item No. | Item Description | * Agreed upon Unit Price | ** Dollar Volume of Item |
|---|---|---|---|---|
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |
| **Name**<br><br>Address | | | | |

***** The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

**** Dollar Volume of DBE Subcontractor $_____**

**Percentage of Total Contract Bid Price _____%**

** Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

*If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.*

*If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.*

# ADDENDUM(S)

ADDENDUM #1

I, _____ representing _____
(SIGNATURE)

Acknowledge receipt of Addendum #1.

ADDENDUM #2

I, _____ representing _____
(SIGNATURE)

Acknowledge receipt of Addendum #2.

ADDENDUM #3

I, _____ representing _____
(SIGNATURE)

Acknowledge receipt of Addendum #3.

***AWARD LIMITS ON MULTIPLE PROJECTS***

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

| | |
|---|---|
| _____ | _____ |
| (Project Number) | (County) |
| _____ | _____ |
| (Project Number) | (County) |
| _____ | _____ |
| (Project Number) | (County) |
| _____ | _____ |
| (Project Number) | (County) |

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

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

_____
**Signature of Authorized Person

**Only those persons authorized to sign bids under the provisions of Article 102-8, Item 7, shall be authorized to sign this form.

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

# BID BOND

Principal: _____
Name of Principal Contractor

Surety: _____
Name of Surety

Contract Number: DN00401 County: HAYWOOD, JACKSON, SWAIN

Date of Bid: _____

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.

(1) _____
Name of Joint Venture

(2) _____
Name of Contractor

_____
Address as prequalified

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

*If Corporation, affix Corporate Seal*

and

(3) _____
Name of Contractor

_____
Address as prequalified

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

*If Corporation, affix Corporate Seal*

and

(4) _____
Name of Contractor *(for 3 Joint Venture only)*

_____
Address as prequalified

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

*If Corporation, affix Corporate Seal*

# EXECUTION OF BID

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

## CORPORATION

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

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

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

## SIGNATURE OF CONTRACTOR

_____

Full name of Corporation

_____

Address as Prequalified

Attest _____ By _____

Secretary/Assistant Secretary
*Select appropriate title*

President/Vice President/Assistant Vice President
*Select appropriate title*

_____ _____

Print or type Signer's name

Print or type Signer's name

**CORPORATE SEAL**

## AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

_____ day of _____ 20__.

**NOTARY SEAL**

_____

Signature of Notary Public

of _____County

State of _____

My Commission Expires:_____

## EXECUTION OF BID
## NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

### PARTNERSHIP

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

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

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

### SIGNATURE OF CONTRACTOR

| | | |
|---|---|---|
| _____ | By | _____ |
| Signature of Witness | | Signature of Partner |
| _____ | | _____ |
| Print or type Signer's name | | Print or type Signer's name |

### AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

_____ day of _____ 20__.

**NOTARY SEAL**

_____
Signature of Notary Public

of _____County

State of _____

My Commission Expires:_____

## EXECUTION OF BID
## NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

## LIMITED LIABILITY COMPANY

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

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

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

## SIGNATURE OF CONTRACTOR

_____
Full Name of Firm

_____
Address as Prequalified

| | |
|---|---|
| _____<br>Signature of Witness | _____<br>Signature of Member/Manager/Authorized Agent<br>*Select appropriate title* |
| _____<br>Print or type Signer's name | _____<br>Print or type Signer's Name |

## AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

_____ day of _____ 20__.

**NOTARY SEAL**

_____
Signature of Notary Public

of _____County

State of _____

My Commission Expires:_____

# EXECUTION OF BID
# NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

## JOINT VENTURE (2) or (3)

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

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

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

## SIGNATURE OF CONTRACTOR

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

| | | |
|---|---|---|
| Signature of Witness or Attest | By | Signature of Contractor |
| Print or type Signer's name | | Print or type Signer's name |
| *If Corporation, affix Corporate Seal* | and | |
| Signature of Witness or Attest | By | Signature of Contractor |
| Print or type Signer's name | | Print or type Signer's name |
| *If Corporation, affix Corporate Seal* | and | |
| Signature of Witness or Attest | By | Signature of Contractor |
| Print or type Signer's name | | Print or type Signer's name |
| *If Corporation, affix Corporate Seal* | | |

*NOTARY SEAL*
*Affidavit must be notarized for Line (2)*
Subscribed and sworn to before me this
_____day of_____ 20___
_____
Signature of Notary Public
of _____County
State of _____
My Commission Expires:_____

*NOTARY SEAL*
*Affidavit must be notarized for Line (3)*
Subscribed and sworn to before me this
_____day of _____ 20___
_____
Signature of Notary Public
of _____County
State of _____
My Commission Expires:_____

*NOTARY SEAL*
*Affidavit must be notarized for Line (4)*
Subscribed and sworn to before me this
____day of _____ 20_____
_____
Signature of Notary Public
of _____County
State of _____
My Commission Expires:_____

## EXECUTION OF BID
## NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

### INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

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

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

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

### SIGNATURE OF CONTRACTOR

Name of Contractor _____
Individual name

Trading and doing business as _____
Full name of Firm

| | |
|---|---|
| _____ | _____ |
| Signature of Witness | Signature of Contractor, Individually |
| _____ | _____ |
| Print or type Signer's name | Print or type Signer's name |

### AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

_____ day of _____ 20__.

**NOTARY SEAL**

_____
Signature of Notary Public

of _____County

State of _____

My Commission Expires:_____

## EXECUTION OF BID
## NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

### INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

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

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

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

### SIGNATURE OF CONTRACTOR

Name of Contractor _____

Print or type Individual name

_____

Address as Prequalified

_____

Signature of Contractor, Individually

_____

Print or type Signer's Name

_____

Signature of Witness

_____

Print or type Signer's name

### AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

**NOTARY SEAL**

_____ day of _____ 20__.

_____

Signature of Notary Public

of _____County

State of _____

My Commission Expires:_____

## DEBARMENT CERTIFICATION

Conditions for certification:

1. The prequalified bidder shall provide immediate written notice to the Department if at any time the bidder learns that his certification was erroneous when he submitted his debarment certification or explanation filed with the Department, or has become erroneous because of changed circumstances.

2. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the Contract Officer of the Department.

3. The prequalified bidder agrees by submitting this form, that he will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in NCDOT contracts, unless authorized by the Department.

4. For Federal Aid projects, the prequalified bidder further agrees that by submitting this form he will include the Federal-Aid Provision titled *Required Contract Provisions Federal-Aid Construction Contract (Form FHWA PR* 1273) provided by the Department, without subsequent modification, in all lower tier covered transactions.

5. The prequalified bidder may rely upon a certification of a participant in a lower tier covered transaction that he is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless he knows that the certification is erroneous. The bidder may decide the method and frequency by which he will determine the eligibility of his subcontractors.

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

7. Except as authorized in paragraph 6 herein, the Department may terminate any contract if the bidder knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available by the Federal Government.

## DEBARMENT CERTIFICATION

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

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

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

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

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

e. Will submit a revised Debarment Certification immediately if his status changes and will show in his bid proposal an explanation for the change in status.

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

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

☐ Check here if an explanation is attached to this certification.

# ***Execution of Contract***

**Contract No: DN00401**

**County: HAYWOOD, JACKSON, SWAIN**

ACCEPTED BY THE DEPARTMENT

_____

**Proposals Engineer**

_____

Date

EXECUTION OF CONTRACT AND BONDS
APPROVED AS TO FORM:

_____

**Division Engineer**

_____

Date

Signature Sheet (Bid) - ACCEPTANCE SHEET