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**DEPARTMENT OF  
TRANSPORTATION**

**DEPARTMENT OF TRANSPORTATION**

**NOTICE TO CONTRACTORS,  
PROPOSAL, SPECIAL PROVISIONS,  
CONTRACT AND CONTRACT BOND  
FOR**

**GRADING & INTERIM SURFACING**

**FEDERAL**

**PROJECT NO.**

**P-PH-PT 0025(81)158  
(PCN 04EW)**

**SD HIGHWAY 25**

**IN CLARK 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, PROJECT Q & A FORUM, 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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## NOTICE TO CONTRACTORS

Bid proposals for this project will be prepared, transmitted, and received electronically by the South Dakota Department of Transportation (SDDOT) via the South Dakota Electronic Bid System until 10 A.M. Central time, on February 19, 2025, 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 within the following requirement(s):

FIELD WORK COMPLETION: **JUNE 12, 2026**

CONSTRUCTION SCHEDULE / PROJECT MANAGEMENT:

**The project category is Category III**

**The project type is Grading**

**The geographic zone is Zone 6**

THE DBE GOAL FOR THIS PROJECT IS: **NOT SPECIFIED**

WORK TYPE FOR THIS PROJECT IS: **WORK TYPE 1**

Bidding package for the work may be obtained at:

<http://apps.sd.gov/hc65bidletting/ebslettings1.aspx#no-back-button>

An electronic version of the most recent version of the South Dakota Standard Specifications for Roads and Bridges may be obtained at <https://dot.sd.gov/doing-business/contractors/standard-specifications/2015-standard-specifications>

The electronic bid proposal must be submitted by a valid bidder as designated by their company's <https://apps.sd.gov/HC65C2C/EBS/BidAdminAuthorizationForm.pdf>. A bidding administrator will have privileges in the SDEBS to prepare bids, submit bids, and authorize additional company employees to prepare and submit bids. Additionally, a bidding administrator will be responsible for maintaining the list of authorized bidders for the company and will have the ability to add employees, remove employees, and set-up bidder identifications and passwords within the SDEBS. Bidding Administrator authorization will 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.

A bidder identification and password, coupled with a company identification previously assigned by the Department, will serve as authentication that an individual is a valid bidder for the company.

Contact information to schedule a preconstruction meeting prior to commencing with the work on this project.

Brad Letcher  
901 Dakota North PO Box 940  
Huron, SD 57350-0940  
Phone: 605/353-7140

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 **within the contract time specified** 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 performance 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 performance bond, in accordance with the terms of the specifications, within twenty (20) calendar days after the date of Notice of Award 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 of not less than \$10,000 and not more than \$100,000 for each such failure.





REV 10/11/24

INDEX OF SPECIAL PROVISIONS

PROJECT NUMBER(S): P-PH-PT 0025(81)158 PCN: 04EW

TYPE OF WORK: GRADING & INTERIM SURFACING

COUNTY: CLARK

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.

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.

Lisa Johnson is the official in charge of the Watertown Career Center for Clark County.

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

**Special Provision for Contract Time, dated 1/24/25.**

**Special Provision for Prosecution and Progress, dated 1/21/21.**

**Special Provision for Cooperation by Contractor and Department, dated 8/17/17.**

**Special Provision for On-The-Job Training Program, dated 3/10/16.**

**Agreement to Sell Materials (Terry Carson, William Hagen, Terry O Yexley and Melinda J Yexley as Trustees of the Terry and Melinda Yexley Trust).**

**Special Provision Regarding Restricted Work at Drainage Crossings or Wetlands, dated 1/15/25.**

**Special Provision for Contractor Staking with Machine Control Grading Option, dated 1/13/25.**

**List of Utilities.**

Special Provision for Steel Beam Guardrail AASHTO M 180 Designation, date 10/8/24.

Special Provision for Acknowledgment and Certification Regarding Article 3, Section 12 of the South Dakota Constitution, dated 8/24/23.

Special Provision for Buy America, dated 5/1/24.

Special Provision for Liability Insurance, dated 4/21/22.

Special Provision for Responsibility for Damage Claims, dated 4/21/22.

Special Provision for Restriction of Boycott of Israel, dated 1/31/20.  
Special Provision for Contractor Administered Preconstruction Meeting, dated 12/18/19.  
Fuel Adjustment Affidavit, DOT form 208 dated 7/15.  
Standard Title VI Assurance, dated 3/1/16.  
Special Provision For Disadvantaged Business Enterprise, dated 2/9/24.  
Special Provision For EEO Affirmative Action Requirements on Federal and Federal-Aid Construction Contracts, dated 2/5/24.  
Special Provision For Required Contract Provisions Federal-Aid Construction Contracts, Form FHWA 1273 (Rev. October 23, 2023), dated 10/18/23.  
Required Contract Provisions Federal-Aid Construction Contracts, Form FHWA 1273 (Rev. 10/23/23).  
Special Provision Regarding Minimum Wage on Federal-Aid Projects, dated 10/24/19.  
Wage and Hour Division US Department of Labor Washington DC. - US Dept. of Labor Decision Number SD20230032, dated 3/10/23.  
Special Provision for Supplemental Specifications to 2015 Standard Specifications for Roads and Bridges, dated 9/7/22.  
Special Provision for Price Schedule for Miscellaneous Items, dated 12/6/23.

Special Provision Regarding Storm Water Discharge, dated 5/8/18.  
General Permit for Storm Water Discharges Associated with Construction Activities, dated 4/1/18  
<https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterConstruction.aspx>

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
CONTRACT TIME**

**PROJECT P-PH-PT 0025(81)158, PCN 04EW  
CLARK COUNTY**

**JANUARY 24, 2025**

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**Field Work Completion**

The Contractor will complete the project by the June 12, 2026 field work completion date.

**Sta. 477+19.49 to Sta. 529+20 Calendar Day Count Completion Requirement**

The Contractor will complete all grading and base course, salvage work in the Sta. 477+19.49 to Sta. 529+20 portion of the project within 21 calendar days. The Department will begin to count calendar days when the Contractor places SD 25 traffic on the gravel detour. The Department will continue to count calendar days until the Contractor completes the work required and places SD 25 traffic back on SD 25 from Sta. 477+19.49 to Sta. 529.20.

If the Contractor does not complete the work within the calendar day completion requirement, the Department will make a disincentive assessment in the amount of \$1000 per calendar day. A contract item for incentive/disincentive pay is included in the bid schedule for the Department's use in assessing disincentive. The Department will use a negative quantity of days for assessing disincentives. The Department will count calendar days in accordance with Section 8.6 B.

**November 14, 2025 Interim Completion Requirement**

The Contractor will complete all grading, base course (salvage), base course, erosion control, permanent signing, interim surfacing (as allowed by seasonal limitations), temporary interim surfacing (as specified below), and pavement marking and restore all traffic to SD 25 by the November 14, 2025 interim completion date.

The seasonal limitation for the application of the Type 3 Cover Aggregate is September 15, 2025.

The Contractor's earth moving and interim surfacing operations will follow the requirements shown in the plans. The Contractor will apply prime oil and as much of the Type 3 cover aggregate as possible before the September 15, 2025 seasonal limitation.

The Department anticipates a portion of the project will not have the Type 3 cover aggregate applied by the September 15, 2025 seasonal limitation. The Contractor will apply dust control chlorides as a temporary interim surface on the remaining portion of the project by the November 14, 2025 interim completion date. The Contractor is responsible for all surface maintenance, except snow removal, of that portion of the project that does not have the Type 3 Cover Aggregate applied. This maintenance will include, but is not limited to, all blading and patching as deemed necessary by the Engineer to adequately maintain traffic. This maintenance will be continuous throughout the winter and spring, until the final surface is complete. The Department will not make payment for the maintenance required. The Contractor will reshape the base course surface in the spring of 2026 back to the plans shown typical section, at no additional cost to the Department.

If the contractor places prime oil but does not cover the primed areas with the asphalt surface treatment by the September 15, 2025 seasonal limitation, the Contractor will be required to re-shape and re-prime these areas in the spring of 2026 at the discretion of the Engineer and at no additional cost to the Department.

The Contractor will apply the Type 3 cover aggregate on or before the June 12, 2026 field work completion date in all areas that do not have the asphalt surface treatment applied by the seasonal limitations of 2025.

If the asphalt surface treatment cannot be completed due to seasonal limitations, the work in 2026 will be completed under traffic. Traffic control for asphalt surface treatment to be completed under traffic in 2026 in accordance with Standard Plate 634.23. The project grading/interim surfacing is expected to be completed in 2025. If the grading is not completed in 2025, and the roadway must be closed in 2026, the Contractor will be responsible for all signage and repair of the detour. If the detour is required. The Contractor will not be allowed use of the detour for completing the asphalt surface treatment in 2026.

Payment for the dust control chloride will be at the contract unit price.

The SDDOT reserves the right to eliminate the application of the Type 3 cover aggregate in the spring of 2026 on the remaining portion of the project regardless of which type of temporary interim surface selected.

If the Contractor does not complete the required work by the required interim completion date, the Department will make a disincentive assessment in the amount of \$1000 per calendar day until the required work is complete. A contract item for incentive/disincentive pay is included in the bid schedule for the Department's use in assessing disincentive. The Department will use a negative quantity of days for assessing disincentives. The Department will count calendar days in accordance with Section 8.6 B.

### **Failure to Complete on Time**

The Contractor will complete all work on the project prior to the field work completion requirement. If the Contractor does not complete all work by the field work completion requirement, the Department will assess liquidated damages in accordance with Section 8.8. The Department will assess liquidated damages for each working day the work (project) is late until the Contractor completes all field work.

In the event the Contractor does not complete all field work on time, the Department will count working days in accordance with Section 8.6 C.

### **Expected Adverse Weather Days**

The Department has provided Attachment 1 for information purposes only as a guide to bidders. This table depicts the typical number of adverse weather days expected for any given month, based on historical records. The Department will consider this project a grading project in Zone 6.

The Department will consider expected adverse weather days cumulative in nature over the time period when the Contractor is actively pursuing completion of the work. The Department will not consider adverse weather days during an extended period of time when the Contractor is not pursuing completion of the work. When considering a time extension for interim completion or field work completion of the project, the Engineer will compare the total number of expected adverse weather days against the total number of actual adverse weather days for the time period during which the work was being completed.

\* \* \* \* \*

# ATTACHMENT 1

Figure A - Expected Adverse Weather Days for South Dakota

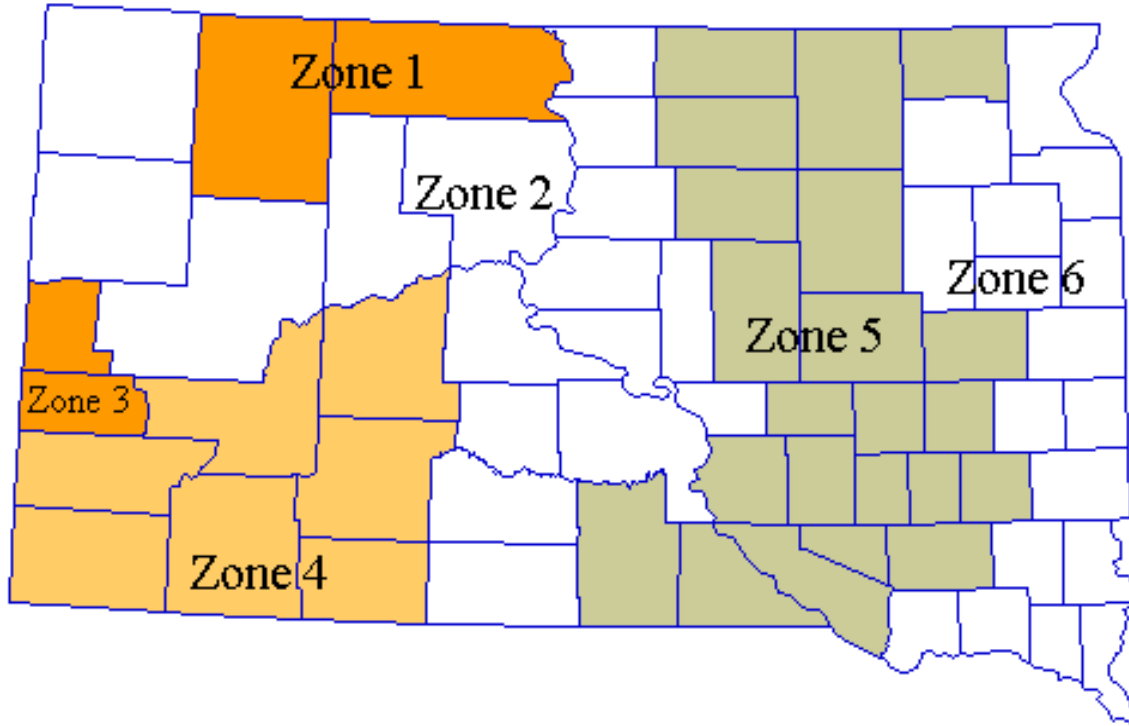


Table 1 - Expected Adverse Weather Days for South Dakota

	Grading Projects						Surfacing and Structural Projects					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Jan	18	18	16	16	22	24	18	18	15	16	21	23
Feb	19	18	12	14	19	21	19	18	12	14	19	21
Mar	12	10	9	8	11	13	12	10	9	8	10	12
Apr	6	5	8	5	6	6	5	4	6	4	4	4
May	6	6	8	6	6	6	5	5	6	4	4	5
Jun	7	6	7	6	7	8	5	5	5	4	5	6
Jul	5	5	6	5	6	7	4	4	5	3	4	5
Aug	4	4	5	4	5	6	3	3	4	3	4	4
Sep	3	3	4	3	4	5	2	2	3	2	3	4
Oct	4	3	5	3	4	4	3	3	4	2	3	3
Nov	11	9	8	7	10	12	11	9	8	7	10	11
Dec	21	19	15	14	20	22	21	19	15	14	20	22

NOTE: Includes Holidays and Weekends.

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
PROSECUTION AND PROGRESS**

**JANUARY 21, 2021**

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**Delete Section 8.3 of the specifications and replace with the following:**

**8.3 PROSECUTION AND PROGRESS** - The Contractor will include the proposed starting date with the signed contract.

The Contractor will provide sufficient materials, equipment, and labor to complete the project within the contract time set forth within the contract.

Should the Contractor discontinue the work for any reason, the Contractor will provide at least a 24-hour notice to the Engineer prior to resuming operations.

A construction schedule is required. The project category, project type, and project geographic zone are defined in the Notice to Contractors.

For the purpose of this specification, work activities will include all Contractor, subcontractor, and utility company work related to the successful completion of the project.

This work consists of scheduling and monitoring all construction work activities. The construction schedule is an integral part of the project. The construction schedule is used as a resource for the Contractor to monitor and manage work progress. The construction schedule is also used as a resource for the Department to monitor work progress and as a resource used in time extension determinations in accordance with Section 8.7 and this specification. The Contractor will ensure operations are conducted such that the construction schedule is adhered to by all contracting parties involved regardless of the amount of work subcontracted.

**A. Project Categories:**

- 1. Category I:** Represents the lowest level of the project ranking system with simple, low risk, short duration projects with minimal impacts on traffic.
  - a.** Types of projects typically include, but are not limited to, asphalt surface treatments, crack seals, rumble strip installation, bridge deck overlays, and other minor repair projects.





schedule and collaborate to include all remaining work activities for the remainder of the project, or the season if the project is a multi-year project. For multi-year projects, the same submittal requirements and timelines will apply each year.

Work activities in the construction schedule will be in chronologic order.

The Contractor will include expected adverse weather days from the Expected Adverse Weather Days chart in Section 8.3 K. of this special provision in the construction schedule. The Contractor will also include an estimate of the duration of utility company work activities identified in the plans that impact the Contractor's critical path in the construction schedule.

The Engineer will accept or may suggest revisions to the construction schedule within 5 business days of the date of receiving the construction schedule. If the Engineer does not accept or does not provide suggested revisions to the construction schedule within 5 business days of receiving the construction schedule, or a longer timeframe if mutually agreed upon by the Contractor and the Engineer, the construction schedule as submitted will be the initial accepted construction schedule.

If revisions are needed prior to acceptance of the construction schedule, the Contractor will make the required revisions and submit the revised construction schedule to the Engineer within a mutually agreed upon amount of time. The Engineer will accept or may suggest further revisions to the revised construction schedule within 2 business days of the date of receiving the revised construction schedule.

Acceptance of the construction schedule by the Engineer does not modify the contract or constitute endorsement or validation by the Engineer of the Contractor's logic, activity durations, or assumptions in creating the schedule. Acceptance of the schedule also does not relieve the Contractor of the obligation to complete all work within the contract time completion requirements.

The Contractor will preface each construction schedule with the following information:

1. Project Number;
2. PCN;
3. Contractor;
4. Original contract time allowed including phase, interim, substantial, and field work completion requirement(s) specified;

5. Type of construction schedule (startup, construction, or update); and,
6. Date of the schedule (the date the schedule was updated to) as applicable by scheduling type.

**C. Written Narrative:** The written narrative consists of:

1. Estimated starting and completion dates of each work activity;
2. Description of work to be done within each work activity including the type and quantity of equipment and labor;
3. Description of the location on the project where each work activity occurs;
4. Description of planned production rates by major work activities (example: cubic yards of excavation per day/week);
5. Description of planned workdays per week, holidays, number of shifts per day, and number of hours per shift;
6. An estimate of any periods which a work activity is idle or partially idle including the beginning and end dates of the reduced production or idle timeframe;
7. Description of expected and critical delivery dates for equipment and materials that may affect timely completion of the project;
8. Description of critical completion dates for maintaining the construction schedule; and,
9. Identification of the vendor, supplier, subcontractor, or utility company to perform the work activity including stating all assumptions made by the Contractor in the scheduling of the subcontractor's, supplier's, or utility company's work.

**D. Bar Chart Method (BCM):** The BCM construction schedule consists of:

1. **Diagram:** The Contractor must show the following in the BCM diagram:
  - a. Planned start and completion dates for each work activity;
  - b. Define and relate principle and major work activities into manageable item with durations no longer than 15 working days;

- c. Work activities related to the procurement of critical (major) materials and articles of special manufacture in the order the work is to be performed;
- d. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required;
- e. Activities related to specified activities by the Department and third parties (including, but not limited to, review of working drawings and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory);
- f. Show all critical (major) work activities that are controlling factors in the completion of the work;
- g. Show the time needed to perform each work activity and the work activity's relationship in time to other work activities; and,
- h. Show the expected time to complete all work.

In addition, the Contractor will provide enough space for each work activity to permit 2 additional plots parallel to the original time span plot. The Contractor will use one spot for revision of the planned time span and one spot for showing the actual time span achieved.

- 2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the BCM construction schedule, the Contractor will not be required to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

**E. Critical Path Method (CPM):** The CPM construction schedule consists of:

- 1. **Diagram:** The Contractor must show the following in the CPM diagram:
  - a. Baseline start and baseline completion dates for each work activity;
  - b. Duration of each work activity (stated in working days with work activities of more than 15 working days in duration broken into two or more work activities distinguished by location or some other feature);
  - c. Completion requirement(s) specified in the contract as the only constraints in the schedule logic;

- d. Work activities related to the procurement of critical (major) materials and articles of special manufacture;
  - e. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required; and,
  - f. Activities related to specified activities by the Department and third parties (including, but not limited to, review of working drawings and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory).
2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the CPM construction schedule, the Contractor will not be required to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

**F. Linear Schedule Method (LSM):** The LSM construction schedule consists of:

1. **Diagram:** The Contractor must show the following in the LSM diagram:
- a. Planned start and completion dates for each work activity;
  - b. All work activities longer than 3 days in duration, or an alternate longer or shorter duration per work activity as mutually agreed upon by the Contractor and the Engineer;
  - c. Completion requirement(s) specified in the contract as the only constraints in the schedule logic;
  - d. Work activities related to the procurement of critical (major) materials and articles of special manufacture;
  - e. Contractor work activities related to the preparation and submission of working drawings, shop plans, and other data specified for review or approval by the Engineer and resubmittal, if required; and,
  - f. Department activities related to specified activities by the Department (including, but not limited to, review of shop drawings by the Department and material quality, mix design, mix design verification, and compatibility test results from the Department's Central Materials Laboratory) and third parties.
2. **Written Narrative:** If all of the information required in Section 8.3 C. is shown in the LSM construction schedule, the Contractor will not be required

to provide a written narrative. For those items not included in the diagram, the written narrative consists of the missing information required in Section 8.3 C.

**G. Construction Schedule Updates:** The construction schedule and all construction schedule updates are intended to be a project management tool for the Contractor, Contractor's staff, subcontractors, suppliers, Department, and any utility companies involved. The Contractor will regularly review and continually maintain the construction schedule to verify actual start dates, actual finish dates of work activities, remaining duration of uncompleted work activities, and any proposed logic or time estimate revisions based on work production. The Contractor will keep the Engineer informed of the current construction schedule and all logic changes. The construction schedule and all construction schedule updates will be discussed during the weekly meetings or at a frequency agreed upon by the Contractor and Engineer.

The Contractor will submit an updated construction schedule for acceptance by the Engineer at least every month or when any of the following conditions occur:

1. A delay of 5 working days or 7 calendar days, as governed by the contract time requirements of the contract, occurs in the completion of a critical (major) work activity or which causes a change in a critical work activity for BCM schedules, causes a change in the critical path for CPM schedules, or causes work activity lines to cross in LSM schedules;
2. The actual prosecution of the work is different from that represented on the current construction schedule;
3. There is an addition, deletion, or revision of work activities caused by a contract change order; or,
4. There is a change in the construction schedule logic.

The Contractor will include all requirements listed in Section 8.3 B.1-6 on the updated construction schedule and will provide a comparison of the initial/baseline schedule to the current schedule of project completion.

When the construction schedule is updated, the Contractor will move the actual lost days (adverse weather days and adverse weather recovery days) from where the expected adverse weather days were originally shown, in accordance with Section 8.3 B, to the date the lost day or days occurred in accordance with Section 8.3 H.

For utility company work activities previously identified in the baseline construction schedule in accordance with Section 8.3 B, the following shall apply:

When the construction schedule is updated, the Contractor will move utility company work activity durations from where the work activities were originally shown, in accordance with Section 8.3 B, to the dates the utility company work activities actually occurred. The Contractor will also include any known delays due to utility company work activities in the construction schedule updates by showing the date of the lost day or days to identify the delays and show the impact to the critical path in accordance with Section 8.3 H. The Contractor will also include documentation of any attempts made by the Contractor to mitigate the delays caused by utility company work activities.

For unexpected or unplanned work activities which become an impact to the critical path not previously identified in the initial/baseline construction schedule including, but not limited to; 1) known utility company work activities, 2) utility conflicts not identified in the plans, 3) differing site conditions, and 4) significant changes in the character of work the following shall apply:

For each occurrence of a delay, the Contractor will add a new work activity in the line below and linked to the controlling work activity for the duration of the delay. The Contractor will include supporting information to document the delay and efforts to mitigate the delay.

The Engineer will accept or may suggest revisions to the updated construction schedule within 5 business days of the date of receiving the updated construction schedule. If the Engineer does not accept or does not provide suggested revisions to the updated construction schedule within 5 business days of receiving the updated construction schedule, or a longer timeframe if mutually agreed upon by the Contractor and the Engineer, the schedule as submitted will be the accepted updated construction schedule.

If revisions are needed prior to acceptance of the updated construction schedule, the Contractor will make the required revisions and submit the revised updated construction schedule to the Engineer within a mutually agreed upon amount of time. The Engineer will accept or may suggest further revisions to the revised updated construction schedule within 2 business days of the date of receiving the revised updated construction schedule.

Acceptance of the updated construction schedule by the Engineer does not modify the contract or constitute endorsement or validation by the Engineer of the Contractor's logic, activity durations, or assumptions in creating the schedule. Acceptance of the updated construction schedule also does not

relieve the Contractor of the obligation to complete all work within the contract time completion requirements.

**H. Contract Time:** The Department will count contract time in accordance with Section 8.6 and any applicable special provision for contract time.

For the purpose of contract time related to weather delays and determining the actual adverse weather days, the Department will consider the following:

Continuing construction progress on the controlling item is defined as the Contractor's progress to complete remaining work identified as the controlling item or critical path in the current construction schedule. Remaining work is the work remaining to be completed prior to the adverse weather event. For this determination, rework caused by the adverse weather event will not be considered part of the remaining work.

Lost days are defined as the actual days lost during adverse weather and adverse weather recovery days, if applicable. An adverse weather recovery day will only be considered when continuing construction progress on the controlling item is delayed due to the effects of adverse weather.

An adverse weather recovery day must meet the following criteria:

1. Days following adverse weather days needed for project conditions to improve to a condition in which the Contractor is able to or would be expected to restart work.
2. Days following adverse weather days needed for rework of previously completed work conforming to the specifications. The Department will only consider rework necessary through no fault of the Contractor.
3. Days following adverse weather days in which the project conditions result in a delay to the Contractor in continuing construction progress on the controlling item as scheduled prior to the adverse weather.

The Contractor will submit a request by the end of the following week and the Engineer will determine if a day meeting the above criteria will be considered an adverse weather recovery day. The determination will be based on the amount of time the Contractor would be expected to do or does work on continuing construction progress on the controlling item.

In accordance with Section 8.6, no adverse weather recovery day will be considered for any day on which conditions are such that the Contractor would be expected to do or does 6 hours or more of work continuing construction progress on the controlling item. A 1/2 adverse weather recovery day will be considered for any day on which conditions are such

that the Contractor would be expected to do or does at least 2 hours but less than 6 hours of work continuing construction progress on the controlling item. A full adverse weather recovery day will be considered for any day on which conditions are such that the Contractor would be expected to do or does less than 2 hours of work continuing construction progress on the controlling item.

The Engineer will determine which days are actual lost working days during each bi-weekly statement and the Contractor will account for those lost working days by moving the agreed upon lost adverse weather days forward in the construction schedule to the date the working days were lost.

#### **I. Extension of Contract Time:**

When considering a time extension request for contract time completion requirements, the Engineer will base the time extension determination on the impact to the initial/baseline construction schedule and all construction schedule updates resulting from the basis (as defined in Section 8.7) for the time extension.

Time extension requests for Category II and III projects must include a construction schedule demonstrating the project schedule impacts to the critical item, the critical path, and completion of the entire project due to items beyond the Contractor's control.

When considering a time extension for contract time completion requirements due to adverse weather, the Engineer will compare the total number of expected adverse weather days against the total number of actual lost days (adverse weather days and adverse weather recovery days) in the current accepted construction schedule.

#### **J. Construction Schedule Payment and Assessments:**

**1. Construction Schedule Payment:** Payment will be full compensation for the work prescribed in this section. The Engineer will make progress payments for the construction schedule in accordance with the following:

- a. 25% of the lump sum contract unit price, not to exceed 1% of the original contract amount will be paid after the construction schedule is accepted.
- b. Payment of the remaining portion of the lump sum contract unit price will be prorated based on the total work completed.

#### **2. Assessments:**



- a. **Construction Schedule:** If the Contractor begins work prior to submitting the construction schedule as required in 8.3 B., the Engineer will make an assessment of \$100 for Category I projects, \$250 for Category II projects, and \$500 for Category III projects for each working day until the construction schedule is submitted.

If the Contractor chooses to use the startup schedule option, the assessment will not apply until 30 working days from start of work

- b. **Construction Schedule Updates:** If the Contractor does not submit the updated construction schedule by the agreed upon date each month or as required in 8.3 G., the Engineer will make an assessment of \$100 for Category I projects, \$250 for Category II projects, and \$500 for Category III projects for each working day until the updated construction schedule is submitted.

#### **K. Expected Adverse Weather Days:**

The Department has provided Attachment 1. This table depicts the typical number of adverse weather days expected for any given month, based on historical records. The Contractor will consider expected adverse weather days cumulative in nature over the time period when the Contractor is planning to actively pursue completion of the work. The Contractor will not include adverse weather days during extended periods of time when the Contractor is not planning to pursue completion of the work. The Contractor will use the expected adverse weather days shown in the table when establishing and updating the construction schedule.

\* \* \* \* \*

## ATTACHMENT 1

Figure A. Expected Adverse Weather Days for South Dakota

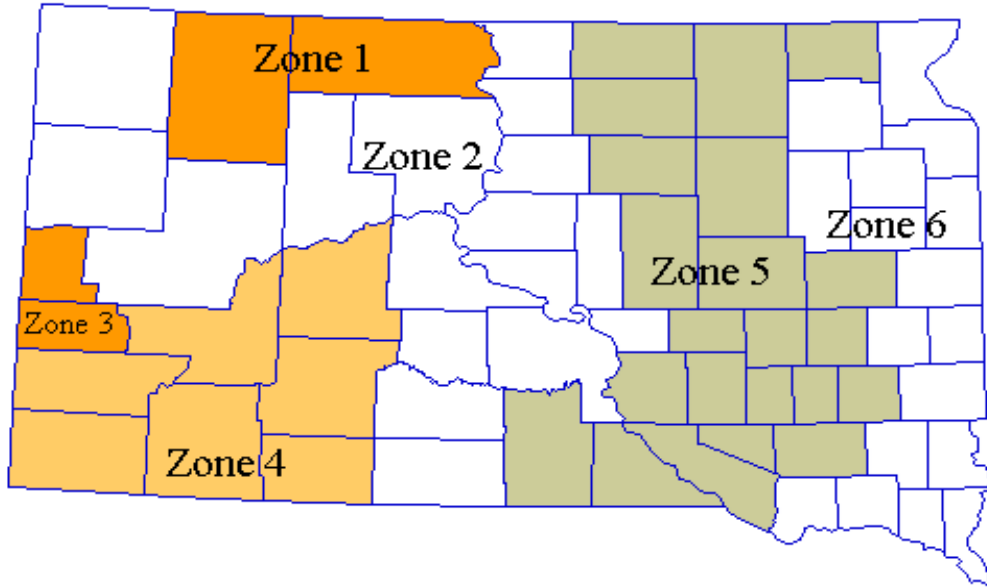


Table 1. Expected Adverse Weather Days for South Dakota

	Grading Projects						Surfacing and Structural Projects					
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
Jan	18	18	16	16	22	24	18	18	15	16	21	23
Feb	19	18	12	14	19	21	19	18	12	14	19	21
Mar	12	10	9	8	11	13	12	10	9	8	10	12
Apr	6	5	8	5	6	6	5	4	6	4	4	4
May	6	6	8	6	6	6	5	5	6	4	4	5
Jun	7	6	7	6	7	8	5	5	5	4	5	6
Jul	5	5	6	5	6	7	4	4	5	3	4	5
Aug	4	4	5	4	5	6	3	3	4	3	4	4
Sep	3	3	4	3	4	5	2	2	3	2	3	4
Oct	4	3	5	3	4	4	3	3	4	2	3	3
Nov	11	9	8	7	10	12	11	9	8	7	10	11
Dec	21	19	15	14	20	22	21	19	15	14	20	22

NOTE: Includes Holidays and Weekends.

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
COOPERATION BY CONTRACTOR AND DEPARTMENT**

**AUGUST 17, 2017**

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**Delete Section 5.5 of the specifications and replace with the following:**

**5.5 COOPERATION BY CONTRACTOR AND DEPARTMENT** - The Department will supply the Contractor with the number of sets of plans and related contract documents noted in the proposal, 1 of which the Contractor will have available on the project.

**A. General:** The Contractor will give the work the constant attention necessary to facilitate the progress, supervise, and direct all the work of the Contractor and all subcontractors to completely and efficiently perform work in accordance with the contract documents.

All subcontractors will communicate directly with the Contractor regarding questions about site readiness for construction, current activities of the Contractor and other subcontractors, and any other scheduling types of questions. The Contractor and all subcontractors will cooperate with the Engineer, inspectors, and other contractors.

**B. Management and Supervision:** The Contractor will provide the management and supervision required by this specification, and in accordance with this specification, regardless of the amount of work subcontracted.

Prior to the preconstruction meeting, the Contractor will provide the Project Engineer written designation of the Project Manager and the Project Superintendent. If the Contractor desires to make changes in designated individuals for Project Manager and Project Superintendent following the preconstruction meeting, the change must be submitted in writing or by email to the Project Engineer in advance of the change. For each crew (Contractor and subcontractor) working on the project, the crew will have a crew working superintendent/foreman.

The project category is specified in the Notice to Contractors.

The following titles, definitions, and responsibilities for Contractor and subcontractor management and supervision will be used by the Department.

## 1. Titles and Definitions:

- a. **Project Manager:** A Contractor employee that is the designated decision making authority for the Contractor and all subcontractors. For category I and II projects, the Project Manager and the Project Superintendent may be the same individual.
- b. **Project Superintendent:** A Contractor employee that is in responsible charge of the contract work and directs the daily project operations. For category I and II projects, the Contractor may designate a willing and capable subcontractor employee as the Project Superintendent.
- c. **Contractor or Subcontractor Working Superintendent/Foreman:** An employee of the Contractor or subcontractor that directs a group of employees working for the Contractor or subcontractor to complete a specific type of work the Contractor or subcontractor has contracted to complete.

## 2. Responsibilities:

- a. **Project Manager:** The Project Manager will:
  - 1) Be accessible to the Project Engineer as required in Section 5.5 C.
  - 2) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
  - 3) Schedule and lead the preconstruction meeting.
  - 4) Proactively manage the submittal and approval process.
  - 5) Manage the project scheduling and schedule updating process including leading the schedule update meetings which may be led in person or remotely including, but not limited to, discussion and identification of upcoming controlling item or items of work. This responsibility may be assigned to a willing and capable subcontractor employee for category I and II projects. Assignment of the duties to a subcontractor does not relieve the Contractor of the overall management responsibilities on the project.
  - 6) Coordinate and manage all subcontractors including, but not limited to, subcontractor approval, general performance, schedule integration, and accessibility. Contractors and subcontractors are expected to be on site and completing work according to the project

schedule throughout the life of the project such that the periods of non-construction activity are kept to a minimum.

- 7) Be the designated person with final decision making authority for the Contractor and subcontractors.
- 8) Be the designated Contractor employee to negotiate with the Project Engineer for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments. The duties of contract components with monetary or contract time implications must remain with an employee of the Contractor for all category projects.
- 9) If the Engineer determines, in his or her sole discretion, the designee is not fulfilling their assigned role for one or more of the responsibilities, the Engineer will provide written or email notice identifying the insufficient duties and the Contractor will immediately reassign those duties to a designated, willing, and capable individual, as needed, to fulfill the identified duties.

**b. Project Superintendent:** The Project Superintendent will:

- 1) Be accessible to the Project Engineer as required in Section 5.5 C.
- 2) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
- 3) Direct the daily project operations in accordance with the construction schedule.
- 4) As appropriate for the project category and at a frequency that is mutually agreed upon with the Engineer, lead construction progress meetings including look-ahead scheduling and planned activities of subcontractors.
- 5) For category III projects, prepare construction progress meeting agendas and designate a Contractor or subcontractor employee to take general notes of the meeting including, but not limited to, future action items, party responsible for future actions items, condensed summary of major issues discussed. The designated individual will distribute the notes to all key project supervision including the Department and affected utilities within a reasonable timeframe mutually agreed upon by the Project Superintendent and Project Engineer. If no timeframe is agreed upon, the designated

individual will distribute the notes no later than the end of the next business day. This practice is also recommended when construction progress meetings are held for category I & II projects.

- 6) When construction progress meetings are not held, update the Project Engineer on changes to subcontractor activities.
- 7) Oversee and direct the daily work activities of all subcontractors on the project. Contractors and subcontractors are expected to be on site and completing work according to the project schedule throughout the life of the project such that the periods of non-construction activity are kept to a minimum.
- 8) Be the designated representative for the Contractor and subcontractors with decision making authority for the Contractor and subcontractors to seek clarification and interpretation of contract document requirements from the Project Engineer.
- 9) Work through the Project Manager to negotiate with the Project Engineer for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments.
- 10) If the Engineer determines, in his or her sole discretion, the designee is not fulfilling their assigned role for one or more of the responsibilities, the Engineer will provide written or email notice identifying the insufficient duties and the Contractor will immediately reassign those duties to a designated, willing, and capable individual, as needed, to fulfill the identified duties.

**c. Contractor or Subcontractor Working Superintendent/Foreman:** A designated employee of the Contractor or subcontractor who will:

- 1) Direct a group of employees working for their respective company to complete a specific type of work their respective company has contracted to complete.
- 2) Be onsite during the progress of the type of work assigned.
- 3) Be capable of reading and understanding the plans and specifications and is experienced in and capable of accomplishing the type of work being performed.
- 4) Work with the Project Manager or the Project Superintendent or both to update the progress schedule for assigned work.

- 5) As appropriate for the project category type, participate in portions of construction progress meetings involving their respective company's specific work being performed.
- 6) Update the Project Superintendent on changes to activities when progress meetings are not held as planned.
- 7) Be the designated representative for the assigned construction staff to seek clarification and interpretation of contract document requirements from the Project Engineer.
- 8) Work through the Project Superintendent or the Project Manager or both for any contract component with monetary or contract time implications including, but not limited to; change orders, time extensions, and price adjustments.

**C. Contractor Accessibility Guidelines by Project Category:** The following are guidelines for the Project Manager and Project Superintendent to be accessible to the Project Engineer. The Contractor and Project Engineer will agree upon the specific requirements to be used during the preconstruction meeting. The Contractor and Project Engineer may agree to either a shorter or longer accessibility requirement. If no alternate set of requirements are agreed upon, the guidelines listed in this specification will be the requirements. During construction of the project, the Contractor and Project Engineer may mutually agree to revise the agreement, if necessary, in writing or by email for specific needs during the project.

#### **1. Category I and II:**

##### **a. Project Manager:**

- 1) Will be available by phone or other mutually available technology with a response time within 2 business days.

##### **b. Project Superintendent:**

- 1) May be off site with prior notice to the Project Engineer.
- 2) When off site, the Project Superintendent will be available by phone with a response time within 1 business day, or on site as scheduled.

## **2. Category III:**

### **a. Project Manager:**

- 1) Will be available by phone or other mutually available technology with a response time within 1 business day.

### **b. Project Superintendent:**

- 1) May be off site with prior notice to the Project Engineer.
- 2) When off site, the Project Superintendent will be available by phone with a response time of the same business day, or on site as scheduled.

**D. Department Accessibility Guidelines:** The following are guidelines for the Project Engineer and Engineering Supervisor to be accessible to the Contractor and are to be agreed upon during the preconstruction meeting. If weekend work is anticipated, the Contractor will provide notice to the Project Engineer by Thursday of the same week. The Contractor and Project Engineer will agree upon the specific requirements to be used during the preconstruction meeting. The Contractor and Project Engineer may agree to either a shorter or longer accessibility requirement. If no alternate set of requirements are agreed upon, the guidelines listed in this specifications will be the requirements. During construction of the project, the Contractor and Project Engineer may mutually agree to revise the agreement, if necessary, in writing or by email for specific needs during the project. The Department will submit changes in designated Department individuals, either temporarily or permanently, for Field Technician, Project Engineer, or Engineering Supervisor in writing or by email to the Contractor's designated Project Manager and Project Superintendent in advance of the change.

## **1. Category I, II, and III:**

### **a. Field Technician:**

- 1) Will to be on site during the construction of their assigned work activities and will be available to the Project Superintendent and associated Working Superintendent/Foreman while these work activities are performed.
- 2) May be off site during work activities that do not require testing or inspecting.
- 3) Will participate in progress meetings when invited by the Project Engineer.



**b. Project Engineer:**

- 1) Will be available by phone with a response time of the same business day or on site within 1 business day for Category I & II projects and within 1/2 business day for Category III projects.
- 2) When off site for more than 1 business day, the Project Engineer will notify the Project Superintendent and any Working Superintendent/Foremen and will remain available by phone with a response time of the same business day or on site within 1 business day.

**c. Engineering Supervisor:**

- 1) Will be available to Project Manager and Project Superintendent through the Project Engineer by phone or other mutually available technology with a response time of 1 business day or on site within 2 business days.

**E. Project Management Payment:** Project management will be paid for at the contract lump sum price. Payment will be full compensation for all costs associated with providing project management and performing all related duties.

Payment for project management will be made as follows:

1. 20% of contract item lump sum price upon designation of Project Manager and Project Superintendent.
2. 50% of contract item lump sum price when construction project is 25% completed.
3. 75% of contract item lump sum price when construction project is 50% completed.
4. 90% of contract item lump sum price when construction project is 75% completed.
5. 100% of contract item price when construction project is 100% completed and the Area Office has issued the Acceptance of Field Work in accordance with Section 5.16.

\* \* \* \* \*



**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR  
ON-THE-JOB TRAINING PROGRAM**

**MARCH 10, 2016**

This Training Special Provision supersedes Part II, Nondiscrimination, Section 6, Training and Promotion, paragraph “b” on Page 2 of the Required Contract Provisions Federal-Aid Construction Contracts (FHWA 1273 – Rev. 5/1/2012).

**PURPOSE**

The purpose of the On-the-Job (OJT) Program is to provide training in the highway construction industry for minority, female, and economically disadvantaged individuals, hereafter known as the target group. Pursuant to 23 Code of Federal Regulations Part 230, Subpart A, Appendix B – Training Special Provisions, this program provides for on-the-job training aimed at developing full journeyworkers in the type of trade or job classification involved.

**INTRODUCTION**

A signature from a bidder on the proposal sheet indicates that the bidder agrees to take part in the OJT Program and to follow the OJT Program Special Provision. Contractors that fail to follow the special provision will be subject to sanctions up to and including revocation of bidding privileges.

In order for the OJT Program to be successful, contractors must follow basic and uniform procedures in training such as, keeping monthly records of trainee progress towards journeyworker status and reporting trainee’s successful completion/termination from the OJT Program.

**SELECTION OF TRAINING PROGRAM**

- A. The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the South Dakota Department of Transportation (Department or SDDOT) and the Federal Highway Administration (FHWA).
- B. The Department and FHWA have currently approved one OJT program for use in South Dakota and that is the OJT program designed and implemented by the

department. Any trainee who has begun training in the previously approved OJT program will be allowed to transfer to the current approved OJT program.

- C. There may be other training programs which some Contractors might wish to utilize. If the Contractor intends to use such a program to meet the OJT requirements on a federal-aid contract with training requirements, approval or acceptance of such program shall be obtained from the Department and FHWA **prior** to beginning training on any classification covered by that program.

It is the intention of these provisions that training is to be provided in the construction crafts rather than administrative support type positions or lower level management positions. Training for any job classification not listed in the current OJT program manual may be permitted provided that significant and meaningful training is provided and prior approval is obtained by the Department Civil Rights Office and the FHWA Division office.

## **RECRUITMENT AND SELECTION PROCEDURES**

### A. Prerequisite for Trainees

1. To be qualified for enrollment in the OJT Program, a trainee applicant should be a member of one of the targeted groups (unless an alternate selection is authorized by the Department), must possess basic physical ability for the work to be performed, should have demonstrated qualities of dependability, willingness to learn, ability to understand and follow instructions and an aptitude to maintain a safe work environment.
2. No person shall be employed as a trainee in any classification in which that person has successfully completed a training course leading to journeyworker status or in which the individual has been employed as a journeyworker. The Contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records should document the findings in each case.

### B. Licenses

Truck driver trainees must possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. When an instructional permit is used in lieu of a license, the trainee must be accompanied by an operator who:

1. Holds a license corresponding to the vehicle being operated;
2. Has had at least one year of driving experience; and
3. Is occupying the seat next to the driver trainee.

C. Recruitment

1. Notices and posters setting forth the Contractor's Equal Employment Opportunity Policy and the availability of training programs will be placed in areas readily accessible to employees, applicants for employment and potential employees.
2. Training and upgrading of minorities, women, and socially and economically disadvantaged persons toward journeyworker status is the primary objective of this Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees, women and disadvantaged persons by conducting systematic and direct recruitment through public and private sources likely to yield minority and female applicants to the extent that such persons are available within a reasonable area of recruitment.
3. Full consideration will be given to upgrading current minority and female employees.

D. Selection

1. The selection and employment of an eligible person by a participating Contractor, in accord with the above Parts A, B, and C, shall qualify the person of the OJT Program.
2. Employment of trainees will be in accordance with the work force requirements of the Contractor. Each Contractor will hire and train the trainees for use in his own organization.
3. Contractors must follow the registration procedures as set out for the South Dakota Department of Transportation. An original registration form must be sent to the Department Civil Rights Office for review and approval. In the event that the Department OJT Registration Form(s) are not received by the Civil Rights Office within two weeks of the date the contractor begins significant work on the project, progress payments may be suspended. This suspension will be lifted upon receipt and approval of the form(s).
4. To be acceptable as an economically disadvantaged trainee, the applicant must meet current disadvantaged guidelines (relative to employment and income) as set out by the United States Department of Labor. These guidelines are available from South Dakota Department of Labor offices and contractors must maintain the necessary documentation on file for review by the department.
5. The Department expects that Contractors will employ minority, female, and disadvantaged persons for all trainee positions assigned through this OJT Special Provision unless such persons are not available within a

reasonable area of recruitment. The Civil Rights office may withhold approval of any trainee who is not a member of one of the targeted groups unless the Contractor can demonstrate a good faith effort to recruit and select a minority, female, or economically disadvantaged person and was unsuccessful in recruiting from the target group.

## **DEPARTMENT RESPONSIBILITIES**

The Department (Civil Rights office):

- A. Will monitor Contractor payrolls and OJT reports for payment of correct wage rates and for evidence of providing a continuing instructional process. The Civil Rights office will maintain records of Contractor participation in the program; names, and training classifications of trainees and other information necessary to assess program participation and results.
- B. Will assist contractors with trainee recruitment, will encourage minority/female recruitment sources to refer suitable applicants, and will monitor Contractor instructional efforts and record keeping.
- C. Reserves the right to do EEO (Equal Employment Opportunity) or OJT reviews on the contractor, at any time without prior notice, to ensure that trainees are getting the proper instruction from their trainer/supervisor.

## **CONTRACTOR RESPONSIBILITIES**

The Contractor:

- A. Will furnish the trainee a copy of the training program to be followed in providing the training and will provide each trainee graduate with a certificate showing the type of training satisfactorily completed.
- B. Will identify all trainees on the registration forms, training reports and project payroll by proper classification title, (see SDDOT Training program booklet) e.g. *heavy duty mechanic, form builder*, etc. **Do not use** coding letters/numbers from the wage scale. On payrolls, contractors must include the designation "trainee" following the job classification title.
- C. Will provide a monthly training report to the Department Civil Rights office within thirty (30) days of the last full pay period of the month on the form supplied by the Department and will use this same form to promptly notify the Department (within thirty days) whenever a trainee leaves the OJT program (voluntarily or involuntarily) or when a trainee completes the program.

- D. Will pay not less than the minimum wage rates as set forth in the specific requirements of the applicable training program and as noted on the copy of the registration form returned to the contractor.
- E. Assign the trainee to a skilled craftsman, foreman, supervisor or mentor who will be responsible for the day-to-day training and mentoring of the trainee and who will share the appropriate skills associated with the classification for which the trainee is enrolled. The contractor attests to providing verification, if requested, that the trainee is being trained and is gaining knowledge to achieve full journeyman status by a supervisor/trainer.
- F. Shall only count, for credit; hours spent training within the classification for which the trainee is enrolled. If such classification is not necessary for a period of time or a particular project, the contractor should attempt to continue to employ the trainee by assigning him/her other duties. A percentage of hours worked on other pieces of equipment are required to be counted in the total hours worked. Approximately 25% of other duties can be counted towards graduation.
- G. Shall count all hours worked in a training program regardless of whether the work was in South Dakota or outside the state. For trainees in required training slots, the contractor will only be reimbursed for eligible hours for work performed in South Dakota.
- H. Will provide a program orientation to the training foreman, superintendent, and OJT trainee. This orientation shall include at a minimum, a review of individual responsibilities during the training program and copies of the training syllabus for the job classification.
- I. Will instruct the trainee in safe and healthful work practices and shall ensure that the trainee is trained in facilities and other environments that are in compliance with all applicable safety and health laws and regulations of the United States and the State of South Dakota.
- J. Provide the trainee a copy of the training program to be used. The contractor must also designate the employee as a "trainee" on weekly certified payrolls. The contractor is responsible for ensuring that proper training is taking place on the job by meeting with the supervisor/foreman of the project that the trainee is working.
- K. In the event that a contractor may be unable to fill the required trainee slot during the current construction season, the Civil Rights Compliance Officer must be notified and contacted by December 1 of the current construction season. Proper documentation must be provided as to why the trainee position was not filled, such as project carry-over until next year.
- L. Certify the trainee hours and be able to show that the trainee is receiving the proper training for their classification. Failure to do so may result in project sanction.

M. Is expected to begin training trainees on a project as soon as feasible after the start of work utilizing the job classification involved. After training has started the contractor should strive to provide monitoring efforts to retain and successfully train employees.

### **ADDITIONAL APPLICABLE PROVISIONS**

- A. The minimum number of hours of training to be provided on this project is as specified in the bid documents. The Contractor shall select whatever training classification specified in the current training program that best meet his employment needs and training hours and minimum wage shall be in accord with that classification.
- B. For the purposes of bidding required trainee slots each trainee is assigned a bid quantity of 500 hours. For example if there is 1000 hours in the bidding documents, that is requiring 2 trainees. The contractor has the option to register multiple trainees to fulfill the training requirement. For example if there is a 1000 hour bid quantity, which equals 2 required trainees, the contractor could have three or more trainees registered in the program as long as there enough work for additional trainees to successfully complete the curriculum and not exceed the allowable ratio of trainees to journeyworkers (generally considered to fall between 1:10 or 1:4)
- C. Please note that 500 hours for each training slot is for bidding purposes only. If a contractor does not achieve the bid quantity on a project, there is no penalty as long as a good faith effort was made to fulfill the training requirement. Also the contractor is not limited to just the bid quantity for reimbursement. If the total hours achieved on a project is higher than the bid quantity, the contractor will be reimbursed for all hours worked. For example if the bid quantity is 1000 hours and the total hours of the trainees are 1450 hours, the contractor will receive reimbursement for 1450 hours.
- D. Registration and reporting requirements shall be as set forth in the program documents; printed instructions and this provision.
- E. Contractors using the current training program may meet the training obligations by either 1) enrolling a new trainee in one of the classifications, or 2) using a trainee currently enrolled in one of the current training program classifications, provided that person has sufficient training hours remaining to meet the minimum project requirements as specified in bid documents. In either case, prospective trainees must meet the program requirements as set forth in "Recruitment and Selection Procedures" above.
- F. The department is responsible for long term maintenance of records regarding trainee registration in various training classifications and for total trainee hours as provided by one or more contractors.



## **WAGE RATES**

- A. Minimum wage rates shall be in accord with program requirements for each classification and trainee placement within the training hours requirement. In no case shall the minimum wage be less than the common laborer classification of the applicable wage rate information contained in the bid documents. Where applicable, trainees shall be paid full fringe benefit amounts.
- B. At the completion of the OJT program, the trainee shall receive the wages of a skilled journeyworker for that specific classification.
- C. For the purpose of the OJT program, a quarter of the program is twenty-five percent (25%) of the training hours credited to the trainee for a particular classification and does not represent three months of the year. Other wage benchmarks are calculated in a similar manner.

## **BASIS OF PAYMENT**

- A. All program reimbursements will be made directly to the Contractor at the project conclusion. The Contractor will be paid, as reimbursement for the extra cost involved in providing the training, the amount per training hour bid for the item "Training" for each hour of training provided and reported.
- B. All hours of onsite and approved offsite training provided in accordance with the approved program and this provision and as shown in trainee reports and on project payrolls will be credited as trainee hours for purpose of contract payment.
- C. No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Special Provision.
- D. Liquidated damages will be assessed the contractor for failure to make a good faith effort to enroll the number of trainees necessary to meet the training requirements of this Special Provision. For each trainee slot left unfilled, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity. For each trainee for whom contractor training is determined to be inadequate and which evidences a lack of good faith to fulfill the training requirements, damages will be assessed at the rate of 100% of the bid amount for the training item times the minimum number of hours specified in the item quantity.
- E. Failure to furnish required documents and reports in the manner and time specified may result in forfeiture of all or a portion of the amounts due the Contractor for reimbursement for training.

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**STATE OF SOUTH DAKOTA  
AGREEMENT TO SELL MATERIALS**

DOT-44B  
(06/2010)

**Terry Carson**, referred to in this Agreement as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements contained in this Agreement, the receipt and sufficiency of which is acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, referred to in this Agreement as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner will sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Clark County, South Dakota**, more particularly described as follows, to wit:

**The N1/2 NW1/4 & NE1/4 of Section 10, Township 118 North, Range 56 West of the  
5<sup>th</sup> P.M., Clark County, South Dakota.**

This Agreement is intended to allow the removal of borrow soil.

The term of this Agreement will be from December 1, 2023, to the completion of Project Number:

**P-PH-PT 0025(81)158, PCN 04EW**

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, will have full and free right of ingress and egress from the public highway and will have the right to operate all necessary equipment on the real property described in this Agreement for any purpose allowed or required by this Agreement. The term "necessary equipment" will include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties will have all rights granted in this Agreement to the State and will assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

**\$0.70 (seventy cents) per cubic yard**

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:

1. The affected area will be restored for use as cropland.
2. Topsoil, to be stockpiled separately from the rest of the overburden, will be considered to consist of the upper eight inches (8") of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 3:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor will meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment at the rate of \$374.00 per acre to cover the loss of use of the real property.
6. The State will pay a one (1) time payment at the rate of \$765.00 per acre to cover crop damage. This payment will only apply if a crop is planted or present at the borrow site before topsoil removal operations commence.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
  - A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
  - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment at the rate of \$0.00 per acre to cover the cost of such re-vegetation; or
  - C.** Not applicable.
8. The Owner will remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")  
None

This Agreement will be binding on the State, the Owner, and the Owner's successors and assigns.

Owner:  
Terry Carson  
Terry Carson  
Terry Carson  
16108 SD Hwy 25  
Bradley, SD 57217  
(605) 881-2401  
Date: 10/24/23

State of South Dakota  
Department of Transportation  
By: Tanner G. Fitzke  
Printed name: TANNER G. FITZKE  
Its: Chief Materials and Surfacing Engineer  
Date: 11/21/2023

Approved as to Form:  
/s/ Dustin W. DeBoer  
Special Assistant Attorney General



OWNERS' ACKNOWLEDGMENT

State of South Dakota )  
County of Clark ) :SS

On this the 24<sup>th</sup> day of October, 2023, before me, Jeff Steen, a notary public, personally appeared Terry Carson, known to me or satisfactorily proven to be the person whose names is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Jeff P. Steen

Notary Public

My Commission Expires: 8-06-26

(Notary Seal)

STATE'S ACKNOWLEDGMENT

State of South Dakota )  
County of Hughes ) :SS

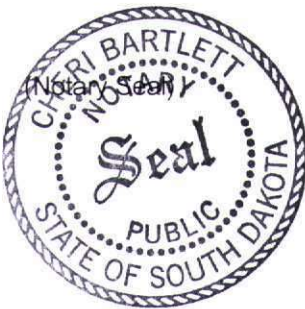
On this the 21<sup>st</sup> day of November, 2023, before me, Cheri Bartlett a notary public, personally appeared Tanner G. Fitzke, Chief Materials and Surfacing Engineer of the State of South Dakota, Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal.

Cheri Bartlett

Notary Public

My Commission Expires: 7/28/2024



**ACKNOWLEDGMENT AND CERTIFICATION REQUIRED BY EXECUTIVE ORDER  
2023-13**

**Section 1 Definitions.** The words used in this Certification shall mean:

1.1 "Contractor," any natural person or entity that is a party to a contract with a state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor.

1.2 "State," any state agency, authority, bureau, board, commission, department or institution of the State of South Dakota that is controlled by the Governor.

1.3 "Contract," any type of agreement with the State, regardless of what the agreement may be called.

**Section 2. Acknowledgment and Certification.** The Contractor acknowledges and certifies that the following information is correct:

2.1 The Contractor understands Article 3, Section 12 of the South Dakota Constitution, has had the opportunity to seek independent legal advice if desired, and no Contracts between the Contractor and the State are made in contravention of the prohibition set forth in Article 3, Section 12.

2.2 It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate the Contract.

2.3 The Contractor further agrees to provide immediate written notice to the State if during the term of the Contract the Contractor no longer complies with this certification. The Contractor also agrees such noncompliance may be grounds for termination of the Contract.

Dated 11/21, 2023.

Contractor: Terry Carson

By: \_\_\_\_\_

Printed Name: Terry Carson

Title: \_\_\_\_\_

**STATE OF SOUTH DAKOTA  
AGREEMENT TO SELL MATERIALS**

DOT-44B  
(06/2010)

**William J. Hagen**, referred to in this Agreement as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements contained in this Agreement, the receipt and sufficiency of which is acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, referred to in this Agreement as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner will sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Clark County, South Dakota**, more particularly described as follows, to wit:

**The NE1/4 of Section 22, Township 119 North, Range 56 West of the 5<sup>th</sup> P.M.,  
Clark County, South Dakota.**

This Agreement is intended to allow the removal of **borrow soil**.

The term of this Agreement will be from **December 1, 2023**, to the completion of Project Number:

**P-PH-PT 0025(81)158, PCN 04EW**

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, will have full and free right of ingress and egress from the public highway and will have the right to operate all necessary equipment on the real property described in this Agreement for any purpose allowed or required by this Agreement. The term "necessary equipment" will include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties will have all rights granted in this Agreement to the State and will assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

**\$0.60 (sixty cents) per cubic yard**


The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.


The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:



1. The affected area will be restored for use as cropland.
2. Topsoil, to be stockpiled separately from the rest of the overburden, will be considered to consist of the upper nine inches (9") of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 3:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor will meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment at the rate of \$374.00 per acre to cover the loss of use of the cropland real property and \$260.00 per acre to cover the loss of use of the non-cropland real property.
6. The State will pay a one (1) time payment at the rate of \$765.00 per acre to cover crop damage. This payment will only apply if a crop is planted or present at the borrow site before topsoil removal operations commence.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
  - A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
  - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment at the rate of \$0.00 per acre to cover the cost of such re-vegetation; or
  - C. Not applicable.
8. The Owner will remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")  
None

This Agreement will be binding on the State, the Owner, and the Owner's successors and assigns.

Owner:  
 William J. Hagen  
  
 William J. Hagen  
 45328 158<sup>th</sup> Street  
 South Shore, SD 57263  
 (605) 237-1137  
 Date: 11-15-23

State of South Dakota  
 Department of Transportation  
 By:   
 Printed name: TANNER G. FITZKE  
 Its: Chief Materials and Surfacing Engineer  
 Date: 11/21/2023

Approved as to Form:  
 /s/ Dustin W. DeBoer  
 Special Assistant Attorney General



OWNERS' ACKNOWLEDGMENT

State of South Dakota )  
 )  
 ) :SS  
County of Brown )

On this the 15<sup>th</sup> day of November, 2023, before me, Jeff Steen, a notary public, personally appeared William J. Hagen, known to me or satisfactorily proven to be the person whose names is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Jeff P. Steen

Notary Public

My Commission Expires: 8-06-26

(Notary Seal)

STATE'S ACKNOWLEDGMENT

State of South Dakota )  
 )  
 ) :SS  
County of Hughes )

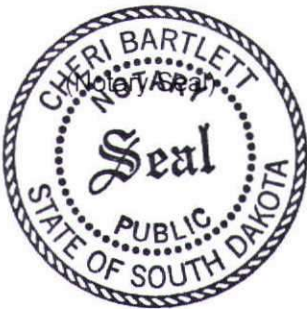
On this the 21<sup>st</sup> day of November, 2023, before me, Cheri Bartlett, a notary public, personally appeared Tanner G. Fitzke, Chief Materials and Surfacing Engineer of the State of South Dakota, Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal.

Cheri Bartlett

Notary Public

My Commission Expires: 7/28/2026



**ACKNOWLEDGMENT AND CERTIFICATION REQUIRED BY EXECUTIVE ORDER  
2023-13**

**Section 1 Definitions.** The words used in this Certification shall mean:

1.1 "Contractor," any natural person or entity that is a party to a contract with a state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor.

1.2 "State," any state agency, authority, bureau, board, commission, department or institution of the State of South Dakota that is controlled by the Governor.

1.3 "Contract," any type of agreement with the State, regardless of what the agreement may be called.

**Section 2. Acknowledgment and Certification.** The Contractor acknowledges and certifies that the following information is correct:

2.1 The Contractor understands Article 3, Section 12 of the South Dakota Constitution, has had the opportunity to seek independent legal advice if desired, and no Contracts between the Contractor and the State are made in contravention of the prohibition set forth in Article 3, Section 12.

2.2 It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate the Contract.

2.3 The Contractor further agrees to provide immediate written notice to the State if during the term of the Contract the Contractor no longer complies with this certification. The Contractor also agrees such noncompliance may be grounds for termination of the Contract.

Dated 11-15, 2023.

Contractor:

William J. Kgo

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF SOUTH DAKOTA  
AGREEMENT TO SELL MATERIALS**

DOT-44B  
(06/2010)

**Terry O. Yexley and Melinda J. Yexley, as Trustees of the Terry O. and Melinda J. Yexley Trust**, referred to in this Agreement as the "Owner" (whether one or more), for and in consideration of the mutual promises and agreements contained in this Agreement, the receipt and sufficiency of which is acknowledged, grants a **NON-EXCLUSIVE** option to the **State of South Dakota**, acting by and through its **Department of Transportation**, referred to in this Agreement as the "State," for the purpose of making the necessary tests for and purchasing borrow soil necessary for use in the construction, maintenance, and repair of highways. The Owner will sell, transfer, and convey to the State such material located in and upon the following described real property situated in **Clark County, South Dakota**, more particularly described as follows, to wit:

**The NW1/4 of Section 35, Township 119 North, Range 56 West of the 5<sup>th</sup> P.M., except Lot H-1 thereof, Clark County, South Dakota.**

This Agreement is intended to allow the removal of **borrow soil**.

The term of this Agreement will be from **December 1, 2023**, to the completion of Project Number:

**P-PH-PT 0025(81)158, PCN 04EW**

The Owner agrees that the State, and any and all servants, agents, contractors, or workers authorized by the State, will have full and free right of ingress and egress from the public highway and will have the right to operate all necessary equipment on the real property described in this Agreement for any purpose allowed or required by this Agreement. The term "necessary equipment" will include equipment required to open the pit, produce materials, blend and mix with other materials, haul materials, service equipment, and restore the pit.

The State reserves the right to assign this Agreement to any party or parties performing the contracts for which the material will be required. Upon assignment of said Agreement, said party or parties will have all rights granted in this Agreement to the State and will assume all obligations of the State under this Agreement.

The State will pay to the Owner, from monies withheld from the Contractor, for material removed from said real property at the rate of:

**\$0.70 (seventy cents) per cubic yard**

The State will restore fencing disturbed by the State's operations under this Agreement to as good a condition as the fencing was in before work started. In the event a temporary fence is required around the pit to protect livestock, such fence will be erected at the expense of the State.

The State will operate the pit and will restore the affected area on completion of operations at the pit site in accordance with the General Provisions of "SOUTH DAKOTA DEPARTMENT of TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES" and the following:



1. The affected area will be restored for use as cropland.
2. Topsoil, to be stockpiled separately from the rest of the overburden, will be considered to consist of the upper eight inches (8") of natural soil.
3. At the completion of removal operations, the State will restore areas disturbed by the State's operations at the pit site with slopes created by material removal left at 3:1 or flatter.
4. Prior to the beginning of the borrow operations, the Owner or the Owner's representative, the State's Engineer, and the State's contractor will meet and discuss the limits of work and pit operations.
5. The State will pay a one (1) time payment at the rate of \$374.00 per acre to cover the loss of use of the real property.
6. The State will pay a one (1) time payment at the rate of \$765.00 per acre to cover crop damage. This payment will only apply if a crop is planted or present at the borrow site before topsoil removal operations commence.
7. Seeding Options: Circle one of A, B, or C (Not applicable) (**Circle One**)
  - A. The State will seed and mulch the disturbed area one (1) time only to permanent seed mixtures as shown in the plans; or
  - B. The Owner will, after the State replaces the topsoil, re-vegetate or cultivate the area at a time and in a manner consistent with the Owner's farming operations and land use plan. The State will pay a one (1) time payment at the rate of \$0.00 per acre to cover the cost of such re-vegetation; or
  - C.** Not applicable.
8. The Owner will remain responsible for controlling all weeds.
9. Other conditions: (if none, enter "none")  
None

This Agreement will be binding on the State, the Owner, and the Owner's successors and assigns.

Owner:  
Terry O. and Melinda J. Yexley Trust  
Terry O. Yexley  
Terry O. Yexley - Trustee  
12044 East State Road 78 Site 298  
Moore Haven, FL 33471  
(605) 237-2561  
Date: 10-30-23

Melinda J. Yexley  
Melinda J. Yexley - Trustee  
12044 East State Road 78 Site 298  
Moore Haven, FL 33471  
(561) 286-2581  
Date: 10/30/23

State of South Dakota  
Department of Transportation  
By: Tanner G. Fitzke  
Printed name: TANNER G. FITZKE  
Its: Chief Materials and Surfacing Engineer  
Date: 11/21/2023

Approved as to Form:  
/s/ Dustin W. DeBoer  
Special Assistant Attorney General

TRUST ACKNOWLEDGMENT

State of FL )  
County of Glades :SS )

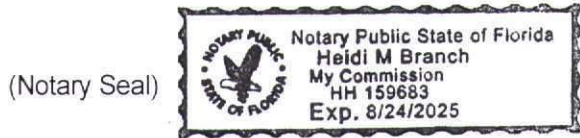
On this the 30 day of October, 2023, before me, Heidi M. Branch, a notary public, personally appeared Terry O. Yexley, who acknowledged himself to be the Trustee of the Terry O. and Melinda J. Yexley Trust, and that he as such Trustee, being authorized so to do, executed the foregoing instrument in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Heidi M Branch

Notary Public

My Commission Expires: 8/24/2025



State of FL )  
County of Glades :SS )

On this the 30 day of October, 2023, before me, Heidi M. Branch, a notary public, personally appeared Melinda J. Yexley, who acknowledged herself to be the Trustee of the Terry O. and Melinda J. Yexley Trust, and that she as such Trustee, being authorized so to do, executed the foregoing instrument in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Heidi M Branch

Notary Public

My Commission Expires: 8/24/2025



STATE'S ACKNOWLEDGMENT

State of South Dakota )  
County of Hughes ) :SS

On this the 21<sup>st</sup> day of November, 2023, before me, Cheri Bartlett, a notary public, personally appeared Tanner G. Fitzke, Chief Materials and Surfacing Engineer of the State of South Dakota, Department of Transportation, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained

In witness whereof I hereunto set my hand and official seal.

Cheri Bartlett

Notary Public

My Commission Expires: 7/28/2026





Prepared by:  
Dustin W. DeBoer  
Special Assistant Attorney General  
South Dakota Department of  
Transportation Sioux Falls Area Office  
5316 West 60<sup>th</sup> Street North  
Sioux Falls, SD 57107  
Tel. (605) 367-4970 ext 1802014

**CERTIFICATE OF TRUST**

STATE OF FLORIDA      SS  
COUNTY OF GLADES

Melinda J. Yexley, being first sworn under oath, states as follows.

1. A trust instrument which established the Terry O and Melinda J. Yexley Trust was executed on 12/23/2011. This trust is still in existence.
2. I am one of the trustees named in this trust instrument The other trustee named in the instrument is Terry O. Yexley.
3. This Certificate of Trust relates to real property in Clark County, South Dakota, legally described as follows:  
  
The **NW1/4** of Section 35, Township 119 North, Range 56 West of the 5<sup>th</sup> P M ,  
except Lot H-1 thereof, Clark County, South Dakota.
4. As trustee, I executed an "Agreement to Sell Materials" for the property described in Paragraph 3 above between the Terry O and Melinda J. Yexley Trust and the South Dakota Department of Transportation, dated 10/30/23
5. I am empowered by the provisions of the trust to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust
6. The trust has not been terminated or revoked.
7. The trust has not been amended to limit the power of the trustee to execute and deliver the instrument affecting an interest in real property described above.
8. The trust is not supervised by any court.
- 9 I do riot have actual knowledge of any facts indicating that the trust is invalid.

10. The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustee to sell, convey, or transfer title to the real property described above.

Dated this 30<sup>th</sup> day of Oct, 2023.

Melinda J. Yexley as Trustee of the Terry O. and Melinda J. Yexley Trust

Melinda Yexley  
(Signature)

Date: 10/30/23

**ACKNOWLEDGMENT**

STATE OF FL )  
COUNTY OF Glades ) :SS

On this the 30 day of October, 2023, before me, Heidi M. Branch, a notary public, personally appeared Melinda J. Yexley, who acknowledged herself to be the Trustee of the Terry O. and Melinda J. Yexley Trust, and that she, as such Trustee, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Trust by herself as Trustee.

In witness whereof I hereunto set my hand and official seal.

Heidi M Branch

Notary Public

My Commission Expires: 8/24/2025



Prepared by:  
Dustin W. DeBoer  
Special Assistant Attorney General  
South Dakota Department of  
Transportation Sioux Falls Area Office  
5316 West 60<sup>th</sup> Street North  
Sioux Falls, SD 57107  
Tel. (605) 367-4970 ext 1802014

**CERTIFICATE OF TRUST**

STATE OF FLORIDA  
COUNTY OF GLADES

:  
SS

Terry O Yexley, being first sworn under oath, states as follows.

1. A trust instrument which established the Terry O and Melinda J. Yexley Trust was executed on 12/23/2011. This trust is still in existence.
2. I am one of the trustees named in this trust instrument The other trustee named in the instrument is Melinda J Yexley
3. This Certificate of Trust relates to real property in Clark County, South Dakota, legally described as follows:  

The **NW1/4** of Section 35, Township 119 North, Range 56 West of the 5<sup>th</sup> P **M**, except Lot H-1 thereof, Clark County, South Dakota.
4. As trustee, I executed an "Agreement to Sell Materials" for the property described in Paragraph 3 above between the Terry O and Melinda J. Yexley Trust and the South Dakota Department of Transportation, dated 10/30/23
5. I am empowered by the provisions of the trust to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust
6. The trust has not been terminated or revoked.
7. The trust has not been amended to limit the power of the trustee to execute and deliver the instrument affecting an interest in real property described above.
8. The trust is not supervised by any court.
- 9 I do riot have actual knowledge of any facts indicating that the trust is invalid.



10. The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the trust instrument or amendments to it that limit the powers of the trustee to sell, convey, or transfer title to the real property described above.

Dated this 30 day of Oct, 2023.

Terry O. Yexley as Trustee of the Terry O. and Melinda J. Yexley Trust

Terry O Yexley  
(Signature)

Date: Oct 30 2023

**ACKNOWLEDGMENT**

STATE OF FL )  
COUNTY OF Glades ) :SS

On this the 30 day of October, 2023, before me, Heidi M. Branch, a notary public, personally appeared Terry O. Yexley, who acknowledged herself to be the Trustee of the Terry O. and Melinda J. Yexley Trust, and that he, as such Trustee, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Trust by himself as Trustee.

In witness whereof I hereunto set my hand and official seal.

Heidi M Branch

Notary Public

My Commission Expires: 8/24/2025

(Notary Seal)



**ACKNOWLEDGMENT AND CERTIFICATION REQUIRED BY EXECUTIVE ORDER  
2023-13**

**Section 1 Definitions.** The words used in this Certification shall mean:

1.1 "Contractor," any natural person or entity that is a party to a contract with a state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor.

1.2 "State," any state agency, authority, bureau, board, commission, department or institution of the State of South Dakota that is controlled by the Governor.

1.3 "Contract," any type of agreement with the State, regardless of what the agreement may be called.

**Section 2. Acknowledgment and Certification.** The Contractor acknowledges and certifies that the following information is correct:

2.1 The Contractor understands Article 3, Section 12 of the South Dakota Constitution, has had the opportunity to seek independent legal advice if desired, and no Contracts between the Contractor and the State are made in contravention of the prohibition set forth in Article 3, Section 12.

2.2 It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate the Contract.

2.3 The Contractor further agrees to provide immediate written notice to the State if during the term of the Contract the Contractor no longer complies with this certification. The Contractor also agrees such noncompliance may be grounds for termination of the Contract.

Dated 11/09/, 2023.

Contractor:

*Sony Yepley - 21414123 Yepley*

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
REGARDING RESTRICTED WORK AT DRAINAGE CROSSINGS OR  
WETLANDS**

**Project # P-PH-PT 0025(81)158, Clark County, PCN 04EW  
SD25 - Fm 9 N of US212 to the Clark/Day Co Line  
Grading, Interim Surfacing**

**January 15, 2025**

This project includes pending approval of a permit application filed with US Army Corps of Engineers (USACE) SD Regulatory Office. The USACE issues nationwide permits to authorize construction activities within waters of the United States as regulated by Section 404 of the Clean Water Act and USACE Permit Regulations 33 CFR 320-332.

Work will be prohibited at the drainage crossings or wetlands shown below until the Department notifies the contractor that a permit has been authorized and that work may proceed in the areas designated below. At the time of notification, the Department will include the general conditions and, if necessary, special conditions that must be complied with to in order for the authorization to be valid.

**Wetlands(s):**

<i>Station</i>	<i>Wetland</i>
65+72-66+69	WL 26a-d

It is anticipated that authorization will be received by March 7<sup>th</sup>, 2025 (51 days) and will be valid until March 18, 2026. Otherwise, if the lack of permit causes a delay or impact to the contractor's schedule, the contractor shall notify the Engineer immediately so contract time can be recorded and charged in accordance with the specifications and provisions set forth in this contract.



**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
CONTRACTOR STAKING  
WITH MACHINE CONTROL GRADING OPTION**

**PROJECT P-PH-PT 0025(81)158, PCN 04EW  
CLARK COUNTY**

**JANUARY 13, 2025**

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Delete Section 5.8 of the specifications and insert the following:

**SECTION 5.8  
CONSTRUCTION STAKES, LINES AND GRADES  
CONTRACTOR GRADE STAKING**

**A. DESCRIPTION**

The Contractor will perform all construction staking. The Contractor may elect to use grading equipment with an automated machine control system for Machine Control Grading (MCG) provided the equipment and methods used provide the same results in the finished work as conventional construction staking. The Engineer may require the Contractor to revert to conventional staking methods for all or part of the work at any point during construction if, in the Engineer's own opinion, the MCG produces unacceptable results.

The Department will not allow the Contractor to use MCG as a substitute for conventional construction staking for slope staking and slope stake referencing, paving hub staking, structure staking, miscellaneous staking, or final cross section surveying.

The staking work includes, but is not limited to, establishing or re-establishing the project centerline; establishing control points and benchmarks as needed; setting additional benchmarks as needed; perform measurement and volume calculations of all Contractor secured borrow sources, State designated borrow sources, and topsoil stockpiles; perform measurement and volume calculations for earthwork quantities; and staking right-of-way, easements, and fence. The Contractor will perform measurement and volume computations by the average end area method at the slope stake stations and plus stations, surface-to-surface method, or alternate measurement and computation method approved by the Engineer.

The Contractor will perform all construction layout and reference staking necessary for the accurate control and completion of all grading, paving, drainage, median crossovers, signing, pavement marking, permanent benchmarks, detours, fence, and all other appurtenances required for the complete construction and acceptance of the work. The layout will include, but is not limited to, staking clearing line, slope staking and slope stake referencing, grade staking (blue tops), and performing the miscellaneous staking as described in the plans and in this specification.

The Department has established horizontal and vertical control as shown on the plans. Each horizontal and vertical control point will be preserved or reset out of the work limits and available during and after construction is complete. Prior to the Department's final acceptance of the project, the Contractor will replace or reset any control that is disturbed during the construction of the project. The Contractor will provide the Department a list of the in-place control points, including coordinates and elevations relevant to the project control, at the end of the project.

The Department will provide a MCG packet to all prospective bidders consisting of a XML file containing the original surface Digital Terrain Model (DTM) and 4 design files for each new alignment on the project. The electronic design files will include, a XML file containing mainline alignment data, a XML file containing mainline design surface DTM, a DGN file containing triangles for mainline surface, and a DWG file containing triangles for mainline surface. The MCG packet will be available on the Department's electronic bid letting website when the project is advertised for bid letting.

The Contractor will convert the electronic information provided by the Department into the format required by the Contractor's MCG system. The Department makes no guarantee the information provided is directly compatible with the Contractor's MCG system.

The information shown in the plans will govern over the provided electronic information. The Contractor assumes the risk of error if the information is used for any purpose for which the information was not intended. The Contractor assumes all risk of any assumptions made regarding the electronic information.

The Contractor bears all costs, including but not limited to the cost of actual reconstruction of work, that may be incurred due to errors in application of MCG techniques. Grade elevation errors, rework resulting from errors or failures of the MCG system, and associated quantity adjustments resulting from the Contractor's activities are at no cost to the Department. Delays due to late submittals or satellite reception of signals to operate the MCG system will not result in adjustment to any contract unit prices or be justification for granting contract extensions.

The electronic information is not to be considered a representation of actual conditions to be encountered during construction. Providing the Contractor this

information does not relieve the Contractor from the responsibility of making an investigation of conditions to be encountered, including but not limited to, site visits and basing the bid on information obtained from these investigations and the Contractor's professional interpretations and judgment. The Contractor assumes the risk of error if the information is used for any purposes for which the information was not intended. Any assumptions the Contractor makes from this electronic information or manipulation of the electronic information is at the Contractor's own risk.

The Contractor will perform the staking work in accordance with the Department's Survey Manual, except as modified by this specification.

If the Contractor elects to use MCG, the Contractor will submit a comprehensive written MCG work plan to the Engineer for review prior to scheduling the preconstruction meeting. The Department will review the plan to determine if the plan conforms to the requirements of the contract.

The Contractor will include in the MCG work plan how MCG will be incorporated into other technologies used on the project. The Contractor's MCG work plan will include, but is not limited to, the following:

1. A designation of which portions of the subgrade will be completed using MCG and which portions, if any, will be completed using conventional subgrade staking methods.
2. A description of the manufacturer, model, and software version of all MCG equipment.
3. Information on the qualifications of the Contractor's staff including, but not limited to, formal training and field experience.
4. A designation of a single person as the primary contact for MCG technology issues.
5. A description of site calibration procedures.
6. A description of site calibration and checking frequency and procedures for documenting site calibration and checking.
7. A description of the Contractor's quality control procedures including procedures for checking, mechanical calibration, and maintenance of equipment.
8. A description of the frequency and types of checks the Contractor will perform to ensure the constructed subgrade conforms to the contract requirements.

## **B. MATERIALS**

The Contractor will furnish all staking materials of adequate quality for the purpose intended including all stakes, stake chasers, paint, field note books, and all other materials and equipment necessary to perform the required work.

## C. CONSTRUCTION REQUIREMENTS

1. **General:** The Department will set control points. The Contractor is responsible for the preservation of ties and references to all control points necessary for the accurate re-establishment of all base lines and centerlines shown in the plans, whether established by the Contractor or found on or adjacent to the project. The Department will also establish benchmark elevations. It is the responsibility of the Contractor to verify the accuracy of the benchmark elevations prior to use on the project.

The Engineer may check the accuracy and control of the Contractor's survey, staking work, and MCG at any time. The checks performed by the Engineer will not relieve the Contractor of the responsibility for the accuracy of the survey layout or the construction work. If the random checks show the grade is out of tolerance, the Engineer may require the Contractor to set additional stakes, at the discretion of the Engineer, at no additional cost to the Department. If the Engineer orders additional stakes, the Contractor will perform the additional staking until the Contractor can show the staking operations achieve the specified grade tolerances.

Prior to any project staking, the Contractor will run a level circuit to check the plan benchmarks the full length of the project.

The Contractor will perform all staking and MCG work under the supervision of a qualified surveyor or engineer who is experienced and competent in road and bridge construction surveying, staking, and MCG procedures. The surveyor or engineer will be available to review work, resolve problems, and make decisions in a timely manner. A crew chief, competent to perform all required surveying duties, will supervise the staking in the absence of the surveyor or engineer from the project. The Contractor will submit the qualifications and work experience history of the surveyor or engineer who will supervise the construction survey and MCG work to the Engineer for review at least 14 calendar days prior to beginning the staking or MCG work.

- a. **Conventional Construction Staking:** The Contractor will also submit the proposed starting date of the staking and the anticipated surveying work schedule.

The Contractor will furnish, set, and properly reference all stakes, references, lines, grades, and batter boards required. Minimum reference notations will be for type, location, and alignment (when there are multiple alignments in the same area). The Contractor will perform the survey and staking work in a manner consistent with standard engineering practices and approved by the Engineer.



The Contractor is solely responsible for the accuracy of the survey and staking work. The Contractor will notify the Engineer of any errors and discrepancies found in previous surveys, plans, specifications, or special provisions prior to proceeding with the survey work.

The Contractor will be responsible for the supervision of the construction staking personnel. The Contractor will correct any deficient survey or staking work that results in construction errors at no additional cost to the Department.

The Contractor will keep field notes in conventional handwritten notebooks or in a computerized form acceptable to the Engineer in a clear, orderly, and neat manner. The notebooks will become the property of the Department upon completion of the project. The notebooks will provide enough information such that quantity measurements are verifiable by the Department. Field notes are subject to inspection by the Engineer at any time.

The Contractor is required to submit any remaining required quantity calculations and notes to the Engineer no later than 60 calendar days after completion of the survey and staking work.

The Contractor will furnish stakes and wooden hubs or steel pins of sufficient length to provide a solid set in the ground. The Contractor will place half-length lath stakes or stake chasers or an alternate, acceptable to the Engineer, adjacent to or on the blue top hubs for guards. Stakes set not meeting these requirements will be reset at the Contractors expense. The Contractor will replace stakes damaged, destroyed, or made unusable at no additional expense to the Department.

- b. Machine Control Grading:** If the Contractor elects to use MCG, the Contractor will confirm the design surface DTM agrees with the contract plans, make adjustments to the design surface DTM as approved by the Engineer, and will maintain the design surface DTM for all areas of the project where MCG is used. The Contractor will also provide constructed surface DTM information to the Department in LandXML or other Engineer approved format.

The Contractor will notify the Department of any errors or discrepancies in Department provided information. The Department will determine what revisions may be required. The Department will revise the contract plans, if necessary, to address errors or discrepancies the Contractor identifies. The Department will provide the best available information related to those contract plan revisions.

The Contractor will revise the design surface DTM as required to support construction operations and to reflect any contract plan revisions the Department makes. The Contractor will perform checks to confirm the revised design surface DTM agrees with the contract plan revisions. The Contractor will provide a copy of the resultant revised design surface DTM to the Engineer in LandXML. The Department will pay for costs incurred to incorporate contract plan revisions as extra work.

The Contractor will designate a set of control points, including a total of at least 6 horizontal and vertical points or 2 per mile, whichever is greater, for site calibration for the portion of the project employing MCG. The Contractor will incorporate the Department provided control framework used for the original survey and design.

The Contractor will calibrate the site by determining the parameters governing the transformation of satellite information into the project coordinate system. The Contractor will use the control points provided by the Department for the initial site calibration. The Contractor will provide the resulting site calibration file to the Engineer before beginning subgrade construction.

In addition to the site calibration, the Contractor will perform site calibration checks at individual control points not used in the initial site calibration. At a minimum, the Contractor will check the calibration at the start of each day as described in the contractor's MCG work plan. The Contractor will report out-of-tolerance checks to the Engineer. The measured position must match the established position at each individual control point within the horizontal tolerance of  $\pm 0.1$  foot and the vertical tolerance of  $\pm 0.05$  foot.

The Contractor will construct the subgrade as the Contractor's MCG work plan indicates and in accordance with the contract requirements. The Contractor will update the plan as necessary during construction of the subgrade. The Contractor will perform periodic sensor calibrations, checks for blade wear, and other routine adjustments as required to ensure the final subgrade conforms to the contract requirements.

The Department may use Department supplied GPS rover and data collector (GPS inspection equipment) to aid in the inspection of the work. The Department supplied GPS inspection equipment will require a connection to the Contractor's Machine Control Grading (MCG) system, through the Contractor's base station, used for MCG equipment.

The Contractor will configure the radio settings of the base station to allow the Department's rover to receive corrections directly from the Contractor's base station. The radio settings must be configured properly to ensure

continuous communication across multiple brands of GPS equipment. The radio settings will be as follows:

- Frequency: 461.050 to 464.750 MHz
- Narrow Bandwidth: 12.5 kHz
- Protocol: PDL or PDL Tx
- Modulation: 4fSK
- Forward Error Correction (FEC): On
- Scrambler: Off
- Free Channel Scan (FCS): On

The connection of the Department's GPS inspection equipment will allow the Engineer the ability to positively and efficiently determine plan station, offset, and elevations in all MCG sections.

The Department will not make payment for the ability to connect or the connection to the Contractor's MCG system.

- 2. Slope Staking:** The Contractor will set slope stakes at the catch points. The slope stake reference hubs will be offset behind the slope stake. The Contractor will place slope stake reference hubs behind the slope stakes at a set distance, at the right-of-way line, or at the easement line, as approved by the Engineer.

The slope stakes will be set at 100-foot intervals on tangents and at 50-foot intervals in horizontal curves. The horizontal tolerance is  $\pm 0.2$  foot and the vertical tolerance is  $\pm 0.1$  foot. The Contractor will reference the subgrade shoulders with slope stake reference hubs set with a horizontal tolerance of  $\pm 0.2$  foot and a vertical tolerance of  $\pm 0.05$  foot.

The Contractor will retain the slope stakes and hub references until the final survey computations are completed and accepted by the Department.

Contractor will set slope stakes based on the information included in the MCG files provided by the Department.

- 3. Grade Staking:** In accordance with the requirements of this provision, the Contractor may elect to use MCG equipment or may use conventional construction staking methods for all or part of the grade staking work, excluding paving hub staking.

- a. Conventional Blue Tops:** The Contractor will set grade finishing stakes (blue tops) for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade. Where additional lanes or turnouts are to be constructed, The Contractor will set blue tops at centerline, the normal shoulder distance, and the extended shoulder distance or outside the additional lane edge.

The transverse distance between blue tops will not exceed 20 feet. The Contractor will be required to set intermediate blue tops when the transverse distance is greater than 20 feet. When intermediate blue tops are required, The Contractor will set the intermediate blue tops at locations approved by the Engineer.

The blue top grade stakes will be set at 100-foot intervals on tangents and 50-foot intervals on horizontal curves. The horizontal tolerance for blue tops is  $\pm 0.2$  foot and the vertical tolerance is  $\pm 0.02$  foot.

Contractor will set grade stakes based on the information included in the MCG files provided by the Department.

The Contractor will retain the shoulder blue tops and guards through placement of the granular material.

The Contractor will not be required to set grade stakes at the top of the base course. If the Contractor deems it necessary to place grade stakes to achieve typical section as per section 260.3 A of the specifications, the staking will be incidental to the contract unit price for base course.

- b. Machine Control Grading:** The Contractor will set conventional construction staking grade finishing stakes (blue tops) for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade (and gravel cushion for PCC paving projects) at a minimum of 500 foot intervals on mainline and slide repairs or at least one location for sections less than 500 foot long; at least two locations on side roads, side streets, and ramps; and at least one location within 100 feet of each bridge end. In addition, the Contractor will set blue tops for grade elevations and horizontal alignment on the roadway centerline and at each shoulder at the top of the subgrade (and gravel cushion for PCC paving projects) at critical transition points including, but not limited to, PC's, PT's, super elevations transition points, and other critical points required for the construction of drainage and roadway structures. The Contractor will also provide conventional construction staking grade finishing stakes (blue tops) at additional locations designated by the Engineer.

The Contractor will establish these grade staking (blue top) grades using the information included in the MCG files provided by the Department, plan typical sections, and cross sections. The Contractor will use these stakes to check the accuracy of the MCG during construction. The Contractor will notify the Engineer at least 3 calendar days before making subgrade checks to allow the Engineer to observe the process.

The Contractor will ensure at least four of any five consecutive conventional construction staking grade finishing stakes (blue tops) locations are within the horizontal and vertical tolerances specified in Section 120.3. The Contractor will notify the Engineer if more than one of any five consecutive conventional construction staking grade finishing stakes (blue tops) locations is not within the horizontal or vertical tolerance.

The Department may conduct periodic independent subgrade checks. The Department will notify the Contractor if any individual check is not within the horizontal or vertical tolerance.

**4. Miscellaneous Staking:** Miscellaneous staking includes the following work:

- a. Approach road staking and all tie-in checks. The Contractor will submit profiles and elevations of all approach roads and other tie-ins throughout the project to the Engineer at least 3 business days prior to staking;
- b. Perform measurement and computation of topsoil quantities. The Contractor will perform volume computations by the average end area method, surface-to-surface method, or alternate computation method approved by the Engineer;
- c. Special ditch staking;
- d. Staking of signs, delineators, pavement markings, guardrail, curb & gutter, light poles, conduit, junction boxes, and related items (Staking is for all aspects, i.e. detours, temporary and permanent);
- e. Right-of-way staking including easement lines and fence post panels;
- f. Pipe and storm sewer staking including drop inlets, manholes, cattle passes, and related items. If additional pipe, storm sewer, drop inlets, manholes, or cattle passes are required which are not shown on the plans, the staking will be paid in accordance with the bid item Engineer Directed Surveying/Staking;
- g. Mark limits of removal items (trees, foundations, curb & gutter, sidewalk, etc.);
- h. Detours, roadway diversions, and crossovers. (This work includes all design and staking notes required to design and stake the detour, roadway diversion, or crossover in accordance with the plan requirements. The Contractor will submit the completed design including profile and alignment and staking notes to the Engineer at least 3 business days prior to staking.);
- i. Perform measurement and computation of quantities of Contractor and State furnished borrow pits. The Contractor will perform volume computations by the average end area method, surface-to-surface method, or alternate computation method approved by the Engineer;
- j. Resetting horizontal and vertical control, if disturbed;
- k. Approach slab and sleeper slab staking;
- l. Staking of sidewalks and curb ramps; and,
- m. Staking of steps and wheel chair ramps.

The Contractor will perform the pipe staking so the pipe will fit the field conditions. The plans show only approximate pipe locations and grades. The Contractor will not install pipe prior to gaining the Engineer's approval of minor location and grade adjustments necessary for proper staking of the pipe.

The Contractor will stake the slope catch points to determine the inlet and outlet locations, set reference stakes for the inlet and outlet locations, and stake ditches and special inlet and outlet grades to ensure proper drainage. The staking of manholes and drop inlets will be included in pipe and storm sewer staking. The Contractor will stake precast cattle passes similar to drainage pipes.

The horizontal tolerance for the pipe and storm sewer staking is  $\pm 0.05$  foot and the vertical tolerance is  $\pm 0.03$  foot.

The Contractor will keep pipe staking notes on a DOT Form 214.

- 5. Engineer Directed Surveying/Staking:** The use of the engineer directed surveying/staking contract item is intended for surveying/staking not included in the plan notes and this special provision. The Contractor may use a survey crew to perform additional survey/staking work caused or required by the Department. The Engineer will use a written order to authorize the hourly engineer directed surveying/staking item and describe the surveying/staking work required of the Contractor.
  
- 6. Final Cross Section Survey:** When the contract allows an option for the measurement of final earthwork quantities by survey or by plan quantities, the Contractor and Engineer must agree to the method of measurement for final earthwork quantities prior to using this item. If this item is not used for the final measurement, the Department will remove this item by a contract change order. If the Contractor and Engineer agree to use this item for measurement of final earthwork quantities, the resulting quantities will be used for payment of the excavation quantities.

Final Cross Section Survey includes final earthwork (or terrain data) measurement and calculation of as-built quantities. The Contractor will include the blue top subgrade elevations, both shoulders, and centerline in the final earthwork (or terrain data). The Contractor will perform earthwork computations by the average end area method at the same intervals, stations, and plus stations as the slope stakes, surface-to-surface method, or alternate computation method approved by the Engineer.

#### **D. METHOD OF MEASUREMENT**

Refer to the Table of Contractor Staking in the plans for more detail on how quantities were calculated.

- 1. Slope Staking:** The Department will not measure slope staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional slope staking in writing.

The Department will consider all combinations of roadway widths as one set of slope stakes. On projects with ramps, the Department will consider ramps as roadway and include the ramps in the slope staking quantity. All additional slope staking for intersections will be incidental to the contract unit price for slope staking.

- 2. Grade Staking:** The Department will not measure grade staking. The Department will pay the plan quantity as the final quantity unless the Engineer orders additional grade staking in writing. The Department will make no adjustment to the plan quantity of grade staking regardless if the Contractor elects to use MCG on all or part of the project.

The Department will consider a two-lane roadway as one set of grade stakes. The Department will proportionately increase the plan quantity for multi-lane roadways in excess to two-lanes as shown in the table of construction staking (lane factor). For example, a three-lane roadway is equivalent to 1.5 times the quantity for a two-lane roadway. On projects requiring grade staking on ramps, the Department will consider ramps as a two-lane roadway for measurement as shown in the table of construction staking. The Department will not consider Acceleration/deceleration lanes and turning lanes for intersecting roads, and median crossovers as an additional roadway. All cost for additional grade staking for acceleration/deceleration lanes, turning lanes, intersecting roads, grade adjustments, and median crossovers will be incidental to the contract unit price for grade staking. All additional grade staking for intersections and medians will be incidental to the roadway grade staking. Any additional staking the Contractor feels necessary to complete the grade staking work is the responsibility of the contractor and will be incidental to the contract unit price for grade staking.

- 3. Miscellaneous Staking:** The Department will not measure miscellaneous staking. The Department will pay the plan quantity as the final quantity.
- 4. Engineer Directed Surveying/Staking:** The Department will measure engineer directed surveying/staking to the nearest 0.1 hour with the following restrictions:

The use of engineer directed surveying/staking will be for the work ordered by the Engineer. The measured quantity will be the actual time the survey crew is working on the project, physically performing the field survey/staking work. The Department will not include travel time for the survey crew in the measurement.

The Engineer will issue a DOT 75 ticket for the hours authorized for engineer directed surveying/staking.

5. **Final Cross Section Survey:** The Department will measure final cross section survey to the nearest 0.001 mile for the plan earthwork balances requiring a final survey to determine as-built unclassified excavation quantities. The Engineer will determine which balances (if any) require a final survey during construction. The plan quantity will be the length of the project mainline. This item will be decreased if the Contractor and Engineer agree to accept the plan excavation quantity prior to performing the work for any or all earthwork balances.

## **E. BASIS OF PAYMENT**

Payment for all survey items will be considered full compensation for furnishing all necessary personnel, vehicles, surveying equipment, software, supplies, materials, recording fees, transportation, and incidentals to accurately and satisfactorily complete the work.

The Department reserves the right to omit any of these bid items without providing compensation to the contractor if the Department deems the bid prices are unreasonable.

1. **Slope Staking:** The Department will pay slope staking at the contract unit price per mile.
2. **Grade Staking:** The Department will pay grade staking at the contract unit price per mile.
3. **Miscellaneous Staking:** The Department will pay miscellaneous staking at the contract unit price per mile.

The Department will make partial payment as follows:

- a. Upon submission of the name, experience, and qualifications of the surveyor or engineer who will supervise the staking, the proposed starting date, and the staking schedule, the Department will pay the Contractor 25 percent of the plan quantity for the miscellaneous staking.
- b. The Department will make intermediate payments based on the amount of the staking work completed.
- c. The Department will make full payment at the plan quantity for miscellaneous staking upon completion of all surveying and staking and when the Contractor has furnished all field notebooks and records to the Engineer.



The Department will not adjust the contract unit price or plan quantity for miscellaneous staking due to overruns or under runs in the other contract items.

4. **Engineer Directed Surveying/Staking:** The Department will pay engineer directed surveying/staking on an hourly basis as per the Price Schedule for Miscellaneous Items. The value listed in the Price Schedule for Miscellaneous Items includes salaries, travel time, equipment, staking supplies, payroll additive, and all incidental expenses related to providing the survey crew.
5. **Final Cross Section Survey:** The Department will pay final cross section survey at the contract unit price per mile.

\* \* \* \* \*





- STA 477+80 to 523+00 – Meanders from 75' to 100' R – Underground Electric
- STA 523+00 – Underground Electric Crossing

As some CCEC facilities cross and run along SD HWY 25 and are in existing public right-of-way, any relocation or adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction. CCEC indicated that they will not be seeking reimbursement for any work along this route performed in private easements and the work will be performed in coordination with the highway construction.

- (2) Basin Electric Power Cooperative  
1717 E. Interstate Ave.  
Bismark, ND 58501-0564

**CONTACT: STEPHEN FARNSWORTH, TELE. 701-557-58125**

Basin Electric Power Cooperative (BEPC) – BEPC has a high voltage overhead line crossing SD HWY 25 located just north of STA 147+00. This project will have no impact on the transmission structures. **BEPC requires a minimum vertical clearance of 20 feet that must be maintained to the line during construction by both equipment and material. Equipment and material should not be stored within BEPC's transmission line easement. Safety precautions near the energized line should be taken.** As BEPC's facilities are not in existing public right-of-way and the project is not anticipated to impact the facilities, no relocation or adjustment to the BEPC's facilities should be necessary.

- (3) Clark Rural Water Inc.  
PO Box 162  
Clark, SD 57225-0162

**CONTACT: TERRY KAUFMAN, TELE. 605-532-5201**

Clark Rural Water Inc. (CRWS) – CRWS has underground water lines located along and crossing SD HWY 25 both within existing public right-of-way and within private easement. CRWS has indicated that they intend to relocate their facilities within the sequence of construction but would like grading completed to the point that they are confident in the bury depth prior to installing their adjusted facilities. This request is the conflict resolution plan for all CRWS utilities within the project corridor and has been presented to the Area Engineer. The list provided below outlines areas where it is anticipated that water utility lines need to be adjusted or relocated within the right-of-way or private easements.

For the waterline inside right-of-way, it is anticipated that adjustment or relocation work will occur at the following locations: from Sta 44+00 to 48+00 (+/- 50' Lt), Sta 78+50 to 91+25 (+/- 40-75' Lt), Sta 103+25 to 103+75 (+/- 75' Lt), Sta 105+75 to 106+50 (+/- 75' Lt), Sta 180+90 to 182+25 (+/-60-75' Lt), Sta 206+00 to 208+10 (+/- 40-75' Lt), Sta 265+90 to 266+60 (+/- 85' Lt), Sta 267+60 to 269+00 (+/- 60-75' Lt), and from Sta 275+00 Lt to 281+00 (60' Lt).

For the waterline within private easement, it is anticipated that adjustment or relocation work will occur at the following locations: from Sta 55+00 to 58+00 (+/-75' Lt), Sta 66+00 to 78+50 (+/-75' Lt), Sta 91+25 Lt to 103+25 (+/-75' Lt), Sta 103+75 Lt to 105+75 (+/-75' Lt), Sta 106+50 to 118+75 (+/-90' Lt), Sta 182+25 to 184+00 (+/-75' Lt), Sta 234+00 to 237+60 (+/-80' Lt), Sta 246+00 to 255+00 (+/-80' Lt), Sta 266+60 to 267+60 (+/-75-90' Lt), Sta 355+00 to 357+40 (+/-80-85' Rt), Sta 393+00 to 394+00 (+/-90' Rt), and Sta 497+60 to 502+10 (+/-80' Rt).

Additionally, waterline crosses SD25 at 153+60 where CRWS potholed the crossing and found the line to be buried 6.33' from existing ground. CRWS anticipates adjustment will be necessary but will make a final determination once finished grade elevations can be verified during construction. A waterline also crosses SD25 at 317+15 where CRWS previously lowered the line during intersection improvements but anticipates that the meter pit and valve will need adjusted with the grading.

As some of CRWS's facilities, which cross or run along SD HWY 25, are in existing public right-of-way, any relocation or adjustment necessary for the facilities presently within the right-of-way to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction. As some of CRWS's facilities are within private easement, an agreement was executed between CRWS and SDDOT regarding reimbursement for relocation or adjustment necessary and the work will be performed in coordination with the highway construction.

(4) Interstate Telecommunications Coop. Inc.

PO Box 920

Clear Lake, SD 57226-0920

**CONTACT: JEROME SALANOVA, TELE. 605-874-8355 or 605-520-0054**

Interstate Telecommunications Coop. Inc. (ITC) – ITC has underground telecommunication lines located along and crossing SD HWY 25 on both sides of the roadway within existing public right-of-way. The locations of these lines are identified in the bullet list below. ITC believes that some of its facilities will require adjustments or relocations and intends to work with Contractor during construction. Some conflicts will be dependent on site conditions, grade stability, and Contractor methods at the time of grading operations. This request is the conflict resolution plan for all ITC utilities within the project corridor and has been presented to the Area Engineer.

- STA 0+00 to 10+90 – 75' R
- STA 53+70 – Underground Crossing
- STA 53+70 to 106+60 – Meanders 70' to 75' L
- STA 106+60 0 Underground Crossing
- STA 106+60 to 154+80 – 60' R
- STA 154+80 – Underground Crossing
- STA 154+80 to 159+30 – 65' L
- STA 193+10 to 213+30 – 75' L
- STA 213+30 – Underground Crossing
- STA 240+20 to 316+20 – Meanders 50' to 70' L
- STA 316+50 to 318+50 – Variable offsets L (4 facilities) and R (2 facilities)
- STA 316+20 – Underground Crossing (3 facilities)
- STA 318+50 – Underground Crossing
- STA 388+60 to 477+60 – Meanders 60' to 75' R
- STA 516+10 – Underground Crossing
- STA 516+10 to 529+20 – 60' L

ITC has provided highlighted construction plans identifying their utilities, which can be made available to the Contractor if desired. As ITC's facilities are in existing public right-of-way, any relocation or adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction.

- (5) NorthWestern Energy  
313 Cedar St.  
Yankton, SD 57078

**CONTACT: Alex Masloski, TELE. 605-228-0571**

NorthWestern Energy (NWE) – NWE has underground electric distribution lines that cross SD HWY 25 within the existing public right-of-way. NWE indicated that their utilities cross Hwy 25 at the intersection of SD HWY 20, approximately STA 318+40. NWE’s lines are 3 wires that are 30” - 48” deep from existing grade. They are in conduit and are on the south side of SD Hwy 20. NWE plans to work with the Contractor during the construction sequencing and will allow the Contractor to work around the conduit if precautions are taken. If it becomes necessary, NWE will be prepared to re-bore the facility. NWE also has a service that crosses SD HWY 20 at approximately STA 318+40 to 319+50 – 80’ to 130’ R. NWE plans to relocate this facility in conjunction with the construction sequencing. NWE’s conflict resolution plan has been presented to the Area Engineer. NWE’s point of contact is Alex Masloski: 605-228-0571. As NWE’s facilities are in the existing public right-of-way, any relocation or adjustment necessary to accommodate the highway construction will be accomplished at no cost to the State and performed in coordination with the highway construction.

The requirements relating to Cooperation Between Contractors, as set forth in Section 5.7 of the Standards Specifications for Roads and Bridges, 2015 edition, shall prevail throughout the limits of this project.

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
STEEL BEAM GUARDRAIL  
AASHTO M 180 DESIGNATION**

**OCTOBER 8, 2024**

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**Section 630.2 B. – Page 427 – Delete and replace with the following:**

**B. Beam Guardrail:**

For all projects let prior to January 1, 2027 the following shall apply:

Beam guardrail will conform to AASHTO M 180-18, Type I, or AASHTO M 180-23, Type I, unless the plans specify another type.

For all projects let January 1, 2027 and after the following shall apply:

Beam guardrail will conform to the most recent, at the time of the letting, version of AASHTO M 180, Type I, unless the plans specify another type.

**Section 630.2 C. – Page 427 – Delete and replace with the following:**

**C. Bolts, Nuts, and Washers:**

For all projects let prior to January 1, 2027 the following shall apply:

Bolts, nuts, and washers will be as specified in AASHTO M 180-18 or AASHTO M180-23.

For all projects let January 1, 2027 and after the following shall apply:

Bolts, nuts, and washers will be as specified in the most recent, at the time of the letting, version of AASHTO M 180.

\* \* \* \* \*





**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
ACKNOWLEDGEMENT AND CERTIFICATION REGARDING  
ARTICLE 3, SECTION 12  
OF THE SOUTH DAKOTA CONSTITUTION**

**AUGUST 24, 2023**

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In accordance with the State of South Dakota Office of the Governor Executive Order 2023-13, the following will apply to all contracts:

The Contractor acknowledges and certifies that the following information is correct:

**CERTIFICATION OF NO STATE LEGISLATOR INTEREST:**

Contractor (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this contract. By signing this contract, Contractor hereby certifies that this contract is not made in violation of the South Dakota Constitution Article 3, Section 12.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Department to terminate the contract.

The Contractor further agrees to provide immediate written notice to the Department if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

\* \* \* \* \*



**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
BUY AMERICA**

**MAY 1, 2024**

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**Section 6.9 – Page 46 – Delete and replace with the following:**

**6.9 BUY AMERICA** – Iron & steel, manufactured (composite) products, and construction materials must be produced in the United States in accordance with these Buy America requirements. Buy America preference applies to articles, materials, and supplies required to be consumed in, permanently incorporated into, or affixed to the completed project. Buy America preference does not apply to tools, equipment, and supplies such as temporary works and other temporary items brought to the project and removed at or before the final completion of the project. Temporary items are items that are not part of contract specifications, items that are not required in the design or final working drawings, and items that are removed or could be removed but allowed to remain in place if requested by the Contractor and approved by the Engineer.

**A. Certification:** The following category-based requirements will apply for each article, material, or supply.

- 1. Iron & Steel:** A statement will be included on the certification stating whether the iron or steel is of domestic or foreign origin. The Department will consider iron & steel that does not require separate certification in accordance with the Department’s Materials Manual as miscellaneous iron & steel. The Contractor will provide the Department a completed and signed Miscellaneous Materials Buy America Certificate stating the miscellaneous iron & steel required to be consumed in, permanently incorporated into, or affixed to the completed project complies with the Buy America requirements specified herein.
- 2. Manufactured (Composite) Products:** Due to an existing nationwide waiver, manufactured (composite) products currently have no specific requirements.
- 3. Construction Materials:** Construction materials and construction materials currently on the Department’s Approved Products List will be treated as “Tier 1” items in accordance with the Required Samples, Tests, and Certificates (RSTC) section of the Department’s Materials Manual. The

Contractor will provide the Department a completed and signed Miscellaneous Materials Buy America Certificate stating the construction materials required to be consumed in, permanently incorporated into, or affixed to the completed project complies with the Buy America requirements specified herein.

**B. Determination of Material Category:** The Department, in the Department's sole discretion, will classify an article, material, or supply into one of the following categories, (1) Iron & Steel, (2) Manufactured (Composite) Product, (3) Construction Material, or (4) Excluded Material. Articles, materials, and supplies will be considered to fall into only one single category of Buy America requirements. Some contract items are composed of multiple components that may fall into different categories. Individual components and composite items will be classified based on their nature when they arrive on the work site.

**1. Iron & Steel:** The Department will classify items wholly or predominantly composed of iron or steel or a combination of both as iron & steel.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50% of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**2. Manufactured (Composite) Products:** The Department will classify items not specifically classified as iron & steel, construction materials, or excluded materials which are fabricated, combined, or manufactured through a manufacturing process into a commercially available composite item as manufactured (composite) products. The Department will classify items consisting of 2 or more of the listed construction materials combined through a manufacturing process as a manufactured (composite) product. The Department will classify items consisting of 1 of the listed construction materials combined with a material not listed through a manufacturing process as a manufactured (composite) product.

**3. Construction Materials:** The Department will classify only the materials specifically listed as construction materials as construction materials.

Minor additions of articles, materials, supplies, or binding agents to a construction material will not change the categorization of the construction material.

**4. Excluded Materials:** The Department will classify cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives as excluded materials.

**C. Iron & Steel:** Structural steel and other iron and steel products will be produced in the United States. To be considered produced in the United States, all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States. The application of a coating is interpreted to mean all processes that protect or enhance the value of material or product to which it is applied; examples are epoxy coatings, galvanizing, and painting.

Buy America does not apply to iron ore, scrap, pig iron, and processed, pelletized, and reduced iron ore.

If iron ingots or steel billets produced in the United States are sent out of the country for a subsequent manufacturing process and then are brought back into the United States, the full value of the iron or steel as it reenters the country (including the original billet cost and any coatings) will be considered foreign.

If foreign iron or steel components are combined with other components into a fabricated or assembled manufactured (composite) product, the foreign iron or steel content of the manufactured (composite) product is not only the value of the foreign iron or steel components, but also the pro-rata value of the fabrication and assembly labor and overhead used in the combining the foreign iron or steel and other components into the finished manufactured (composite) product, including coatings.

**D. Manufactured (Composite) Products:** Iron and Steel components of manufactured (composite) products will comply with the Buy America requirements for iron & steel. Due to an existing nationwide waiver, manufactured (composite) products without iron and steel components currently have no specific requirements.

**E. Construction Materials:** Construction materials will be produced in the United States. Each construction material is followed by a standard for the material to be considered produced in the United States.

A construction material is an article, material, or supply that is one of the following:

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products including polyvinylchloride, composite building materials, and polymers used in fiber optic cables. All manufacturing processes, from initial combination of constituent plastic or

polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

3. Glass including optic glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
  4. Fiber optic cable including drop cable. All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
  5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
  6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
  7. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.
  8. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- F. Unavailability of Compliant Items:** If the Contractor discovers a Buy America compliant item or items does not exist or an item becomes unavailable, the Contractor will immediately notify the Department. The Contractor will furnish written documentation of the Contractor's complete efforts to obtain a compliant item. This documentation will include a complete contact log with dates and times of the Contractor's efforts to obtain a compliant item, the responses received, and any correspondence between the Contractor and potential suppliers of the item which demonstrate efforts to obtain a compliant item. If, based on review of the documentation provided, the Department determines all potential options to obtain a compliant item have been exhausted; the Department will determine the appropriate course of action.
- G. Non-Compliant Items:** If the Engineer, in the Engineer's sole discretion, determines an article, material, or supply provided to the project does not comply with these Buy America requirements but is available; the following will apply:

1. If the non-compliant item is not permanently incorporated into the completed work, the Contractor will not permanently incorporate the item and will replace the non-compliant item with an item that complies with the Buy America requirements specified herein at the Contractor's expense.
2. If the non-compliant item has been permanently incorporated into the completed project; the Engineer, in the Engineer's sole discretion, will determine if the non-compliant item must be removed and replaced including any completed work at the Contractor's expense or if the non-compliant item may remain in place in accordance with both of the following requirements:
  - a. Minor quantities of non-compliant iron & steel may be incorporated in the Department's sole discretion based on the Department's review of the Contractor's documented invoiced material costs, provided the invoiced material costs of all non-compliant iron & steel do not exceed 0.1% of the total contract amount or \$2,500, whichever is greater.
  - b. Minor quantities of non-compliant iron & steel and construction materials may be incorporated in the Department's sole discretion based on the Department's review of the Contractor's documented invoiced material costs, provided the total value of the non-compliant items does not exceed 5.0% of the total applicable costs for the project or \$1,000,000, whichever is less.

The total value of the non-compliant items will include non-compliant iron & steel and non-compliant construction materials. The total value of the non-compliant items will not include excluded materials, manufactured (composite) products, or other items within the scope of an existing Buy America waiver.

The total value of an item includes the cost of the material plus the cost of transportation to the project site, as evidenced by delivery receipt, but does not include the labor costs to assemble and install at the project site.

The total applicable project costs will be defined as the total value of materials used in the project that are subject to a domestic preference requirement, including the total value of any iron & steel, construction materials, manufactured (composite) products, and other items within the scope of an existing Buy America waiver. The total applicable project costs will not include excluded materials.

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
LIABILITY INSURANCE**

**APRIL 21, 2022**

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**Section 7.15 – Page 50 – Delete and replace with the following:**

**7.15 LIABILITY INSURANCE** - The Contractor will 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. The insurance will cover all operations under the contract, whether performed by the Contractor or by subcontractors, and will name the State of South Dakota, the Department, and the Department's officers and employees as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, the Department, and the Department's officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law. Before commencing the work, the Contractor will furnish certificates of insurance, certifying that the policies will not be changed or cancelled until 30 calendar days' written notice has been given to the Department.

The certificates of insurance will provide evidence that the Contractor carries sufficient liability insurance to protect the public from injuries sustained by reason of pursuing the work, and that Workers' Compensation Insurance meets the requirements of the South Dakota Workers' Compensation Law.

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
RESPONSIBILITY FOR DAMAGE CLAIMS**

**APRIL 21, 2022**

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**Section 7.14 – Page 50 – Delete and replace with the following:**

**7.14 RESPONSIBILITY FOR DAMAGE CLAIMS** - The Contractor will indemnify the State of South Dakota, the Department, and the State's officers and employees, from all suits, actions, or claims of any character, including suits in which the State, Department, or the State's officers and employees are sued, brought because of any injuries or damages received or sustained by any person, persons, or property arising at least in part from the Contractor's operations; 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 "Workers' Compensation Act", or any other law, ordinance, order, or decree. The Contractor's obligation to indemnify will include the payment of reasonable attorney fees and other costs of defense. So much of the money due the Contractor under and by virtue of the 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, the Contractor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid will 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 the Contractor's insurer that adequate public liability insurance and property damage insurance providing coverage for such particular claims as may be made is in force, and the Contractor provides evidence the claim has been submitted to the Contractor's insurer. 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.

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
RESTRICTION OF BOYCOTT OF ISRAEL**

**JANUARY 31, 2020**

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In accordance with the State of South Dakota Office of the Governor Executive Order 2020-01 the following will apply to all contracts unless the amount being bid is less than \$100,000:

By submitting a bid proposal for this contract, the bidder certifies and agrees the following information is correct for the bidder and all subcontractors (all tiers) and suppliers with five (5) or more employees:

The bidder, in preparing the bid proposal or in considering proposals submitted from qualified potential suppliers and subcontractors, or in the solicitation, selection, or commercial treatment of any supplier or subcontractor; has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid proposal, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Department to reject the bid proposal submitted by the bidder on this contract and terminate any contract awarded based on the bid. The bidder agrees to provide immediate written notice to the Department if, during the term of the contract awarded to the bidder, the bidder no longer complies with this certification. The bidder further agrees such noncompliance may be grounds for contract termination.

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
CONTRACTOR ADMINISTERED PRECONSTRUCTION MEETING**

**DECEMBER 18, 2019**

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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**

The Area Engineer will provide the Contractor the Authorization Form for Preconstruction Meeting (Form DOT-270) and the Contractor's Required Submittals Form (Form DOT-272) after the date of the Notice of Award and no later than 10 business days after the date of the Notice to Proceed.

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.

The Contractor's Required Submittals Form 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. The Area Engineer will update the Contractor's Required Submittals Form with any project specific requirements and cross out or delete those that do not apply prior to providing the document to the Contractor.

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.

When the Contractor has provided the Area Engineer all required submittals, except those mutually agreed upon to be provided at a later date or dates, the Contractor will schedule a preconstruction meeting with the Area Engineer.

Within 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).

The Area Engineer will edit and amend the Preconstruction Meeting Outline, as necessary, to meet the specific needs of the project. The Area Engineer will complete the project information and the Department information prior to furnishing the form to the Contractor.

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, railroad companies (if applicable), and all suppliers at least 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 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 who will be working on this project, as required by Section 5.5, or the Contractors Project Manager, as required by the Special Provision for Cooperation by Contractor and Department (if applicable), 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 the minutes to all attendees



and principle stakeholders within 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.

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**FUEL ADJUSTMENT AFFIDAVIT**

Project Number \_\_\_\_\_  
PCN \_\_\_\_\_  
County \_\_\_\_\_

*For project let using the SDEBS) and in accordance with Section 9.12, the bidder is not required to notify the Department at the time of submitting bids whether the Contractor will or will not participate in the fuel cost adjustment program. Prior to execution of the contract, the successful bidder must submit this completed form to the Department for approval. 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**

**STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES  
APPENDIX A & E**

**MARCH 1, 2016**

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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
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 will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or

is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
DISADVANTAGED BUSINESS ENTERPRISE**

**FEBRUARY 9, 2024**

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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 Department-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.
- G. Reasonable Effort:** For projects when goals are not specified, bidders are encouraged to solicit all certified DBEs listed in the appropriate work classifications in the DBE directory that have indicated in the directory they are

willing to work in the project's geographic area and also those that are listed on the plan holders list.

## **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, upon request from the Department all bidders who did not meet or exceed the goal must provide GFE documentation as indicated in Section III of this special provision.

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.

Bidders must submit GFE documentation, when requested by the Department, within 2 business days from the date bidders are contacted by the Department. Section III of this special provision provides information on the types of action bidders should make as part of their GFE to obtain DBE participation. Bidders may submit documentation with the bidding files provided all pertinent information is included. Bidders must submit any missing documentation within 2 business days from the date the Department contacts the bidder. If the bidder fails to comply with this requirement, the Department will consider the bid proposal irregular and may reject the bid proposal.



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 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 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's GFE will be reviewed, unless all bids are rejected. Unless all bids are rejected, award of the contract will be made to the lowest bidder with a responsive bid.

The lowest responsive bidder on a project with a specified goal 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 bidders must submit documentation showing compliance with the following requirements:

- A.** The bidders 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 Department of Transportation Electronic Bid System (SDEBS), SDEBS may be used to document the log of solicitation efforts for the project.

- B.** The bidders 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 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 6 calendar days by mail or 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 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 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% 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% 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 prior to and including the date of the Notice of Award. Additionally, the Department will not count toward DBE participation materials or services provided by a DBE who loses certification at any time after the date of the Notice of Award except in the case of a DBE whose ineligibility is caused solely by having exceeded the size standard.

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 of this special provision
- 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 calendar days of the date of the Acceptance of Field Work 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% 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 Department will monitor the running tally on a program basis and if reporting issues are identified, additional reporting requirements may be implemented.

The Contractor is required to report payments to DBEs twice a year from the date of the Notice to Proceed until the date of the Acceptance of Field Work. Reporting periods and deadlines for payment reporting submittals will be in accordance with the following:

<b>Reporting Period:</b>	<b>Reporting Deadline:</b>
October 1 to March 31	April 30
April 1 to September 30	October 31

For each reporting period, the Contractor is required to submit form DOT-289 listing all DBEs that participated in the contract, the payments to DBEs for that reporting period, and the total dollar amount paid to each DBE. For each reporting period after the Notice to Proceed, the Contractor will mark the form DOT-289 as "On-Going" when reporting payments to DBEs prior to the Date of the Acceptance of Field Work. Within 30 calendar days of the date of the Acceptance of Field Work and all DBE payments have been made, the Contractor is required to submit form DOT-289 and the Contractor will mark the form DOT-289 as "Final".

Each form DOT-289 must be provided to the Engineer by the reporting deadline stated above.

DBE payment are compared to commitment on form DOT-289R/C and any payment less than 90% of that commitment, without proper justification and documentation, will result in the Department assessing liquidated damages

against the contract. The Contractor's final payment will not be released until receipt of the form DOT-289 marked "Final".

## **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, 100% of the deficiency.
2. For the next \$9,000 DBE deficiency, 50% of the deficiency.
3. For the next \$10,000 DBE deficiency, 25% of the deficiency.
4. For any remaining DBE deficiency in excess of \$20,000, 10% of the deficiency.

This liquidated damage provision will not be applicable where actual payment to a DBE is within 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 issued.

## **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 Department 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 is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1,200 or applicable state law
- 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 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 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 of this special provision. In addition, if the Contractor is found to have knowingly and willingly attempted to circumvent the DBE contract provisions, the Department will not make payment for the work that was originally committed to a DBE and the Department may impose sanctions referred to in Section IV of this special provision.

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

- The DBE is being used on a contract with a “Specified Goal” however the DBE was not listed as a DBE commitment on form DOT-289R/C.
- The DBE was listed as an anticipated utilization 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**

**FEBRUARY 5, 2024**

**Notice of 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 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%	Oglala Lakota	7.9%
Buffalo	7.9%	Hanson	0.8%	Pennington	3.4%
Butte	7.9%	Harding	7.9%	Perkins	7.9%
Campbell	7.9%	Hughes	7.9%	Potter	7.9%
Charles Mix	0.8%	Hutchinson	0.8%	Roberts	1.3%
Clark	1.3%	Hyde	7.9%	Sanborn	0.8%
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. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project 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 shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

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

**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 or 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 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 7 a 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 or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting 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 unions have employment opportunities available, and maintain a record of the organizations' 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 such 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 therefor, along with whatever additional actions the Contractor may have taken.

D. Provide immediate written notification to the Director when the union or unions 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 compiled 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 Contractor's EEO policy with other 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 work force.

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 obligations.

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 goals 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, sexual orientation, gender identity, 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, helper, 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 the 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 (OCTOBER 23, 2023)**

**OCTOBER 18, 2023**

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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 three sentences of 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 and to all portions of Transportation Alternatives Program (TAP) funded projects.

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

Delete this section and replace with the following:

The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, an electronic certified weekly payroll report. The Contractor is responsible for the submission of certified payroll reports by all subcontractors. The payroll report must be submitted electronically to the Elation System website. The Contractor must submit a legally valid electronic signature. The Elation System website can be accessed by logging onto the State of South Dakota's single sign-on website at <https://mysd.sd.gov/> or can also be accessed at <https://elationsys.com/>. First time users will need to use the Promotion Code SDDOT-19. The payroll report must be submitted within fourteen (14) calendar days after the end of the workweek.

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

Delete the third sentence.

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

Delete the first paragraph and replace with the following:

Each certified weekly payroll report must include the most recent South Dakota Department of Transportation (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 Instructions for the SDDOT Statement of Compliance Form are found at <https://dot.sd.gov/doing-business/contractors/labor-compliance/certified-payrolls-let-after-6/5/19>. The SDDOT will not accept any payroll report which does not include the most recent SDDOT Statement of Compliance Form. The SDDOT Statement of Compliance Form must certify the following:

**Section IV.3.b.(4)**

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.(3) of this section.

**Section IV.4.a.(1)**

Delete the first sentence and replace with the following:

Apprentices will be permitted to work at less than the predetermined rate for the work they perform, but not less than the Common Laborer wage rate contained in the bid documents, 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 (OA), or with a State Apprenticeship Agency recognized by the OA.

\* \* \* \* \*

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

- I. General
- II. Nondiscrimination
- III. Non-segregated 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**ATTACHMENTS**

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

**II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)**

**I. GENERAL**

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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.

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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. 23 CFR 633.102(e).

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.

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) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

**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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). 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.

(4) 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 will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph



2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.



(5) *Signature*. The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification*. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention*. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents*. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers*. The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements*. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices* (1) *Rate of pay*. Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits*. Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio*. The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates*. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity*. The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, 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 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 [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

**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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* 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.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

- (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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**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. 2 CFR 180.220 and 1200.220.

**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. 2 CFR 180.320.
- 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. 2 CFR 180.325.
- 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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

\* \* \* \* \*



**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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

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**3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

\*\*\*\*\*

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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.

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

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**

**OCTOBER 24, 2019**

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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, an electronic certified weekly payroll report. The payroll report must be submitted electronically to the Elation System website. The Elation System website can be accessed by logging onto the State of South Dakota's single sign-on website at <https://mysd.sd.gov/> or can also be accessed at <https://elationsys.com/>. First time users will need to use the Promotion Code SDDOT-19. The payroll report must be submitted within fourteen (14) calendar days after the end of the workweek. The payroll reports submitted shall set out accurately and completely all the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i). Weekly transmittals must include an individually identifying number for each employee, such as the last four digits of the employee's social security number, but these weekly transmittals must not include full social security numbers or home addresses. The Contractor is responsible for the submission of certified payroll reports by all subcontractors.

Each certified weekly payroll report must include the most recent South Dakota Department of Transportation (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 Instructions for the SDDOT Statement of Compliance Form are found at <https://dot.sd.gov/doing-business/contractors/labor-compliance/certified-payrolls-let-after-6/5/19>. The SDDOT 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**

**Agency:** U.S. DOL  
**Wage Decision Number:** **SD20230032 SD1**  
**Counties:** SD Statewide  
**Wage Decision Date:** **03/10/2023 (Mod-0)**

\*SUSD2023-001 01-11-2023

**LABORERS**

**GROUP GL1**

Air Tool Operator; Common Laborer; Landscape Worker; Flagger; Pilot Car Driver;  
Trucks under 26,000 GVW; Blue-top Checker; Materials Checker

**GROUP GL2**

Mechanic Tender (Helper); Pipe Layer (except culvert); Form Builder Tender;  
Special Surface Finish Applicator; Striping

**GROUP GL3**

Asphalt Plant Tender; Pile Driver Leadsman; Form Setter; Oiler/Greaser

**GROUP GL5**

Carpenter; Form Builder

**GROUP GL6**

Concrete Finisher; Painter; Grade Checker

**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

**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

**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

**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

**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

**TRUCK DRIVERS**

**GROUP GT1**

Tandem Truck without trailer or pup; Single Axle Truck over 26,000 GVW with Trailer

**GROUP GT2**

Semi-Tractor and Trailer; Tandem Truck with Pup

**ELECTRICIANS**

**GROUP E01**

Electrician

	<b>Rates</b>	<b>Fringes</b>
GROUP GL1	<b>22.38</b>	<b>0.00</b>
GROUP GL2	<b>23.16</b>	<b>0.00</b>
GROUP GL3	<b>24.41</b>	<b>0.00</b>
GROUP GL5	<b>31.94</b>	<b>0.00</b>
GROUP GL6	<b>26.45</b>	<b>0.00</b>
GROUP G01	<b>24.57</b>	<b>0.00</b>
GROUP G02	<b>24.68</b>	<b>0.00</b>
GROUP G03	<b>26.07</b>	<b>0.00</b>
GROUP G04	<b>27.18</b>	<b>0.00</b>
GROUP G05	<b>30.01</b>	<b>0.00</b>
GROUP GT1	<b>24.52</b>	<b>0.00</b>
GROUP GT2	<b>25.88</b>	<b>4.28</b>
GROUP E01	<b>29.78</b>	<b>5.04</b>

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

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

\*Classifications listed under an "SU" identifier were derived from survey data and the published rate is the weighted average rate of all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates.

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

**A COPY OF THIS DOCUMENT, COLORED TAN, 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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In the listing above, the "SU" identifier indicates the rates were derived from survey data. As these weighted average rates include all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of the survey on which these classifications and rates are based. The next number, 007 in this example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates.

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

For SDDOT Defined Work Classifications, please visit: <https://dot.sd.gov/doing-business/contractors/labor-compliance>

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

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

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

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**END OF GENERAL DECISION**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
SUPPLEMENTAL SPECIFICATIONS TO  
2015 STANDARD SPECIFICATIONS FOR ROADS AND BRIDGES**

**SEPTEMBER 7, 2022**

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The Supplemental Specifications dated September 7, 2022 are in effect for and made a part of this contract.

The Supplemental Specifications may be obtained from the Department website or the local Area Office or by contacting the Operations Support Office.

Department Website:

<https://dot.sd.gov/doing-business/contractors/standard-specifications/2015-standard-specifications>

Operations Support:

605-773-3571

\* \* \* \* \*



**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
FOR  
PRICE SCHEDULE FOR MISCELLANEOUS ITEMS**

**DECEMBER 6, 2023**

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The following unit bid prices have been established by the South Dakota Department of Transportation Commission.

These prices will be pre-entered in the bidding package 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.

<b>Specification Section Number</b>	<b>Specification Section Name</b>	<b>Item Name</b>	<b>Price per Item</b>
5.8	Construction Stakes, Lines, and Grades	Engineer Directed Surveying/Staking	\$175.00/hour
7.7	Public Convenience and Safety	Water for Dust Control	\$35.00/M.Gal
7.7	Public Convenience and Safety	Dust Control Chlorides	\$0.70/lb
9.3	Payment for extra haul of Materials	Extra Haul	\$0.25/ton mile (Truck) or \$0.10/ cubic yard station (Scraper)
120.5 A.5.	Roadway and Drainage Exc. & Emb.	Unclassified Excavation, Digouts	\$15.00/cu.yd.
120.5 H.	Roadway and Drainage Exc. & Emb.	Extra Haul	\$0.25/ton mile (Truck) or \$0.10/cubic yard station (Scraper)
120.5 I.	Roadway and Drainage Exc. & Emb.	Water for Embankment	\$35.00/M.Gal
421.5	Undercutting Pipe & Plate Pipe	Undercutting Culverts	\$20.00/cu.yd.

510.5 D.	Timber, Prestressed, and Steel Piles	Timber Pile Splice	\$850.00/each
		Steel Pile Splices (*All Weights)	Splice made before either of the pieces has been driven.
		8 HP*	\$200.00/each
		10 HP*	\$250.00/each
		12 HP*	\$275.00/each
		14 HP*	\$300.00/each
		Steel Pile Splices (*All Weights)	Splice made after one of the pieces has been driven.
		8 HP*	\$400.00/each
		10 HP*	\$525.00/each
		12 HP*	\$650.00/each
		14 HP*	\$750.00/each
510.5 E.	Timber, Prestressed, and Steel Piles	Pile Shoes (Timber Pile)	\$190.00/each
510.5 H.	Timber, Prestressed, and Steel Piles	Pile Tip Reinforcement (Steel Pile)	
		10" HP Tip Reinforced	\$200.00/each
		12" HP Tip Reinforced	\$225.00/each
		14" HP Tip Reinforced	\$275.00/each
601.5	Haul Roads	Granular Material	\$28.00/ton
601.5	Haul Roads	Asphalt Concrete (including asphalt)	\$160.00/ton
601.5	Haul Roads	Cover Aggregate	\$55.00/ton
601.5	Haul Roads	Asphalt for Prime	\$1200.00/ton
601.5	Haul Roads	Asphalt (Tack, Flush & Surface Treatment)	\$800.00/ton
601.5	Haul Roads	Water	\$35.00/M.Gal
601.5	Haul Roads	Dust Control Chlorides	\$0.70/lb
634.5	Temporary Traffic Control	Flagging	\$36.03/hour
634.5	Temporary Traffic Control	Pilot Car	\$52.75/hour

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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION  
REGARDING  
STORM WATER DISCHARGES  
TO WATERS OF THE STATE**

**MAY 8, 2018**

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In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Article 74:52, the State of South Dakota has been issued Permit No. SDR10##### "GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH 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 signing the CONTRACTOR AUTHORIZATION FORM and submitting a bid or proposal, certifies the following:

"I certify under penalty of law that I understand and will comply with the terms and conditions of the Surface Water Discharge General Permit for Storm Water Discharges Associated with Construction Activities for the project identified above."

A copy of the full version of the General Permit for Storm Water Discharges Associated with Construction Activities, dated 04/01/2018, must be posted on the job site. The General Permit for Storm Water Discharges Associated with Construction Activities is available for downloading and printing from the SD DENR website:

<https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterConstruction.aspx>

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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