



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

July 29, 2010

MEMORANDUM TO: AGC-DOT Joint Cooperative Committee Members

FROM: Victor Barbour, PE

SUBJECT: July 22, 2010 Minutes for the Joint Cooperative Committee Meeting

The Joint Cooperative Committee of the AGC-DOT met at 10:00 a.m. on July 22, 2010 in the Chief Engineer's Conference Room at the NCDOT Equipment and Maintenance Facility, Beryl Road, Raleigh with the following in attendance.

Debbie Barbour	Steve DeWitt	Berry Jenkins	Natalie Roskam
Victor Barbour	Daniel Fields	Don Lee	Shelton Russell
Philip Bickham	Scott Fisher	Sharon Lipscomb	Ron Shaw
Chris Britton	Mark Foster	Robert Lofling	Trent Sherrill
Kevin Burns	C.A. Gardner	Brian Long	Ted Sherrod
Alan Cahill	Randy Garriss	Michael McKoy	Bill Tomlinson
Terry Canales	Terry Gibson	Bo Memory	Ricky Vick
Ivan Clayton	Brad Goodson	Jon Nance	Jim Wyngaarder
Bill Copeland	Ricky Greene	Donnie Oldham	
Susan Coward	Ron Hancock	Edward Parker	

*AGENDA AND DISCUSSION ITEMS*

**Maintenance of Effort (Economic Stimulus Update)**

**Mark Foster**

Mr. Foster stated that the \$735 million federal stimulus funds for highway and bridge projects and \$545 million for rail projects required a match of \$1.5 billion state spending from February 2009 to September 2010. Contract resurfacing and construction expenditures are running behind, but other areas are exceeding. Mr. Foster indicated that the State is expected to meet the commitment of Maintenance of Effort. Mr. Foster stressed that bills need to process by the September deadline.

See Attachment #1.

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TECHNICAL SERVICES DIVISION  
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WEBSITE: [WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)

**LOCATION:**  
TRANSPORTATION BUILDING  
FIRST FLOOR ROOM 102  
1 SOUTH WILMINGTON STREET  
RALEIGH NC

## **Revenue and Budget Update**

**Mark Foster**

Mr. Foster reported that the cash models for the past year were within 0.5% of actual revenue received by the State. The 2010-11 NCDOT budget is \$3.8 billion. The budget and programs are approximately the same as last year. The Trust Fund was created in 1989. The GARVEE Bonds used on Phase 1 of the Yadkin River Bridge project and the Appalachian Development program are statutorily exempt programs. The Mobility Fund has been added and the hope is for a revenue stream of \$300 million per year (currently at \$58 million this year) to address strategic projects throughout the State. These funds are earmarked for Phase 2 of the Yadkin River Bridge project. Over 75% of the transportation budget is used for highway, bridge construction, and maintenance. The percentage of administrative transfers continues to diminish.

## **Letting Projections**

**Victor Barbour**

Mr. Barbour reported on historical highway letting totals from 2002 through 2009 and projected highway lettings from 2010 to 2015. Using the cash model projections, the Contract Office may adjust approximately 10 to 15 project lettings to compensate for slow period projections later this fiscal year and in 2013.

Mr. Barbour reported Phase 2 of the I-85 Yadkin River Project will be advertised August 2<sup>nd</sup>. In Division 1, Hertford County TIP R-2583 and Hertford/Gates County TIP R-2507A will be advertised consecutively this fall as Design Build projects.

Low impact bridges in Division 1 and 6 will be advertised soon and will include 10 to 13 bridges per Division. Division 7 and 13 low impact bridge projects will be advertised this fall. The other divisions will be advertising low impact bridge projects conventionally. Each division has approximately \$10 million for bridge improvements. The low impact bridge budgets are in addition to TIP spending.

See Attachment #2.

## **Legislative and Congressional Update**

**Bo Memory/Susan Coward**

Mr. Memory reported that the Mobility Fund did pass, and stakeholders are invited to develop project selection criteria. Three agency bills passed in the past legislative session:

**NC House Bill 1685 - *Turnpike Authority Toll Enforcement Changes*** provided financing on future toll projects and an efficient and equitable tolling experience.

**NC House Bill 1729 - *Motor Vehicles Law Changes*** changed traffic statutes.

**NC House Bill 1734 - *DOT Powers and Duties Changes*** allowed the Department to proceed with the 5 and 10 year work programs, clarified the Turnpike is under NCDOT which was needed for bond financing, authorized NCDOT to coordinate with municipalities on right of way acquisitions, and made changes to the Minority Business Enterprise/Women Business Enterprise program based on 2009 study entitled "Measuring Business Opportunity: A Disparity Study of 30 NCDOT's State and Federal Programs."

Ms. Coward reported that NC House Bill 1800 was stopped. It would have eliminated the ability of NCDOT to use innovative financing. Funding was approved for a Transportation Oversight Committee study by UNC Kenan-Flagler Business School to improve NCDOT finance and organization.

Because of the Appalachian Development Highway System exemption, Division 14 will receive \$213 million and other divisions budgets will be reduced by \$16 to \$24 million to compensate.

Ms. Coward commented that the current Federal Highway Trust Fund is being provided by an extension that will expire in mid-2011. Another extension is expected to pass. The next New Surface Transportation Bill is expected in late 2012 at the earliest.

The State is pursuing TIGER II Discretionary Grants with submissions due in August. The total federal money available is \$600 million.

#### **EPA Effluent Guidelines**

**Ted Sherrod**

Mr. Sherrod anticipates the EPA Effluent Guidelines to go into effect on August 2011 for any site with a land disturbance greater than 20 acres. Of 500 active NCDOT projects, these guidelines would affect 7 job sites. This threshold will lower to 10 acres in three years. Contractors will be required to monitor discharge with an average daily limit of 280 NTUs. Storm events will require additional sampling.

Mr. Sherrod reported on several technology field tests to assist with implementation of these guidelines. One technology tested was a biopolymer sock system for pumping operations. The initial reading for discharge in the test was over 1200 NTU. A two pair biopolymer sock system with 4 ppm of biopolymer reduced the readings to 70 NTU at an estimated cost of \$0.004 per gallon. A six pair system at 12 ppm reduced the readings to 16 NTU at a cost of \$0.012 per gallon.

A committee is currently working on guideline implementation issues such as how to estimate acreage and required levels of monitoring. North Carolina's 2011 legislative session is expected to change the current 21 day seeding requirement to match the federal 14 day seeding requirement.

See Attachment #3 and #4.

#### **NC GO1 Permit for Resurfacing, Etc.**

**Ted Sherrod**

Mr. Sherrod reported on changes in the NC GO1 permit, the construction stormwater permit that allows Contractors to discharge from construction sites. The new requirements will effect resurfacing and shoulder reconstruction projects. Projects may require installation of erosion and sediment control/stormwater control measures and NPDES documentation performed by a Level II Erosion and Sediment Control/Stormwater certificate holder every 14 days or within 24 hours of a rainfall event of 0.5" or greater. The NC GO1 permit change is expected to affect 5% of the projects based on analysis from projects over the past six months. In any areas where the vegetated buffer is less than 5-10 feet between the disturbed area and waters of the State classified as high quality or critical, then perimeter protection and erosion control measure will be needed. In lieu of perimeter protection, installation of ABS can make the surface non-erodible.

See Attachment #5.

#### **CAGC/NCDOT Joint Winter Conferences**

**Berry Jenkins**

Mr. Jenkins reminded the committee that the economy prevented a winter conference for the past three years; however, the conference has value and should be conducted if possible. Mr. Jenkins will work with Mr. Hancock and others to determine a date and location.

## **EEO Compliance Training**

**Berry Jenkins / Ron Hancock**

Mr. Hancock reported that 10 to 15 EEO compliance reviews are conducted annually. Mr. Bickham invited contractors and subcontractors to take advantage of the training available from the EEO office. The training program is a half day program that can be provided onsite. Ms. Lipscomb plans four sessions across North Carolina on best practices for EEO compliance. The EEO office has developed a corrective action plan example to assist those contractors who have been found in non-compliance. The office is working on developing a contractor's guidebook. The timing of the training was discussed with the suggestion of October after the highway letting on the third Tuesday of the month.

See Attachment #6 for the information sheet and program brochure.

## **DBE Issues**

**Scott Fisher**

Mr. Fisher presented possible changes to the DBE program to assist Contractors with compliance and participation. The first suggestion was a "banking" program to allow Contractors to report DBE participation beyond the project goal and bank those credits for use in other projects. Later discussion indicated that banking is currently prohibited.

Mr. Fisher reported that projects have more DBE participation than reported. The current system allows Contractors to bid a higher DBE participation goal than stated for the project, but the Contractor gets penalized if the higher goal is not met. There is no incentive for the Contractor to report excess DBE participation in the current system.

The third request was to update the data for the DBE certified subcontractors in Bid Express at a set time prior to bid letting. The issue is a Contractor submitted a bid with a DBE subcontractor still in Bid Express database who was previously de-certified. Mr. Barbour indicated that he is aware of the issue and efforts are underway to resolve it.

Mr. Fisher addressed DBE and subcontractor certification applications which are currently two different applications. Can DBE and subcontractor certification be streamlined into one process? Ms. Canales commented that the DBE certification application reviews the financial structure and control of the firm, and the subcontractor application reviews the ability of the firm to complete the work.

Mr. Fisher stated trucking DBE accounting (the 50% rule) is cumbersome because it requires Contractors to identify the number of DBE owned trucks within a trucking fleet. Mr. Fisher seeks relief on how trucks are counted towards goal without having to count individual truck ownership.

Mr. Barbour encouraged active reporting of DBE participation because NCDOT does not have to put a DBE goal on projects if the record indicates NCDOT projects no longer have disparity.

See Attachment #7.

## **DBE FHWA Update**

**Edwin Parker**

Mr. Parker reviewed the DBE participation data from the Recovery Act projects. DOT identified areas for improvement and requested the State improve the DBE program. The annual goal for NCDOT is 13%, 10.6% race conscious and 2.4% race neutral. The DBE commitments for Recovery Act projects is 8.4% race conscious participation. Reviewing Good Faith Efforts (GFE), overall NCDOT GFE is

8.1%; however, central let projects had 15.5% GFE. Mr. Parker encouraged discussion to improve the program.

See Attachment #8 for the presentation.

#### **DBE Annual Three Year Goal Process**

**Berry Jenkins**

Legislative changes moved the annual goal setting to a three year cycle. Mr. Barbour said the annual goal is set based on the historical data on projects similar to those expected to be let in the next twelve months. Ms. Canales noted that meetings conducted this week will determine the methodology for goal setting. The goal setting methodology will be published and given a 45 day public comment period. If approved, the next goal will be set for two years through 2013. The future goals will be set for three year periods to match the federal goal setting.

Another change is Minority Business Enterprise/Women Business Enterprise are no longer allowed dual enrollment. The only group to register as a WBE is non-minority, female-owned businesses.

#### **Debarment Certifications**

**Randy Garriss**

Mr. Garriss reported that as a result of the audits on stimulus projects NCDOT was scrutinized on how project bids were screened for debarred firms. *N.C.G.S. § 133-24* was added to the non-collusion affidavit, debarment certification, and gift ban certification. There are 60,000 individuals debarred, and 5,000 firms debarred in the database. The Contract Office and DBE/Subcontractor certification programs check for debarred firms. The debarment database link will be added to the Contract Office/Project Letting website.

See Attachment #9.

#### **N. C. Turnpike Authority**

**Steve DeWitt**

Mr. DeWitt announced the Garden Parkway advertisement is scheduled for November 1<sup>st</sup>.

#### **Design Build Consultation Utilization**

**Victor Barbour**

Mr. Barbour asked for comments on when to exclude bid participation from data gathering consultants used on a project prior to the bid letting. The reason for this discussion was that federal highway has relaxed the exclusion of contractors and consultants involved in early work. Mr. DeWitt commented that historically the consulting industry did want to be excluded from anything; however, the construction side of the business was concerned that the consultants had an advantage with detailed preliminary knowledge of the project. NCDOT's policy to exclude firms that have done data gathering consulting prior to the bid has worked well because of the opportunity for consultants to request an exception reviewed on a case by case basis.

### **Centralized Posting of Division Work**

**Victor Barbour**

It had been requested that the Department have a central place on our website for posting of advertisements of our construction projects. We currently have that on the Project Letting portion of our website. The difficulty is the location where the Division projects are posted is not readily visible. Mr. Garris spoke with the web team and a redesigned Contract Office/Project Letting webpage is being revamped to make division lettings more visible. Divisions will also have new webpage templates available for their use.

See Attachment #10 for the current website.

### **Pavement Marking Material Update**

**Ron Hancock**

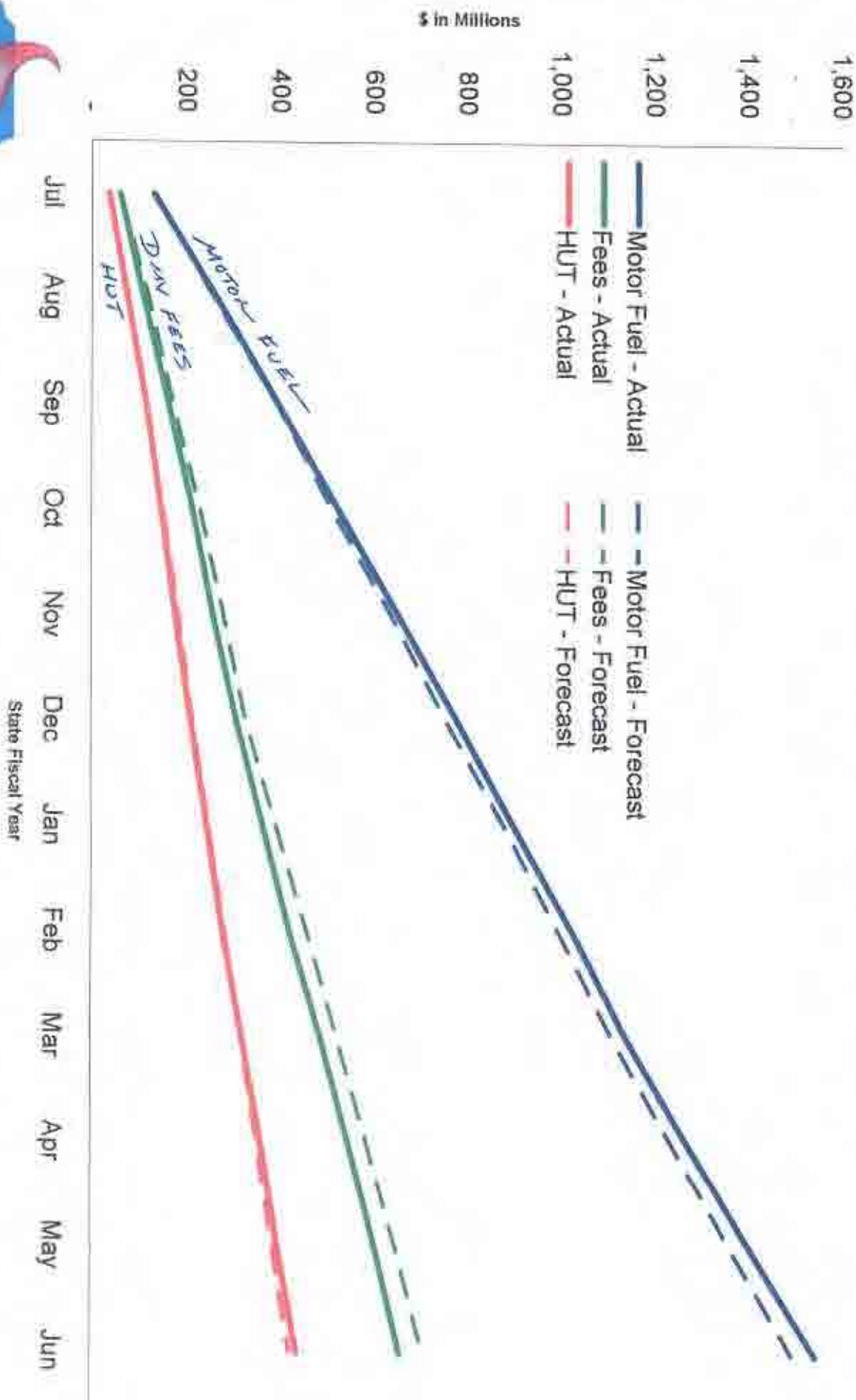
Mr. Hancock reported that there are still paint and thermoplastic shortages causing typical supply to be reduced by half. Internal memos were produced to provide guidance for alternatives to permanent markings and a waiver of LDs if all work was completed except permanent markings. The crisis is due to a shortage of gum resin compounded by a slow harvest and reduced production.

### **Next Meeting Date**

The next meeting is scheduled for September 16, 2010 at 10:00 a.m. in the Chief Engineer's Conference Room at the NCDOT Equipment and Maintenance Facility located at Beryl Road in Raleigh.

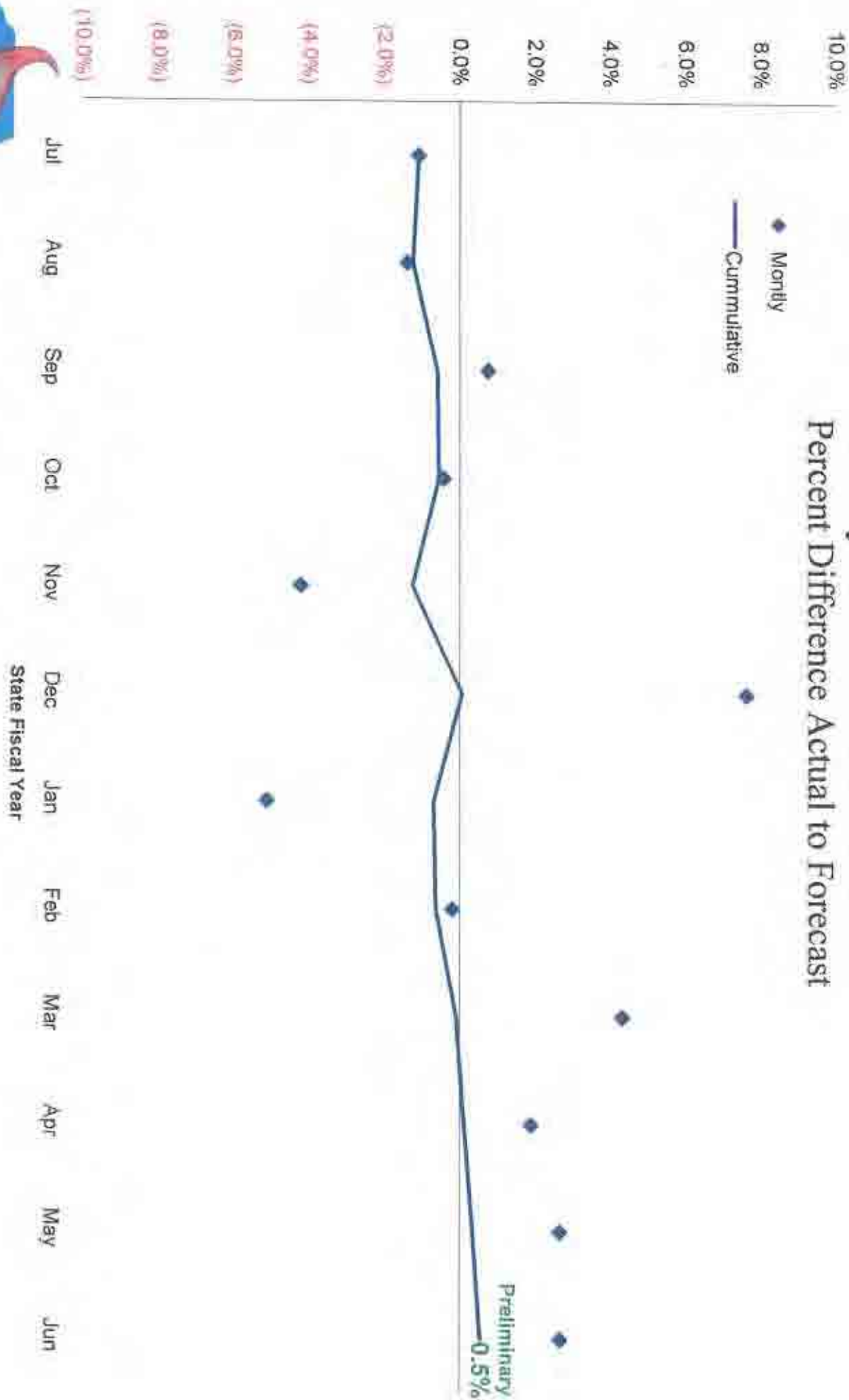
# SFY 2010 NCDOT Revenues

## Comparison – Cumulative Actual vs Forecast



# SFY 2010 NCDOT Revenues

Monthly and Cumulative All Sources  
Percent Difference Actual to Forecast



## Exemptions to Distribution Formula

	Effective Date
Urban Loops	Original law
Competitive Awards or Discretionary Grants through Federal Appropriations	July 1, 1999
Federal Congestion Mitigation and Air Quality funds (CMAQ)	July 1, 2000
Yadkin River Bridge Phase I "GARVEE" Bond Payments	July 1, 2010
Appalachian Development Highway System Funds	July 1, 2010

- NOTE: The Equity Formula only applies to about a third of DOT Expenditures. The General Assembly and the Department have created other formulas that apply to DOT expenditures on maintenance, rail, transit, aviation, etc.



## Mobility Fund

- **New Transportation Funding Source**
  - For Projects of Statewide Significance
  - Available for All Type of Projects (Highway, Rail, Aviation, Transit, Ferry, Ports
  - Not Subject to Distribution “Equity” Formula
- **Project Selection**
  - Yadkin River Bridge/I-85 Widening – 1<sup>st</sup> Project
  - Develop New Prioritization Model
- **Funding Sources**
  - Highway Trust Fund General Fund Transfer
  - SFY 2010 NCTA Unencumbered GAP Funding

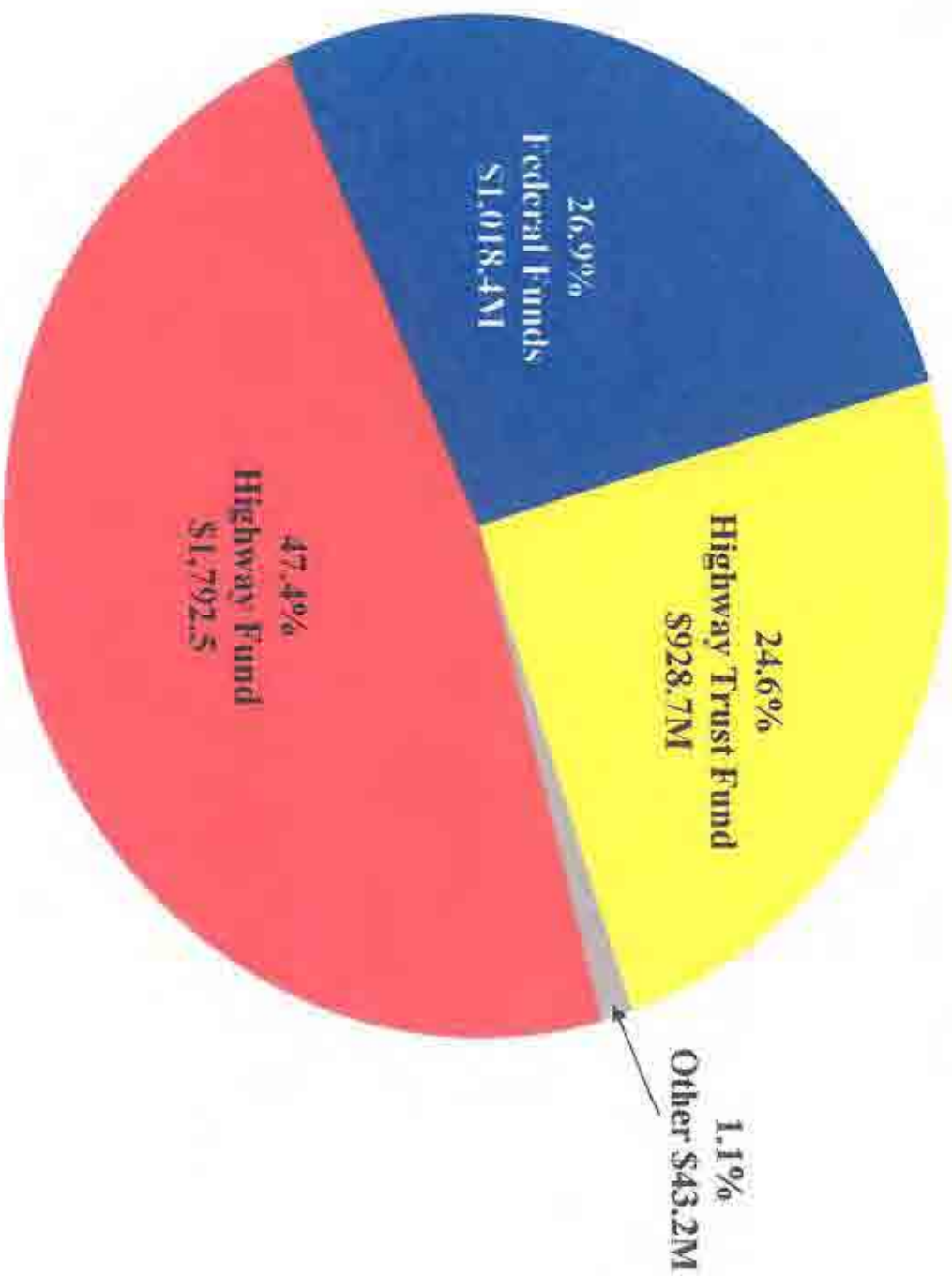
## Funding Amounts

SFY	\$ (Millions)
2011	39
2012	31
2013	45
2014	58



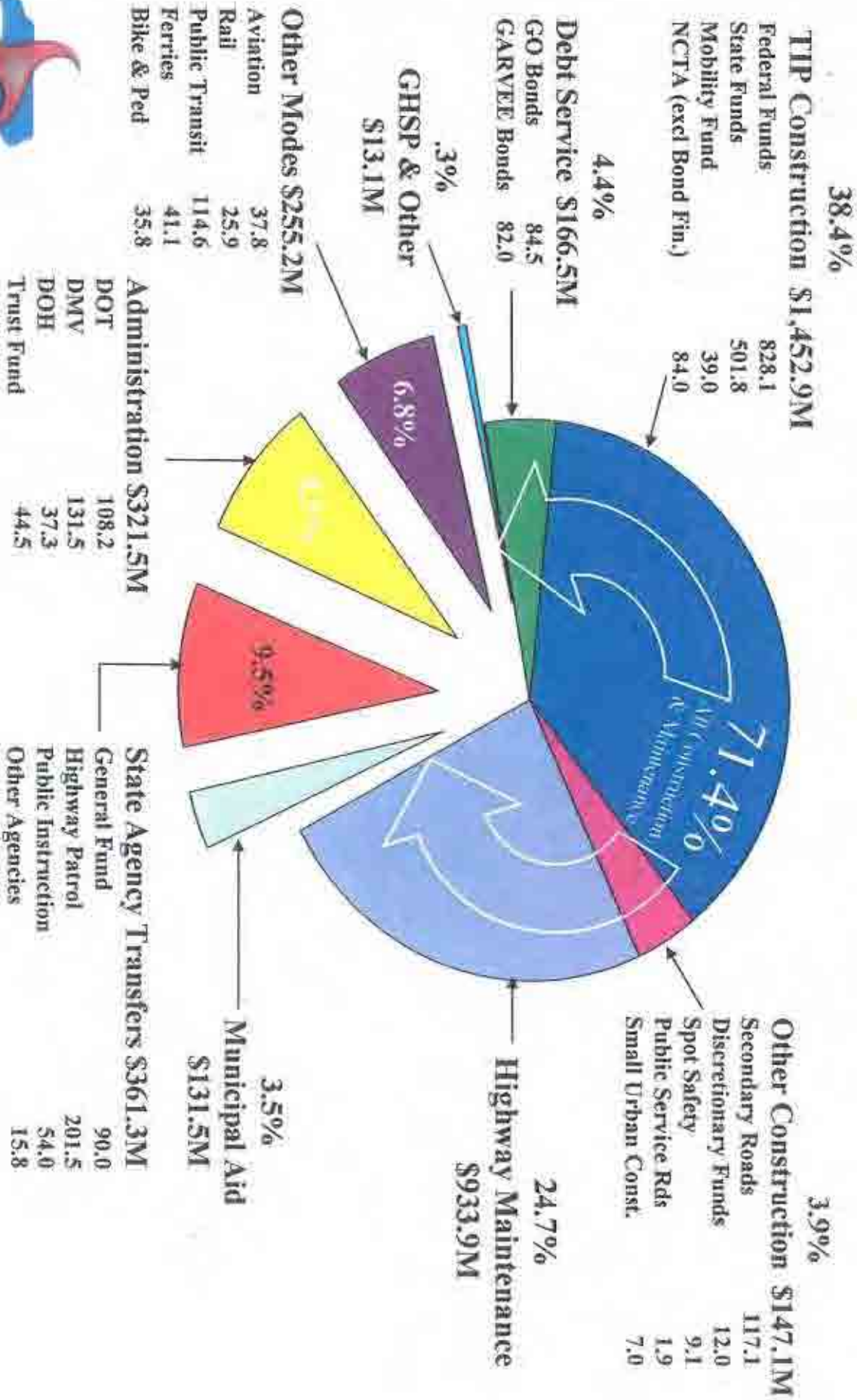
# Major Funding Source - 2010-11

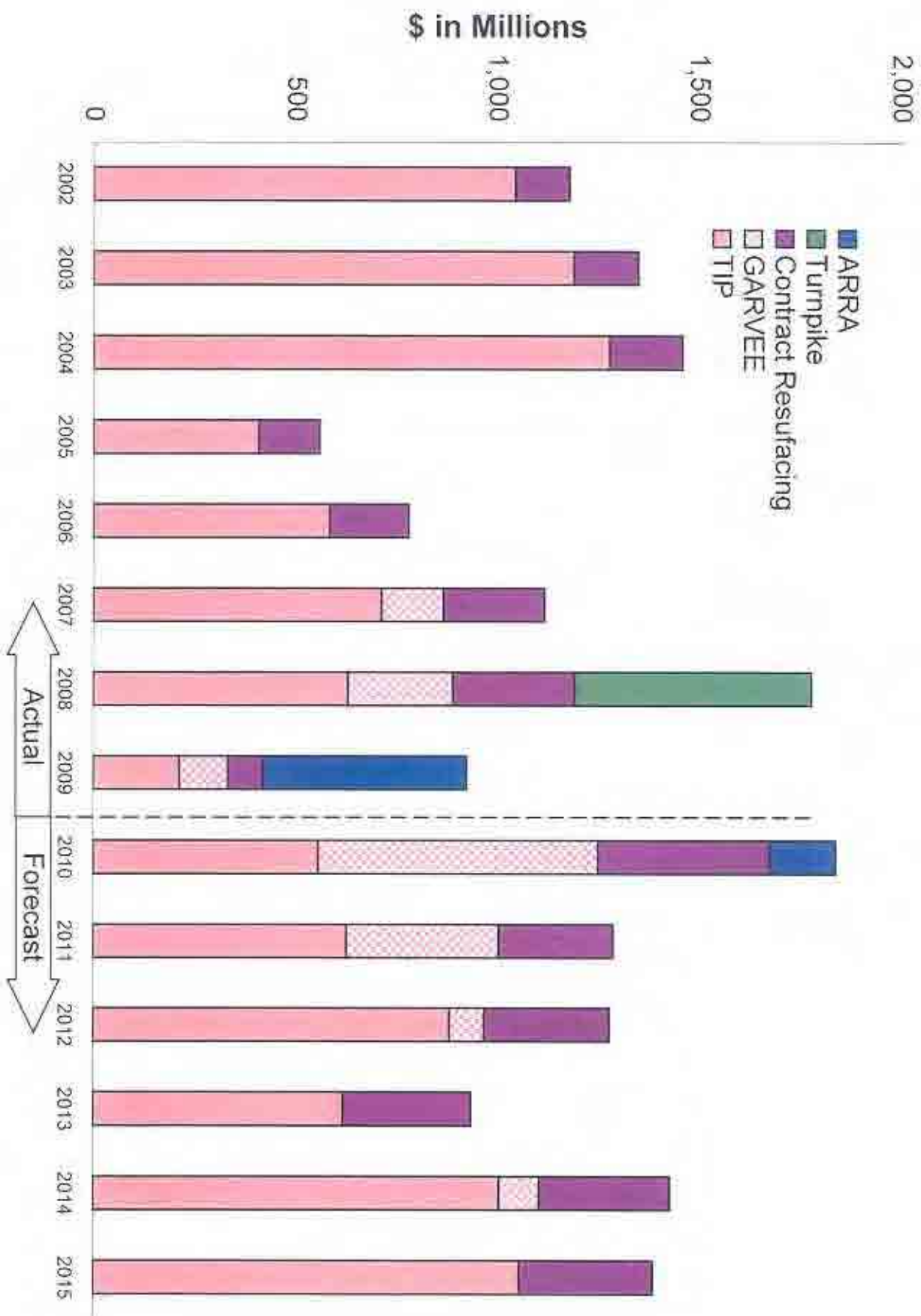
## Total Funding = \$3.8 Billion



# Projected Uses - 2010-11

## Total Funding = \$3.8 Billion





Calendar Year Letting Summary (Factored Bids)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Traditional	497,845,676	786,880,217	706,903,088	247,606,649	638,677,075	720,297,000	1,013,060,000	710,232,000	1,153,800,000	1,210,959,000
Garvee	87,388,807	185,524,680	299,256,215	137,601,249	797,052,240	432,600,000	97,919,500		114,000,000	
ARRA				651,178,099	187,539,750					
NCTA	0	0	0	0	0	0	0	0	0	0
Total	585,234,483	972,404,897	1,006,159,303	1,036,385,997	1,623,269,065	1,152,897,000	1,110,979,500	710,232,000	1,267,800,000	1,210,959,000

Calendar Year Letting Summary (Unfactored Bids)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Traditional	432,909,283	684,243,667	614,698,337	215,310,130	555,371,370	626,345,217	880,921,739	617,593,043	1,003,304,348	1,053,007,826
Garvee	75,990,267	161,325,809	260,222,796	119,653,260	693,088,904	376,173,913	85,147,391	0	99,130,435	0
ARRA	0	0	0	566,241,825	163,078,043	0	0	0	0	0
NCTA	0	0	0	0	0	0	0	0	0	0
Total	508,899,550	845,569,476	874,921,133	901,205,215	1,411,538,317	1,002,519,130	966,069,130	617,593,043	1,102,434,783	1,053,007,826

## **EPA's Effluent Limitation Guidelines for NCDOT Construction Activities**

### **Metrics**

Daily average of 280 NTUs for turbidity  
> 20 acres land disturbance, Aug. 2011  
> 10 acres land disturbance, Aug 2014  
Not applicable when precip exceeds 2yr-24hr storm (Raleigh 3.5")

### **Brief Overview/Background**

#### **Managing Disturbed Acreage**

US 19 Madison/Yancey, US 311 Randolph, Fayetteville Outer Loop, US 70 Goldsboro Bypass, I-540 Western Wake Expressway and TriEx  
"Rolling" acreage sum

Contractors have the ability to engineer/manage this metric on most projects  
Issues during subgrade operations with expanded open acreage

#### **Estimating Acreage Thresholds**

Determine best method with good accuracy

#### **Tools for Precip Thresholds**

NOAA website; need to have equivalent values for high intensity, short duration storms

#### **Monitoring/Sampling: Where, When, How**

On linear jobs, located at selected representative sites; not ALL discharge points  
Sample prior to discharge into waters of the state  
Minimum of three samples (before/during/after storm); only during normal work hours  
Manual or automated samplers; handheld meters to measure NTU level

#### **14 Day Seeding Requirement**

Anticipate NC Sed & Pollution Control Act changes in 2011 to set 14 day limit  
Challenges with timely response and mobilization by subs performing seeding

# Biopolymer System Components



# Biopolymer Socks



# Initial sample taken from skimmer outlet



# Installation of Biopolymer socks



# Initial discharge from basin to silt bag post Biopolymer



# Silt bag discharge with Biopolymer



# Discharge from silt bag with increased rate of Biopolymer



# Cost Analysis

- PVC Unit - \$400.00
- Silt bag (10'x15') – \$90.00
- 150'x60'x3' = 200,000 gals
- 1 pair of socks ~ 100,000 gals
- 1283 NTU in basin
- 16 NTU Discharge
- 67 NTU Discharge
- 6 pairs of Biopolymer
- 2 pair of Biopolymer socks - \$2300.00
- 2 pair of Biopolymer socks - \$750.00
- Dose rate of 12 ppm
- Dose rate of 4 ppm
- \$0.012 per gal.
- \$0.004 per gal.

# Meeting ELGs with Passive Treatment Systems



# Meeting ELGs with Passive Treatment Systems



# ELG Sampling



## **DRAFT for Lettings beginning November 2010**

### **NPDES STORMWATER REQUIREMENTS FOR SHOULDER CONSTRUCTION/RECONSTRUCTION**

The contractor's attention is directed to the fact that land disturbing operations associated with shoulder construction/reconstruction may require erosion and sediment control/stormwater measure installation and reporting requirements.

In any areas where shoulder construction/reconstruction consists of a narrow swath of disturbance, no NPDES inspection and monitoring is required. Erosion control measures shall be installed per the erosion control detail in any area where the vegetated buffer between the disturbed area and surface waters (streams, wetlands, or open waters) or drainage inlet is less than 5-10 feet. Erosion control measures shall be spot checked every two weeks until permanent vegetative establishment.

In any areas where shoulder construction/reconstruction includes disturbance and/or grading on the front slope or to the toe of fill, relocates ditch line or backslope, and/or removes vegetation from the ditch line or swale, NPDES inspection and monitoring is required every 14 days or within 24 hours of a rainfall event of 0.5" or greater. Maintain daily rainfall records. Install erosion control measures per detail.

In any areas where the vegetated buffer is less than 5-10 feet between the disturbed area and waters of the State classified as HQW, ORW, Critical Areas, or Unique Wetlands, NPDES inspection and monitoring is required every 14 days or within 24 hours of a rainfall event of 0.5" or greater. The plans and or provisions will indicate the presence of these water classifications. Maintain daily rainfall records. Install erosion control measures per detail.

Land disturbances hardened with aggregate materials are considered non erodible.

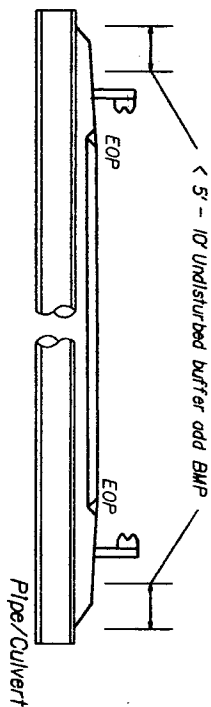
Sites that may require lengthy sections of silt fence may be substituted with rapid permanent seeding and mulching as directed by the Engineer.

NPDES documentation shall be performed by a Level II Erosion and Sediment Control/Stormwater certificate holder.

July 22, 2010  
-27-

NOTES: Less than 5' - 10' undisturbed buffer from ROW, ditchline, water feature, or drainage inlet, add BMP.  
BMP Options: Wattle or Silt Fence

## EROSION CONTROL DETAIL



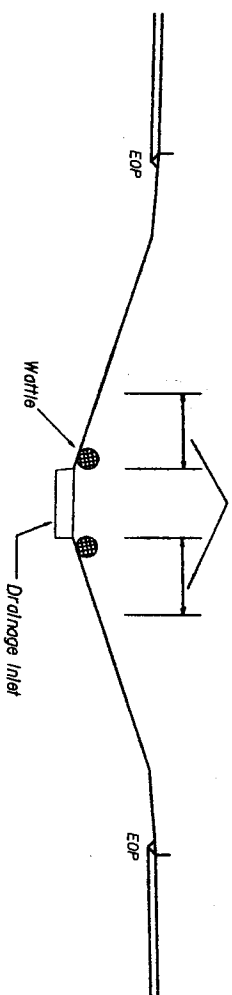
< 5' - 10' Undisturbed buffer from Jurisdictional feature add BMP

< 5' - 10' Undisturbed buffer from ditchline, add BMP

Jurisdictional Feature

Use BMP's if shoulders and/or front slopes and/or ditchline and/or back slopes are disturbed

< 5' - 10' Undisturbed buffer from Inlet, add wattle



NOT TO SCALE

PROJECT NO.	10-10
DATE	6-17-2009
DESIGNED BY	K. J. J. J.
CHECKED BY	K. J. J. J.
APPROVED BY	K. J. J. J.
DATE	6-17-2009

## **NCDOT OFFICE OF CIVIL RIGHTS EQUAL OPPORTUNITY CONTRACT COMPLIANCE FACT SHEET**

### **OFFICE OF CIVIL RIGHTS (OCR)**

The OCR is responsible for ensuring that state and federal highway construction funds **are not** spent in a manner which encourages, or supports, discrimination in employment or contracting opportunities.

### **WHAT IS EQUAL OPPORTUNITY (EO) COMPLIANCE?**

The primary purpose of EO compliance is to ensure that all contractors and subcontractors receiving \$10,000, or more, of federal-aid funding and performing work on federal-aid construction projects comply with federal requirements related to employment, training, personnel actions, nonsegregated facilities, recruitment, and subcontracting opportunities.

### **WHAT IS THE INTENT OF THE EO REVIEW?**

The overall intent of a contract compliance review is to determine:

- if the contractor is providing EEO in all terms and conditions of employment;
- if there is reasonable representation and utilization of minorities and women in each construction trade; and
- if there is evidence of discrimination, and if so, what action did the contractor take to eliminate and prevent discrimination.

### **COMPLIANCE DETERMINATION**

A contractor is found in compliance when there is sufficient information, data and evidence obtained during the compliance review to determine that the EO/EEO requirements have been effectively implemented.

### **NON-COMPLIANCE DETERMINATION**

Where there is evidence of a failure to provide EEO and there is sufficient basis to determine

that a contractor has not demonstrated a good faith effort to comply with the Required Contract Provisions.

### **MOST COMMON DEFICIENCIES**

The below are the most common deficiencies where contractors fail to demonstrate good faith efforts with the FHWA 1273 Required Contract Provisions:

- Required Contract Provisions are not physically incorporated in subcontract agreements;
- Prime contractors failure to ensure compliance by its subcontractors or lower tier subcontractors with Required Contract Provisions;
- EEO Officer;
- Dissemination of EEO Policy;
- Recruitment Efforts;
- Personnel Actions; and
- Training and Promotion.

### **FOR MORE INFORMATION CONTACT:**

Sharon Lipscomb  
Title VI/EEO Contract Compliance Manager  
NC Department of Transportation  
Office of Civil Rights  
(919) 508-1830 or (800)-522-0453  
Email: [slipscomb@ncdot.gov](mailto:slipscomb@ncdot.gov)



### **Nonsegregated Facilities**

All federal-aid construction contractors, subcontractors, and material suppliers must certify that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

The term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

### **Selection of Subcontractors, Procurement of Material, 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. Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, shall have the equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees.

### **CONTRACT SANCTIONS**

In the event a contractor's non-compliance with the EEO provision of the contract, the Department shall impose such contract sanctions as it or the FHWA may determine to be appropriate including but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies
- Cancellation, termination or suspension of the contract, in whole or in part,
- Removal from bidders list

### **COMPLAINTS OF DISCRIMINATION**

The Contract Compliance Section will be responsible for the investigation and processing of all alleged complaints of discrimination received by the Department against the contractor.

**Disclaimer:** This brochure is intended to be an informational guide for contract compliance. It is not inclusive of all Contract Compliance and other nondiscrimination authorities or sub-recipient responsibilities.

#### **FOR MORE INFORMATION CONTACT:**

**OFFICE OF CIVIL RIGHTS  
TITLE V/EO CONTRACT COMPLIANCE MANAGER  
1511 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1511  
TEL. 919-508-1830  
FAX. 919-508-1814  
[WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)**

## **EXTERNAL EQUAL OPPORTUNITY CONTRACT COMPLIANCE PROGRAM**



**NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION  
OFFICE OF CIVIL RIGHTS**

The North Carolina Department of Transportation (NCDOT) is committed to ensuring nondiscrimination and affirmative action on federal-aid highway contracts relating to employment and subcontracting under the authority of 23 CFR Part 230, Subpart D. It is the policy of the NCDOT that every federal-aid contractor, subcontractor or material supplier perform all employment related activities in full accord with applicable equal employment opportunity (EEO) statutes, executive orders, regulations, and policies to assure equal employment opportunity and treatment of employees without regard to race, color, sex, age, disability, religion, or national origin.

## CONTRACT PROVISIONS

As a recipient of federal funds, the NCDOT has the responsibility to ensure that equal opportunity requirements are included in federal-aid contracts and that contractors are in compliance with those requirements. NCDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against any person in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

NCDOT advises contractors, through contract specifications, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract, or any such remedy that NCDOT deems appropriate.

## FWHA Form 1273, Required Contract

**Provisions Federal-Aid Construction** is a standard document containing required federal EEO contract provisions. FHWA 1273 is to be physically incorporated in each federal-aid highway construction contract and subcontract of \$10,000 or more. When a contractor signs a federal-aid contract of \$10,000 or more, the non-discrimination provisions in the Form FHWA-1273 constitutes the contractor's

EEO/Affirmative Action Plan standards for that contract.

## Equal Employment Opportunity

Each contractor and subcontractor on federal-aid projects shall 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, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, and/or on-the-job training."*

## EEO Officer

The contractor will designate and make known to NCDOT an EEO (equal employment opportunity) officer who will have adequate responsibility and authority to effectively administer and promote an active contractor EEO program.

## Dissemination of EEO Policy

All members of a contractor's staff with authorization to hire, supervise, promote, and discharge employees, or make such recommendations, must be made aware of and implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment.

## Recruitment

When advertising for employees, the contractor will include in all advertisements for employees the notation, "An Equal Opportunity Employer."

Advertisements shall be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

## Personnel Actions

Wages, working conditions and employee benefits shall be established and administered without regard to race, color, religion, sex, national origin, age or disability. This includes hiring, upgrading, promotion, transfer, demotion, layoff, and termination.

## Training and Promotion

Contractors shall periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for training and promotion. Contractors shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs. The contractor will advise employees and applicants for employment of available training programs and entrance requirements.

## Records and Reports

Contractors shall keep records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the NCDOT and the FHWA.

The contractors will submit an annual report to the department 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. The information is to be reported on Form FHWA 1391.



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## **Carolinas AGC / North Carolina DOT Joint Cooperative Committee July 22, 2010**

### **Suggested Changes to the Disadvantaged Business Enterprise Project Special Provisions**

#### **Implement a DBE Banking System**

Amounts in excess of the Project Goal would go to the DBE Bank.  
Amounts in the DBE Bank could be used on other projects to meet goals.  
Amounts in the DBE Bank could be used on existing projects to replace DBE participation. (Contractor's Choice as to whether replace DBE or use DBE Bank).

#### **Revise the DBE Replacement Guidelines**

If the goal is exceeded, the contractor should be able to replace the DBE without using another DBE as long as the DBE participation does not drop below the original goal. (This would not be necessary with DBE Banking – see above)  
This would include replacing a DBE who quoted saying they would furnish a bond and then will not furnish a bond with the subcontract.

#### **Bid Express**

DBE file in Bid Express needs to be up to date so contractors can rely on it at bid time.  
For a Tuesday letting, have a revised DBE file available for download on the previous Friday. If the contractor has the current file, all DBE's can be used for the project goal.

#### **DBE's as Certified Subcontractors**

DBE's should be certified as subcontractors when they are approved as a DBE.

#### **Trucking – Counting Towards DBE Goals**

Trucking should be able to be counted toward the goal in its entirety. The specs say the Department will evaluate, among other items,... industry practices ...  
Contractors have always preferred to call one trucker to meet their hauling needs.  
Why, then can't we use one DBE trucker, and count towards our goal the total paid for all trucks hauling under the DBE?

# National DBE Program Emphasis and DBE Participation on Economic Recovery Act Projects

Carolina AGC/NCDOT Meeting  
July 22, 2010

# DBE Program Emphasis

- December 7 letter (USDOT Secretary of Transportation to NC Governor)
- May 4 letter (FHWA Administrator to NCDOT Secretary)
  - Review and correct errors in Recovery Act Data
  - Analyze gaps
  - Provide plan for closing gaps

# DBE Program Emphasis

## Charge of FHWA Division Offices

- Visible and engaging leadership
- Outreach on DBE program (Opportunities and Limitations)

# What is the DBE Program Goal

- NCDOT Annual DBE Program Goal is 13%
  - Race Conscious portion    10.6%
  - Race Neutral                    2.4%
- DBE Commitments for Recovery Act Projects  
8.4%

Data Source - FHWA 1585 May 2010

# DBE Race Conscious Participation on Recovery Act Projects

	Contract Amount	Contract Goal	Contract Commitment	Payments
Central Let	\$667.4	8.6%	8.3%	2.5%
Division Let	\$35.2	4.1%	6.0%	2.9%
Local Let	\$33.2	6.7%	11.6%	2.2%
Total	\$735.8	8.2%	8.4%	2.5%

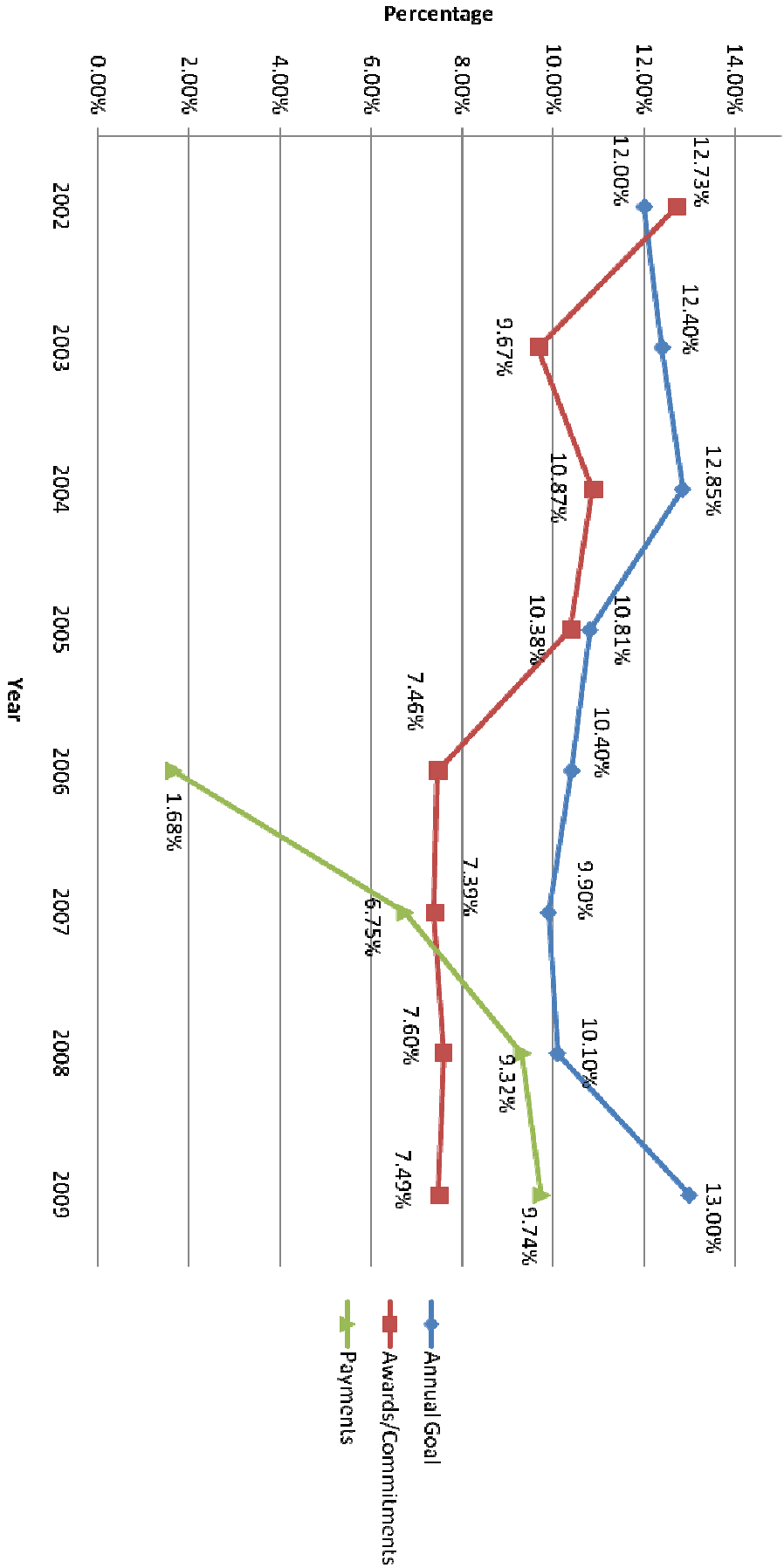
Data Source - FHWA 1585 May 2010

# Recovery Act Contracts Awarded on Good Faith Effort

	Number Contracts	Number GFE	Percent
Central Let	138	20	15.5%
Division Let	133	1	1.2%
Local Let	118	2	2.7%
Total	389	23	8.1%

Data Source -1585 May 2010

# North Carolina DOT DBE Participation/Payment Summary



# DBE Data on Recovery Act Projects

- Analyze
- Develop plan and strategies for gaps
- Employ opportunities to outreach, educate, and increase participation

# Questions

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**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 legitimate employees or subcontractors and is not bidding for the benefit of another contractor.

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

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

**SIGNATURE OF CONTRACTOR**

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

\_\_\_\_\_  
Address as prequalified

Attest

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

By

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

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

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

**CORPORATE SEAL**

**AFFIDAVIT MUST BE NOTARIZED**

Subscribed and sworn to before me this the

**NOTARY SEAL**

\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

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

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

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

Non-Exclusive Addendum, Debarment Certification, and Cost-Bid Certification are required prior to bidding  
subject to the Prequalification Office.

Rev. 04/2010

## 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*, *proposed*, 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.

Non-Collusion Affidavit, Debarment Certification and Civil Bid Certification are required prior to bidding.  
Submit to the Procurement Office.

Rev. 7-12-10

### 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 substantial. 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.

**§ 133-25. Conviction; punishment.**

(a) Upon conviction of violating G.S. 133-24, any person shall be punished as a Class H felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-24.

(c) In the event an individual is convicted of violating G.S. 133-24, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as an officer, director, employee or agent, if that corporation engages in public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-24 for a period of up to three years from the date of conviction. (1981, c. 764, s. 1.)

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*This document (also available in PDF and RTF formats) is not an official document.  
Please read the caveats on the main NC Statutes page for more information.*

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**§ 133-24. Government contracts; violation of G.S. 75-1 and 75-2.**

Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and 75-2 shall be guilty of a felony under this section where the combination, conspiracy, or other unlawful act in restraint of trade involves:

- (1) A contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency;
- (2) A subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency. (1981, c. 764, s. 1.)

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Please read the caveats on the main NC Statutes page for more information.*

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## Chapter 75. Monopolies, Trusts and Consumer Protection.

### Article 1.

#### General Provisions.

#### **§ 75-1. Combinations in restraint of trade illegal.**

Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class H felony. (1913, c. 41, s. 1; C.S., s. 2559; 1981, c. 764, s. 2.)

#### **§ 75-1.1. Methods of competition, acts and practices regulated; legislative policy.**

(a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(b) For purposes of this section, "commerce" includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.

(c) Nothing in this section shall apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station, or other advertising medium in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and when the newspaper, periodical or radio or television station, or other advertising medium did not have a direct financial interest in the sale or distribution of the advertised product or service.

(d) Any party claiming to be exempt from the provisions of this section shall have the burden of proof with respect to such claim. (1969, c. 833; 1977, c. 747, ss. 1, 2.)

#### **§ 75-2. Any restraint in violation of common law included.**

Any act, contract, combination in the form of trust, or conspiracy in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of G.S. 75-1. (1913, c. 41, s. 2; C.S., s. 2560.)

#### **§ 75-2.1. Monopolizing and attempting to monopolize prohibited.**

It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina. (1995 (Reg. Sess., 1996), c. 550, s. 1.)



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# Public Broadcast and Results of Highway Letting



## Other Project Letting Bid Requests

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Questions or comments regarding this page should be directed to the National Division Office



### Please Note:

This information and the timing of the bidding is subject to change. NCDOT is not responsible for errors or omissions. The information is provided for informational purposes only. The information is not intended to be used for any other purpose.



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