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Connecting South Dakota and the Nation

# DEPARTMENT OF TRANSPORTATION

## NOTICE TO CONTRACTORS,

## PROPOSAL, SPECIAL PROVISIONS,

## CONTRACT AND CONTRACT BOND

**FOR**

## STRUCTURE & APPROACH GRADING

**FEDERAL PROJECT NO. BRO 8012(15)**
**(PCN 01DL)**

## COUNTY ROAD

**IN CHARLES MIX COUNTY**

## NOTICE TO ALL BIDDERS

## 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 AND IS OPERATED UNDER THE DIRECTION OF THE DOT INSPECTOR GENERAL.

ALL INFORMATION WILL BE TREATED CONFIDENTIALLY AND CALLER ANONYMITY WILL BE RESPECTED.

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## PLANS, PROPOSALS AND ADDENDA

AFTER AWARD OF CONTRACT, THE LOW BIDDER WILL RECEIVE TEN (10) COMPLIMENTARY SETS OF PLANS, PROPOSALS, AND ADDENDA FOR FIELD AND OFFICE USE. AN ELECTRONIC COPY WILL ALSO BE PROVIDED. ANY ADDITIONAL COPIES REQUIRED WILL BE THE RESPONSIBILITY OF THE CONTRACTOR.

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Project Number: BRO 8012(15)

Revised 5/15/14
PCN 01DL

# NOTICE TO CONTRACTORS

Electronic Bids for this project will be received by the South Dakota Department of Transportation (SDDOT) via the SDDOT secure bid submission site at http://apps.sd.gov/hc65bidletting/bidsubmittallogin.aspx until 10 A.M. Central time, on October 1, 2014, at which time the SDDOT will open bids. All bids will be checked for qualifications with results posted on the SDDOT website. The South Dakota Transportation Commission will consider all bids at a scheduled Commission meeting.

The work for which proposals are hereby requested is to be completed: **ON OR BEFORE SEPTEMBER 25, 2015.**

The DBE goal for this project is: **NOT SPECIFIED.**

Work Type for this project is: **Work Type 12.**

All proposals shall be prepared and submitted accordance with the Special Provision of Electronic Bidding Requirements. Any proposal otherwise submitted will be deemed informal, irregular and not subject to or worthy of consideration in the award of the contract.

Plans and the proposal package for the work may be obtained at:
http://apps.sd.gov/hc65bidletting/ebslettings1.aspx

An electronic version of the most recent version of the South Dakota Standard Specifications for Roads and Bridges may be obtained at
http://www.sddot.com/business/contractors/specs/Default.aspx

The electronic bid proposal must be submitted by a valid bidder as designated on the Bidding Authorization Form. The Bidder ID and Password, coupled with a previously Department assigned Company ID, will serve as authentication that an individual is a valid bidder and will assure the secure electronic delivery of bid proposals to the Department. This authorization shall remain in full force and effect until written notice of termination of this authorization is sent by an Officer of the company and received by the Department.

No proposal will be considered unless a guaranty in amount of five percent of the total amount of the bid is secured by the Contractor and received by the Department with the bid or prior to opening of the bids. Satisfactory proposal guaranties include certified checks, cashier's checks, bank drafts issued upon a National or State Bank, or a bid bond issued in accordance with the laws of South Dakota. If electronic bid bonds are used, the Contractor is required to submit the bid bond identification number with the Contractor's bid. Unless otherwise specified in the proposal book, the proposal guaranty shall be made payable at sight to the Department of Transportation, State of South Dakota.

The South Dakota Transportation Commission reserves the right to reject any or all Proposals.

PROPOSAL Revised 8/10/11

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION, STATE OF SOUTH DAKOTA:

Ladies / Gentlemen:

The following proposal is made on behalf of the undersigned and no others. It is in all respects fair and is made without collusion on the part of any other person, firm or corporation not appearing in the signature to this proposal.

The undersigned certifies that she / he has carefully examined the plans listed herein, the Specifications hereinbefore referred to, the Special Provisions and the form of contract, both of which are attached hereto. The undersigned further certifies that she / he has personally inspected the actual location of the work, together with the local sources of supply and that she / he understands the conditions under which the work is to be performed, or, that if she / he has not so inspected the actual location of the work, that she / he waives all right to plea any misunderstanding regarding the location of the work or the conditions peculiar to the same.

On the basis of the plans, Specifications, Special Provisions and form of contract proposed for use, the undersigned proposes to furnish all necessary machinery, tools, apparatus and other means of construction, to do all the work and furnish all the materials in the manner specified, to finish the entire project **ON OR BEFORE SEPTEMBER 25, 2015** and to accept as full compensation therefore the amount of the summation of the products of the actual quantities, as finally determined, multiplied by the unit prices bid.

The undersigned understands that the quantities as shown in the Bid Schedule are subject to increase or decrease, and hereby proposes to perform all quantities of work, as increased or decreased, in accordance with the provisions of the specifications, and subject to any applicable special provisions, and at the unit prices bid.

The undersigned understands that the "Total or Gross Amount Bid" as immediately hereinbefore set forth is not the final amount which will be paid if this proposal is accepted and the work done, but that such amount is computed for the purpose of comparison of the bids submitted and the determination of the amount of the contract bond.

The undersigned further proposes to perform all extra work that may be required on the basis provided in the specifications, and to give such work personal attention in order to see that it is economically performed.

The undersigned further proposes to both execute the contract agreement and to furnish a satisfactory contract bond, in accordance with the terms of the specifications, within twenty (20) days after the receipt of notice from the South Dakota Department of Transportation that this proposal has been accepted.

# CERTIFICATION REGARDING LOBBYING

I certify, to the best of my knowledge and belief, that: 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 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 a Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the undersigned shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

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 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 or not less than $10,000 and not more than $100,000 for each such failure.

**REV. 12/19/13**

SPECIAL PROVISIONS

**PROJECT NUMBER(S): BRO 8012(15) PCN: 01DL**

**TYPE OF WORK: STRUCTURE & APPROACH GRADING**

**COUNTY: CHARLES MIX**

The following clauses have been prepared subsequent to the Standard Specifications for Roads and Bridges and refer only to the above described improvement, for which the following Proposal is made. In case of any discrepancy or conflict between said specifications and these Special Provisions, the latter are to govern.

The Contractor's attention is directed to the need for securing from the Department of Environment & Natural Resources, Foss Building, Pierre, South Dakota, permission to remove water from public sources (lakes, rivers, streams, etc.). The Contractor should make his request as early as possible after receiving his contract, and insofar as possible at least 30 days prior to the date that the water is to be used.

Fred Binder is the official in charge of the Pierre Career Center for Charles Mix County.

**THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:**

**Special Provision for Contract Time, dated 8/27/14.**

**Special Provision Regarding Section 404 of the Clean water Act, dated 9/4/14.**

**Fact Sheet #23.**

**Special Provision for Indian Employment and Contracting**
**Yankton Sioux Tribe, dated 9/2/14.**

Special Provision for Contractor Administered Preconstruction Meeting, dated 4/18/13.
Special Provision for Electronic Bidding Requirements, dated 12/18/13.
Special Provision for Fuel Cost Adjustment, dated 7/13/06.
Special Provision for Differing Site Conditions, dated 12/19/13.
Special Provision for Suspension of Work, dated 2/13/04.
Standard Title VI Assurance, dated 7/14/08.
Special Provision For Disadvantaged Business Enterprise, dated 12/19/12.
Special Provision For EEO Affirmative Action Requirements on Federal and Federal-aid Construction Contracts, dated 9/1/97.
Special Provision For Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. May/1/12), dated 4/30/13.
Required Contract Provisions Federal-aid Construction Contracts, Form FHWA 1273 (Rev. 5/1/12).
Special Provision Regarding Minimum Wage on Federal-Aid Projects, dated 4/30/13.

Wage and Hour Division US Department of Labor Washington DC.
- US Dept. of Labor Decision Number SD100010, dated 8/30/13.

Supplemental Specification for Errata, dated 3/3/10.

Supplemental Specification to Standard Specifications for Roads and Bridges, dated 3/3/10.

Special Provision for Price Schedule for Miscellaneous Items, dated 9/26/13.

Special Provision Regarding Storm Water Discharge to Waters of the United States Within Indian Reservations, dated 5/3/13.

National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities.
http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION
## FOR
## CONTRACT TIME

## PROJECT BRO 8012(15), PCN 01DL
## CHARLES MIX COUNTY

## AUGUST 27, 2014

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The Contractor will complete all work on the project by the September 25, 2015 overall completion date.

In addition, the Contractor will have 45 working days for the closure of the roadway. The Department will begin to charge working days when the Contractor closes the roadway to traffic. The Department will continue to charge working days until the Contractor completes the work and opens the roadway to traffic. The Department will charge working days in accordance with Section 8.6 A.

If the Contractor does not complete the work within the working day completion requirement, the Department will assess liquidated damages in the amount of $500 per working day.

In order to avoid or reduce liquidated damage assessments, the Contractor may request a time extension for the working day count and overall completion date. The Department will consider these time extension requests using the same considerations that apply when granting an extension of Contract Time under Section 8.6, except extra work or an increase in quantities will not qualify for an automatic extension of time based on a proportional increase in the contract amount.

The Contractor will complete all work on the project prior to the working day completion requirement and overall completion date or the overall completion date as amended by formally approved time extensions. If the Contractor does not complete all work by the working day completion requirement and overall completion date or the overall completion date as amended by formally approved time extensions, the Department will assess liquidated damages in accordance with Section 8.7. The Department will assess liquidated damages for each working day the work (project) is late until the Contractor completes all contract work.

In the event the Contractor does not complete the work (project) on time, the Department will charge working days in accordance with Section 8.6 B.

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION REGARDING
## SECTION 404 OF
## THE CLEAN WATER ACT

## BRO 8012(15), PCN 01DL
## CHARLES MIX COUNTY

## SEPTEMBER 4, 2014

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The following conditions contained in the Department of the Army Nationwide Permit are to be adhered to in connection with the construction of this project:

33 CFR SECTION 330.5

Section 330.5b General Conditions: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

Please refer to the attached ***Fact Sheet Nationwide Permit 23*.**

**THESE CONDITIONS APPLY TO THE FOLLOWING LOCATION(S) ON THIS PROJECT:**

Drainage Crossings over:

Andes Creek at Station 10+00.00, Structure 12-451-160

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REVISED 5/97

# Nationwide Permit 23

# Approved Categorical Exclusions

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity. The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters.

(Sections 10 and 404)

## Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the

permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas**. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls**. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district

engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking

occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. <u>Discovery of Previously Unknown Remains and Artifacts</u>.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. <u>Designated Critical Resource Waters</u>.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. <u>Mitigation</u>.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal

adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based

on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified

acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.** (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request

additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation,

especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource

agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

# 2012 NATIONWIDE PERMITS
# REGIONAL CONDITIONS
# OMAHA DISTRICT
# STATE OF SOUTH DAKOTA

The following Nationwide Permit (NWP) regional conditions will be used in the State of South Dakota. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

## Wetlands Classified as Peatlands – Revoked for Use

All NWPs, with the exception of 3, 5, 20, 27, 30, 32, 38, and 45, are revoked for use in peatlands in South Dakota.

"Peatlands" are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

## Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For NWPs 3, 5, 20, 27, 30, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity impacting peatlands in South Dakota.

## Waters Adjacent to Natural Springs – Pre-construction Notification Requirement – All Nationwide Permits

For all NWPs, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in South Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

**Minimum Culvert Width – All Nationwide Permits**

The permittee shall size culvert stream crossings based on the estimated two-year storm event or the width of the bankfull stream channel. Culverts placed in streams with a discernable bed and bank shall have a maximum width that is at least as wide as the bankfull channel width in the section of stream where the culvert will be placed. In lieu of bankfull width as a reference for minimum culvert size, the permittee may install a culvert that can pass the two-year storm event without causing rise of flood flows upstream of the culvert. Bankfull width shall be defined as the width of the stream at where over-bank flow begins during a flood event. In incised stream channels that do not or infrequently access their floodplains bankfull indicators may include slope changes, vegetation changes, the maximum elevation of deposited bedload, or the top of undercut banks.

**Culvert Countersink Depth for Aquatic Organism Depth – All Nationwide Permits**

The permittee shall install culverts as so that the culvert invert is set below the natural flowline of the water body according to the below table.

| Culvert Type | Drainage Area | Culvert Invert Depression Below Stream Grade Line |
|---|---|---|
| All culvert types | $\leq$ 100 acres | Not required |
| Pipe diameter < 8.0 ft | 100 to 640 acres | 0.5 ft |
| Pipe diameter < 8.0 ft | > 640 acres | 1.0 ft |
| Pipe diameter $\geq$ 8.0 ft | All drainage sizes | 20 % of pipe diameter |
| Box culvert | All drainage sizes | 1.0 ft |

- **The stream grade line shall be defined as the longitudinal average of the low-flow stream channel.**
- **The slope of the culvert should be parallel to the slope of the stream grade line.**
- **The culvert invert depression depth shall be measured at the culvert inlet for culverts installed at a slope less than the slope of the stream grade line.**
- **Riprap inlet and outlet protection shall be placed to match the height of the culvert invert.**

## GENERAL CONDITIONS (REGIONAL ADDITIONS)

### General Condition 3 - Spawning Areas

In order to further minimize adverse impacts in certain waters of the United States and to comply with General Condition No. 3, projects authorized under all available Section 404 NWPs that would occur in South Dakota's cold water streams must comply with the following regional condition:

In all South Dakota streams classified as cold water streams, when water flow is present, the discharge of dredged or fill material shall not take place without the permittee notifying the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity between October 15 and April 1. The Corps of Engineers, the South Dakota Department of Game, Fish and Parks, or the South Dakota Department of Environment and Natural Resources can be contacted for the location of State classified cold water streams. The cold water fisheries rivers and streams in South Dakota may be found at http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=74:51:03.

### General Condition 6 - Suitable Material

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, the following materials are not suitable for discharge into waters of the United States in the State of South Dakota:

1. Vehicle bodies, farm machinery and metal junk, including appliances and metal containers, are prohibited.

2. The use of old or used asphalt paving material as a fill material and the use of new or used asphalt for bank stabilization or erosion control is prohibited.

3. The use of organic debris as fill material is prohibited. (Properly anchored trees, treetops, root wads, logs, and hay bales may be allowed on a case-by-case basis.)

4. Any material subject to leaching when in an aquatic environment is prohibited (for example, but not limited to, chemically-treated building material, roofing material, and wood debris).

5. Individual or unanchored tires are prohibited. (Tires may be allowed on a case-by-case basis when placed in the form of a mat or grid with multiple anchoring points to reduce the risk of design failure.)

6. Small aggregate (i.e. less than 6 inches in diameter) may not be placed below the ordinary high water mark (OHWM) of a water body for the purpose of bank stabilization or erosion control when such aggregate will be unstable or subject to frequent failure. Small aggregate may, however, be placed below the OHWM if its purpose is to fill the interstices of a well-graded rock riprap revetment or channel lining.

7. Slab material, regardless of source, must be broken before placement so that the dimension of the largest slab will not be more than 3.5 times the dimension of the smallest slab (unless justified by a qualified engineer) and must be free of exposed rebar, wire and wire mesh.

8. The use of clean brick, broken concrete and cinder block for erosion control or bank stabilization will be considered on a case-by-case basis. If allowed, the broken concrete must be free of exposed rebar, wire, wire mesh, asphalt paving material, paint, and other erodible materials. Broken concrete must range in size from 6 to 36 inches (unless justified by a qualified engineer).

**STATE OF SOUTH DAKOTA**
**DEPARTMENT OF TRANSPORTATION**

# SPECIAL PROVISION FOR INDIAN EMPLOYMENT AND CONTRACTING YANKTON SIOUX TRIBE

**PROJECT NO. BRO 8012(15); PCN 01DL**
**CHARLES MIX COUNTY**
**SEPTEMBER 2, 2014**

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## PURPOSE

The purpose of the Indian Employment and Contracting Special Provision is to establish the specifications for Indian preference and the responsibilities of the contractor and subcontractors for this project.

All of this project is located within the historic exterior boundaries of the Yankton Reservation.

Title 23 United States Code (USC), Section 140(d), recognizes and permits the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservations roads. The State of South Dakota and the Department of Transportation, consistent with the intent of Section 140(d), affirms that it is their policy to encourage employment of minorities.

## DEFINITIONS

For the purposes of this Special Provision, the following definitions will apply:

A. **Indian:** An enrolled member of a federally recognized Indian tribe.

B. **Qualified Indian Applicant** is defined as one or more of the following:

1) Applicants approved by the contractor based on job performance on other jobs.
2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.

**C.** **Core Crew Employee**: A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

D. **Pre-Employment Standards**: Directly related job standards of fitness and ability which indicate that with a reasonable amount of job training a person would be capable of satisfactorily performing an entry level position as well as jobs at a higher level which, with a reasonable amount of training, are normally filled by progression from an entry-level position. This applies to those persons who, at the time of application for employment, are not fully qualified for the available jobs but have general potential of becoming qualified through a reasonable amount of training.

## DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights Office or Area Office):

A. Will monitor contractor and subcontractors for compliance with the requirements of this special provision and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provisions.

B. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.

C. Will establish on-the-job training opportunities as specified in the On-the-Job Training Special Provision.

D. Will provide notification to the TERO office of the name of the successful low bidder.

E. Will provide notification to the successful low bidder regarding the TERO requirements.

F. Will invite a representative of the TERO office to attend the preconstruction meeting and provide a copy of the preconstruction meeting minutes to the TERO office.

G. Will not allow a contractor or subcontractor to commence work until the contractor's or subcontractor's compliance plan has been approved and the Department's Area Office has received a copy of the approved compliance plan or verbal or written notification of approval by the TERO Office.

## CONTRACTOR RESPONSIBILITIES

A. The contractor and subcontractor will give preference in employment opportunities under this contract to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin, or tribal affiliation to the extent set out in the paragraphs below.

B. The contractor and subcontractor will not use pre-employment standards, qualifications, criteria, or other personnel requirements as a barrier to Indian employment except when such criteria or standards are required by business necessity. The contractor and subcontractor have the burden of showing that such criteria or standards are required by business necessity.

C. The contractor agrees that Indians will be given preference for at least fifty percent (50%) of the project work force provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees".

D. The contractor and subcontractor are required to complete a compliance plan and submit the compliance plan to the TERO office at least two (2) weeks prior to beginning work. Prior to commencing work, contractors and subcontractors are expected to contact the Yankton Sioux Tribe TERO office concerning an identified core crew, project work force needs, and (sub)contractor/TERO interface. No contractor or subcontractor will begin work until the compliance plan has been approved by the TERO office. The contractor and any subcontractor must submit a copy of the approved compliance plan to the Department's Area Office prior to commencing work unless arrangements are made for the TERO office to provide the copy of the compliance plan directly to the Department's Area office. In lieu of a copy of the approved compliance plan, the Department's Area office may seek approval directly from the TERO office.

E. The contractor will provide the TERO Director at least forty-eight (48) hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, the contractor and subcontractor may recruit and hire workers from whatever sources are available and by whatever process, provided the contractor and subcontractor notifies the TERO Office of any job vacancies, positions, or any negotiated positions.

F. The contractor and subcontractor will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the Department determines necessary. The contractor and subcontractor will submit the following information on a weekly basis to the Tribal TERO Office:

1. Weekly TERO Employment Report which includes the following data (forms for the weekly TERO Employment Report available from the TERO office);
   a) Wage and hour reports;
   b) New hires or terminations, and disciplinary action taken; and,
   c) Promotions
2. Copies of official payrolls.

G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.

H. Nothing in this Special Provision will be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractor's standards of conduct.

## OTHER PROVISIONS

This Special Provision supplements but does not replace the existing equal employment opportunity and disadvantaged business enterprise requirements, which may be included in this Agreement.

The Tribal TERO office will maintain a Job Skills Bank, listing available Indians by job classification based on skill level as indicated on their TERO application. The contractor and subcontractors agree to utilize the Tribal TERO office to locate qualified applicants.

The contractor is authorized to include in the bid an amount necessary to cover the two percent (2%) employment rights fee, which is applicable to this project, based on the portion of the project which is located within the historic boundaries of the Yankton Reservation. The Department determined that one hundred percent (100%) of the project is within those boundaries; therefore the contractor is authorized to include a TERO fee amount based on 100% of the total contract dollar amount.

The Yankton Sioux Tribe has an Indian Preference Subcontracting goal, which has been established at the same level as the Department's DBE goal for this project and is concurrent with the Department's DBE goal. The Tribe recognizes that FHWA policy does not permit the Department to extend Indian preference in subcontracting for this project and is satisfied that the Department and the contractor will seek qualified and DBE-certified Indian firms for this project. The contractor will make every reasonable effort to inform certified Indian DBE firms of the subtracting opportunities of the project and to solicit bids from such firms. Contact the Tribal TERO office at 605-384-3641 or the Department's Civil Rights office at 605-773-3540 for assistance.

The Department acknowledges the Yankton Sioux Tribe issues a business license to contractors working on projects within the exterior historic boundaries of the Yankton Reservation. For further information contact the Tribal TERO Office at 605-384-3641.

## ENFORCEMENT

The contractor and all subcontractors are made aware that this Special Provision is made part of the contract requirements, and that the Department of Transportation will monitor and enforce these provisions in a manner similar to other special provisions, as outlined in Division I, General Provisions of the Standard Specifications for Roads and Bridges, 2004 edition.

The TERO Special Provisions will apply to those projects adjacent to Indian land located wholly or partially within the former boundaries of the Yankton Reservation, the TERO Special Provisions will apply to the entire project and not just the portion located within the historic exterior boundaries of the Yankton Reservation with the TERO fee that is calculated based on the portion adjacent to Indian land and located within former reservation boundaries.

It is the intent of all parties that this Special Provision be implemented on a cooperative basis without regard to jurisdictional issues. It is agreed that nothing in this Special Provision will prevent the Tribe, the Department, or any contractor from instituting any litigation pertaining to any jurisdictional issue with regard to the employment rights code or any other matter.

Nothing in this Agreement will be construed to constitute recognition of or denial of the status of any particular piece of land as "reservation" as defined by 18 USC 1151(a), or as "Indian country" as defined by 18 USC 1151(c). The Tribe and the Department agree that the question of the status of the lands involved in and adjacent to this project under 18 USC 1151 is in dispute and do not intend that anything in this Agreement will be offered in or will affect the outcome of any litigation on that question.

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION
# FOR
# CONTRACTOR ADMINISTERED PRECONSTRUCTION MEETING

## APRIL 18, 2013

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## I. DESCRIPTION

This work consists of the Contractor scheduling and conducting a preconstruction meeting prior to beginning work on this contract. Additionally this work consists of the Contractor providing the Area Engineer a completed list of required submittals.

## II. MATERIALS (Not Specified)

## III. CONSTRUCTION REQUIREMENTS

For the purposes of this special provision, a business day is any calendar day except Saturdays, holidays, and days designated by the Governor of this State as an administrative leave day for state employees.

The Department will provide the Contractor a list of required submittals and the Authorization Form for Preconstruction Meeting (Form DOT-270) within five (5) business days of the date of the Notice to Proceed.

The Contractor's Required Submittals Form (Form DOT-272) is a document outlining information required prior to the completion of the project. This list will include two types of submittals; 1) information required before scheduling a preconstruction meeting and 2) information required before the Contractor begins related work. The Department reserves the right to request additional information not included in the original list of required submittals. The list of required submittals will include, but is not limited to, proposed sequence changes, shop drawings, permits, certifications, mix designs, labor compliance, equal employment opportunity, and disadvantaged business enterprise documents.

Prior to scheduling the preconstruction meeting, the Contractor will complete and provide the Area Engineer all items on the list of required submittals that are required as described in 1) above. If the Contractor cannot complete and provide a submittal item required prior to scheduling the preconstruction meeting, the Contractor will contact the Area Engineer to establish a mutually agreed upon

date when the required submittal will be completed and provided to the Area office.

The Contractor will not begin work on an item until the Contractor has provided the Area Engineer with all required information for the applicable work item and the appropriate office has approved the information, if necessary. The Contractor will make every reasonable effort to deliver the required submittals at the earliest possible time.

The Contractor's authorized representative as indicated on the Signature Authorization Form (Form DOT-209) will complete, in its entirety, the first page of the Authorization Form for Preconstruction Meeting and will initial each proceeding section. By initialing each section, the Contractor is confirming comprehension of each section.

When the Contractor has provided the Area Engineer all required submittals, unless the Contractor and Department have established an agreement in writing providing future dates of outstanding required submittal items, the Contractor will schedule a preconstruction meeting with the Area Engineer.

Within two (2) business days following the Contractor scheduling the preconstruction meeting, the Area Engineer will prepare and send the Contractor a meeting confirmation and the Preconstruction Meeting Outline (Form DOT-271) of discussion items including specific Department items.

The Contractor will complete the Contractor's portion of the Preconstruction Meeting Outline and will add additional discussion items as needed. The Contractor will send the meeting notice and final Preconstruction Meeting Outline to the Area Engineer, all subcontractors, utility companies, and all suppliers at least five (5) business days prior to the preconstruction meeting.

The Area Engineer will send the notice of the meeting and the final Preconstruction Meeting Outline of discussion items to any other government entities and other principle stakeholders involved in the project at least three (3) business days prior to the preconstruction meeting.

At the discretion of the Area Engineer, the preconstruction meeting may be held in person, videoconference, or over the phone. The Contractor's competent superintendent, as required by Section 5.5, who will be working on this project, is required to attend the preconstruction meeting.

The Contractor will lead the meeting discussion as described in the Preconstruction Meeting Outline. The Area Engineer will prepare the meeting minutes including any unresolved items and distribute them to all attendees and principle stakeholders within five (5) business days following the preconstruction meeting.

## IV. METHOD OF MEASUREMENT

The Department will not make a separate measurement for the preconstruction meeting.

## V. BASIS OF PAYMENT

The Department will not make a separate payment for the preconstruction meeting. All costs associated with the preconstruction meeting will be incidental to other contract items.

* * * * *

# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION
## FOR
## ELECTRONIC BIDDING REQUIREMENTS

## DECEMBER 18, 2013

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The South Dakota Department of Transportation requires all bid proposals submitted for this project be prepared and submitted using the latest version of the South Dakota Electronic Bidding System (SDEBS).

A prospective bidder may obtain the latest version of the SDEBS software from the SDDOT Website:
http://apps.sd.gov/hc65bidletting/ebsInstall.aspx

**MAKE THE INDICATED CHANGES TO THE FOLLOWING SPECIFIED SECTIONS OF THE STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES:**

**Delete Section 2.1 and replace with the following:**

**2.1**

**A. PREQUALIFICATION OF BIDDERS** - Prequalification on state highway construction contracts is required unless the amount being bid is less than $200,000.

A prospective bidder must be prequalified prior to the time and date specified for bid opening. A prospective bidder may apply for prequalification by completing and executing a Contractor's prequalification statement on a form approved by the Department. This application must be received by the Department's classification and rating committee at least 14 calendar days prior to the letting date.

Once prequalified, the Department will issue a notice to the prospective bidder stating the prospective bidder's approved work classification or work classifications, the prospective bidder's bidding capacity, and the prospective bidder's expiration date for prequalification status.

A prospective bidder may obtain the prequalification requirements contained in South Dakota Administrative Rules from the website:
http://legis.sd.gov/rules/DisplayRule.aspx?Rule=70:07

**B. ELECTRONIC IDENTIFICATION** – A prospective bidder must register as a new user on the Department's website to obtain a company identification and password. Certain bidding documents will only be available for download with proper company identification and password. Each company will receive one company identification and password.

In addition to the company identification and password, a prospective bidder must obtain a bidder identification and password for each individual who will be authorized to submit a bid proposal on behalf of the company. To authorize an individual to submit a bid proposal on behalf of the company, and obtain the bidder identification(s) and password(s), the company must complete a Bidding Authorization Form (available on the Department's website), furnishing all required information and all appropriate notarized signatures, and submit the form to the Department no later than 48 hours prior to the bid opening.

The individual receiving this bidder identification and password must be an authorized agent of the company having legal authority to do business for the company.

**Delete Section 2.2 and replace with the following:**

**2.2 CONTENTS OF BIDDING PACKAGE** - The bidding package consists of the proposal booklet, plans, electronic design files, specifications, special provisions, supplemental specifications, addenda, project question and answer (Q&A) forum, and electronic bid files. The bidding package will state the location and description of the contemplated construction, show the estimate of the various quantities and type of work to be performed or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. The bidding package will state the time in which the contract work must be completed, the time and date deadline for submitting the required bid proposals, and prequalification requirements.

Prospective bidders must refer to the SDDOT Website to acquire the bidding package. The prospective bidder will be responsible for all costs associated with utilizing the SDEBS and electronic bonds through the bond management company.

The Department will open the project Q&A forum when the project is advertised for letting. Prospective bidders are responsible for periodically checking the project Q&A forum for new questions and answers. The Department will post questions and answers, but will provide no additional notification of posted questions and answers. Prospective bidders may post new questions to the project Q&A forum until 10:00 AM CT on the Friday prior to the letting, at which time prospective bidders will be locked from further posting. The Department may post new questions and answers to the project Q&A forum up until 10:00 AM CT

on the Tuesday prior to the letting, at which time the project Q&A forum will be final and locked from all editing. In submitting a complete and final bid, a prospective bidder must account for any and all information posted to the final project Q&A forum regardless of when the prospective bidder submits a bid proposal.

**Delete Section 2.3 and replace with the following:**

**2.3 ISSUANCE OF BIDDING PACKAGE -** The Department will not place restrictions on who may download the bidding package from the website, except that certain documents will require the company identification described in Section 2.1 B. The bidder must verify the bidder's prequalification status prior to bidding. The Department will verify bidder status in accordance with Section 3.1 prior to opening bids.

**Delete Section 2.5 and replace with the following:**

**2.5 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, PROJECT Q&A FORUM, AND SITE OF WORK -** The bidder must examine the project site, and the entire bidding package for the work contemplated. The submission of a bid proposal will be considered conclusive evidence the bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality, and quantities of work to be performed, and materials to be furnished, according to all contract documents.

Boring logs and other records of subsurface investigations are available for inspection by prospective bidders. Prospective bidders must understand this information was obtained and is intended for Department design and estimating purposes and the Department cannot guarantee the accuracy of this information. This information is made available so all prospective bidders have access to the same subsurface information available to the Department. The furnishing of this information is not intended as a substitute for the prospective bidder's personal investigation, interpretation, and judgment.

The Department will not be bound by any statement or representation made by any Department employee or agent prior to the execution of the contract, unless included in the bidding package.

A prospective bidder must request any explanation regarding the meaning or interpretation of the bidding package in adequate time to allow a Department reply to reach all prospective bidders before submission of final bid proposals. The bidder will contact the Department by submitting a request for explanation to the project Q&A forum. If the deadline for submitting questions to the project Q&A forum has passed, the bidder will submit the request for explanation to the Department Bid Letting office. The Department may answer the request for explanation on the project Q&A forum or issue an addendum to all prospective

bidders, as appropriate, in the Department's sole discretion. The Department will furnish any addendum to all prospective bidders by electronic addendum before the time specified for opening of bid proposals.

The bidder will not take advantage of any apparent error, omission, or ambiguity in the bidding package. If the bidder discovers an error, omission, or ambiguity, the bidder will immediately notify the Department of the apparent error, omission, or ambiguity and its perceived consequences. The bidder will notify the Department by submitting a question to the project Q&A forum. If the deadline for submitting questions to the project Q&A forum has passed, the bidder will notify the Department Bid Letting office. The Department may certify the error, omission, or ambiguity and may answer the question on the project Q&A forum or issue an addendum to all prospective bidders, as appropriate, in the Department's sole discretion. The Department will furnish any addendum to all prospective bidders by electronic addendum before the time specified for opening of bid proposals.

The Contractor will not take advantage of any apparent error, omission, or ambiguity in the contract. If the Contractor discovers an error, omission, or ambiguity, the Contractor will immediately notify the Department of the apparent error, omission, or ambiguity and its perceived consequences. The Contractor will notify the Engineer. The Engineer will make corrections and interpretations as necessary to fulfill the intent of the Contract.

**Delete Section 2.6 and replace with the following:**

**2.6 PREPARATION OF PROPOSAL** - The bidder must submit the proposal using the SDEBS.

The bidder must specify a unit price, in numerals, for each bid item for which a quantity is given. A unit price cannot be "$0.00."

When the bidding package contains an alternate bid item or group(s) of alternate bid items, the bidder must indicate a choice for each available group by entering unit prices for all bid items within the alternate chosen.

The bidder must complete all required fields in the SDEBS. If the bidder does not completely fill out all required fields the Department may consider the bid irregular and reject the bid proposal in accordance with Section 2.7.

For bidding purposes, in case of a discrepancy between the line number, bid item description, or quantity shown in the SDEBS and the corresponding item shown in the plans, the bid item description and the quantity shown in the SDEBS will govern.

**2.7 IRREGULAR BID PROPOSALS** – The Department will consider a bid proposal irregular and may reject the bid proposal for any of the following reasons:

**A.** The bid proposal is incomplete, or is submitted on a form other than the Department's latest version of the SDEBS;

**B.** The bid proposal contains unauthorized additions, conditional or alternate bids, or other irregularities, which may tend to make the bid proposal incomplete, indefinite, or ambiguous as to its meaning;

**C.** The bid proposal contains provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award (this is not intended to exclude a bid proposal limiting the maximum gross amount of awards acceptable to a bidder at one bid letting. The Department will select awards in its sole discretion.);

**D.** The bid proposal does not contain a unit price in numerals for each pay item listed, except in the case of authorized alternate pay items;

**E.** The bid proposal is signed with an invalid bidder identification;

**F.** The Department determines, in its sole discretion, that any of the unit bid prices are significantly unbalanced to the potential detriment of the Department; or,

**G.** Confirmation of receipt of all addenda issued by the Department is not included in the bid proposal.

**Delete Section 2.8 and replace with the following:**

**2.8 PROPOSAL GUARANTY** - The Department will not consider any bid proposal unless the bidder has furnished the Department a guaranty in the amount of five percent of the total amount of the bid prior to opening of the bids. Satisfactory forms of proposal guaranties are certified checks, cashier's checks, bank drafts issued upon a national or state bank, and bid bonds issued in accordance with South Dakota law. If the bidder uses an electronic bid bond, the bidder must submit the bid bond identification number with the bid proposal. Unless otherwise specified in the bidding package, the proposal guaranty must be made payable at sight to the "South Dakota Department of Transportation."

**Delete Section 2.9 and replace with the following:**

**2.9 SUBMISSION OF BID PROPOSALS** – A bidder must submit a bid proposal electronically using the SDEBS to the Department's secure bid submission site prior to the time and date specified by the Notice to Contractors in the bidding

package. The Department will not accept any bid proposal received after the time specified for opening of bids.

**Delete Section 2.10 and replace with the following:**

**2.10 WITHDRAWAL OR REVISION OF PROPOSALS** - A bidder may withdraw a proposal after it has been submitted, if the withdrawal is made before the time set for opening the proposals.

A bidder may revise and resubmit a bid proposal any time prior to the time set for opening the proposals. The Department will consider only the last bid proposal submitted as a valid bid proposal for that project. A bidder may revise a bid only through the SDEBS.

**Delete Section 3.1 and replace with the following:**

**3.1 CONSIDERATION OF BID PROPOSALS** - After the bids are received, but prior to opening, the Department will verify the bidder is prequalified for the specified work type. After the bids are opened, the Department will verify the bidder's status at that time is sufficient to handle the work for which the bidder submitted a bid. The Department reserves the right to refuse to accept a bid proposal for any of the following reasons:

**A.** Lack of competency or adequate machinery, plant, and other equipment, as shown by the Contractor's Prequalification Statement;

**B.** Uncompleted work which the Department determines, in its sole discretion, may hinder or prevent the prompt completion of additional work;

**C.** Failure to pay or satisfactorily settle any legal obligation due for labor or material on any contract at the time of issuance of proposals;

**D.** Failure to comply with the Department's prequalification regulations;

**E.** Default under any previous contract or contracts;

**F.** Debarment by the Department or the federal government;

**G.** Lack of bidding capacity as established by the Contractor's prequalification statement, considering the uncompleted work currently under contract; or,

**H.** Unsatisfactory performance on previous work or any current contract or contracts consisting of, but not limited to:

**1.** Noncompliance with contract specifications, contract requirements, or Engineer's directives;

2. Failure to complete work on time;

3. Instances of substantial corrective work prior to acceptance;

4. Instances of completed work that requires acceptance at reduced pay;

5. Production of work or materials not meeting required specifications, and when applicable, requiring price reductions or corrective work;

6. Failure to provide adequate safety measures or appropriate traffic control that endangers the safety of the work force and public;

7. Questionable moral integrity as determined by the Attorney General of the State, or the Department; or,

8. Failure to reimburse the State for monies owed on any previously awarded contract including any contract where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.

After the bid proposals are opened, the Department will compare the bids on the basis of the summation of the products of the quantities shown in the bid proposal by the unit bid prices. The results of such comparisons will be available to the public via the Department's Internet Website.

The Department reserves the right to reject any bid proposal, the right to waive technicalities, and the right to reject all bid proposals and advertise for new bid proposals, if in the sole judgment of the Department the rejection or waiver will promote the best interest of the Department.

**Delete Section 3.4 and replace with the following:**

**3.4 PROPOSAL GUARANTY** - The Department will retain the proposal guaranties of the two lowest responsible and competent bidders. The Department will release the remaining proposal guaranties following opening and checking of bid proposals. The Department will release the proposal guaranties of the two low bidders when the contract has been executed.

**Delete Section 5.4 and replace with the following:**

**5.4 COORDINATION OF CONTRACT DOCUMENTS** – The contents of the bidding package are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. The contents of the bidding package are intended to be complimentary and to describe and provide for a complete work.

If any discrepancy exists, the governing ranking is:

1. Addenda
2. Project Q&A forum
3. Special provisions
4. Plans
5. Supplemental specifications
6. Standard specifications
7. Electronic design files

Notwithstanding the above governing ranking, addenda will govern over the project Q&A forum unless specifically addressed by a Department response in the project Q&A forum.

In case of a discrepancy between questions on the project Q&A forum regarding the same topic, the most recent question and answer will govern over previous questions and answers. Questions will be numbered on the project Q&A forum in order of date and time posted.

In addition, calculated dimensions will govern over scaled dimensions.

**Delete Section 570**

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# STATE OF SOUTH DAKOTA

# DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION
# FOR
# FUEL COST ADJUSTMENT

# JULY 13, 2006

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**Delete Section 9.12 of the Standard Specifications for Roads and Bridges and replace with the following:**

**General**

Compensation adjustments for motor fuels and burner fuels consumed in prosecuting the contract shall be determined by the Engineer in accordance with the provisions set forth herein.

Compensation adjustments will be assessed for the cost of the motor fuels and burner fuels whenever the Current Fuel Index (CFI) is outside the range of 85 percent to 115 percent of the Base Fuel Index (BFI). Compensation adjustments for burner fuel will only be made when asphalt concrete bid items are paid for on the estimate.

The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program. Prior to execution of the contract, the successful bidder shall submit the Fuel Adjustment Affidavit - Form DOT-208 to the Department.

Determination of whether to participate in the Fuel Adjustment program is the decision of the Prime Contractor. If the Prime Contractor decides not to participate, or if he has a fixed fuel cost for any of the fuel types, no compensation adjustments will be made for the subcontractors by the Department. The Fuel Adjustment Affidavit shall include the anticipated fuel cost of subcontractors, if the Prime Contractor chooses to participate in the fuel cost adjustment program. If compensation adjustments are made, the prime contractor shall ensure that all subcontractors including second and lower tier, are included in the adjustments in proportion to the percentage of work and anticipated fuel cost by that subcontractor.

Each week the Department will record the average wholesale price for No. 2 fuel oil (diesel), regular unleaded gasoline, and propane (LPG), Freight On Board (FOB) South Dakota terminals, as listed in the “Oil Price Information Service” (OPIS) publication.

The BFI price for motor fuels and burner fuel to be used in the contract will be the average of the recorded wholesale fuel prices for the four most recent weekly reporting periods prior to the week of the bid letting.

The CFI price for motor fuels and burner fuel to be used for each progress payment will be the average for the recorded wholesale fuel prices for the four most recent weekly reporting periods available at the time when the progress payment is prepared.

Burner fuel adjustment will use the BFI and CFI as determined for No. 2 fuel oil (diesel), except when the contractor lists the burner fuel as propane (LPG) on Form DOT-208, Fuel Adjustment Affidavit. In that case, the BFI and CFI will be as determined for propane (LPG).

Compensation adjustments will not be assessed for fuel items which the contractor has obtained a fixed fuel cost, or if the contractor elects not to participate in fuel adjustments on Form DOT-208, Fuel Adjustment Affidavit. Fixed fuel costs are defined as a fuel cost that has been set and will remain the same for the entire length of the contract.

Compensation adjustments made in accordance with these provisions may be made on progress payments without a prior approved Construction Change Order.

**Fuel Cost Percentage Change**

The biweekly change in fuel cost percentage will be determined by Equation 1 as follows:

<u>Equation 1</u>

$$Change_{(x,\,y,\,z)} = \left( \frac{CFI_{(x,\,y,\,z)} - BFI_{(x,\,y,\,z)}}{BFI_{(x,\,y,\,z)}} \right)$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| $Change_{(x,\,y,\,z)}$ | = | Percent change in the respective fuel price compared to the Base Fuel Index Price set for the contract. |
| $CFI_{(x,\,y,\,z)}$ | = | Current Fuel Index Price for the respective fuel type ($$). |
| $BFI_{(x,\,y,\,z)}$ | = | Base Fuel Index Price for the respective fuel type ($$). |

**Contract Fuel Percentage**

For the purpose of determining fuel cost adjustment, a percent of contract will be determined for Motor Fuel (Diesel), and Motor Fuel (Unleaded) based on the original

contract prices. Burner Fuel will be adjusted based on the original contract prices of the plant mix asphalt concrete pavement bid items.

The percent of the contract will remain the same throughout the length of the contract. No changes to this percentage will be allowed for any reason. The sum of the individual fuel costs shall not exceed 15% of the Original Contract Cost. The percent of the contract will be determined by Equation 2 as follows:

Equation 2

$$\%\ Contract_{(x,\,y,\,z)} = \left( \frac{Affidavit\ Cost_{(x,\,y,\,z)}}{Original\ Contract\ Cost_{(x,\,y,\,z)}} \right) x\,100$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| % $Contract_{(x,y,z)}$ | = | Percent of contract for each respective fuel item. |
| Affidavit $Cost_{(x,y,z)}$ | = | Cost from Fuel Adjustment Affidavit (Form DOT-208) |
| Original Contract $Cost_{(x,y)}$ | = | Total of the original contract bid cost excluding lane rental, and Part B of the bid (when A+B bidding is used), if applicable ($$). |
| Original Contract $Cost_{(z)}$ | = | Total original contract cost for all plant mix asphalt concrete pavement bid items combined, excluding bid items for asphalt binder, hydrated lime, sawing and sealing joints, compaction samples, etc. Only bid items measured by the Ton will be included in the calculation. |

**Compensation Adjustment**

The compensation adjustments will be determined for Motor Fuel (diesel), Motor Fuel (Unleaded), and Burner Fuel separately. The calculation will be based on the current Engineer's pay estimate, the percent of the contract for each of the respective fuel items, and the portion of the Current Fuel Index price that falls outside the 85 to 115 percent range of the Base Fuel Index price.

When the "$Change_{(x,\,y,\,z)}$" from Equation 1 is greater than 15%, Equation 3 will be used to determine the compensation adjustment for each item as follows:

Equation 3

$$FCA_{(x,\,y.z)} = \frac{\%\ Contract_{(x,\,y,\,z)}}{100}\ x\ Estimate\ Cost_{(x,\,y,\,z)}\ x\ \left(Change_{(x,\,y,\,z)} - 0.15\right)$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |
| $FCA_{(x,y,z)}$ | = | Fuel Cost Adjustment for the respective fuel item for the current Engineer's estimate ($$). |
| % $Contract_{(x,y,z)}$ | = | Percent of contract for each respective fuel item (from Equation 2). |
| Estimate $Cost_{(x,y)}$ | = | Amount to be paid on the biweekly pay estimate excluding all pay adjustments made for incentive, disincentive, price adjustments, pay factor adjustments, liquidated damages, and royalties. |
| Estimate $Cost_{(z)}$ | = | Amount to be paid on the biweekly pay estimate for all plant mix asphalt concrete pavement bid items combined, excluding bid items for asphalt binder, hydrated lime, sawing and sealing joints, compaction samples, all pay adjustments made for incentive, disincentive, price adjustments, pay factor adjustments, liquidated damages, and royalties. Only asphalt concrete bid items measured by the Ton will be included in the calculation. |
| $Change_{(x,y,z)}$ | = | Change in the respective fuel price compared to the Base Fuel Index price (from Equation1). |

When the "$Change_{(x,y,z)}$" from Equation 1 is less than -15%, the Equation 4 will be used to determine the compensation adjustment for each item.

Equation 4

$$FCA_{(x,\,y.z)} = \frac{\%\ Contract_{(x,\,y,\,z)}}{100}\ x\ Estimate\ Cost_{(x,\,y,\,z)}\ x\ \left(Change_{(x,\,y,\,z)} + 0.15\right)$$

| | | |
|---|---|---|
| (x) | = | Motor Fuel (Diesel) |
| (y) | = | Motor Fuel (Unleaded) |
| (z) | = | Burner Fuel |

| | | |
|---|---|---|
| $FCA_{(x,y,z)}$ | = | Fuel Cost Adjustment for the respective fuel item for the current Engineer's estimate ($$). |
| % $Contract_{(x,y,z)}$ | = | Percent of contract for each respective fuel item (from Equation 2). |
| Estimate $Cost_{(x,y)}$ | = | Amount to be paid on the biweekly pay estimate excluding all pay adjustments made for incentive, disincentive, price adjustments, pay factor adjustments, liquidated damages, and royalties. |
| Estimate $Cost_{(z)}$ | = | Amount to be paid on the biweekly pay estimate for all plant mix asphalt concrete pavement bid items combined, excluding bid items for asphalt binder, hydrated lime, sawing and sealing joints, compaction samples, all pay adjustments made for incentive, disincentive, price adjustments, pay factor adjustments, liquidated damages and royalties. Only asphalt concrete bid items measured by the Ton will be included in the calculation. |
| $Change_{(x,y,z)}$ | = | Change in the respective fuel price compared to the Base Fuel Index price (from Equation1). |

**Payment**

Adjustments will be determined by the Engineer on biweekly progress payments based on when the completed work is paid for, not when the work is completed. Adjustments will be made by utilizing the following lump sum line items: Motor Fuel Cost Adjustment, Diesel; Motor Fuel Cost Adjustment, Unleaded; Burner Fuel Cost Adjustment, Propane; and Burner Fuel Cost Adjustment, Diesel.

* * * * *

For informational purposes, Form DOT-208 follows in Attachment A.

**Attachment A**

DOT-208
(05/07)

**FUEL ADJUSTMENT AFFIDAVIT**

Project Number _____
PCN _____
County _____

*The Contractor is not required to notify the Department at the time of submitting bids whether he will or will not participate in the fuel cost adjustment program The Fuel Adjustment Affidavit shall include the anticipated fuel cost of subcontractors.*

Does your company elect to participate in a fuel adjustment for this contract for the fuels that do not have a fixed price? No adjustments in fuel prices will be made if "No" is checked.

☐ Yes ☐ No

If yes, provide the total dollars for each of the applicable fuels. No adjustments in fuel price will be made for the fuel types that are left blank or completed with a $0.00 value.

Diesel (x) $_____

Unleaded (y) $_____

Burner Fuel (z) $_____ Type of Burner Fuel Used: _____

Sum (x + y + z) = $_____

**Note:** The sum of the x, y, and z may not exceed 15% of the original contract amount.

**The following must be completed regardless of whether the Contractor elects to participate in the fuel adjustment affidavit**

Under the penalty of law for perjury or falsification, the undersigned, _____,
*(Printed Name)*

_____ of _____,
*(Title)* *(Contractor)*

hereby certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of their knowledge and belief, and that the monetary amount identified accurately reflects the cost for fuel, and that they are duly authorized to certify the above documentation on behalf of the company.

I hereby agree that the Department or its authorized representative shall have the right to examine and copy all Contractor records, documents, work sheets, bid sheets, and other data pertinent to the justification of the fuel costs shown above.

Dated _____ Signature _____

**Notarization is required only when the Contractor elects to participate in the fuel adjustment affidavit**

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

_____ _____
*Notary Public* *My Commission Expires*

# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION
## FOR
## DIFFERING SITE CONDITIONS

## DECEMBER 19, 2013

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During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

This section does not apply to material sources shown on the plans and as defined in Section 6.

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISON
## FOR
## SUSPENSION OF WORK

## FEBRUARY 13, 2004

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The following shall apply when suspension of the work is ordered by the Engineer.

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/ or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the contractor's request in accordance with Section 5.17 and/or Section 8.6 of the Standard Specifications. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

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# STATE OF SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
# TITLE VI AND NONDISCRIMINATION ASSURANCE
# JULY 14, 2008

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

(1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended (hereinafter referred to as the "Regulations"), incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, national original, sex, age or disability.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the South Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the South Dakota Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the South Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the South Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event of a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the South Dakota Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter such litigation to protect the interests of the United States.

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION
# FOR
# DISADVANTAGED BUSINESS ENTERPRISE

## DECEMBER 19, 2012

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The Contractor, subrecipient, 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 Department deems appropriate.

## I. Definitions

**A. Specified Goal:** A DBE participation goal for a contract as indicated by a specific numerical percentage of the total dollar amount of the contract in the bidding documents.

**B. Not Specified:** No specific DBE participation goal is specified for a contract.

**C. Disadvantaged Business Enterprise (DBE):** A for-profit small business that is certified by the Department and is listed in the DBE Directory available on the Department's web site.

**D. Good Faith Effort (GFE):** Efforts to achieve a DBE goal which; by their scope, intensity, and appropriateness to the objective; can reasonably be expected to meet the objective of the Department's DBE program pursuant to 49 CFR 26.1.

**E. Positive Contact:** Communication between the bidder and the DBE in which the bidder receives an oral or written response from the DBE stating the DBE's intention to quote or not quote a project.

**F. Commitment:** The dollar amount of work to be subcontracted to DBEs, according to the bidder's bid. The commitment may be compared to the dollar amount of all contract items in the bidder's bid and expressed as a percentage of the total bid amount.

## II. Bidding Requirements

A bidder must not discriminate on the basis of race, color, national origin, or sex in the solicitation or award to subcontractors and material suppliers. Bidders who demonstrate a pattern of possible discrimination through consistent and repeated under-utilization of DBEs may be subject to investigation and sanctions allowed by regulation, administrative rule, or law.

The Bidder's failure to carry out the requirements of this special provision will be treated as a non-responsive bid.

On contracts that specify a specific DBE contract participation goal, all bidders must include their DBE commitment for the contract in the bidding files provided by the Department.

If the contract indicates "Not Specified," all bidders are encouraged to include their anticipated DBE utilization for the contract in the bidding files provided by the Department.

Each bidder must submit a list of all subcontractors and suppliers (DBEs and non-DBEs) the bidder received quotes from for that contract with the bid files.

A Contractor must make reasonable efforts to provide opportunities for DBEs to participate on Federal-aid contracts throughout the life of the contract.

On contracts let with a specified DBE contract participation goal, where the low bidder has not met or exceeded that goal, the bidder must provide GFE documentation as indicated in Section III.

When the DBE participation is "Not Specified" on a contract, each bidder is encouraged to use DBE Contractors; however no bidder will be required to furnish GFE documentation.

The apparent low bidder must submit GFE documentation, when requested by the Department, within two (2) business days from the date the apparent low bidder is contacted by the Department. Section III provides information on the types of action bidders should make as part of their GFE to obtain DBE participation. The apparent low bidder may submit documentation with the bidding files provided all pertinent information is included. The apparent low bidder must submit any missing documentation within two (2) business days from the date the Department contacts the low bidder.

If the apparent low bidder does not provide documentation showing GFE as required by this special provision, the Department will consider that bid nonresponsive and may either award the contract to the next lowest responsible bidder with a responsive bid, or reject all bids. Subsequent to the DBE

committee's decision that the apparent low bidder's efforts do not establish GFE, the apparent low bidder will be notified that the bid is not responsive. The apparent low bidder will have two (2) business days from the date of notification to contact the Bid Letting Engineer to arrange a meeting with the Department Secretary, or the Secretary's designee, to present documentation and argument about why the bid should not be rejected. The Department Secretary or the Secretary's designee will issue a written decision on responsiveness of the bid within two (2) business days after the meeting.

If the apparent low bid is rejected for failure to meet the GFE or other requirements, the next apparent low bidder will be notified, unless all bids are rejected. The next apparent low bidder's DBE commitment will also be reviewed, and GFE documentation may be requested. Unless all bids are rejected, award of the contract will be made to the lowest bidder with a responsive bid.

The lowest responsive bidder will be required to complete form DOT-289B, as included in the contract documents, when the contract is sent for signature. This form requires a signature from each DBE identified in the low bidder's DBE commitment. A separate form will be supplied for each DBE and will be included in the contract documents.

Bidders are encouraged to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or other related services.

## III. Good Faith Efforts

If a GFE package is requested on a contract with a specified goal, the apparent low bidder must submit documentation showing compliance with the following requirements:

**A.** The apparent low bidder will submit a contact log of all solicitation efforts including:

- Name of the DBE firm
- Name and phone number of the individual with whom contact was made
- Date, time, and manner of each and every contact (by phone, in person, fax, mail, e-mail, etc.)
- The DBE's response to the solicitation
- Result of the solicitation effort

An example of a solicitation log is available on the Department's Bid Letting website. When bidding utilizing the South Dakota Electronic Bidding System (SDEBS) software, the software may be used to document the log of solicitation efforts for the project.

**B.** The apparent low bidder will also submit documentation that shows GFE in relation to the following requirements:

**1.** The bidder must select contract work items to encourage DBE participation. This includes breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.

**2.** The bidder must solicit all certified DBEs that are listed in the appropriate work classifications in the DBE directory and that have indicated in the directory they are willing to work in the project's geographic area. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time seven (7) calendar days prior to the bid letting must be solicited in accordance with Section III.B.3 of this special provision. If the bidder has not solicited any DBE meeting these requirements, the bidder will provide a detailed written explanation showing why the DBE was not solicited.

**3.** To provide adequate time for the DBE to respond with a quote in the normal course of business, the bidder must make the initial solicitation at least six (6) calendar days by mail or five (5) calendar days by phone, fax, or e-mail prior to the letting date. Without exception, all DBEs who are listed on the plan holders list by 10 AM central time seven (7) calendar days prior to the bid letting must be solicited.

**4.** If the bidder does not receive a positive contact from a DBE, the bidder must follow up the initial solicitation with a second solicitation by phone, fax, or e-mail to determine whether the DBE is interested in quoting. The bidder must make this second solicitation at least two (2) business days prior to the letting.

**5.** The bidder will provide interested DBEs with adequate and timely information about plans, specifications, and requirements of the contract to assist DBEs in responding to a solicitation.

**6.** If a bidder rejects a DBE quote because of previous problems with a particular DBE, the bidder must prepare a detailed written explanation of the problem. Additional cost involved in finding and using DBEs is not, in itself, sufficient reason for a bidder to reject a quote. A bidder must not reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities.

**7.** Any additional information requested by the Department.

**C.** The bidder must consider qualified DBEs whose quotes are reasonably competitive. If the bidder rejects any quote because it is considered not to be "reasonably competitive," the bidder must provide copies of all DBE and non-DBE quotes, and a work item price spreadsheet comparing DBE quotes to non-DBE quotes. The spreadsheet must show which quote was included in the bid for the work items being compared. The ability or desire of a bidder to perform the work with its own forces does not relieve the bidder of the responsibility to make GFE. In the event a bidder elects to use its own forces over a DBE, the bidder must include, on the spreadsheet, documentation of the costs of using the bidder's own forces. This can be shown in a number of ways, which may include submitting portions of the bidder's work sheets used to prepare the bid.

**D.** The bidder must explain why the specified goal could not be met.

**E.** The bidder must identify any additional efforts the bidder made to secure DBE participation.

## IV. Counting DBE Participation

On projects with a specified goal, the contract commitment, as submitted with the bid, will be documented on form DOT-289R/C as included in the contract documents.

If the project is shown as "Not Specified," the anticipated DBE utilization, as submitted with the bid, will be documented on form DOT-289 R/N – DBE Utilization Form, as included in the contract documents. The DBE utilization shown on this form is not a commitment to use the DBE. This information will be used by the Department to track anticipated DBE usage.

Only the portion of a contract performed by the DBE's own forces will count toward DBE participation. Included is the cost of supplies and materials obtained by the DBE for the contract, including supplies purchased or equipment leased by the DBE. Supplies and equipment the DBE subcontractor purchased or leased from the Contractor or its affiliate is not allowed to be included.

When a DBE performs as a participant in an approved joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will count toward DBE participation.

A bidder may count toward its DBE participation only that percentage of expenditures to DBEs that perform a commercially useful function (CUF) in the performance of a contract. A DBE performs a CUF when the DBE is responsible for execution of the work of a contract and is carrying out the DBE's responsibilities by actually performing, managing and supervising the work

involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating prices, determining quality and quantity, ordering and installing (where applicable) the materials, and paying for the material itself. To determine whether a DBE is performing a CUF, the Department will evaluate the amount of work subcontracted, the industry practice, and whether the amount the DBE is to be paid is commensurate with the work it is actually performing, DBE credit claimed for performance of the work, and other relevant factors.

A DBE is not performing a CUF if the DBE performs less than 30% of the total cost of its contract with its own work force, or if its role is limited to that of an extra participant in a transaction, project, or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is simply an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

DBE participation will be counted for trucking services as follows:

> The bidder/Contractor will receive credit toward DBE participation for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates and which are driven by drivers the DBE employs.
>
> A DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. When a DBE leases trucks from another DBE, the bidder/Contractor can count the total value of the transportation services the lessee DBE provides on the contract toward DBE participation.
>
> The DBE may also lease trucks from a non-DBE firm, including an owner-operator. When a DBE leases trucks from a non-DBE, the bidder/Contractor can count toward DBE participation only the fee or commission the DBE receives as a result of the lease arrangement. The bidder/Contractor does not receive credit toward DBE participation for the total value of the transportation services, since all services are not provided by a DBE.

The bidder may count toward DBE participation expenditures to DBE firms for materials, supplies, or services as follows:

> If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE participation. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials, supplies, articles, or equipment are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count only the amount of fee or commission charged for assistance in the procurement of the materials or supplies or fee or transportation charges for the delivery of materials or supplies required at the job site toward DBE participation. In order to be counted, the Department must determine the fee to be reasonable and not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves will not count toward DBE goals.

The Department will not count toward DBE participation materials or services provided by a DBE who is not currently certified.

No intended or actual subcontracting arrangement which is contrived to artificially inflate DBE participation is allowed. This includes, but is not limited to, DBE middlemen which serve no commercially useful function, or arrangements where a DBE is acting essentially as a broker of goods or services, but has been counted as a manufacturer, regular dealer, or subcontractor.

The Department will review and monitor projects for compliance with the bidder's intended DBE participation. Failure by the Contractor to fulfill the contract commitment constitutes a breach of contract. The Department may also investigate the form and substance of particular business arrangements between and among DBE and Contractors with regard to specific contracts. If, as a result of an investigation, the Department determines a particular business arrangement is not allowable, the dollar amount of the unallowable DBE participation will be subtracted from the Contractor's DBE participation on that project. The Contractor will be notified if the apparent DBE participation is not adequate to meet the DBE participation stated on the form DOT-289R/C. The Contractor will be directed to seek additional participation from other DBEs to meet the unallowable portion on that contract.

All Contractors and DBEs shall cooperate fully and promptly with the Department in compliance reviews, investigations, and other requests for information. If the Department determines a Contractor was a knowing and willing participant in an unallowable business arrangement, or in the event of repeated violations, falsification, or misrepresentation, the Department will impose sanctions. Sanctions may include, but are not limited to one or more of the following:

- Assessment of liquidated damages as stated in Section VII below
- Suspension of bidding privileges or debarment
- Withholding progress payments
- Securing additional DBE participation on future Federal-aid contracts sufficient to make up for the DBE participation found to be unallowable
- Referral of the matter for criminal prosecution

## V. Joint Checks to DBEs

A joint check is a check issued by a prime Contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. For a prime Contractor to receive DBE credit, the DBE must perform a commercially useful function and be responsible for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for materials.

To ensure that the DBE is independent of the prime Contractor and in compliance with the regulation, use of joint checks will be reviewed and allowed only under following conditions:

- Issued for valid reasons only, not simply for the convenience of the prime Contractor
- Used for a specific contract or specific time frame and not long-term or open ended
- Payment is made to the DBE and not directly to the supplier
- Requested and received prior written approval from the DBE Compliance Officer.

The request must include the following:

- Name of the DBE
- The DOT contract number(s)
- The DOT PCN number(s)
- The work the DBE will be performing on each contract
- Name of the supplier(s) used by the DBE
- The specific reason(s) for issuing joint checks

The Department will review the request and verify the circumstances indicated in the request with the DBE. A copy of the request and approval will be provided to the prime Contractor and the DBE.

## VI. Certification of DBE Performance and Payments

Within 30 days of physical completion of the project the Contractor is required to submit form DOT-289 (Certification of DBE Performance and Payments), listing all DBEs that participated in the contract, and the total dollar amount paid (and

anticipated to be paid) to each. DBE attainments are compared to commitments on form DOT-289R/C and any payments less than 90 percent of that commitment, without proper justification and documentation, will have liquidated damages assessed against the contract. The Contractor's final payment is not released until receipt of the form DOT-289.

Contractors are required to maintain a running tally of payments to DBEs. For reports of payments not being made in accordance with the prompt payment provision, alleged discrimination against a DBE or other similar complaint, the tally may be requested for review by the Department. The Department may perform audits of contract payments to DBEs to ensure that the amounts paid were as reported on the form DOT-289. All Contractors participating in Federal-aid contracts are expected cooperate fully and promptly with the Department in compliance reviews, investigations and other requests for information regarding payments to DBEs. Their failure to do so is grounds for appropriate sanctions or action against the Contractor.

The DOT will monitor the running tally on a program basis and if reporting issues are identified, additional reporting requirements may be implemented.

## VII. Liquidated Damages

**A.** If the Contractor does not meet its contract commitment documented on form DOT-289 R/C, the Department will assess liquidated damages according to the following schedule:

**1.** For the first $1,000 DBE deficiency, one hundred percent (100%) of the deficiency.

**2.** For the next $9,000 DBE deficiency, fifty percent (50%) of the deficiency.

**3.** For the next $10,000 DBE deficiency, twenty five percent (25%) of the deficiency.

**4.** For any remaining DBE deficiency in excess of $20,000, ten percent (10%) of the deficiency.

This liquidated damage provision will not be applicable where actual payment to a DBE is within ninety percent (90%) of the commitment or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, or other unexpected occurrences.

**B.** If a Contractor finds it impossible, for reasons beyond its control, to meet the contract commitment on form DOT-289R/C, the Contractor may, at any time prior to completion of the project, provide a written request to the DBE Compliance Officer for a complete or partial waiver of liquidated damages. No

request for a waiver will be accepted after Acceptance of Field Work has been made.

## VIII. Termination or Substitution of a DBE

The Contractor will not be allowed to terminate or substitute a DBE without the Department's prior verbal consent followed by written approval. This includes, but is not limited to, instances in where the Contractor desires to perform work originally committed to a DBE with its own forces, with an affiliated company, with a non-DBE, or with another DBE. Department approval is required when the contract contains a "specified goal" on form DOT-289R/C and the DBE to be terminated or substituted is listed as a commitment on the form DOT-289R/C.

The Department will provide written consent only if the Department agrees the Contractor has good cause to terminate the DBE listed on the form DOT-289R/C. Good cause includes the following:

- The DBE fails or refuses to execute a written contract
- The DBE fails or refuses to perform the work of the DBE subcontract in a manner consistent with normal industry standards or DOT specifications unless the failure or refusal by the DBE is a result of unfair or discriminatory actions by the Contractor
- The DBE fails or refuses to meet the Contractor's reasonable nondiscriminatory bond requirements
- The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
- The DBE in ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1,200 or applicable state law
- The Department has determined that the DBE is not a responsible Contractor
- The DBE voluntarily withdraws from the project and provided the Department with a written notice of withdrawal
- The DBE is found to be ineligible to receive DBE credit for the type of work required
- A DBE owner dies or becomes disabled with the result that the DBE is unable to complete its work on the contract
- Other documented good cause that the Department determines to substantiate the termination of the DBE.

Good cause does not exist if the Contractor seeks to terminate a DBE so the Contractor can self-perform the work for which the DBE was committed, or so the Contractor can substitute another DBE or non-DBE Contractor after the contract award.

Before submitting a request to terminate or substitute a DBE to the Department, the Contractor must first provide written notice to the DBE, with a copy of the

notice to the DBE Compliance Officer, of the Contractor's intent to request to terminate or substitute, and the reason for the request.

The Contractor must give the DBE five (5) calendar days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), the Department may provide a response period shorter than five (5) calendar days.

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to replace the committed DBE with another DBE. The Contractor must make efforts to find another DBE to perform the same amount of work under the contract as the DBE that was terminated. The letter to the Department requesting termination or substitution must include the name of the DBE and dollar amount of the replacement DBE. If the Contractor is unable to find another DBE, the Contractor must provide the names of the DBEs it contacted and reason why they were unable to use those DBEs.

If the Contractor does not utilize or pay DBEs as required, liquidated damages will be assessed as specified in Section VII. In addition, if the Contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, sanctions referred to in Section IV may be imposed.

The Contractor does not need Department approval to terminate or substitute a DBE under the following circumstances:

- The DBE is being used on a contact with a "Specified Goal" however the DBE was not listed as a DBE commitment on form DOT-289R/C.
- The DBE was listed as a commitment on a "Not Specified" DBE goal contract on form DOT-289R/N.

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**SPECIAL PROVISION FOR**
**EEO AFFIRMATIVE ACTION REQUIREMENTS ON**
**FEDERAL AND FEDERAL-AID CONSTRUCTION CONTRACTS**

**SEPTEMBER 1, 1997**

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APPENDIX A

Notice or Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. 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, are as follows:

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE

| | | | | | |
|---|---|---|---|---|---|
| Aurora | 0.8% | Fall River | 7.9% | Marshall | 1.3% |
| Beadle | 0.8% | Faulk | 1.3% | Meade | 3.4% |
| Bennett | 7.9% | Grant | 1.3% | Mellette | 7.9% |
| Bon Homme | 1.2% | Gregory | 0.8% | Miner | 0.8% |
| Brookings | 0.8% | Haakon | 7.9% | Minnehaha | 1.2% |
| Brown | 1.3% | Hamlin | 1.3% | Moody | 0.8% |
| Brule | 0.8% | Hand | 0.8% | Pennington | 3.4% |
| Buffalo | 7.9% | Hanson | 0.8% | Perkins | 7.9% |
| Butte | 7.9% | Harding | 7.9% | Potter | 7.9% |
| Campbell | 7.9% | Hughes | 7.9% | Roberts | 1.3% |
| Charles Mix | 0.8% | Hutchinson | 0.8% | Sanborn | 0.8% |
| Clark | 1.3% | Hyde | 7.9% | Shannon | 7.9% |
| Clay | 1.2% | Jackson | 7.9% | Spink | 1.3% |
| Codington | 1.3% | Jerauld | 0.8% | Stanley | 7.9% |
| Corson | 7.9% | Jones | 7.9% | Sully | 7.9% |
| Custer | 7.9% | Kingsbury | 0.8% | Todd | 7.9% |
| Davison | 0.8% | Lake | 0.8% | Tripp | 7.9% |
| Day | 1.3% | Lawrence | 7.9% | Turner | 0.8% |
| Deuel | 1.3% | Lincoln | 0.8% | Union | 1.2% |
| Dewey | 7.9% | Lyman | 7.9% | Walworth | 7.9% |
| Douglas | 0.8% | McCook | 0.8% | Yankton | 1.2% |
| Edmunds | 1.3% | McPherson | 1.3% | Ziebach | 7.9% |

GOALS FOR FEMALE PARTICIPATION IN EACH TRADE

Statewide - - - - - - - - - - 6.9%

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 efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. 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 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

for 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.

3. The Contractor when requesting permission to sublet shall provide written notification to the Department of Transportation as specified in Section 8.1 of the Standard Specifications for Roads and Bridges. When the subcontract is in excess of $10,000, the request for permission to sublet shall list the name, address and telephone number of subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed. The Department of Transportation will then provide written notification to the Director of the Office of Federal Contract Compliance Programs through proper channels.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is as shown by county designation on the Title Sheet of the plans.

APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      (I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (II) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      (III) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (IV) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor of Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed

as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office, from Federal procurement contracting officers or from the South Dakota Department of Transportation. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or if referred, not employed by the Contractor, this shall be documented in the file with the reason thereof, along with whatever additional actions the Contractor may have taken.

    d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

    e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

    f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy

with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group, has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply,

however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

# SPECIAL PROVISION FOR
# REQUIRED CONTRACT PROVISIONS
# FEDERAL-AID CONSTRUCTION CONTRACTS
# FHWA 1273 (MAY 1, 2012)

## APRIL 30, 2013

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The following are amendments to the above contract provisions.

**Section I.4.**

Delete this section and replace with the following:

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 Federal-aid construction project unless it is labor performed by convicts who are on parole, supervised release, or probation.

**Section IV.**

Delete the first paragraph and replace with the following:

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.

**Section IV.3.b.(1)**

Delete the first sentence and replace with the following:

The contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, a copy of a completed certified weekly payroll report to the South Dakota Department of Transportation (SDDOT) Labor Compliance Officer (LCO) within fourteen (14) calendar days of the end of the workweek. The address of the Labor Compliance Officer is: South Dakota Department of Transportation, Labor Compliance Program, 700 E. Broadway Avenue, Pierre, SD 57501-2586.

**Section IV.3.b.(2)**

Delete the first paragraph and replace with the following:

Each submitted certified weekly payroll report must set out accurately and completely all information required by the Instructions for SDDOT Statement of Compliance & Certified Payroll Report (located on the SDDOT Labor Compliance website). Each certified weekly payroll report must include the most recent SDDOT Statement of Compliance Form, signed by the Contractor or related subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract. The SDDOT will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form. This SDDOT Statement of Compliance Form must certify the following:

**Section IV.3.b.(3)**

Delete this paragraph and replace with the following:

The weekly submission of a properly executed SDDOT Statement of Compliance Form shall satisfy the requirement for submission of the "Statement of Compliance Form" required by paragraph 3.b.(2) of this section.

**Section IV.4.a**

Delete the first sentence of the third paragraph and replace with the following:

Every apprentice must be paid the higher of the Common Laborer wage rate contained in the bid documents or 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.

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# REQUIRED CONTRACT PROVISIONS
# FEDERAL-AID CONSTRUCTION CONTRACTS

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.

* * * * *

**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.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

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

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION REGARDING
## MINIMUM WAGE ON FEDERAL-AID PROJECTS

## APRIL 30, 2013

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This proposal contains a copy of the most recent United States Department of Labor (USDOL) Davis-Bacon Act Wage Decision.

The Contractor and each related subcontractor will pay their respective employees not less than the USDOL minimum wage for each work classification an employee actually performs at the site of the work.

The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, a copy of a completed certified weekly payroll report to the South Dakota Department of Transportation (SDDOT) Labor Compliance Officer (LCO) within fourteen (14) calendar days of the end of the workweek.

Each certified weekly payroll report must include the most recent SDDOT Statement of Compliance Form. The Department will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form.

* * * * *

**Wage and Hour Division**
**U.S. Department of Labor (DOL)**
**200 Constitution Avenue, N.W.**
**Washington, DC 20210**

**Davis-Bacon Act Wage Decisions**
**State: South Dakota**
**Construction Types: Heavy and Highway**
**Counties: South Dakota Statewide**

| | |
|---|---|
| | * SUSD2013-001 |
| **Agency:** | U.S. DOL |
| **Wage Decision Number:** | **SD130009 SD9** |
| **Counties:** | Statewide: All Counties in South Dakota |
| **Wage Decision Date:** | **08/30/2013** |

| | Rates | Fringes |
|---|---|---|
| **LABORERS** | | |
| **GROUP GL1** | | |
| Air Tool Operator; Common Laborer; Landscape Worker; Flagger; Pilot Car Driver; Trucks under 26,000 GVW; Blue-top Checker; Materials Checker | 15.08 | 0.00 |
| **GROUP GL2** | | |
| Mechanic Tender (Helper); Pipe Layer (except culvert); Form Builder Tender; Special Surface Finish Applicator; Striping | 16.78 | 0.00 |
| **GROUP GL3** | | |
| Asphalt Plant Tender; Pile Driver Leadsman; Form Setter; Oiler/Greaser | 18.42 | 0.00 |
| **GROUP GL5** | | |
| Carpenter; Form Builder | 21.82 | 0.00 |
| **GROUP GL6** | | |
| Concrete Finisher; Painter; Grade Checker | 20.81 | 0.00 |
| **POWER EQUIPMENT OPERATORS** | | |
| **GROUP G01** | | |
| Concrete Paving Cure Machine; Concrete Paving Joint Sealer; Conveyor; Tractor (farm type with attachments); Self Propelled Broom; Concrete Routing Machine; Paver Feeder; Pugmill; Skid Steer | 16.15 | 0.00 |
| **GROUP G02** | | |
| Bull Dozer 80 HP or less; Front End Loader 1.25 CY or less; Self Propelled Roller (except Hot Mix); Sheepsfoot/50Ton Pneumatic Roller; Pneumatic Tired Tractor or Crawler (includes Water Wagon and Power Spray units); Wagon Drill; Air Trac; Truck Type Auger; Concrete Paving Saw | 17.62 | 0.00 |
| **GROUP G03** | | |
| Asphalt Distributor; Bull Dozer over 80 HP; Concrete Paving Finishing Machine; Backhoes/ Excavators 20 tons or less; Crusher (may include internal screening plant); Front End Loader over 1.25 CY; Rough Motor Grader; Self Propelled Hot Mix Roller; Push Tractor; Euclid or Dumpster; Material Spreader; Rumble Strip Machine | 19.33 | 0.00 |
| **GROUP G04** | | |
| Asphalt Paving Machine Screed; Asphalt Paving Machine; Cranes/Derricks/Draglines/Pile Drivers/Shovels 30 to 50 tons; Backhoes/Excavators 21 to 40 tons; Maintenance Mechanic; Scrapers; Concrete Pump Truck | 19.73 | 0.00 |
| **GROUP G05** | | |
| Asphalt Plant; Concrete Batch Plant; Backhoes/Excavators over 40 Tons; Cranes/ Derricks/Draglines/Pile Drivers/Shovels over 50 tons; Heavy Duty Mechanic; Finish Motor Grader; Automatic Fine Grader; Milling Machine; Bridge Welder | 21.80 | 0.00 |
| **TRUCK DRIVERS** | | |
| **GROUP GT1** | | |
| Tandem Truck without trailer or pup; Single Axle Truck over 26,000 GVW with Trailer | 15.88 | 0.00 |
| **GROUP GT2** | | |
| Semi-Tractor and Trailer; Tandem Truck with Pup | 18.29 | 0.00 |
| **ELECTRICIANS** | | |
| **GROUP E01** | | |
| Electrician | 21.84 | 0.00 |

*Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Survey wage rates will remain in effect and will not change until a new survey is conducted.

**A COPY OF THIS DOCUMENT, COLORED SOLAR YELLOW, MUST BE CONSPICUOUSLY POSTED AT THE PROJECT SITE**

**Wage and Hour Division**
**U.S. Department of Labor**
**200 Constitution Avenue, N.W.**
**Washington, DC 20210**

**Davis-Bacon Act Wage Decisions**
**State: South Dakota**
**Construction Types: Heavy and Highway**
**Counties: South Dakota Statewide**

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

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award, pursuant to 29 CFR 5.5(a)(1)(ii); contractors are responsible for requesting SDDOT to secure necessary additional work classifications and rates.

For SDDOT Defined Work Classifications, please visit: http://www.sddot.com/business/contractors/labor/wcwr/Default.aspx

In the listing above, the "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. Survey wage rates will remain in effect and will not change until a new survey is conducted.

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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 our 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, DC 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, DC 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, DC 20210

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

**END OF GENERAL DECISION**

**STATE OF SOUTH DAKOTA**
**DEPARTMENT OF TRANSPORTATION**

**SUPPLEMENTAL SPECIFICATION FOR**
**ERRATA**

**MARCH 3, 2010**

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**MAKE THE INDICATED CORRECTIONS TO THE FOLLOWING SPECIFIED SECTIONS:**

**Section 491.5 A, B, C, D, E – Page 290 – Add the following to the end of the first sentence of each of these sections:**

(square meter).

**Section 629.4 C – Page 351 – Replace the first sentence with the following:**

Remove Three Cable Guardrail will be measured to the nearest foot (0.1 meter) along the centerline of the cable.

**Section 629.4 D – Page 351 – Replace the first sentence with the following:**

Removal of Anchor Assembly will be measured by the each.

**Section 630.3 D – Page 354 – Replace the fourth sentence with the following:**

The drawings shall contain all components of the W beam end terminal.

**Section 634.2 – Page 371 – Replace the second paragraph with the following:**

Traffic control devices shall meet the crashworthy requirements of the National Cooperative Highway Research Program Report 350 (NCHRP 350) for Category I, II and III devices.

**Section 635.3 L – Page 383 – Delete and replace with the following:**

**L. Luminaires:** Luminaires shall be adjusted on the support so the laminar sets level as indicated by a small bubble level. Bolts shall be firmly tightened.

**Section 635.4 K – Page 385 – Delete and replace with the following:**

**K. Luminaires:** Measurement will be by the actual count of the various types and sizes of luminaires furnished and installed.

**Section 635.5 K – Page 387 – Delete and replace with the following:**

**K. Luminaires:** Payment for luminaires of the various types and sizes will be at their respective contract unit prices per each. Payment will be full compensation for furnishing and installing luminaires.

**Section 984.3 H – Page 504 – Replace the first paragraph with the following:**

Temporary road markers shall consist of a yellow or white plastic body providing a horizontal width and length of approximately 3 ½ inches (90 mm) in both dimensions and approximately ¾ inches (20

mm) high. If flexible vertical markers are used they shall be approximately 4 inches (100 mm) wide and approximately 2 inches (50 mm) high.

**Index – Page 532 – Under Portland Cement Concrete Pavement – Delete "Dowel and Tie Bars…517" and replace with the following:**

Dowel and Tie Bars…….. 519

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SUPPLEMENTAL SPECIFICATION TO
## STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES

## MARCH 3, 2010

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All items included in this supplemental specification will govern over the Errata.

**MAKE THE INDICATED CHANGES TO THE FOLLOWING SPECIFIED SECTIONS:**

**Section 2.6 D – Page 11 – Delete and replace with the following:**

**D.** PCN

**Section 3.6 – Page 15 – Delete and replace with the following:**

**3.6 EXECUTION AND APPROVAL OF CONTRACT -** The contract shall be signed and returned by the successful bidder, together with the contract bond, within 20 calendar days after the receipt of the Notice of Award. If the contract is not executed by the Department within 15 calendar days following the receipt from the bidder of the signed contract and related documents, the bidder shall have the right to withdraw the bid without penalty. A contract will not be considered in effect until it has been executed by all parties to the contract.

**Section 3.7 – Page 15 – Delete the first sentence and replace with the following:**

Failure to execute the contract and file acceptable bonds within 20 calendar days after bidder's receipt of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty which shall become the property of the Department, for liquidation of damages sustained.

**Section 4.6 – Page 19 – Delete and replace with the following:**

**4.6 FINAL CLEANING UP -** Before Acceptance of Field Work is made by the Area Office, the highway and areas occupied by the Contractor in connection with the work shall be cleaned of rubbish, excess materials, temporary structures, and equipment; and the work left in an acceptable condition, unless otherwise approved by the Engineer.

**Section 5.6 – Page 24 – Delete the last sentence of the seventh paragraph and replace with the following:**

The depth applies to the existing grade or ditch flowline within the right-of-way.

**Section 5.6 – Page 24 – Delete the last two sentences of the eighth paragraph and replace with the following:**

Contractors shall give at least 48 hour notice prior to commencement of excavation, excluding Saturdays, Sundays, and legal holidays of the state. South Dakota One Call phone number is **1-800-781-7474** or **811** within the State of South Dakota.

**Section 5.6 – Page 24 – Add the following to the list of items on page 25:**

Tunneling or Boring
Duration of Excavation
Nearest Cross Street

**Section 5.6 – Page 24 – Delete the third sentence of the last paragraph on page 25 and replace with the following:**

The utility shall as soon as possible but not longer than two hours from the notification time during the business day and not longer than four hours from the notification time outside of the business day or by the start time on the ticket, whichever is later provide all reasonably available practical information to the Contractor.

**Section 5.10 – Page 27 – Add the following sentence to this section:**

Neither the Department's authority to inspect all work nor any actual inspections performed by the Department during the course of construction shall constitute an acceptance of work performed, or operate to relieve the Contractor of its obligation to construct the project in compliance with the plans and specifications.

**Section 5.14 – Page 28 – Delete the first sentence of the first paragraph and replace with the following:**

The Contractor shall maintain the work during construction and until the Area Office issues the Acceptance of Field Work.

**Section 5.14 – Page 28 – Delete the last paragraph and replace with the following:**

Cost of maintenance work during construction and before the Area Office issues the Acceptance of Field Work shall be included in the unit price bid on the various pay items and the Contractor will not be paid an additional amount for such work.

**Section 5.16 – Page 29 – Delete and replace with the following:**

**5.16 ACCEPTANCE OF FIELD WORK** - When the contract work, including authorized modifications and final cleanup has been completed, the Area Engineer or his designee will, within fourteen days, make a final inspection of the work. When provided in the Contract, the Area Engineer or his designee may make inspections following completion of portions of the contract. If the work is found to conform with the requirements of the Contract, the Area Engineer or his designee will issue written notification to the Contractor of Acceptance of Field Work. Such notice is not to be construed as an acceptance by the Area Engineer or his designee of previously noted defective or unauthorized work, or of unauthorized work subsequently determined during the final computations of field measurements. Should the work fail to conform with requirements of the Contract, a written statement of the features to be remedied will be given the Contractor. Final Acceptance will not be made until the Contractor advises the Engineer that the corrections have been made and the requirements have been met.

**Section 5.17 – Page 29 – Delete the first paragraph and replace with the following:**

**5.17 CLAIMS FOR ADJUSTMENT AND DISPUTES** - If the Contractor deems that additional compensation is warranted for work or materials not covered in the Contract and not ordered as extra work as defined herein, the Contractor shall give the Area Engineer written notice of the claim for additional compensation.

**Section 5.17 – Page 29 – Delete the fourth paragraph and replace with the following:**

Under no circumstances will a claim be considered if written notification is made more than 30 days after the final payment is made.

**Section 5.17 – Page 30 – Delete the sixth and seventh paragraphs and replace with the following two paragraphs:**

The Contractor hereby agrees to waive any claim for additional compensation if timely written notification is not furnished and the Area Engineer is not provided the opportunity to keep account of or determine costs, to incorporate alternate methods of accomplishing the disputed work or to otherwise resolve the claim.

A Claims Documentation Form, furnished by the Department, shall be completed by the Contractor and submitted to the Area Engineer after completion of the work on which the claim is based. The Claims Documentation Form shall be completed within 120 calendar days after completion of the work unless an extension is granted, in writing, by the Area Engineer.

**Section 5.17 – Page 30 – Delete the last three paragraphs of this section and replace with the following five paragraphs:**

Claims which are properly submitted, but which are not approved, will be automatically escalated to the next higher authority level within the Department for review. The Secretary of Transportation has final resolution authority on all submitted claims.

Claims may be submitted by the Department to a third-party claim investigator for further review and investigation. The report prepared by the claim investigator shall not be shared with the Contractor, nor shall the report be used in subsequent administrative or legal proceedings. Failure to fully cooperate with the third-party investigator may result in

denial of the claim. After the Secretary of Transportation receives the report, the parties, by mutual agreement, may initiate a non-binding mediation to attempt to resolve the claim.

If the claim is determined completely or partially valid, those portions determined valid, plus interest computed at the rate of 4.25% per annum for the time period between the date shown on the Region Engineer's letter of Final Acceptance and the date the claim was resolved, will be paid.

If a claim is determined completely or partially valid in a subsequent proceeding in circuit court and pre-judgment interest is awarded by the court on all or a portion of the judgment, that interest shall be computed at the rate of 4.25% per annum.

Nothing in this section shall be construed as establishing any claim contrary to the terms of Section 4.2.

**Section 7.6 – Page 37 – Add the following paragraph to this section:**

All workers within the right of way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel intended to provide conspicuity during both daytime and nighttime usage, and meeting the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear".

**Section 7.12 – Page 39 – Delete the last sentence of the second paragraph and replace with the following:**

The Contractor's responsibility will not be released until completion of the project and Final Acceptance is made, as noted by the date shown on the Region Engineer's letter of Final Acceptance.

**Section 7.14 – Page 39 – Delete this section and replace with the following:**

**7.14 RESPONSIBILITY FOR DAMAGE CLAIMS** - The Contractor shall hold harmless and indemnify the Department, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property arising from the operations of the said Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act", or any other law, ordinance, order, or decree; and so much of the money due the said Contractor under and by virtue of his contract as may be considered necessary by the Department for such purpose may be retained for the use of the State; or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Department; money due the Contractor will not be withheld when the Contractor produces satisfactory written confirmation from its insurer that adequate public liability insurance and property damage insurance providing coverage for such particular clams as may be made is in force; a copy of a certificate of insurance, without further confirmation of coverage for the particular claim being made, will not be sufficient to satisfy the requirement of written confirmation.

**Section 7.15 – Page 40 – Delete the first sentence and replace with the following:**

**7.15 LIABILITY INSURANCE** - The Contractor shall procure and maintain at the Contractor's expense, during duration of the Contract, liability insurance with an insurance company authorized to do business in the state of South Dakota, for damages imposed by law.

**Section 7.16 – Page 40 – Delete the second sentence of the last paragraph and replace with the following:**

In such event, the Contractor shall not be relieved of liability or responsibility during the period the work is so opened and prior to Acceptance of Field Work.

**Section 7.17 – Page 40 – Delete the first paragraph and replace with the following two paragraphs:**

**CONTRACTOR'S RESPONSIBILITY FOR WORK** - The Contractor is responsible for the work until the Acceptance of Field Work is made by the Area Office, except as set forth in Section 4.4 B.1. The Contractor shall protect the work against injury or damage from all causes, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and replace all work that is injured or damaged prior to the Acceptance of Field Work, at no additional cost to the Department. Damage to work due to unforeseeable

causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, or acts of governmental authorities shall be restored by the Contractor at the Department's expense according to subsection 4.2 or 4.3, as applicable.

Following the Acceptance of Field Work, but prior to Final Acceptance as described in Section 9.9, the Contractor shall be responsible for damage to work resulting from an act, omission, neglect, or misconduct in the Contractor's manner or method of executing the work, or due to defective work or materials at no additional cost to the Department.

**Section 8.1 – Page 45 – Delete and replace with the following:**

**8.1 SUBLETTING OF CONTRACT -** The Contractor shall not sublet, sell, transfer, assign, or dispose of the contract or contracts or any portion of them, without written consent of the Engineer. Each request to sublet shall be submitted on the form provided by the Engineer. The Contractor shall submit a request to sublet for any contracting firms a subcontractor proposes to use as a lower tier subcontractor. The Contractor shall obtain approval of each subcontractor before the start of the work performed by the subcontractor.

The Contractor will be permitted to sublet up to 50 percent of the contract amount, based on the contract unit prices, but shall perform work amounting to not less than 50 percent of the total contract amount with his own organization.

The Department will consider the Contractor's own organization to include only workers employed and paid directly by the Contractor, equipment owned or rented by the Contractor, and materials purchased by the Contractor for its use in performing Contract work. This does not include employees, equipment, or materials purchased by or incorporated into work of any subcontractor, assignee, or agent of the Contractor.

The Department will not consider as subcontracting the following; 1) any material produced outside the project limits including but not limited to the production of sand, gravel, crushed stone, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any materials delivered by established and recognized commercial plants; or 2) delivery of these materials to the work site from an off-site location in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. Project limits is defined as being within a 1/2 mile radius of the project proper.

Any items designated in the contract as "specialty items" may be performed by subcontract and the cost of designated specialty items performed by subcontract will be deducted from the total contract amount before computing the amount of work required to be performed by the Contractor's own organization.

The Contractor shall give assurance to the Engineer that all pertinent provisions of the prime contract including minimum wage for labor shall apply to the work sublet. Subcontract, or transfer of contract, shall not relieve the Contractor of his responsibilities and liability under the contract and bonds.

**Section 8.2 – Page 45 – Delete and replace with the following:**

**8.2 NOTICE TO PROCEED -** The Notice to Proceed shall consist of written notification to the Contractor to proceed with the work. Such notification will be issued within 15 calendar days following the receipt from the bidder of the signed contract and related documents. The contract time will start on the date the Contractor actually starts construction work or 30 calendar days after the date of the Notice to Proceed, whichever date is earlier. The Contractor shall not begin work prior to the date of the Notice to Proceed.

**Section 8.6 A – Page 48 – Delete the first paragraph on page 48 and replace with the following:**

If for reasons beyond the Contractor's control the work cannot be completed within the contract time as specified or as extended according to the provisions of this section, the Contractor may make a written request for an extension of contract time. The written request shall be made at any time prior to the expiration of the contract time as extended. The Contractor's time extension request shall set forth the reasons which will justify an extension of time.

A Time Extension Request Form, furnished by the Department, shall be completed by the Contractor and submitted to the Area Engineer. If the written request was properly filed in accordance with the requirements of this section, the time extension request will be forwarded through the proper channels, to the Secretary of Transportation for final resolution.

The Time Extension Request Form shall be fully completed and will contain the following:

1. A narrative justification citing the basis for the time extension.

2. A statement of the amount of extra compensation, including liquidated damages, incentive, or disincentive associated with the time extension.

3. A signed and notarized statement that the information furnished is true and fully documented.

4. Permission for the Department or its authorized representative to examine all Contractor records concerning this time extension request.

The Secretary of Transportation may submit the time extension request to a third-party investigator for further review and investigation. The report prepared by the investigator shall not be shared with the Contractor, nor shall the report be used in subsequent administrative or legal proceedings. Failure to fully cooperate with the third-party investigator may result in denial of the time extension request. After the Secretary of Transportation receives the report, the parties, by mutual agreement, may initiate a non-binding mediation to attempt to resolve the time extension request.

**Section 8.6 A – Page 48 – Delete the first sentence of the second to last paragraph and replace with the following:**

If the Secretary of Transportation finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Secretary may extend the time for completion in such amount as the conditions justify.

**Section 8.6 A – Page 48 – Delete the last paragraph and replace with the following:**

When Acceptance of Field Work has been duly made as prescribed in Section 5.16, the daily time count/assessment will cease. The daily time count/assessment may resume if the Contractor fails to provide, in a timely manner, required project documentation as ordered by the Area Engineer. The daily time count/assessment may also resume when in accordance with Section 7.17, repairs, rework, or other activities are ordered for work that the Contractor is responsible for.

**Section 8.6 B – Page 50 – Delete the second paragraph on page 50 and replace with the following:**

If for reasons beyond the Contractor's control the work cannot be completed within the contract time as specified or as extended according to the provisions of this section, the Contractor may make a written request for an extension of contract time. The written request shall be made at any time prior to the expiration of the contract time as extended. The Contractor’s time extension request shall set forth the reasons which will justify an extension of time.

A Time Extension Request Form, furnished by the Department, shall be completed by the Contractor and submitted to the Area Engineer. If the written request was properly filed in accordance with the requirements of this section, the time extension request will be forwarded through the proper channels, to the Secretary of Transportation for final resolution.

The Time Extension Request Form shall be fully completed and will contain the following:

1. A narrative justification citing the basis for the time extension.

2. A statement of the amount of extra compensation, including liquidated damages, incentive, or disincentive associated with the time extension.

3. A signed and notarized statement that the information furnished is true and fully documented.

4. Permission for the Department or its authorized representative to examine all Contractor records concerning this time extension request.

The Secretary of Transportation may submit the time extension request to a third-party investigator for further review and investigation. The report prepared by the investigator shall not be shared with the Contractor, nor shall the report be used in subsequent administrative or legal proceedings. Failure to fully cooperate with the third-party investigator may result in denial of the time extension request. After the Secretary of Transportation receives the report, the parties, by mutual agreement, may initiate a non-binding mediation to attempt to resolve the time extension request.

**Section 8.6 B – Page 51 – Delete the last sentence of the second to last paragraph and replace with the following:**

If the Secretary of Transportation finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Secretary may extend the time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

**Section 8.6 B – Page 51 – Delete the last paragraph and replace with the following:**

When Acceptance of Field Work has been duly made as prescribed in Section 5.16, the daily time count/assessment will cease. The daily time count/assessment may resume if the Contractor fails to provide, in a timely manner, required project documentation as ordered by the Area Engineer. The daily time count/assessment may also resume when in accordance with Section 7.17, repairs, rework, or other activities are ordered for work that the Contractor is responsible for.

**Section 8.7 – Page 51 – Delete the last sentence of the second paragraph and replace with the following:**

This sum shall be considered and treated not as a penalty but as liquidated damages due the Department from the Contractor by reason of added cost of engineering and supervision resulting from failure to complete the work within the time specified in the contract.

**Section 9.1 B – Page 56 – Delete the fourth paragraph on page 57 and replace with the following:**

Loader Scales - Loader scales will be allowed to be used on contracts when the quantity per line item of granular material to be weighed for payment is less than 10,000 tons (10,000 metric tons).

**Section 9.1 B – Page 56 – Add the following sentence to the end of the sixth paragraph on page 57:**

The accuracy check shall be performed prior to weighing the material for payment and then once per week thereafter.

**Section 9.4 – Page 61 – Delete and replace with the following:**

**9.4 COMPENSATION FOR ALTERED QUANTITIES** - When the accepted quantities of work vary from the estimated quantities in the Contract, the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work. Allowance will not be made for increased expense, except as provided in Section 4.2. Allowance will also not be made for loss of expected reimbursement or loss of anticipated profits.

**Section 9.5 D – Page 62 – Delete the first paragraph of this section and replace with the following:**

**D. Equipment:** For machinery or special equipment including fuel and lubricants, plus transportation costs, authorized by the Engineer, the Contractor shall be paid in accordance with the provisions and rates set forth in the South Dakota Equipment Rental Rates Book which is currently established as the "Rental Rate Blue Book" published by EquipmentWatch, a division of Penton Media, Inc. For purposes of determining an hourly rate, the monthly rate divided by 176 shall be used. This rate will be adjusted for regional factors, age and operating expenses as set forth in the "Rental Rate Blue Book".

**Section 9.7 – Page 64 – Add the following sentence to the end of the second to last paragraph:**

Progress payments shall not constitute acceptance of the work.

**Section 9.9 - Page 65 - Delete this section and replace with the following:**

**9.9 FINAL ACCEPTANCE AND FINAL PAYMENT** - When Acceptance of Field Work has been made as prescribed in Section 5.16, and all project documentation has been provided, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. After the Engineer determines the final estimate, the Contractor will be paid the entire sum found to be due after deducting previous payments and amounts to be retained or deducted under the provisions of the contract.

Prior partial estimates and payments shall be subject to correction in the final estimate of payment. Final payment will be due 120 days after the date shown on the Region Engineer's letter of Final Acceptance.

Interest will be added to payments in excess of $2000 which are due the Contractor and remain unpaid 120 days after the date shown on the Region Engineer's letter of Final Acceptance. Interest will accrue at a rate of 4.25% per annum for the time period after the noted 120 days until final payment is made.

**Section 9.12 – Page 66 – Delete and replace with the following:**

**9.12 THIS SECTION INTENTIONALLY LEFT BLANK**

**Section 120.2 A – Page 73 – Delete and replace with the following:**

**A. Unclassified Excavation:** All materials except those classified as rock excavation, unclassified/rock excavation, muck excavation, option borrow excavation, contractor furnished borrow, or borrow unclassified excavation encountered during the construction of the work, regardless of their nature or manner in which they are removed, will be considered unclassified excavation.

**Section 120.2 – Page 73 – Add the following to the end of this Section:**

**I. Option Borrow Excavation:** Material, furnished by the State, from a pit or other source. The Contractor may use this material at his option.

**J. Contractor Furnished Borrow:** Material, furnished by the Contractor, from a pit or other source.

**K. Borrow Unclassified Excavation:** Material, furnished by the State, from a pit or other source. The Contractor must use this material.

**Section 120.3 – Page 74 – Delete the fifth paragraph and replace with the following:**

The subgrade shall be finished to within minus 0.04 feet (13 mm) to plus 0.08 feet (25 mm) from the design grade and typical section shown in the plans and to within ±0.5 percent of the typical section cross slope. The quarter crown within any 12 foot (3.6 m) transverse length shall not exceed 0.04 feet (13 mm) when measured with a straight edge, stringline, or by other suitable equipment.

**Section 120.3 B.3.a – Page 77 – Delete the fifth paragraph and replace with the following:**

Density shall be determined in accordance with SD 105 (AASHTO T 191), SD 106, or SD 114 (AASHTO T 310).

**Section 120.3 B.3.a – Page 78 – Add the following sentence to the end of the second to last paragraph:**

If the material does not contain enough fines to allow for conventional density testing (SD 105 or SD 106), the material shall be compacted as specified for A-2-4(0) and A-3 soils.

**Section 120.4 – Page 79 – Add the following to the end of this Section:**

**I. Borrow Unclassified Excavation:** Borrow unclassified excavation will be measured in its original position by cross sectioning. Volumes will be computed in cubic yards (cubic meters) by the average end area method.

Original cross sections will be taken prior to removal of any material and final sections will be taken following replacement of topsoil. Salvaged topsoil which is stockpiled from the borrow sources will be included as borrow unclassified excavation.

The quantity of topsoil stockpiled and respread on borrow sources will be determined by measuring the stockpiles prior to removal of the material from the stockpiles.

**Section 120.5 – Page 81 – Add the following to the end of this Section:**

**I. Borrow Unclassified Excavation:** Borrow unclassified excavation will be paid for at the contract unit price per cubic yard (cubic meter). Payment will be full compensation for excavation and furnishing the material on the project, construction and compaction of embankments, shaping of slopes, finishing of surface, completion of subgrade, shoulders, and roadway, and maintenance, and for furnishing materials (except topsoil), labor, and incidentals required for restoration of the pit.

Topsoil which is stockpiled from the borrow source will be respread and paid for at the contract unit price per cubic yard (cubic meter) of borrow unclassified excavation and placing topsoil.

**Section 120.5 F – Page 82 – Delete the last sentence and replace with the following:**

Topsoil, seed, fertilizer and mulch for the restoration of the pit shall be incidental to the unit price per cubic yard (cubic meter) of contractor furnished borrow.

**Section 210.3 – Page 85 – Delete the second to last paragraph and replace with the following:**

The subgrade shall be finished to within minus 0.04 feet (13 mm) to plus 0.08 feet (25 mm) from the design grade and typical section shown in the plans and to within ±0.5 percent of the typical section cross slope. The quarter crown within any 12 foot (3.6 m) transverse length shall not exceed 0.04 feet (13 mm) when measured with a straight edge, stringline, or by other suitable equipment.

**Section 260.3 A – Page 93 - Delete the first paragraph and replace with the following:**

**A. Subbase and Base Course:** Roadway shaping shall be performed in accordance with Section 210.3 B prior to placement of the material.

**Section 260.3 A – Page 94 - Delete the last paragraph and replace with the following:**

Recycled Portland cement concrete pavement used as a granular base material shall not be used for Base Course, Salvaged Base Course, or in areas where drainage fabric, edge drains, or other similar drainage systems are present.

**Section 270.1 – Page 97 – Delete and replace with the following:**

**270.1 DESCRIPTION**

This work consists of salvaging, processing or crushing, and stockpiling salvaged material from the existing roadway. Salvaged material shall consist of granular material, asphalt concrete mix material, or asphalt mix and granular base material.

**Section 270.2 – Page 97 – Delete this section and replace with the following:**

**270.2 MATERIALS**

The salvaged material shall be processed or crushed to provide material meeting the following gradation.

| Sieve Size | % Passing |
|---|---|
| 1 ½ inch (37.5 mm) | 100 |
| 1 inch (25.0 mm) | 95-100 |

**Section 270.3 – Page 97 – Delete and replace with the following:**

**270.3 CONSTRUCTION REQUIREMENTS**

**A. Salvage and Stockpile Granular Material or Asphalt Mix and Granular Base Material:**

1. **Salvaging:** The salvaged material shall be moved and loaded in a manner that minimizes waste and avoids contamination of the salvage material with underlying subgrade soil. Scrapers shall not be used for the removing or loading operations, but may be used to haul the material. Salvaging of material shall not exceed two miles (3.2 kilometers) in advance of the grading operation, unless otherwise directed. The material shall be moved toward the center of the road, to the extent necessary to ensure that salvage material is not lost down inslopes.

2. **Processing:** Processing and blending may be accomplished in place, provided the Contractor's method meets the blending and gradation requirements and has positive depth control.

3. **Stockpiling:** Asphalt concrete mix and granular material shall be processed or crushed and stockpiled together so that a uniform blend is obtained. The salvaged material may be stockpiled at contractor provided sites. Prior to stockpiling, the stockpile site shall be prepared by removal of the top six inches (150 mm) of topsoil and the area bladed smooth.

**B. Salvage and Stockpile Asphalt Mix Material:**

1. **Salvaging:** The salvaged material shall be moved and loaded in a manner that minimizes waste and avoids contamination of the salvage material. Scrapers shall not be used for the removing or loading operations, but may be used to haul the material. Salvaging of material shall not exceed two miles (3.2 kilometers) in advance of the grading operation, unless otherwise directed. The material shall be moved toward the center of the road, to the extent necessary to ensure that salvage material is not lost down inslopes.

2. **Stockpiling:** Salvaged asphalt mix material shall be processed or crushed and stockpiled so that a uniform blend is obtained. Prior to stockpiling, the stockpile site shall be prepared by removal of the top six inches (150 mm) of topsoil and the area bladed smooth. Stockpiles shall be constructed in accordance with Section 320. The stockpiles shall not contain dirt, grease, oil, brick, paving fabric, clay balls, organic debris, and other foreign material.

**Section 270.4 – Page 97 – Delete and replace with the following:**

**270.4 METHOD OF MEASUREMENT**

Salvage and stockpile granular material, salvage and stockpile asphalt mix and granular base material, and salvage and stockpile asphalt mix material will be measured to the nearest 0.1 ton (0.1 metric ton) or 0.1 cubic yard (0.1 cubic meter) at the time it is hauled to the road.

When less than 5000 tons (4500 metric tons) of salvaged material is generated on a project, the material may be measured in a stockpile and converted to tons (metric tons) using a factor of 1.5 tons per Cu. Yd. (1.78 metric tons per cubic meter), in lieu of weighing the material.

Alternate measurement techniques may be allowed if agreed upon by the Contractor and Engineer prior to salvaging operations commencing.

Material stockpiled for future use will be measured in the stockpile and converted to tons (metric tons) using a factor of 1.50 tons per Cu. Yd. (1.78 metric tons per cubic meter).

The unclassified excavation quantities will not be increased or decreased to reflect whether salvaged material was taken from cut or fill sections.

**Section 270.5 – Page 97 – Delete and replace with the following:**

**270.5 BASIS OF PAYMENT**

Salvage and stockpile granular material, salvage and stockpile asphalt mix and granular base material, and salvage and stockpile asphalt mix material will be paid for at the contract unit price per ton (metric ton) or cubic yard (cubic meter). Payment will be full compensation for work required to salvage, haul, process or crush, and stockpile the material.

Removal of this material is included in and paid for under the item of unclassified excavation.

**Section 280.2 – Page 99 – Delete this section and replace with the following:**

**280.2 MATERIALS**

The asphalt mix and granular material shall be processed to provide material meeting the following gradation.

| Sieve Size | % Passing |
|---|---|
| 1 ½ inch (37.5 mm) | 100 |
| 1 inch (25.0 mm) | 95-100 |

**Section 320.3 B.1 – Page 103 – Delete the first sentence of the fourth paragraph and replace with the following:**

Burner fuel used for production of asphalt concrete shall be propane, butane, natural gas, Grade 1 fuel oil, Grade 2 fuel oil, Grade 4 fuel oil, Grade 4 (light) fuel oil, Grade 5 (light or heavy) fuel oil, or Grade 6 fuel oil.

**Section 320.3 B.1 – Page 103 – Add the following to the end of the seventh paragraph:**

An accurate thermometer must be installed in the tank so the temperature can be monitored.

**Section 320.3 B.4 – Page 104 – Delete the third sentence of the first paragraph.**

**Section 320.3 B.4 – Page 105 – Delete the last sentence of the third paragraph and replace with the following:**

The system shall be capable of manually controlling the transverse slope and the screed height.

**Section 320.3 B.5 – Page 105 – Delete the last sentence of the first paragraph and replace with the following:**

The rollers shall be capable of being reversed smoothly, without shoving or tearing the asphalt concrete.

**Section 320.3 C.3.d – Page 106 – Delete and replace with the following:**

**d.** A one-gallon (four liter) sample of asphalt binder intended for use shall be obtained from the designated supplier for the project.

**Section 320.3 D – Page 107 – Delete the last sentence of the fifth paragraph and replace with the following:**

A water spray system must be installed at the discharge end of the pug mill. This water system must be used when directed by the Engineer to prevent fugitive lime dust from being released into the air.

**Section 320.3 E – Page 107 – Add the following after the fourth sentence in the first paragraph:**

No material shall be used which could adversely affect the asphalt concrete.

**Section 320.3 F – Page 107 – Add the following new paragraph after the first paragraph:**

Surfaces which have been primed with cutback asphalt shall be allowed to cure for a minimum of 72 hours prior to being covered.

**Section 320.3 F – Page 107 – Add the following to the end of the third paragraph:**

In lieu of a self-propelled paver, asphalt concrete may be placed by a shouldering machine on shoulders less than 6 feet (2 m) in width.

**Section 320.3 F – Page 110 – Delete the first paragraph at the top of Page 110 and replace with the following:**

Irregularities shall be corrected before the temperature of the asphalt mix drops below 175º F (80º C). The longitudinal profile can only be improved by using a grinder with diamond blades mounted on a horizontal shaft and when approved by the Engineer. Areas that have been ground shall not be left smooth or polished, but shall have a uniform texture equal in roughness to the surrounding unground asphalt concrete. Grinding shall be day lighted to the outside edge of the pavement. Ground surfaces shall be flushed sealed. Under no circumstances shall operations continue when it becomes evident final rolling is not producing a smooth, uniform, compacted surface free from roller marks and other irregularities.

**Section 320.4 A – Page 111 – Add the following after the first sentence:**

Quantities of asphalt binder in excess of the asphalt content listed on the job mix formula plus 0.3% tolerance will not be accepted for payment.

**Section 320.4 B – Page 111 – Delete the last two sentences of the first paragraph and replace with the following:**

The mixture of mineral aggregate, asphalt binder, and hydrated lime, when required, will be weighed after mixing. No deduction will be made for the weight of the asphalt binder or hydrated lime, when required, included in the mixture.

**Section 320.4 E – Page 112 – Add the following after the first sentence:**

Quantities of hydrated lime in excess of the lime content listed on the job mix formula plus 0.1% tolerance will not be accepted for payment.

**Section 320.5 C – Page 112 – Add the following sentence to the end of the paragraph:**

Payment will be full compensation for all labor, equipment, materials, and all other items incidental to sampling and repair of the sample locations to the satisfaction of the Engineer.

**Section 321.3 B – Page 113 – Delete and replace with the following:**

**B. Density:** The minimum density requirement shall be 92 percent of the maximum specific gravity of the test specimens prepared in the field in accordance with SD 312. The compacted density of asphalt concrete shall be determined according to SD 311.

**Section 324.5 – Page 115 and 116 – Delete the last sentence and replace with the following:**

When required, the following shall also be included in the contract unit price per ton (metric ton) for Asphalt Concrete Composite: Asphalt for Prime MC-70, Blotting Sand for Prime, Asphalt for Flush Seal SS-1h or CSS-1h, Sand for Flush seal, Hydrated Lime, equipment, labor and incidentals necessary.

**Section 330.2 – Page 121 – Add the following to the end of this section:**

**D. Sand for Fog Seal:** Section 879

**Section 330.3 A.2.b – Page 121 – Add the following paragraph after the second paragraph:**

Surfaces primed with cutback asphalt shall be allowed to cure for a minimum of 72 hours prior to being overlaid with asphalt concrete.

**Section 330.3 F – Page 123 – Delete the first sentence of the fourth paragraph and replace with the following:**

When applying fog seal coats, a light application of sand may be ordered by the Engineer to prevent material pickup.

**Section 330.4 – Page 124 – Add the following to the end of this section:**

**D. Sand for Fog Seal:** Sand for fog seal will be measured to the nearest 0.1 ton (0.1 metric ton).

**Section 330.5 – Page 124 – Add the following to the end of this section:**

**D. Sand for Fog Seal:** Sand for fog seal will be paid for at the contract unit price per ton (metric ton) complete in place. Payment will be full compensation for furnishing, installing, and all incidentals required to complete the work.

**Section 332.2 – Page 125 – Delete this section and replace with the following:**

**332.2 MATERIALS**

The material produced by cold milling shall be processed or crushed to provide material meeting the following requirements.

| Sieve Size | % Passing |
|---|---|
| 1 ½ inch (37.5 mm) | 100 |
| 1 inch (25.0 mm) | 95-100 |

Cold milled asphalt concrete material used in hot mixed asphalt as recycled asphalt pavement (RAP) shall have the 1 inch sieve size requirement waived.

**Section 332.3 B – Page 125 – Delete the first paragraph and replace with the following:**

**B. Equipment:** The equipment for cold milling shall consist of a rotating drum equipped with teeth capable of removing material to a depth of up to three inches (75 mm) in one pass, producing a uniform surface finish.

**Section 332.3 C – Page 125 – Delete the last paragraph of this section on page 126 and replace with the following:**

When traffic will be exposed to the milled surface, all cold milling asphalt concrete shall be accomplished on one-half of the roadway at a time. The Contractor shall schedule the cold milling asphalt concrete operations so that there are no drop offs, uneven lanes, or windrows of milled material remaining on the roadway overnight. At the end of the day the Contractor shall place cold milled asphalt concrete material to provide temporary ramps as a transition onto or off of the milled surface and the project limits, bridge approaches, and intersecting roads. The resultant transition shall be of sufficient length to provide a slope no steeper than 20:1.

1. **Cold Milling Asphalt Concrete and Placing Cold Milled Material:** Some areas of the shoulder may require the movement of cold milled asphalt concrete material either ahead or back to achieve the required cross section. No separate payment will be made for the movement of this material.

   Material placed on the shoulders shall be compacted according to Section 260.3 B of the Standard Specifications except that a pneumatic tired roller with an effective roller weight of at least 250 pounds per inch (4.5 kilograms per mm) of roller width will be required.

2. **Cold Milling Asphalt Concrete:** Loose material resulting from the milling shall be immediately picked up, hauled to the stockpile site(s), and stockpiled. Prior to allowing traffic on the milled surface, the surface shall be thoroughly broomed free of remaining loose material.

   Cold milled asphalt concrete material shall be processed or crushed and stockpiled so that a uniform blend is obtained. Prior to stockpiling, the stockpile site shall be prepared by removal of the top six inches (150 mm) of topsoil and the area bladed smooth. Stockpiles shall be constructed in accordance with Section 320. The stockpiles shall not contain dirt, grease, oil, brick, paving fabric, clay balls, organic debris, and other foreign material

**Section 332.4 – Page 126 – Delete and replace with the following:**

**332.4 METHOD OF MEASUREMENT**

**A. Cold Milling Asphalt Concrete and Placing Cold Milled Material:** Cold Milling Asphalt Concrete and Placing Cold Milled Material will not be measured. Plans quantity will be used. If changes from the plans quantity are ordered these areas will be measured and the plans quantity will be appropriately adjusted.

**B. Cold Milling Asphalt Concrete:** Cold milling Asphalt Concrete will not be measured. Plans quantity will be used. If changes from the plans quantity are ordered these areas will be measured and the plans quantity will be appropriately adjusted.

**Section 332.5 – Page 126 – Delete and replace with the following:**

**332.5 BASIS OF PAYMENT**

**A. Cold Milling Asphalt Concrete and Placing Cold Milled Material:** Cold Milling Asphalt Concrete and Placing Cold Milled Material will be paid for at the contract unit price per square yard (square meter) or as indicated in the plans. Payment will be full compensation for the removal of grass, weeds, topsoil, etc. from the placement location, milling, removing, placing, and compaction of the cold milled material and the brooming, equipment, labor, and all incidentals required.

**B. Cold Milling Asphalt Concrete:** Cold Milling Asphalt Concrete will be paid for at the contract unit price per square yard (square meter) or as indicated in the plans. Payment will be full compensation for milling, removing, hauling, stockpiling, processing or crushing the cold milled material, brooming, equipment, labor, and all incidentals required.

**Section 350.2 – Page 127 – Delete this section and replace with the following:**

The sealant shall conform to the requirements of ASTM D-6690 Type IV.

The sealant material shall have a unit weight no greater than 9.35 lbs./gal (1124 kilograms per cubic meter).

Only products that meet the above requirements and have performed satisfactorily based on Department analysis may be used. A listing of acceptable products meeting ASTM D-6690 Type IV requirements may be obtained from the Department's Approved Products List. Products on the Approved Products list for Joint Sealant for Asphalt Over Long Jointed Concrete Pavement may also be used.

The blocking medium shall be an inert, compressible material, which is compatible with the sealant.

**Section 350.4 – Page 129 – Add the following sentence to this section:**

Quantities of asphalt concrete crack sealing with a manufacturer's unit weight in excess of the specified unit weight will be reduced to the specified maximum unit weight prior to measurement for payment.

**Section 360.3 A – Page 131 – Delete the minimum temperature and seasonal limitations table and replace with the following:**

Minimum temperatures and seasonal limitations are as follows:

| Cover Aggregates | Air and Surface Temp. (In the Shade and Rising) | Seasonal Limitations (Dates are Inclusive) |
|---|---|---|
| Type 1 | 70° F (21° C) | May 15 - Aug. 31 |
| Type 2 | 70° F (21° C) | May 15 - Aug. 31 |
| Type 3 | 70° F (21° C) | May 15 - Sept. 15 |

**Section 360.3 B.3 – Page 131 – Delete the last sentence of this section:**

**Section 370.2 – Page 135 – Delete the first paragraph of this section and replace with the following:**

The RAP material, after processing, shall meet the following gradation.

| Sieve Size | % Passing |
|---|---|
| 1 ¼ inch (31.5 mm) | 100 |
| 1 inch (25.0 mm) | 95-100 |

**Section 380.2 – Page 139 – Add the following to the end of this section:**

**L. Epoxy Resin Adhesive:** Epoxy resin adhesive shall be of the type intended for horizontal applications, and shall conform to the requirements of ASTM C 881, Type IV, Grade 3 (equivalent to AASHTO M235, Type IV, Grade 3).

**Section 380.3 B.1 – Page 140 – Delete the first paragraph on page 141 and replace with the following:**

When automatic moisture sensing equipment is used for an aggregate component, the batch ticket shall show the percent of moisture for the aggregate component with moisture sensing equipment. The results of the most recent two hour moisture test shall be shown for aggregate components without moisture sensing equipment.

The W/C ratio shall be calculated using the following formula and rounded to the nearest 0.01:

$$\text{W / C ratio} = \left[ \frac{\text{weight of free water} + \text{weight of batch water}}{\text{weight of cement} + \text{weight of supplementary cementitious material}} \right]$$

weight of free water = (% total moisture in aggregate - % absorption of aggregate) x weight of aggregate
weight of batch water = total weight of water added to the batch of concrete either at the plant or in the truck

The weight of free water shall be calculated for both the fine aggregate and the coarse aggregate.

**Section 380.3 D – Page 146 – Add the following paragraph to the end of this section:**

The amount of batch water and aggregates added to the mix shall be adjusted accordingly using the results of the most recent two hour moisture tests. If automatic moisture sensing equipment is used, the Engineer may allow the use of the automatic moisture sensing results to make adjustments.

**Section 380.3 E – Page 146 – Delete the second sentence and replace with the following:**

Truck mixing will be permitted only when approved by the Engineer.

**Section 380.3 E – Page 146 – Delete the fifth paragraph and replace with the following:**

When a concrete batch is transported in a truck mixer or agitator and the batch is smaller than 60 percent of the rated capacity of the truck mixer or agitator, the following percentage of additional cementitious material at the same proportions as listed on the mix design shall be added to the batch:

**Section 380.3 E – Page 146 – Delete the paragraph below the table at the top of page 147 and replace with the following:**

The above provisions regarding additional cementitious material shall also apply to the mixing of small batches in central plants. Additional cementitious material will not be required when the small batch is mixed in a drum that is sufficiently coated with mortar to withstand the loss of cementitious material. Sufficient mortar coating, as determined by the Engineer, may include mortar coating the drum from a previously mixed batch during continuous mixing operations. Additional cementitious material will be required if more than 30 minutes has passed from the mixing of the previous batch, if the drum has been cleaned following the previous batch, or if the mortar coating the drum has been disturbed following the previous batch.

**Section 380.3 E.2 – Page 147 – Delete the second sentence of the second paragraph and replace with the following:**

When approved by the Engineer, additional water or cement may be added to the batch after completion of the original mixing, in which case the batch shall be mixed an additional 30 revolutions at mixing speed.

**Section 380.3 L – Page 149 – Add the following sentence to the end of this section:**

Epoxy coated dowel bars and tie bars shall meet the requirements of Section 480.3 A.

**Section 380.3 M.2 – Page 151 – Delete the first sentence of the last paragraph and replace with the following:**

The Contractor shall load test five percent of the first 500 tie bars that are drilled and epoxied in place.

**Section 380.3 M.3 – Page 151 – Add the following paragraph to this section:**

If a soft cut style saw is used, the soft cut shall remain approximately 1" (25mm) from the edges of the concrete slab to control spalling at the edge. Additionally if a soft cut is used, the Contractor shall complete the initial saw cut for the entire width and to the required depth before the end of the 72 hour curing period.

**Section 380.3 M.4 – Page 151 – Delete the first sentence of the fourth paragraph and replace with the following:**

If an uncontrolled crack develops within six feet (1.8 m) of the contraction joint, a minimum of six feet (1.8 m) of pavement removal and replacement will be required.

**Section 380.3 N.6 – Page 153 – Delete this section and replace with the following:**

6. **Final Finish**: Before the concrete has attained its initial set, the surface shall be given a final finish with a carpet drag drawn over the surface in a longitudinal direction. The drag shall be mounted on a bridge and shall be sized so that a strip of the carpet approximately two feet (600 mm) wide is in contact with the pavement surface while the drag is operated.

The condition of the drag shall be maintained so the resultant surface is of uniform appearance with corrugations approximately 1/16 inch (2 mm) in depth. Drags shall be maintained clean and free of encrusted mortar. Drags that cannot be cleaned shall be discarded and replaced.

The carpet shall meet the following requirements:

| | |
|---|---|
| Facing Material | - Molded polyethylene pile face |
| Blade Length | - 7/8", ±1/8" (22 mm, ±3 mm) |
| Total Fabric Weight | - 70 oz. per square yard min. (2.37 kg per square meter min.) |

The backing shall be of a strong, durable material, not subject to rot, which is adequately bonded to the facing.

Plain Jointed concrete pavement shall be either longitudinally or transversely tined as specified in the plans.

Continuously reinforced concrete pavement shall be longitudinally tined.

Tining depth and spacing shall be determined according to SD 418.

**a. Transverse Tining:** Immediately following the carpet drag, the surface of the concrete pavement shall be given a transverse metal-tine finish with a separate self-propelled mechanical device. The metal-tine finish shall provide a groove width of 1/8" and a groove depth of 6/32 inch (5 mm) ± 2/32 inch (2 mm). The spacing between the individual tines shall meet the following:
Inches (ten foot tining rake)

2-5/16, 2-15/16, 1-1/4, 2-7/16, 2-1/16, 1-1/4, 13/16, 1, 1-5/16, 1-1/8, 2-5/16
2-1/2, 2-7/8, 2-3/4, 1-1/8, 2-3/4, 2-1/8, 1-15/16, 13/16, 7/8, 2-5/8, 3-1/16
3-1/16, 7/8, 9/16, 9/16, 1-5/8, 2-3/8, 1, 1-1/4, 1-9/16, 2-15/16, 1-1/8
1-15/16, 2-3/16, 2, 2-13/16, 1, 2-11/16, 13/16, 1-7/8, 9/16, 2-5/16, 1-7/8
2-1/2, 1-5/16, 3-3/16, 1-3/8, 15/16, 7/8, 1-5/8, 9/16, 1-3/4, 2-7/8, 3
1-5/8, 1-5/8, 7/8, 9/16, 5/8, 2-13/16, 1-5/8, 2-7/16, 13/16, 1-1/4, 11/16
2-3/4, 2-5/16, 1-1/8

Millimeters (3 meter tining rake)

58, 74, 31, 62, 53, 32, 21, 26, 33, 28, 59
64, 73, 70, 29, 70, 54, 49, 20, 22, 67, 78
77, 23, 15, 15, 41, 60, 25, 32, 39, 75, 28
50, 55, 51, 72, 25, 69, 21, 47, 15, 59, 47
64, 34, 55, 35, 24, 22, 42, 14, 45, 73, 76
41, 41, 22, 15, 16, 71, 41, 62, 21, 31, 17
70, 58, 29

Successive passes of the tining shall not overlap.

Each location, where transverse joint saw cuts are to be made, shall be protected from tining by covering with a metal strip from four inches (100 mm) to six inches (150 mm) or by other methods that produce acceptable results.

Brooming may be used on irregular areas in lieu of the carpet drag and tine finish. The broom shall be drawn transversely across the pavement with adjacent strokes slightly overlapping.

Brooming shall be uniform in appearance and shall produce grooves 1/16 inch (2 mm) deep. Texturing shall be completed while the concrete surface can be broomed without being torn or unduly roughened by the operation.

The finished surface shall be free from rough and porous areas, irregularities, and depressions resulting from improper handling of the broom.

**b. Longitudinal Tining:** Immediately following the carpet drag, the surface of the concrete pavement shall be given a longitudinal metal-tine finish with a wire broom or comb attached to a separate self-propelled mechanical device.

Transverse joints shall not be protected from longitudinal tining, the tining shall be continuous across the joints.

The slab shall not be tined within 3 inches of the edge of the slab, centerline, or rumblestrip.

The longitudinal tining equipment shall have the ability to be raised and lowered, and shall have vertical and horizontal string line controls to ensure straight grooves that are parallel to the longitudinal joint.

The curing unit shall be separate from the tining unit when longitudinal tining is used unless the tining and curing can be accomplished simultaneously with the same piece of equipment at the specified rate to the satisfaction of the Engineer.

The tine bar shall have a single row of tines and shall provide a groove width of 1/8 inch (3 mm) $\pm$1/64 inch (0.4 mm) and a groove depth of 6/32 inch (5 mm) $\pm$ 2/32 inch (2 mm). The spacing between the individual tines shall be uniformly spaced at 3/4 inch (20 mm) intervals.

**Section 380.3 N.7 – Page 155 – Delete the first sentence of the first paragraph and replace with the following:**

After the final finish, and while the concrete is still plastic, the edges of the pavement along each side of the slab, and on each side of transverse construction joints, shall be worked with an approved tool and rounded to the specified radius.

**Section 380.3 O – Page 155 – Add the following two sentences to the beginning of this section:**

The pavement surface shall be checked for deviations using either a ten foot (3 meter) straightedge or a profilograph (when specified). When the use of a profilograph is specified, the ten foot (3 meter) straightedge check may also be required in locations determined by the Engineer.

**Section 380.3 O.2.c.2 – Page 157 – Delete the first paragraph and replace with the following:**

Areas excluded from profilograph testing shall be shoulders, transitions, area within 50 feet (15 m) of existing pavement and bridges, existing curb and gutter sections, ramps, pavements on horizontal curves having a centerline radius less than 1,000 feet (300 m) and the superelevation transitions. Pavement sections not subject to profilograph testing shall meet the 10 foot (3 m) straight edge test requirements in Section 380.3 O.1.

**Section 380.3 O.2.c.2 – Page 157 – Add the following to the end of the last paragraph:**

Grinding shall be day lighted to the outside edge of the pavement.

**Section 380.3 O.2.f.1 – Page 158 – Delete this section and replace with the following:**

1) Satisfactorily correct deficient area by grinding with equipment meeting the requirements of Section 380.3 O.2.c.2.

**Section 380.3 O.2.h – Page 158 – Delete the last paragraph of this section.**

**Section 380.3 R.2 – Page 161 – Delete the first sentence of the third paragraph and replace with the following:**

The sealant surface shall be tooled to produce a slightly concave surface below the pavement surface.

**Section 380.3 T – Page 162 – Add the following sentence after the first sentence in the second paragraph:**

Equipment operated on a previously constructed pavement that has attained a compressive strength of at least 3000 psi (21 Mpa) but less than 4000 psi (28 Mpa) shall be tracked type equipment.

**Section 390.2 B – Page 167 – Delete and replace with the following:**

**B. Concrete Patches:** Concrete patching material shall be one of the following:

1. A packaged, dry, rapid-hardening cementitious mortar conforming to the requirements of ASTM C 928, Type R-3 containing no chloride ions.

2. A packaged, dry, rapid-hardening concrete materials conforming to the requirements of ASTM C 928, Type R-3 containing no chloride ions.

3. A patching material meeting the following requirements:

   a. **Cement:** Cement shall be Type III conforming to Section 750.

   b. **Air Entraining Admixtures:** Air entraining admixtures shall conform to Section 751.

   c. **Water:** Water shall conform to Section 790.

   d. **Fine Aggregate:** Fine aggregate shall conform to Section 800.

   e. **Coarse Aggregate:** Coarse aggregate shall be crushed quarry stone, size five, conforming to Section 820.

   f. **Curing Compound:** Curing compound shall conform to Section 821.

   g. **Proportioning:** Materials for concrete patches shall be mixed at the following proportions:

      Fine Aggregate..……..165 lbs./bag (75 kg/bag) cement
      Coarse Aggregate……165 lbs./bag (75 kg/bag) cement
      Cement (min)……. 8.0 bags/c. y.(10.5 bags/cubic meter) concrete
      Water (maximum)……..5.0 gallon/bag (19 L/bag) cement

   h. **Air and Slump:** The slump and air shall conform to the following:

      Air……7% $\pm$ 2%
      Slump……...1-1/2" (40 mm) maximum

**Section 391.2 A – Page 171 – Add the following paragraph to the end of this Section:**

Alternate design mixes for the grout may be submitted to the Engineer for approval.

**Section 392.2 A – Page 177 – Add the following paragraph to the end of this section:**

Alternate jacking slurry design mixes may be submitted to the Engineer for approval.

**Section 410.3 G.6 – Page 195 – Add the following section to the end of this section:**

**g.** The turn-of-nut method for bolt tightening may be used when specified in the plans. When the turn-of-nut installation method is specified, hardened washers are not required except as specified in Section 410.3 G.6.d.

A sufficient number of bolts shall first be placed in the joint and snugged to insure that all faying surfaces are in firm contact, prior to tightening. Snug tight is defined as the tightness attained by a few impacts of an impact wrench or the full effort of a man using an ordinary wrench. Bolts shall be placed in any remaining holes and snugged tight as erection bolts or pins are removed. All bolts in the joint shall then be tightened the amount shown in Table 2 progressing systematically from the center most rigid part of the joint to its free edges. When tightening, the element not turned shall be held with a hand wrench to prevent rotation.

| **Table 2 Nut Rotation from Snugged Condition[a,b]** | | | |
|---|---|---|---|
| | **Geometry of Outer Faces of Bolted Parts** | | |
| Bolt Length Measured From Underside of Head to End of Bolt | Both Faces Normal to Bolt Axis | One Face Normal to Bolt Axis and Other Face Sloped Not More Than 1:20, Bevel | Both Faces Sloped Not More Than 1:20 From Normal to Bolt Axis, Bevel Washers Not |

| | | Washer Not Used | Used |
|---|---|---|---|
| Up to and including 4 diameters | 1/3 turn | 1/2 turn | 2/3 turn |
| Over 4 diameters but not exceeding 8 diameters | 1/2 turn | 2/3 turn | 5/6 turn |
| Over 8 diameters but not exceeding 12 diameters[c] | 2/3 turn | 5/6 turn | 1 turn |

[a] Nut rotation is relative to bolt, regardless of the element (nut or bolt) being turned. For bolts installed by 1/2 turn and less, the tolerance should be plus or minus 30 degrees; for bolts installed by 2/3 turn and more, the tolerance should be plus or minus 45 degrees.

[b] Applicable only to connections in which all material within grip of the bolt is steel.

[c] No research work has been performed by the Research Council Riveted and Bolted Structural Joints to establish the turn-of-nut procedure when bolt lengths exceed 12 diameters. Therefore, the required rotation must be determined by actual tests in a suitable tension device simulating the actual conditions.

**Section 421.3 A – Page 213 – Delete the second sentence of the second paragraph and replace with the following:**

Backfill shall be compacted to 95% or greater of Maximum Dry Density in horizontal layers not to exceed six inches (150 mm) loose depth.

**Section 423.1 – Page 219 – Delete this section and replace with the following:**

**423.1 DESCRIPTION**

This work consists of the design, construction, and subsequent removal of all temporary works including, but not limited to; falsework, formwork, cofferdams, work berms and platforms, temporary traffic and stream diversions, and temporary retaining structures.

**Section 421.2 A – Page 213 – Delete the sieve analysis specification for the No. 200 (75 μm) sieve and replace with the following:**

No. 200 (75 μm) 0 - 18.0

**Section 421.2 B – Page 213 – Delete the sieve analysis specification for the No. 200 (75 μm) sieve and replace with the following:**

No. 200 (75 μm) 0 - 10.0

**Section 421.3 – Page 213 – Add the following to this section:**

**D. Extruded Insulation Board (Polystyrene):** No equipment will be allowed on the uncovered insulation board. The backfill covering the insulation board shall be spread and compacted in such a manner that the equipment used shall be operated on a minimum of 6 inches (150 mm) of backfill material at all times.

**Section 421.4 – Page 214 – Add the following to this section:**

**C. Extruded Insulation Board (Polystyrene):** Extruded insulation board (polystyrene) will be measured to the nearest square yard (square meter).

**Section 421.5 – Page 214 – Add the following to this section:**

**C. Extruded Insulation Board (Polystyrene):** Extruded insulation board (polystyrene) will be paid for at the contract unit price per square yard (square meter). Payment shall be full compensation for labor, equipment, and incidentals to furnish and install the extruded insulation board (polystyrene).

**Section 423.3 A – Page 219 – Add the following to the end of this section:**

All temporary works in streams or wetlands are required to be covered in the Corp of Engineers 404 Permit. At the time of the preconstruction meeting, the Contractor shall submit documentation for all temporary works for the purpose of complying with the 404 Permit requirements. The documentation shall include at a minimum:

1. A written description of the proposed temporary works including types of materials to be used, how the temporary works will be installed, removed, and what portion, if any, will remain in place after construction.

2. Details showing approximate size and location of the temporary works. Details shall include at a minimum, a Plan View and a Cross-Section View of the temporary works. Details shall provide sufficient dimensions such that the approximate size of the temporary works and location of the temporary works from a known point is shown.

3. Estimated quantities of all temporary fill material below the ordinary high water elevation. If the temporary fill is to be placed in a wetland, the estimated quantity shall be the amount of wetland loss, (in acres).

If during the course of construction there is a need for additional temporary works, the documentation shall be submitted to the Engineer at that time.

The Engineer will submit the documentation to the Corp of Engineers for approval. No construction of temporary works below the ordinary high water mark or in wetlands may begin until Corp of Engineer approval is attained by the Engineer.

**Section 423.3 B – Page 219 – Delete the first sentence and replace with the following two sentences:**

Falsework plans and design calculations for bridges shall be prepared by an Engineer registered in the State of South Dakota. Three (3) copies of the falsework plans and design calculations shall be submitted to the Bridge Construction Engineer for review at least 30 days prior to construction of falsework.

**Section 423.5 – Page 221 – Delete this section and replace with the following:**

**423.5 BASIS OF PAYMENT**

No payment will be made for temporary works. All costs involved in designing, constructing, and removing temporary works shall be incidental to the other contract items.

**Section 430.2 A. – Page 223 – Delete the last sentence of the second paragraph and replace with the following:**

The percentage of material passing a No. 200 (75μm) sieve shall not exceed 2.0 percent.

**Section 430.2 B – Page 223 – Delete this section and replace with the following:**

**B. Granular Bridge End Backfill:** The granular bridge end backfill material shall conform to Section 882.

**Section 430.3 C – Page 225 – Delete the second and third paragraphs and replace with the following:**

Granular bridge end backfill shall not be placed until at least 24 hours after completion of the deck pour. In addition, granular bridge end backfill shall not be placed until the abutments and sills, including wingwalls, have attained full design strength.

Granular bridge end backfill shall be placed in loose lifts not to exceed eight inches (200 mm) and compacted to 97% of maximum dry density. The moisture at the time of compaction shall be within ± 4% of optimum moisture. Maximum dry density and optimum moisture will be determined in accordance with SD 104.

**Section 430.3 C.1 through 6 – Page 225 and 226 – Delete and replace with the following:**

1. Each layer of granular bridge end backfill shall be placed in loose lifts not to exceed eight inches (200 mm). The placement and compaction of each layer must be inspected and approved by the Engineer prior to placement of the next layer.

2. Any equipment used to install the bridge end backfill over the geotextile fabric shall be operated in such a manner that the geotextile fabric is not damaged. To avoid damage to the geotextile fabric, the equipment used to place, spread, and compact the granular bridge end backfill over the geotextile fabric shall not be operated on less than six inches (150 mm) of material.

3. The geotextile fabric may be oriented in any direction. To minimize the horizontal deflection of the mechanically stabilized vertical face, it is extremely important to make sure that the geotextile fabric is taut and free of wrinkles during placement of the granular bridge end backfill.

4. Any geotextile fabric that is torn or punctured shall be repaired or replaced by the Contractor at no additional cost to the Department. The repair shall consist of a patch of the same type of geotextile fabric being placed over the ruptured area such that it overlaps the damaged area a minimum of 3 ft. (1 m) from any damaged edge. A sewn patch meeting the same requirements for seam strength as that of the fabric being repaired is allowed.

5. Seams that are perpendicular to face of the mechanically stabilized backfill may be constructed by overlapping the fabric a minimum of two feet (0.6 m). All other seams, as well as those in which the two foot (0.6 m) minimum overlap cannot be accomplished, shall be sewn. All seams shall be inspected by the Engineer and any deficient seams repaired by the Contractor prior to placement of the next layer of granular bridge end backfill. Geotextile fabric that is joined by sewn seams shall have strength properties at the seam equal to the specified strength requirements of the geotextile fabric. High strength polyester, polypropylene, or kevlar thread shall be used for sewn seams. Nylon threads shall not be used. The edges of the fabric shall be even and shall be completely penetrated by the stitch.

6. During periods of shipment and storage, the geotextile fabric shall be enclosed in a heavy duty opaque wrapping such that the fabric is protected from direct sunlight, ultraviolet rays, dirt or debris. The fabric shall not be subjected to temperatures greater than 140°F (60°C).

**Section 430.5 B – Page 227 – Delete the second sentence and replace with the following:**

Payment will be full compensation for all labor, equipment, materials, water, and all other items incidental to scarifying, reshaping and recompacting the area to be backfilled, furnishing and installing the polyethylene sheeting, drainage fabric, geotextile fabric, and furnishing, placing, and compacting the porous backfill and granular bridge end backfill to the limits shown on the plans.

**Section 450.2 – Page 231 – Add the following to this section:**

F. **High Density Polyethylene Pipe:** Section 990.

**Section 450.3 C – Page 231 – Delete and replace with the following:**

C. **Polyethylene Pipe Culverts:** Corrugated polyethylene pipe culverts and high density polyethylene pipe culverts shall be installed according to manufacturer instructions.

**Section 450.3 G – Page 232 – Delete and replace with the following:**

G. **Backfill Above Bedding Grade:** Moisture and density requirements for backfill shall be as specified in the plans and shall meet the requirements of Section 120. The backfill material shall be pre-moistened if necessary to obtain uniform moisture.

Selected embankment material shall be placed along the pipe in layers not exceeding six inches (150 mm) in depth and thoroughly compacted by mechanical compactors to the specified density before successive layers are placed. The width of the berms on each side of the pipe shall be twice as wide as the external diameter of the pipe or 12 feet (four meters), whichever is less. This method of backfilling shall be continued until the embankment is at least two feet (600 mm) over the top of the pipe.

In trench installations, backfill width shall be equal to trench width. The backfill shall be brought up evenly on both sides of the pipe for its full length. This method of backfilling shall be continued until the embankment is at least two feet (600 mm) over the top of the pipe.

**Section 460.3 A – Page 235 – Delete the first paragraph of this section and replace with the following:**

**Concrete Quality and Proportion:** The Contractor shall design and be responsible for the performance of all concrete mixes used in structures.

All mix designs and any modifications thereto, including changes in admixtures, shall be approved by the Concrete Engineer prior to use. Mix design data and test results shall be recorded on a DOT-24 and submitted to the Engineer.

The mix proportioning selected shall conform to the following requirements:

**Section 460.3 A – Page 236 – Delete the second sentence in Note 1 under Table 1.**

**Section 460.3 A – Page 235 – Delete the second sentence of the first paragraph on page 236 and replace with the following:**

The mix design shall be based upon obtaining an average concrete compressive strength 1200 psi above the specified minimum 28 day compressive strength.

**Section 460.3 A – Page 235 – Delete the last sentence of the second paragraph on page 236 and replace with the following:**

Trial batches shall be conducted in accordance with the American Concrete Institute Publication ACI 211.1, ACI 318, ASTM C192 and the following:

**Section 460.3 A – Page 235 – Delete the first paragraph on page 237 and replace with the following:**

Concrete mix designs previously used will be considered in compliance with the mix design requirements provided all of the following conditions are met:

**Section 460.3 A – Page 235 – Delete the second sentence of item 3 on page 237 and replace with the following:**

These test results and associated batch tickets shall be submitted to the Engineer.

**Section 460.3 A – Page 235 – Add the following to the list of items on page 237:**

4. All supporting information for the mix design including but not limited to, fresh concrete tests and material properties.

**Section 460.3 A – Page 235 – Delete the last two paragraphs of this section on page 237:**

**Section 460.3 B.2 – Page 237 – Delete the last paragraph of this section on page 238 and replace with the following:**

If the average compressive strength of the 28 day and the backup cylinder compressive strength is more than 500 psi (3.5 Mpa) below the specified 28 day compressive strength, the concrete represented by the cylinders shall be removed and replaced.

**Section 460.3 B.3 – Page 238 – Delete the last paragraph of this section and replace with the following:**

If the average core compressive strength is more than 500 psi (3.5 Mpa) below the specified 28 day compressive strength, the concrete represented by the cylinders shall be removed and replaced.

**Section 460.3 B.4 – Page 238 – Delete the last paragraph of this section on page 239 and replace with the following:**

If the average core compressive strength is more than 500 psi (3.5 Mpa) below the specified 28 day compressive strength, the concrete represented by the cylinders shall be removed and replaced.

**Section 460.3 B.5 – Page 239 – Delete the first sentence and replace with the following:**

If the Contractor utilizes the option to core as specified in Section 460.3 B.4, the Contractor shall arrange for an independent testing laboratory to perform the coring and compressive testing within 14 calendar days of notification of the failing compressive strength of the backup cylinder.

**Section 460.3 B.5 – Page 239 – Delete the last sentence of the second paragraph.**

**Section 460.3 B.5.a – Page 239 – Delete this section and replace with the following.**

**a.** Include DOT project number, county, & PCN.

**Section 460.3 C.1 – Page 240 – Add the following to the list of items to be included on the printed ticket on page 241:**

W/C ratio

Aggregate Moistures (total moisture & absorption)

**Section 460.3 C.1 – Page 240 – Add the following after the last paragraph of this section on page 241:**

The W/C ratio shall be calculated using the following formula and rounded to the nearest 0.01:

$$\text{W / C ratio} = \left[ \frac{\text{weight of free water} + \text{weight of batch water}}{\text{weight of cement} + \text{weight of supplimentary cementitious material}} \right]$$

weight of free water = (% total moisture in aggregate - % absorption of aggregate) x weight of aggregate
weight of batch water = total weight of water added to the batch of concrete either at the plant or in the truck

The weight of free water shall be calculated for both the fine aggregate and the coarse aggregate.

**Section 460.3 D – Page 242 – Add the following to this section:**

**6.** The amount of batch water and aggregates added to the mix shall be adjusted accordingly using the results of the most recent two hour moisture tests. If automatic moisture sensing equipment is used, the Engineer may allow the use of the automatic moisture sensing results to make adjustments.

**Section 460.3 E – Page 243 – Delete the third paragraph and replace with the following:**

When a concrete batch is transported in a truck mixer or agitator and the batch is smaller than 60 percent of the rated capacity of the truck mixer or agitator, the following percentage of additional cementitious material at the same proportions as listed on the mix design shall be added to the batch:

**Section 460.3 E – Page 243 – Delete the paragraph below the table on the middle of page 243 and replace with the following:**

The above provisions regarding additional cementitious material shall also apply to the mixing of small batches in central plants. Additional cementitious material will not be required when the small batch is mixed in a drum that is sufficiently coated with mortar to withstand the loss of cementitious material. Sufficient mortar coating, as determined by the Engineer, may include mortar coating the drum from a previously mixed batch during continuous mixing operations. Additional cementitious material will be required if more than 30 minutes has passed from the mixing of the previous batch, if the drum has been cleaned following the previous batch, or if the mortar coating the drum has been disturbed following the previous batch.

**Section 460.3 K.1 – Page 247 – Delete and replace with the following:**

**1.** The coarse aggregate piles must be flushed with water for a minimum of 24 hours.

**Section 460.3 K – Page 248 – Delete the twelfth paragraph and replace with the following:**

Barrier curbs will not be allowed to be placed with slipform paving equipment.

**Section 460.3 M.4.c – Page 251 – Delete the second sentence of the first paragraph and replace with the following:**

Tining depth and spacing shall be measured according to SD 418. The metal-tine finish shall provide a groove width of 1/8" and a groove depth of 6/32 inch (5 mm) ±2/32 inch (3 mm).

**Section 465.2 A.3 – Page 265 – Add the following sentence to the end of the paragraph:**

Slump loss shall be tested in accordance with SD 423.

**Section 465.2 A.6 – Page 265 – Delete this section and replace with the following:**

**6.** The mix design shall establish a maximum water cementitious material ratio for the concrete mix (never to exceed 0.44)

The use of a water reducer will be required to achieve the above properties. Water reducers conforming to AASHTO M194 Type C (Accelerating) and Type E (Water-Reducing and Accelerating) will not be permitted.

**Section 480.3 C.1 – Page 280 – Delete the fifth paragraph and replace with the following:**

Welding of reinforcing steel shall not be allowed without written approval of the Bridge Construction Engineer. The request for approval shall list the bars to be welded, welding procedure, type of electrode, joint detail, and mill certificate of the reinforcing steel to be welded.

**Section 480.4 – Page 281 and 282 – Delete the English and Metric Bar Designation tables and replace with the following:**

**Bar Designation**

| Size (English) | No. 3 | No. 4 | No. 5 | No. 6 | No. 7 | No. 8 | No. 9 | No. 10 | No. 11 | No. 14 | No. 18 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Weight (lb/ft) | 0.376 | 0.668 | 1.043 | 1.502 | 2.044 | 2.670 | 3.400 | 4.303 | 5.313 | 7.65 | 13.60 |
| Size (Metric) | 10 | 13 | 16 | 19 | 22 | 25 | 29 | 32 | 36 | 43 | 57 |
| Weight (kg/m) | 0.560 | 0.994 | 1.552 | 2.235 | 3.042 | 3.973 | 5.060 | 6.404 | 7.907 | 11.38 | 20.24 |

**Section 550.3 A.2 – Page 303 – Delete the second sentence of the last paragraph and replace with the following:**

When backfilling extra depth holes in accordance with Section 550.3 C.1.f.2, a grout admixture shall be added to the grout mixture in accordance with the manufacturer's recommendations.

**Section 550.3 C.1.b – Page 305 – Delete the third sentence of the first paragraph and replace with the following:**

After completion of the Type 1A removal, the Engineer will inspect the deck and mark remaining areas of unsound existing overlay.

**Section 550.3 C.1.c – Page 306 – Delete and replace with the following:**

**c.** Type 1B Removal areas will be determined after Type 1A Removal (or Type 2A Removal if specified) has been accomplished. Type 1B Removal shall consist of removing delaminated or unsound concrete by chipping below the Type 1A Removal (or Type 2A Removal if specified) and extending down to the top of the top bar in the top mat of reinforcing steel. Concrete removed below the top of the top bar incidental to Type 1B Removal will be considered a part of the Type 1B Removal.

**Section 550.3 C.1.f.2 – Page 306 – Delete the first sentence and replace with the following:**

**Backfill of Extra Depth Holes:** When Type 1D removal is necessary, or when holes deeper than 4" (100mm) below the top of the scarified surface are encountered, they shall be backfilled as follows:

**Section 550.3 D.2 – Page 309 – Delete the fourth paragraph and replace with the following:**

Concrete placement will not be permitted after October 1 or before May 1 or when the air temperature is above 85°F (29°C) in the shade. It may be necessary to place concrete during evening or early morning hours and not during periods of low humidity and high wind to comply with this requirement.

**Section 550.3 E – Page 310 – Delete and replace with the following:**

**E. Proportioning and Mixing Concrete Materials:** Proportioning and mixing shall conform to Section 460.3 F.

**Section 560.2 A – Page 317 – Add the following:**

**6. Cement:** Section 750. Type II cement shall be used, unless otherwise specified.

**Section 560.3 A – Page 317 – Add the following paragraph after the first paragraph:**

Precast concrete drop inlets shall conform to the requirements of Section 670.

**Section 560.3 A.1 – Page 317 – Delete and replace with the following:**

1. **Fabrication:** The Fabricator shall notify the Area Engineer prior to the fabrication of precast and prestressed concrete items.

**Section 560.3 A.2 – Page 317 – Delete the last sentence of the first paragraph and replace with the following:**

When a plant has been in operation and satisfactorily producing material, the Contractor will not be required to submit a concrete mix design for precast concrete, unless changes have been made to the pre-approved mix design or the material used in the mix design. Concrete mix designs shall be submitted for each project on all prestressed concrete products.

**Section 560.3 B.1 – Page 319 – Delete the second sentence of the fifth paragraph and replace with the following:**

A checked design includes the design calculations and check design calculations performed by an independent Engineer registered in the State of South Dakota.

**Section 560.3 B.2.b – Page 321 – Delete the second paragraph and replace with the following:**

Acceptance of the precast units shall be in accordance with Section 460.3 B except that the fabricator shall be responsible for the sampling, preparing, and properly curing of all concrete cylinders for concrete compressive strength in accordance with the Materials Manual. The precast units will be accepted when the minimum design concrete compressive strength requirements have been met. Accepted precast units represented by that test group of cylinders may be delivered to the project and will not require the 28 day cylinder test.

**Section 600.2 A.17 – Page 333 – Add the following sentence at the end of the paragraph:**

The concrete pad must be securely mounted and solidly supported under the laboratory to minimize vibration while operating the Marshall compactor.

**Section 600.3 – Page 336 – Delete the fourth and fifth sentence and replace with the following:**

On projects that a Type III lab is required, the Engineer may allow a Type I or II lab to be supplied until such a time the Engineer determines the Type III lab is required. If the Engineer allows a temporary Type I or II lab to be furnished, no additional payment for that lab will be made.

**Section 605.3 C – Page 339 – Delete the third sentence of the first paragraph and replace with the following:**

If fly ash is used, the minimum amount of cement to be replaced is 15 percent and the maximum amount is 20 percent at a 1:1 ratio by weight.

**Section 630.4 A – Page 355 – Delete this section and replace with the following:**

A. **Beam Guardrail:** Each class and type will be measured to the nearest 0.1 foot (0.1 meter) along the centerline of the rail. The length in feet (meters) shall be the overall length center to center of end posts or to connections with bridges.

**Section 630.4 C – Page 355 – Delete this section and replace with the following:**

C. **Remove Beam Guardrail:** Remove Beam Guardrail will be measured to the nearest 0.1 foot (0.1 meter) along the centerline of the rail.

**Section 630.5 A – Page 355 – Delete this section and replace with the following:**

A. **Beam Guardrail:** Beam guardrail will be paid for at the contract unit price per 0.1 foot (0.1 meter) for each class and type installed. Payment will be full compensation for labor, materials, equipment, and incidentals required.

**Section 630.5 C – Page 356 – Delete this section and replace with the following:**

C. **Remove Beam Guardrail:** Remove Beam Guardrail will be paid for at the contract unit price per 0.1 foot (0.1 meter). Payment will be full compensation for the backfill of holes and the removal of the guardrail including end terminals, beam guardrail, posts, blocks, and hardware from the project limits.

**Section 632.3 H.2.c – Page 361 – Delete and replace with the following:**

**c.** Anchor bolts shall be provided with leveling nuts, top nuts, and jam nuts. Anchor bolts shall be tightened in accordance with Section 635.3 F.

**Section 633.3 D – Page 368 – In the grooving tolerance tables, replace "Depth of Groove" with the following:**

| | | |
|---|---|---|
| | **(English)** | |
| Depth of Groove | 80 mils | + 10 mils |
| | **(Metric)** | |
| Depth of Groove | 2.032 mm | + 0.25 mm |

**Section 634.3 A – Page 372 – Delete the first sentence of the fourth paragraph and replace with the following:**

All workers within the right of way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel intended to provide conspicuity during both daytime and nighttime usage, and meeting the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear".

**Section 634.3 A – Page 372 – Delete the first sentence of the fifth paragraph.**

**Section 634.3 C – Page 374 – Add the following paragraph after the first paragraph:**

For 2 lane roadways with average daily traffic volumes of 2500 or less, no passing zones may be identified using DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs rather than pavement markings. The DO NOT PASS and NO PASSING ZONE signs shall be used to mark the beginning of each no passing zone, and the PASS WITH CARE signs to mark the end of each zone. These may be utilized in place of the pavement markings normally used to identify no passing zones for no longer than 2 weeks. The placement of the dashed centerline marking and these signs shall be required prior to nightfall.

**Section 635.3 C.3 – Page 380 – Add the following sentence at the end of the first paragraph:**

The contractor shall not use a machine requiring flowing water for installation of conduit under streets or roadways unless approved by the Engineer.

**Section 635.3 F – Page 381 – Delete and replace with the following:**

**F. Anchor Bolts:** Anchor bolts shall be installed in accordance with the following requirements.

**1. General:** Anchor bolts shall be provided with leveling nuts and top nuts. Anchor bolts for light towers shall be provided with leveling nuts, top nuts, and jam nuts.

**2. Anchor Bolt Installation:** A steel template shall be used to accurately locate and hold the anchor bolts plumb and in proper alignment. This template shall be in place during placement of the concrete base and shall remain in place a minimum of 24 hours after the concrete placement has been completed. Out of position anchor bolts and anchor bolts greater than 1:40 out-of-plumb are cause for rejection of the base. Bending of the anchor bolts to straighten or move into position, or alterations of the pole base plate will not be permitted.

**3. Anchor Bolt Tightening:**

**a.** All leveling nuts (bottom nuts) shall be brought to full bearing on the bottom of the base plate. The bottom of the leveling nuts must be kept as close to the concrete base as practical, and shall not be more than one inch above the top of the concrete base. Leveling nuts must be threaded onto the anchor bolt to provide at least ¼ inch (6 mm) projection of the bolt above the top nut or jam nut if required when in its tightened position.

**b.** A softened beeswax or equivalent shall be applied to the top nut bearing face and top nut internal threads prior to placement on the anchor bolt. All top nuts shall be tightened to a snug tight condition. Snug tight

is defined as the tightness attained by the full effort of a person using a wrench with a length equal to 14 times the diameter of the anchor bolt, except the minimum length shall be 18 inches. The use of adjustable wrenches will not be allowed. The full effort required to achieve a snug tight condition, shall be applied as close to the end of the wrench as possible. Pull firmly by leaning back and using full body weight (brace feet to prevent slipping) on the end of the wrench until the nut stops rotating. This snug tightening shall be accomplished in a minimum of two separate passes of tightening. The sequence of tightening in each pass shall be such that the opposite side nut, to the extent possible, shall be subsequently tightened until all the nuts in that pass have been snugged.

Snug tightness of both the top and leveling nuts shall be checked in the presence of Department personnel after the Contractor has completed nut snugging as described above, but prior to final tightening. Snug tightness of the nuts (top and leveling) shall be checked by applying a torque in a range from 20% to 30% of the verification torque. See Table 1 for verification and snug tight torque values.

**Table 1**

**Anchor Bolt Tightening**

| Anchor Bolt Diameter (in) | Anchor Bolt Stress Area (sq in) | Yield Strength (ksi) | Minimum Tensile Strength (ksi) | Verification Torque (ft-lbs) | 30% Snug Tight Torque (ft-lbs) | 20% Snug Tight Torque (ft-lbs) |
|---|---|---|---|---|---|---|
| | | | | | | |
| 1.00 | 0.61 | 36.0 | 58.0 | 177 | 53 | 35 |
| 1.25 | 0.97 | 36.0 | 58.0 | 351 | 105 | 70 |
| 1.50 | 1.41 | 36.0 | 58.0 | 613 | 184 | 123 |
| 1.75 | 1.90 | 36.0 | 58.0 | 964 | 289 | 193 |
| 2.00 | 2.50 | 36.0 | 58.0 | 1449 | 435 | 290 |
| 2.25 | 3.25 | 36.0 | 58.0 | 2120 | 636 | 424 |
| 2.50 | 4.00 | 36.0 | 58.0 | 2899 | 870 | 580 |
| 2.75 | 4.93 | 36.0 | 58.0 | 3930 | 1179 | 786 |
| 3.00 | 5.97 | 36.0 | 58.0 | 5192 | 1558 | 1038 |
| | | | | | | |
| 1.00 | 0.61 | 55.0 | 75.0 | 274 | 82 | 55 |
| 1.25 | 0.97 | 55.0 | 75.0 | 545 | 163 | 109 |
| 1.50 | 1.41 | 55.0 | 75.0 | 951 | 285 | 190 |
| 1.75 | 1.90 | 55.0 | 75.0 | 1496 | 449 | 299 |
| 2.00 | 2.50 | 55.0 | 75.0 | 2249 | 675 | 450 |
| 2.25 | 3.25 | 55.0 | 75.0 | 3289 | 987 | 658 |
| 2.50 | 4.00 | 55.0 | 75.0 | 4498 | 1349 | 900 |
| 2.75 | 4.93 | 55.0 | 75.0 | 6098 | 1830 | 1220 |
| 3.00 | 5.97 | 55.0 | 75.0 | 8056 | 2417 | 1611 |
| | | | | | | |
| 1.00 | 0.61 | 75.0 | 100.0 | 366 | 110 | 73 |
| 1.25 | 0.97 | 75.0 | 100.0 | 726 | 218 | 145 |
| 1.50 | 1.41 | 75.0 | 100.0 | 1268 | 381 | 254 |
| 1.75 | 1.90 | 75.0 | 100.0 | 1994 | 598 | 399 |
| 2.00 | 2.50 | 75.0 | 100.0 | 2999 | 900 | 600 |
| 2.25 | 3.25 | 75.0 | 100.0 | 4386 | 1316 | 877 |
| 2.50 | 4.00 | 75.0 | 100.0 | 5998 | 1799 | 1200 |
| 2.75 | 4.93 | 75.0 | 100.0 | 8131 | 2439 | 1626 |
| 3.00 | 5.97 | 75.0 | 100.0 | 10742 | 3223 | 2148 |
| | | | | | | |
| 1.00 | 0.61 | 105.0 | 125.0 | 457 | 137 | 91 |
| 1.25 | 0.97 | 105.0 | 125.0 | 908 | 272 | 182 |
| 1.50 | 1.41 | 105.0 | 125.0 | 1586 | 476 | 317 |
| 1.75 | 1.90 | 105.0 | 125.0 | 2493 | 748 | 499 |
| 2.00 | 2.50 | 105.0 | 125.0 | 3749 | 1125 | 750 |
| 2.25 | 3.25 | 105.0 | 125.0 | 5482 | 1645 | 1096 |
| 2.50 | 4.00 | 105.0 | 125.0 | 7497 | 2249 | 1499 |
| 2.75 | 4.93 | 105.0 | 125.0 | 10164 | 3049 | 2033 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 3.00 | 5.97 | 105.0 | 125.0 | 13427 | 4028 | 2685 |

**c.** At this point, the top nut and leveling nut must be in full bearing on the base plate. If any gap exists between either nut (top or leveling) and the base plate, a beveled washer shall be added between the nut washer and the base plate to eliminate the gap. The beveled washer shall be stainless steel Type 304, the same diameter as the hardened washer, and beveled as required to eliminate the gap between the nut and the base plate. All nuts shall be retightened according to steps (a) and (b) above if beveled washers are added. All costs required to remove and re-erect the structure to install beveled stainless steel washers shall be at the Contractor's expense.

**d.** Using a hydraulic wrench rotate all top nuts as indicated in Table 2. The additional turn of the nuts shall be accomplished by tightening all the nuts in two separate passes of equal incremental turns (i.e., for 1/3 turn use 1/6 turn each pass). The sequence of nut tightening in each pass shall be such that the opposite side nut, to the extent possible, shall be subsequently tightened until all the nuts in that pass have been turned. There shall be no rotation of the leveling nut during top nut tightening.

In lieu of a hydraulic wrench, torque wrenches and multipliers may be used to achieve the desired nut rotations and tightness.

**e.** Tightness of the nuts shall be checked in the presence of Department personnel. Tightness of the nuts shall be checked within a minimum of 48 hours and a maximum of 96 hours after the nuts have been rotated as indicated in Section 635.3 F.3.d above. Tightness of the top nuts shall be checked by applying the verification torque to the nut. See Table 1 for verification torque.

**Table 2**

**Nut Rotation for Turn-Of-Nut Pretensioning**

| Anchor Rod Diameter (in)* | Nut Rotation from Snug-Tight Condition a, b | |
|---|---|---|
| | F1554 Grade 36, A307 | F1554 Grade 55 and 105, A449 |
| | | |
| < 1 ½ | 1/6 Turn | 1/3 Turn |
| ≥ 1 ½ | 1/12 Turn | 1/6 Turn |
| a. Nut rotation is relative to anchor rod. The tolerance is plus 20 degrees<br>b. Applicable only to double-nut-movement joints. | | |

Bottom leveling nuts shall be in contact with the base prior to applying the torque. An inability to achieve the verification torque indicates that the threads have stripped and the anchor bolt must be replaced. All costs for replacing anchor bolts shall be at the Contractor's expense.

**f.** Install jam nut after verification torque has been applied to top nut. Lubricate threads of jam nut with beeswax or equivalent and tighten to a torque of 100 ft-lb (approximated without the use of a torque wrench).

**Section 635.3 H – Page 382 – Delete the first paragraph and replace with the following:**

Traffic signal conductors shall be continuous from the controller cabinets to the pole bases. Splicing of conductors will not be allowed in the junction boxes.

**Section 635.3 Q.3 – Page 384 – Delete and replace with the following:**

**3. Preformed Loops:** Each set of loop wires shall be tagged to identify loop. If installation of the loop is for future use the loop wires in the same lane shall be taped together. If installation is on a signal project, tagging shall be done and wires connected in series.

In new roadways, the preformed loops and lead-in conduits shall be placed in the base course, with the top of the conduit flush with the top of the base, and then covered with hot mix asphalt or Portland cement concrete pavement. Preformed loops and lead-in conduits shall be protected from damage prior to and during pavement placement.

In new reinforced concrete structure decks, the preformed loops shall be secured to the top of the uppermost layer of reinforcing steel using nylon wire ties. The loop shall be held parallel to the structure deck by using PVC or polypropylene spacers where necessary. Conduit for lead-in conductors shall be placed below the upper mat of reinforcing steel.

In existing pavement, the preformed loops shall be placed in a saw slot, 1-1/4 inches minimum width, cut into the existing pavement. The top of the conduit shall be 2 inches, minimum, below the top of existing surface. Sawed Slots shall be filled with an approved loop sealant.

On asphalt or concrete resurfacing projects, the preformed loops shall be placed in a saw slot, 1-1/4 inches minimum width, cut into the existing pavement. The top of the conduit shall be 2 inches, minimum, below the top of existing surface after any required surface removal is completed and prior to the placing of the new surface. Sawed Slots shall be filled with an approved loop sealant.

**Section 635.3 R.3 – Page 384 – Delete the first sentence in the first paragraph and replace with the following:**

All circular red, red arrow, circular yellow, yellow arrow, circular green, green arrow, and pedestrian indications shall be light emitting diode (LED) signal modules.

**Section 635.5 E – Page 386 – Delete and replace with the following:**

**D. Anchor Bolts:** Cost for anchor bolts shall be included in the contract unit price for the concrete for which they are incorporated with.

**Section 651.2 C – Page 391 – Delete the last sentence of this section and replace with the following:**

Not more than 25.0 percent by weight shall pass a No. 200 (75µm) sieve.

**Section 670.3 – Page 393 – Delete and replace with the following:**

**A. General Requirements:** Concrete for drop inlets shall be proportioned, mixed, hauled, and placed in accordance with Section 462.

When the foundation for a drop inlet is in new embankment, the embankment shall be constructed to an elevation at least one foot (300 mm) above the footing before the foundation for the drop inlet is prepared. The foundation shall be compacted as specified for the adjacent embankment.

Castings shall be set in full mortar beds or secured as specified. Castings shall be set accurately to the correct elevation so subsequent adjustment will not be necessary.

Inlet and outlet pipe connections shall be of the same size and kind and shall meet the same requirements as the pipe they connect. Pipe sections shall be flush on the inside of the structure wall and project outside sufficiently for proper connection with the next pipe section. Masonry shall fit neatly and tightly around the pipe. Grouting of the pipe connection may be required as directed by the Engineer if voids exist after form removal.

Drop inlets shall be either cast in place or precast. Precast drop inlets shall be defined as those drop inlets cast outside of the project limits. Drop inlets cast within the project limits will be considered cast in place.

**B. Cast in Place Drop Inlets:** The foundation excavated for drop inlets shall be thoroughly moistened immediately prior to placing concrete.

Steel reinforcement shall be placed in accordance with Section 480.

The finished surface of the concrete shall present a neat and smooth appearance. Concrete shall be protected and cured in accordance with Section 460.3, except the minimum curing time shall be 72 hours.

Upon completion and curing of the unit, the sheeting, bracing, forms, and falsework shall be removed and the excavation backfilled. The unit shall not be backfilled until the completion of the 72 hour curing period, or until the concrete reaches a minimum compressive strength of 3000 psi (21 MPa). Backfill shall be placed in layers not

exceeding six inches (150 mm) thick and compacted to the same degree as specified for the adjacent embankment. Installations shall be finished completed and left in a neat appearing condition.

**C. Precast Drop Inlets:** Precast drop inlets shall conform to the following requirements:

1. **Notification:** The Contractor shall notify the Engineer 24 hours in advance of all concrete pours for inspection and observation of Contractor testing:

2. **Design:** Precast drop inlets shall conform to the configurations of the standard plates. Variations from the standard plates may be accepted provided the AASHTO materials, design, fabrication specifications, and the requirements of this section are complied with.

   Precast drop inlets shall be designed to specified load conditions. The Design Engineer of the drop inlets must be registered in the State of South Dakota. The design shall conform to the AASHTO design requirements for the depth of fill, including surfacing, etc., as well as live load or specified loading.

   The Contractor shall furnish a checked design with the shop drawings. A checked design shall include the design calculations, and check design calculations performed by an independent Engineer registered in the State of South Dakota.

3. **Shop Drawings:** Fifteen days prior to fabrication, the Contractor shall furnish shop drawings for Department review. The shop drawings shall consist of fabrication details including reinforcing steel and spacer placement and configurations, total quantities for the complete item, and all information for fabrication and erection.

4. **Forms:** The forms shall be designed to withstand the fluid pressure of the concrete and the added forces due to vibration and impact without distortion. The forms shall be mortar tight and free from warp.

   The form surface area in contact with the concrete shall be treated with an approved form oil or wax before the form is set in position. The forms shall be thoroughly cleaned of all other substances.

5. **Concrete Cure:** The concrete shall be cured by low pressure steam, radiant heat, or as specified in Section 460.3 N. When curing in accordance with Section 460.3 N., the concrete temperature requirements of Section 460.3 O. shall apply.

   Low pressure steam or radiant heat curing shall be done under an enclosure to contain the live steam or the heat and prevent heat and moisture loss. The concrete shall be allowed to attain initial set before application of the steam or heat. The initial application of the steam or heat shall be three hours after the final placement of concrete to allow the initial set to occur. When retarders are used, the waiting period before application of the steam or radiant heat shall be five hours. When the time of initial set is determined by ASTM C 403, the time limits described above may be waived.

   During the waiting period, the minimum temperature within the curing chamber shall not be less than 50° F (10° C) and live steam or radiant heat may be used to maintain the curing chamber between 50° F (10° C) and 80° F (27° C). During the waiting period the concrete shall be kept moist.

   Application of live steam shall not be directed on the concrete forms causing localized high temperatures. Radiant heat may be applied by pipes circulating steam, hot oil, hot water, or by electric heating elements. Moisture loss shall be minimized by covering exposed concrete surfaces with a plastic sheeting or by applying an approved liquid membrane curing compound to exposed concrete surfaces. The top surface of concrete members for use in composite construction shall be free of membrane curing compound residue unless suitable mechanical means for full bond development are provided.

   During the initial application of live steam or radiant heat, the concrete temperature shall increase at an average rate not exceeding 40° F (22° C) per hour until the curing temperature is reached. The maximum concrete temperature shall not exceed 160° F (71° C). The maximum temperature shall be held until the concrete has reached the desired strength. After discontinuing the steam or radiant heat application, the temperature of the concrete shall decrease at a rate not to exceed 40° F (22° C) per hour until the concrete temperature is within 20° F (11° C) of the ambient air temperature. The Contractor will not be required to monitor this cool down temperature when the ambient air temperature is 20° F (11° C) or above.

The test cylinders shall be cured with the unit, or in a similar manner (similar curing method and concrete curing temperature, as approved by the Concrete Engineer) as the unit, until minimum compressive strength has been obtained.

6. **Surface Finish and Patching:** If a precast or prestressed item shows stone pockets, honeycomb, delamination or other defects which may be detrimental to the structural capacity of the item, it will be subject to rejection at the discretion of the Engineer. Minor surface irregularities or cavities, which do not impair the service of the item, and which are satisfactorily repaired will not constitute cause for rejection. Repairs shall not be made until the Engineer has inspected the extent of the irregularities and has determined whether the item can be satisfactorily repaired. If the item is deemed to be repairable, the repair method and procedures shall be agreed upon by the Department and fabricator prior to the work commencing.

   Depressions resulting from the removal of metal ties or other causes shall be carefully poainted with a mortar of sand and cement in the proportions, which are similar to the specific class of concrete in the unit. A sack rub finish is required on prestressed beams except for the bottom of the bottom flange and the top of the top flange. A sack rub finish is also required on sloped surfaces of box culvert end sections.

7. **Fresh Concrete Testing:** The Contractor shall be responsible for performing all fresh concrete testing in accordance with the materials manualMaterials Manual. Tests shall be documented on a DOT-54 form and submitted to the Engineer.

8. **Concrete Compressive Strength:** The Contractor shall make a minimum of one group of test cylinders for each class of concrete for each day's production, not to exceed 150 cubic yard (125 cubic meters) per group of cylinders.

   At a minimum, a group of test cylinders shall consist of the following:

   **a.** Two test cylinders are required for the 28 day compression test.

   **b.** Two additional cylinders will be required for determining concrete strength, when the Contractor desires to make delivery and obtain acceptance by the Department prior to the 28 day compression test.

   Acceptance of the precast units shall be in accordance with Section 460.3 B. The precast units will be accepted when the minimum design concrete compressive strength requirements have been met. Accepted precast units represented by that test group of cylinders may be delivered to the project and will not require the 28 day cylinder test.

   The Engineer will be responsible for breaking of all concrete cylinders for concrete compressive strength in accordance with the Materials Manual.

**Section 670.5 – Page 394 – Add the following paragraph after the first paragraph:**

Unless otherwise specified in the plans the cost for removal of existing pipe, if necessary, to facilitate the installation of new drop inlets shall be incidental to the associated drop inlet contract unit prices.

**Section 671.5 – Page 397 – Add the following paragraph to this section:**

Unless otherwise specified in the plans the cost for removal of existing pipe, if necessary, to facilitate the installation of new manholes shall be incidental to the associated manhole contract unit prices.

**Section 680.2 A – Page 399 – Delete the last sentence of the second paragraph and replace with the following:**

The percentage of material passing a No. 200 (75μm) sieve shall not exceed 2.0 percent.

**Section 720.4 – Page 405 – Delete this section and replace with the following:**

**A. Bank and Channel Protection Gabions:** Bank and channel protection gabions will be measured to the nearest 0.1 cubic yard (0.1 cubic meter). If a substitution is made, the dimensions of the bank and channel protection installed shall be equal to or greater than the dimensions specified. Payment will be based on plans quantity, unless changes are ordered in writing by the Engineer.

**B. Drainage Fabric:** Drainage fabric will be measured to the nearest square yard (square meter). The lap at joints will not be included in the measurement.

**Section 720.5 – Page 405 – Delete this section and replace with the following:**

**A. Bank and Channel Protection Gabions:** Bank and channel protection gabions will be paid for at the contract unit price per cubic yard (cubic meter). Payment will be full compensation for materials, equipment, labor, excavating, shaping and incidentals required.

**B. Drainage Fabric:** Drainage fabric will be paid for at the contract unit price per square yard (square meter). Payment will be full compensation for furnishing and installing the drainage fabric as specified. Payment will be for plan quantity unless changes are ordered in writing.

**Section 730.2 C – Page 407 – Delete the fourth sentence and replace with the following:**

If the seed is not planted within the 9 month period, the Contractor shall have the seed retested for germination, as described above, and a new certified test report shall be furnished prior to starting seeding operations.

**Section 734.3 – Page 423 – Add the following paragraph before the first paragraph:**

The Contractor shall designate an employee as Erosion Control Supervisor whose responsibility is the construction and maintenance of erosion and sediment control. This person shall be available to be reached by phone 24 hours a day, 7 days a week, and must be able to respond to emergency situations at the job site within 12 hours. The person so designated must have training and be certified by the South Dakota Department of Transportation in the area of erosion and sediment control. The name, phone number, and location of the person shall be provided to the Department at the preconstruction meeting.

**Section 734.3 B.2 – Page 424 – Delete the second sentence and replace with the following:**

The muck will be removed when the surface of the muck is at approximately one-third the height of the silt fence.

**Section 750 – Page 431 – Add the following after the second paragraph:**

In addition to the certification requirement specified in SD 416, when limestone is used, the manufacturer shall state in writing the amount thereof, the percentage of Calcium Carbonate in the limestone, and shall supply comparative test data on chemical and physical properties of the cement with and without the limestone. The comparative tests do not supersede the normal testing to confirm that the cement meets chemical and physical requirements.

**Section 800.2 D – Page 436 – Add the following sentence to the end of the fourth paragraph:**

Fine aggregate with a 14 day expansion value of 0.400 or greater shall not be used.

**Section 800.2 D – Page 436 – Add the following sentence to the end of the last paragraph:**

The expansion value of the blended sources will be used to determine the type of cement required.

**Section 800.2 F – Page 437 – Delete the last three sentences of the first paragraph and replace with the following:**

If the fineness modulus falls outside this limit the Concrete Engineer shall be notified. A new or adjusted mix design may be provided or approved. The uniformity of grading requirements do not apply to fine aggregate for Low slump Dense Concrete and Class M (I) concrete.

**Section 800.2 F – Page 437 – Delete the first sentence of the second paragraph and replace with the following:**

For determining the FM deviation from the design mix FM, the average of the five most recent FM test shall be used.

**Section 800.2 F – Page 437 – Delete the first sentence of the last paragraph and replace with the following:**

Additionally for Portland Cement Concrete Paving conforming to Section 380; the FM of the fine aggregate, as established by the mix design, will be from 2.40 to 3.10 (wide band).

**Section 810.1 B – Page 439 – Delete the sieve analysis specification for the No. 200 (75 µm) sieve and replace with the following:**

| | | |
|---|---|---|
| No. 200 (75 µm) | - - - | 0 to 25.0 |

**Section 820.2 E – Page 443 – Delete SD 218 from the list and replace with the following:**

SD 218 *

**Section 820.2 E – Page 443 – Delete SD 216 from the list and replace with the following:**

SD 216 *

**Section 820.2 E – Page 443 – Add the following to the end of this section:**

* Not required for crushed ledge rock (Quarry Stone).

**Section 821.1 A – Page 444 – Delete and replace with the following:**

**A. Burlap Cloth made from Jute or Kenaf**……AASHTO M 182

White non-woven polypropylene geotextile conforming to the following requirements may be used in lieu of burlap for horizontal applications only. This material is not to be used for curing vertical surfaces.

| Property | Test Method | Unit | Min. Ave. Roll Value |
|---|---|---|---|
| Weight | ASTM D 5261 | Oz/Sq. Yd. | 8.0 |

**Section 821.1 B – Page 444 – Add the following sentence to this Section:**

The compound shall be stored at temperatures above 35º F (2º C). Compound stored for a period in excess of six months will require resampling and testing for compliance prior to use.

**Section 821.1 D.2 – Page 444 – Delete the second sentence and replace with the following:**

Compound stored for a period in excess of six months will require resampling and testing for compliance prior to use.

**Section 870.1 A – Page 452 – Delete this section and replace with the following:**

**A. Hot Poured Elastic Joint Sealer:** The sealant shall conform to the requirements of ASTM D 6690 Type II or Type IV or be on the Departments approved products list for Joint Sealants for Asphalt Over Long Jointed Concrete Pavement.

Hot poured elastic joint sealer meeting the requirements of ASTM D 6690 Type IV shall not weigh more than 9.35 lbs/gal (1.12 kg/L).

Test methods shall conform to ASTM D 5329, except the fine aggregate used in preparing the concrete test blocks shall conform to Section 800. The Contractor shall furnish a certificate of compliance for hot poured elastic joint sealer not listed on the approved products list.

**Section 880.2 A – Page 455 – Delete this section and replace with the following:**

**A. Mineral Aggregate:** The mineral aggregate job mix formula, without the addition of hydrated lime, shall conform to the requirements shown in Table 1. The single percentage aggregate gradation established in the job mix formula for Class D, E, and G asphalt concrete mixes shall be within the limits in Table 1. The single percentage aggregate gradation established in the job mix formula for Class S asphalt concrete mixes will be the center of the gradation band in Table 1. The Class S gradation will include mineral fillers or other approved additives.

**TABLE 1**

| REQUIREMENTS | CLASS D | | CLASS E | | CLASS G | | CLASS S | |
|---|---|---|---|---|---|---|---|---|
| | TYPE 1 | TYPE 2 | TYPE 1 | TYPE 2 | TYPE 1 | TYPE 2 | TYPE 1 | TYPE 2 |
| SIEVE | PERCENT PASSING | | | | | | | |
| 1" (25.0 mm) | 100 | | 100 | | 100 | | | |
| 3/4" (19.0 mm) | 97-100 | 100 | 97-100 | 100 | 97-100 | 100 | | |
| ½" (12.5 mm) | 75-95 | 97-100 | 75-95 | 97-100 | 75-95 | 97-100 | 86-100 | 100 |
| 3/8" (9.50 mm) | | | | | | | 66-80 | 80-100 |
| No. 4 (4.75 mm) | 45-75 | 60-80 | 45-75 | 60-80 | 45-75 | 60-80 | 24-34 | 24-45 |
| No. 8 (2.36 mm) | 30-55 | 40-60 | 30-55 | 40-60 | 30-55 | 40-60 | 10-20 | 10-22 |
| No. 16 (1.18 mm) | 20-45 | 25-50 | 20-45 | 25-50 | 20-45 | 25-50 | | |
| No. 40 (425 µm) | 10-30 | 15-35 | 10-30 | 15-35 | 10-30 | 15-35 | | |
| No. 200 (75 µm) | 3.0-7.0 | 4.0-8.0 | 3.0-7.0 | 4.0-8.0 | 3.0-7.0 | 4.0-8.0 | 4.0-8.0 | 2.0-5.0 |
| Processing Required | Crushed | | Crushed | | Crushed | | Crushed | |
| Liquid Limit (max) | 25 | | 25 | | 25 | | 25 | |
| Plasticity Index, (max) | 3 | | Non-Plastic | | Non-Plastic | | Non-Plastic | |
| L.A. Abra. Loss, (max) | 45% | | 40% | | 35% | | 40% | |
| Sodium Sulfate (Soundness) (Max.) | | | | | | | | |
| +4 (4.75 mm) sieve | 15% | | 15% | | 12% | | 12% | |
| -4 (4.75 mm) sieve | 15% | | 15% | | 12% | | 12% | |
| Lightweight Particles (Max.) | | | | | | | | |
| +4 (4.75 mm) sieve | 4.5% | | 3.0% | | 1.0% | | 1.0% | |
| -4 (4.75 mm) sieve | 4.5% | | 3.0% | | 1.0% | | 1.0% | |
| Crushed Particles (Min.) | | | | | | | | |
| +4 (4.75 mm) sieve | 50% 1-FF | | 70% 2-FF | | 90% 2-FF | | 90% 2-FF | |
| * - 4 Manufactured Fines | NA | | 20% Min. | | 70% Min. | | 95% Min. | |

* - Manufactured fines shall be manufactured solely from material retained on the ¾ inch (19mm) sieve, unless the aggregate material is produced from a ledge rock source.

**Section 880.2 B.1 – Page 456 – Delete the second sentence and replace with the following:**

The material shall be fine enough that when pulverized for testing, 90 percent by dry weight will pass a No. 40 (425 µm) sieve and 60.0 percent by dry weight will pass a No. 200 (75µm) sieve.

**Section 880.2 B.2 – Page 456 – Delete the sieve analysis specification for the No. 200 (75 µm) sieve and replace with the following:**

Passing a No. 200 (75 µm) sieve ..... 65.0-100%

**Section 882.2 – Page 459 – Delete Table 1 and replace with the following:**

Table 1

| REQUIREMENT | Subbase | Gravel Cushion | Granular Bridge End Backfill | Aggregate Base Course | Limestone Ledge Rock | | Gravel Surfacing |
|---|---|---|---|---|---|---|---|
| | | | | | Base Course | Gravel Cushion | |
| SIEVE | PERCENT PASSING | | | | | | |
| 2" (50 mm) | 100 | | | | | | |
| 1" (25.0 mm) | 70-100 | | 100 | 100 | 100 | | |
| 3/4" (19.0 mm) | | 100 | 80-100 | 80-100 | 80-100 | 100 | 100 |
| ½" (12.5 mm) | | | 68-91 | 68-91 | 68-90 | | |
| No. 4 (4.75 mm) | 30-70 | 50-75 | 42-70 | 46-70 | 42-70 | 46-70 | 50-78 |
| No. 8 (2.36 mm) | 22-62 | 38-64 | 29-58 | 34-58 | 29-53 | 29-53 | 37-67 |
| No. 40 (425 µm) | 10-35 | 15-35 | 10-35 | 13-35 | 10-28 | 10-28 | 13-35 |
| No. 200 (75 µm) | 0.0-15.0 | 3.0-12.0 | 0.0-5.0 | 3.0-12.0 | 3.0-12.0 | 3.0-12.0 | 4.0-15.0 |
| Liquid Limit Max | | 25 | 25 | 25 | 25 | 25 | |
| Plasticity Index | 0-6 | 0-6 | 0-6 | 0-6 | 0-3 | 0-3 | 4-12 |
| L.A. Abra. Loss, max. | 50 | 40 | 40 | 40 | 40 | 40 | 40 |
| Foot Notes | | 2 | 1,2 | 1,2 | | | |
| Processing Required | crushed | crushed | crushed | crushed | crushed | crushed | crushed |

**Section 890.2 G – Page 465 – In the table, under TESTS ON RESIDUE FROM DISTILLATION TESTS, add the following after Elastic Recovery @ 50ºF (10ºC):**

(see Note 4)

**Section 890.2 G – Page 465 – Add the following after Note 3:**

Note 4: The Elastic Recovery test shall be in accordance with AASHTO T301, except that the residue will be obtained by distillation, not oven evaporation. The distillation temperature shall be as recommended by the emulsion manufacturer.

**Section 972.2 B – Page 479 – Delete the second paragraph and replace with the following:**

For bolts that are 1" (M24) (incl.) in diameter and less, the maximum hardness for AASHTO M164 (ASTM A325) bolts shall be 33 Rc.

**Section 972.2 C – Page 483 – Add the following paragraph before the second to last paragraph:**

Jam nuts shall conform to ASTM A563 Grade A.

**Section 972.2 C – Page 483 – Delete the first sentence of the last paragraph and replace with the following:**

Bolts and nuts shall be hot dipped galvanized in accordance with ASTM F2329 or mechanically galvanized in accordance with ASTM B695. Washers shall be hot dipped galvanized in accordance with ASTM F2329 or mechanically galvanized in accordance with ASTM B695.

**Section 972.2 D – Page 484 – Delete the fourth note under the table as denoted by "****" and replace with the following:**

******** Anchor bolts conforming to ASTM F1554 Grade 55 (380) shall satisfy Supplemental Requirement S4. Anchor bolts conforming to ASTM F1554 Grade 105 (725) shall satisfy Supplemental Requirement S5.

**Section 980.1 A.1 – Page 485 – Delete this section and replace with the following:**

1. **Quantitative Requirements:** The finished paint shall meet the following quantitative requirements:

| | WHITE | YELLOW |
|---|---|---|
| Lead, parts per million max.<br>ASTM D 3335 or X-ray fluorescence | 100 | 100 |
| Pigment, percent by weight | 60.0 - 62.5 | 58.5 – 61.0 |
| Pigment, percent by weight;<br>when tested in accordance with ASTM D 3723 (See Note 1) | 60.0 - 62.5 | 56.1 - 58.6 |

Note 1: The residual extracted pigment upon analysis shall conform to the following quantitative compositional requirements when tested in accordance with ASTM D 1394 or ASTM D 4764.

| | | |
|---|---|---|
| Titanium Dioxide ASTM D 476 Type<br>II Rutile 92% min. $Ti0_2$ tested in accordance with<br>ASTM D 1394 or ASTM D 4764 | 1.00 lb/gal min. | 0.20 lb/gal min. |
| Total Solids, percent by weight;<br>min. when tested in accordance with ASTM D 3723 | 77.0 | 76.1 |
| Non-volatile Vehicle, percent by<br>weight vehicle; min. when tested in accordance with FTMS 141c<br>(Method 4051.1) | 42.5 | 42.5 |
| Consistency. Krebs-Stormer<br>Shearing rate 200 r.p.m. Grams | 190 to 300 | 190 to 300 |
| Equivalent K.U.<br>when tested in accordance with ASTM D 562 (See Note 2) | 80 to 95 | 80 to 95 |

Note 2: The consistency of the paint shall be within the stated specification when determined a minimum 48 hours after packaging the material.

| | | | |
|---|---|---|---|
| Weight per Gallon, pounds minimum<br>when tested in accordance with<br>ASTM D 1475 (See Note 3) | Rohm & Haas<br>Dow DT 250NA | 13.85<br>13.75 | 13.30<br>13.20 |

Note 3: In addition to compliance with the minimum, the weight per gallon shall not vary more than ± 0.3 lbs / gal. between batches.

| | | |
|---|---|---|
| Fineness of Dispersion<br>Hegman Scale, min. when tested in accordance<br>with ASTM D 1210 | 2 min.<br>"B" Cleanliness" | 2 min<br>B" Cleanliness |
| Drying Time, No Pick-Up, Minutes,<br>max. when tested in accordance with ASTM D711, except the wet film thickness shall be 12.5 ± 0.5 mils. The applied film shall be immediately placed in a laboratory drying chamber maintaining the relative humidity of 65 ± 3%, the temperature 73.5 ± 3.5°F (23 ± 2°C), and air flow less than one foot (1') per minute. | 12max. | 12max. |
| Drying Time, Dry-through, Minutes | 120max. | 120max. |

max. when tested in accordance with ASTM 1640, except the wet film thickness shall be 12.5 ± 0.5 mils. The applied film shall be immediately placed in a laboratory drying chamber maintaining the relative humidity at 90 ± 3%, and the temperature 23 ± 2°C. The pressure exerted will be the minimum needed to maintain contact between the thumb and film. A reference-control paint will be run in conjunction with the candidate paint. Rohm and Haas formulation will be referenced-control paint.

Note 4: If either the candidate or reference-control paint exceeds the 120 minute maximum, then the candidate paint shall not exceed the dry time of the reference-control paint by more than 15 minutes.

Field Drying Time, Track-Free, minutes max. 2 2
When applied under the following conditions, the line shall show no visual tracking when viewed from 50 feet after driving a passenger vehicle over the line at a speed of 25-35 mph:
Fifteen mils wet film thickness
Six lbs. of glass beads per gal. of paint
Paint temperature at nozzle between 70 to 120°F
Pavement dry, pavement temperature 50 to 120°F
Relative humidity of 85% maximum

Directional Reflectance, minimum. 85 50
when applied at a wet film thickness of 15 mils and when tested in accordance with ASTM E 1347 (Illuminate C 2°)

pH, minimum. 9.80 9.80
when tested in accordance with ASTM E70

Dry Opacity, Contrast ratio, min. 0.955 0.880
when applied at a wet film thickness of 6 to 7 mils and when tested in accordance with FTMS 141c (Method 4121 Illuminate C 2°)

Volatile Organic Content (VOC), max. 115 g/liter 115 g/liter
in accordance with ASTM D 3960

Flash Point, closed cup, min. 115°F 115°F

Color: The paint shall meet the color specification limits and luminance factors listed in Tables 1 & 2 when tested in accordance with ASTM E1347 or ASTM E1349. The paint shall not discolor in sunlight and shall maintain the colors and luminance factors throughout the life of the paint. No Bayferrox 3950, iron oxides or other color enhancers will be permitted to achieve the color chromaticity coordinates.

Table 1*

| Color | Chromaticity Coordinates (corner points) | | | | | | | | Min. Luminance Factor (Y %) |
|---|---|---|---|---|---|---|---|---|---|
| | X | Y | X | Y | X | Y | X | Y | |
| White | 0.355 | 0.355 | 0.305 | 0.305 | 0.285 | 0.325 | 0.335 | 0.375 | 35 |
| Yellow | 0.560 | 0.440 | 0.490 | 0.510 | 0.420 | 0.440 | 0.460 | 0.400 | 25 |

* Daytime Color Specification Limits and Luminance Factors for Pavement Markings Material with CIE 2° Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D65

Table 2**

| ***Color*** | Chromaticity Coordinates (corner points) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 1 | | 2 | | 3 | | 4 | |
| | X | Y | X | Y | X | Y | X | Y |
| White | 0.480 | 0.410 | 0.430 | 0.380 | 0.405 | 0.405 | 0.455 | 0.435 |
| Yellow | 0.575 | 0.425 | 0.508 | 0.415 | 0.473 | 0.453 | 0.510 | 0.490 |

** Nighttime Color Specification Limits for Pavement Marking Retroreflective Material With CIE 2° Standard Observer, Observation Angle = 1.05°, Entrance Angle + 88.76° and CIE Standard Illuminant A.

**Section 981.1 – Page 489 – Delete this section and replace with the following:**

Glass beads for use with pavement marking paint shall be moisture resistant and shall meet the requirements of AASHTO M 247, Type I. The glass beads shall be without floatation properties. The glass beads shall have dual surface treatment consisting of a moisture resistant silicone treatment, and silane adherence surface treatment. The glass beads shall have a minimum of 80% true spheres. Roundness shall be tested in accordance with SD 510.

**Section 983.1 – Page 499 – Delete the third sentence of the first paragraph:**

**Section 983.1 B – Page 499 – Delete this section in it's entirety.**

**Section 983.2 B – Page 500 – Delete this section in it's entirety.**

**Section 985.1 D – Page 506 – Delete the last two sentences of the first paragraph and replace with the following:**

Vertical reinforcement shall be deformed unless otherwise noted and shall conform to the requirements of ASTM A 615/AASHTO M 31 Grade 60 (400). Circular ties, stirrups, and spiral reinforcing may be fabricated from deformed bars conforming to the requirements of ASTM A 615/AASHTO M31 Grade 60 (400). Spiral reinforcing may also be fabricated from cold drawn wire conforming to ASTM A 82 or hot rolled plain bars conforming to ASTM A 615/AASHTO M 31 Grade 60 (400).

**Section 985.1 G.4 – Page 508 – Delete the first sentence and replace with the following:**

Conductor insulation shall be colored in accordance with ICEA S-95-658, Method 1, Table K-2.

**Section 985.1 G.5 – Page 508 – Delete the first sentence and replace with the following:**

Jackets shall be polyvinyl chloride meeting UL requirements for Class 12 jackets and ICEA S-95-658, Section 4.

**Section 985.1 I.1.b – Page 508-509 – Delete the last sentence in the paragraph:**

**Section 985.1 N – Page 514 – Delete the second sentence in the fifth paragraph and replace with the following:**

The flash control circuit shall ensure that remote transfer to flashing from normal stop and go operations occurs during the end of the mainline green interval in the cycle.

**Section 985.1 N.1 and 2 – Page 515 – Delete these two sections and replace with the following sentence:**

The controller furnished shall meet current NEMA TS2 standards for controllers.

**Section 985.1 Q.7 – Page 516 – Delete and replace with the following:**

**7.** Backplates for Signal Heads: Unless otherwise stated on the plans, backplates may be either 0.050 inch (1.27 mm) thick aluminum or 0.125 inch (3.18 mm) thick polycarbonate. The polycarbonate backplates must be made up from no more than two pieces.

**Section 990.1 – Page 517 – Add the following to this section:**

**G. High Density Polyethylene Pipe:** High Density Polyethylene pipe, couplings, and fittings shall conform to the requirements of AASHTO M 294.

**Section 990.1 A.2.a – Page 517 – Delete and replace with the following:**

**a.** Portland cement shall conform to Section 750.

**Section 990.1 A.2.h – Page 517 – Delete and replace with the following:**

**h.** Flexible watertight gaskets shall conform to AASHTO M 198.

**Section 990.1 A.3 – Page 517 – Delete and replace with the following:**

3. **Concrete:** The concrete in special sections shall have a minimum compressive strength of 4000 psi (28 MPa). Special sections are those sections of concrete pipe not covered by the class requirement of AASHTO M 170, M 206, or M 207. The strength shall be determined by test cylinders or by cores.

**Section 1010.1 A – Page 519 – Add the following to the end of the first paragraph:**

Bar reinforcement shall be deformed, unless otherwise noted.

**Section 1010.1 C – Page 519 – Delete the second paragraph and replace with the following:**

Dowel bars for concrete pavements shall be epoxy coated and shall conform to AASHTO M 254 Type B except the film thickness shall be from 5 to 12 mils (0.13 to 0.30 mm) after cure. The steel cores shall be plain round bars conforming to AASHTO M 31 Grade 40 or 60, M 227 Grade 70 minimum, or M 255 Grade 75 minimum. The bars shall be the diameter shown in the plans, free from burring or other deformation restricting slippage in the concrete.

**Section 1010.1 C – Page 519 – Add the following sentence after the first sentence of the third paragraph:**

The cut ends do not have to be coated.

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION
## FOR
## PRICE SCHEDULE FOR MISCELLANEOUS ITEMS

## SEPTEMBER 26, 2013

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The following unit bid prices have been established by the Transportation Commission. These prices will be pre-entered on the Bid Schedule sheets for each project or will establish a standard price to be used whenever no project contract unit price exists for that item.

Each unit price listed is considered full compensation for the cost of labor, material, and equipment to provide the item of work and/or material, complete in place, including (but not limited to) royalty, waste of unsuitable materials, equipment rental, overhead, profit, and incidentals.

Items specified in this document may be paid for on progressive estimates without the benefit of a prior approved Construction Change Order.

Use the equivalent metric unit prices that are listed in parenthesis below the item prices on metric projects.

| Specification Section Number | Specification Section Name | Item Name | Price Per Item |
|---|---|---|---|
| 5.8 | Construction Stakes, Lines and Grades | Three-Man Survey Crew | $160.00/hour |
| 7.7 | Public Convenience and Safety | Water | $15.00/M.Gal ($3.96/cubic meter) |
| 9.3 | Payment for extra haul of Materials | Extra Haul | $0.15/ton mile ($0.10/mton kilometer) |
| 120.5 A.4. | Roadway and Drainage Exc. & Emb. | Unclassified Excavation Digouts | $8.00/cu.yd. ($10.46/cubic meter) |
| 120.5 G. | Roadway and Drainage Exc. & Emb. | Extra Haul | $0.05/cu.yd. station ($ 2.14/cubic meter station) |

| | | | |
|---|---|---|---|
| 120.5 H | Roadway and Drainage Exc. & Emb. | Water for Embankment | $15.00/M.Gal ($3.96/cubic meter) |
| 421.5 | Undercutting Pipe & Plate Pipe | Undercutting Culverts | $12.00/cu. yd. ($15.69/cubic meter) |
| 510.5 D. | Timber, Prestressed, and Steel Piles | Timber Pile Splice | $550.00/each |
| | | Steel Pile Splices (* All Weights) | Splice made after one of the pieces has been driven. |
| | | 8 HP* (HP 200) | $220.00/each |
| | | 10 HP* (HP 250) | $300.00/each |
| | | 12 HP* (HP 300) | $360.00/each |
| | | 14 HP* (HP 350) | $420.00/each |
| | | | Splice made before either of the pieces has been driven. |
| | | 8 HP* (HP 200) | $105.00/each |
| | | 10 HP* (HP 250) | $125.00/each |
| | | 12 HP* (HP 300) | $140.00/each |
| | | 14 HP* (HP 350) | $160.00/each |
| 510.5 E | Timber, Prestressed, and Steel Piles | Pile Shoes (Timber Pile) | $110.00/each |
| 510.5.H | Timber, Prestressed, and Steel Piles | Pile Tip Reinforcement (Steel Pile) | |
| | | 10” (250mm) HP Tip Reinforced | $120.00/each |
| | | 12” (300 mm) HP Tip Reinforced | $140.00/each |
| | | 14” (350 mm) HP Tip Reinforced | $170.00/each |
| 601.5 | Haul Roads | Granular Material | $12.00/ton ($13.22/mton) |

| | | | |
|---|---|---|---|
| 601.5 | Haul Roads | Asphalt Concrete (including asphalt) | $80.00/ton ($88.18/mton) |
| 601.5 | Haul Roads | Cover Aggregate | $25.00/ton ($27.56/mton) |
| 601.5 | Haul Roads | Asphalt for Prime | $700.00/ton ($771.00/mton) |
| 601.5 | Haul Roads | Asphalt (Tack, Flush & Surface Treatment) | $450.00/ton ($496.00/mton) |
| 601.5 | Haul Roads | Water | $15.00/M.Gal ($3.96/cubic meter) |
| 601.5 | Haul Roads | Dust Control Chlorides | $0.35/lb ($.77/kg) |
| 634.5 | Traffic Control | Flagging | $23.55/hour |
| 634.5 | Traffic Control | Pilot Car | $39.62/hour |

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# STATE OF SOUTH DAKOTA
# DEPARTMENT OF TRANSPORTATION

## SPECIAL PROVISION
## REGARDING
## STORM WATER DISCHARGE
## TO WATERS OF THE UNITED STATES
## WITHIN INDIAN RESERVATIONS

## MAY 3, 2013

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In compliance with the provisions of the Clean Water Act as amended by the Water Quality Act of 1987, the State of South Dakota has been issued Permit No. SDR12#### or NDR12#### "NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT FOR DISCHARGES FROM CONSTRUCTION ACTIVITIES". This permit authorizes the discharge of storm water in accordance with the conditions and requirements set forth in the permit.

The Contractor, by submitting a bid or proposal, certifies the following:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

A copy of the full version of the Environmental Protection Agency National Pollutant Discharge Elimination System General Permit for Discharges from Large and Small Construction Activities, dated 02/16/2012 must be posted on the job site. The permit is available for downloading and printing from the US EPA website:

http://www.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

The Contractor may also obtain a printed copy of the permit from the SDDOT Project Development office or from the SDDOT Area Office assigned to this project.

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