



**DEPARTMENT OF
TRANSPORTATION**

DEPARTMENT OF TRANSPORTATION

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

**MODIFY DRAINAGE, SPOT GRADING, PCC SURFACING,
CROSSOVERS**

FEDERAL

**PROJECT NO. PT 0907(89)316
(PCN 07W7)**

INTERSTATE HIGHWAY 90

IN DAVISON 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 October 1, 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 25, 2027**

The project category is Category II

The project type is Grading

The geographic zone is Zone 5

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

WORK TYPE FOR THIS PROJECT IS: **WORK TYPE 2 OR WORK TYPE 3**

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/>

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.

Jay Peppel
PO Box 1206
Mitchell, SD 57301-7206
Phone: 605/995-8120

PROPOSAL

Revised 8/10/11

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION, STATE OF SOUTH DAKOTA:

Ladies / Gentlemen:

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

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

On the basis of the plans, Specifications, Special Provisions and form of contract proposed for use, the undersigned proposes to furnish all necessary machinery, tools, apparatus and other means of construction, to do all the work and furnish all the materials in the manner specified, to finish the entire project **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 10/1/25

INDEX OF SPECIAL PROVISIONS

PROJECT NUMBER(S): PT 0907(89)316 **PCN:** 07W7

TYPE OF WORK: MODIFY DRAINAGE, SPOT GRADING, PCC SURFACING,
CROSSOVERS

COUNTY: DAVISON

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.

Devon Bartscher is the official in charge of the Mitchell Career Center for Davison County.

THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:

Special Provision for Contract Time, dated 8/25/25.

Special Provision for Contractor Staking, dated 8/25/25.

Special Provision for Contractor Furnished Mix Design for PCC Pavement, dated 8/30/18.

Special Provision for Durable Pavement Markings, dated 8/25/25.

List of Utilities

Special Provision for Steel Beam Guardrail AASHTO M 180 Designation, dated 10/1/25.

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 10/1/25.

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 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/StormWater
Construction.aspx](https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/stormwater/StormWaterConstruction.aspx)

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACT TIME**

**PROJECT PT 0907(89)316; PCN 07W7
DAVISON COUNTY**

AUGUST 25, 2025

March 2, 2026 Work Restriction

The Contractor will not begin work on the project prior to March 2, 2026.

March 30, 2026 Work Restriction

The Contractor will not begin any work requiring 2-lane 2-way traffic or closing I-90 on the project prior to March 30, 2026.

November 13, 2026 Interim Completion Requirement

The Contractor will complete all work except permanent pavement markings, and the Contractor will restore unimpeded traffic to all roadways by the November 13, 2026 interim completion date.

If the Contractor does not complete the work by the interim completion requirement, the Department will make a disincentive assessment in the amount of \$4000 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 8.7 C.

In addition, if the Contractor does not complete the work by the interim completion requirement, the Department will also assess liquidated damages in accordance with Section 8.9 Table A. The Department will assess liquidated damages for each calendar day the work is late until the Contractor completes the work required.

Field Work Completion

The Contractor will complete the project by the June 25, 2027 field work completion date.

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 8.7 C.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACTOR STAKING**

**PROJECT PT 0907(89)316, PCN 07W7
DAVISON COUNTY**

AUGUST 25, 2025

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 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; taking original and final cross sections of all Contractor secured borrow sources and State designated borrow sources; taking cross sections of all topsoil stockpiles; and staking right-of-way, easements, and fence.

The Contractor will perform all construction layout and reference staking necessary for the accurate control and completion of all structures, 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), paving hub staking, structure staking, and performing the miscellaneous staking as described in the plans and in this specification.

Horizontal and vertical control has been established 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 Contractor will perform the staking work in accordance with the Department's Survey Manual, except as modified by this specification.

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 Contractor will perform all staking work under the supervision of a qualified surveyor or engineer who is experienced and competent in road and bridge construction surveying and staking. 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 work to the Engineer for review at least 14 calendar days prior to beginning the staking work.

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 Department will set reference 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 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. The Contractor will place guard stakes or an alternate, acceptable to the Engineer, adjacent to the paving hub with stationing and a grade to the top of slab written on the stake. Stakes set not meeting these requirements will be reset at the Contractors expense. The Contractor will replace stakes and paving hubs damaged, destroyed, or made unusable at no additional expense to the Department.

The Engineer may check the accuracy and control of the Contractor's survey and staking work 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, and grade and paving hub 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. At structure sites, the circuit will include two benchmarks, one on each end of the structure.

- 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 ± 0.2 foot and the

vertical tolerance is ± 0.1 foot. The Contractor will reference the subgrade shoulders with slope stake reference hubs set with a horizontal tolerance of ± 0.2 foot and a vertical tolerance of ± 0.05 foot.

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

The Department will not provide slope stake notes. The Contractor is responsible to generate the slope staking notes using the cross sections and the existing field conditions.

- 3. Grade Staking:** 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 ± 0.2 foot and the vertical tolerance is ± 0.02 foot.

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.

When paving hub staking is required, the Contractor will set paving hubs at a maximum longitudinal distance of double the transverse joint spacing. The paving contractor may require a closer spacing. The horizontal and vertical tolerance for the paving hubs or grade nails is $\pm 0.02'$.

The Department will not provide paving hub notes and top of granular material blue top notes. The Contractor is responsible for generating the paving hub grades and top of granular material grades from the blue top notes.

The Department will not provide grade stake notes. The Contractor is responsible to generate the grade staking notes using the typical sections and the existing field conditions.

- 4. Structure Staking:** The Contractor will stake and reference bridges and box culverts to ensure adequate horizontal and vertical control of the substructure and superstructure components. The Contractor will stake and reference the bridge chord or the bridge tangent and centerline of each pier, bent, and abutments for bridges. The Contractor will stake the box culvert centerline(s) in both longitudinal and transverse directions.

When the work requires bridge rehabilitation work, the structure staking will include all surveying and staking required for completion of the project. The staking work may include, but not be limited to, setting the rail for the deck overlay. The plans will indicate the grade line for the deck overlay; and if necessary, the Engineer may modify the grade line.

When staking retaining walls (except Type C), the Contractor will survey and record the original ground profile along the front face of the proposed wall at the elevation break points. The Contractor will supply the wall designer the original ground profile data prior to the wall designer performing the design. Set adequate stakes and references for horizontal and vertical control during construction.

For structures and retaining walls, the horizontal tolerance is ± 0.04 foot and vertical tolerance is ± 0.02 foot.

The Contractor is responsible for all notes required to stake structures including bridges, box culverts, and walls.

- 5. 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. Topsoil measurement and computation of quantities;
- 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 for at the contract unit price per hour for 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. Final and original cross sections of Contractor and State furnished borrow pits and computations. The Contractor will perform earthwork 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 ± 0.05 foot and the vertical tolerance is ± 0.03 foot.

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

- 6. 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.

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 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.

When both blue top and paving hub stakes are required, the Department will base and calculate the plan quantity to include each type of grade staking as a separate set of stakes.

- 3. Structure Staking:** The Department will measure structure staking by the each for bridges, box culverts, and retaining walls.
- 4. Miscellaneous Staking:** The Department will not measure miscellaneous staking. The Department will pay the plan quantity as the final quantity.
- 5. 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.

E. BASIS OF PAYMENT

Payment for all of the survey items will be considered full compensation for furnishing all necessary personnel, vehicles, surveying equipment, 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. 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. Structure Staking:** The Department will pay structure staking at the contract unit price per each.
- 4. 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.

- 5. 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.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACTOR FURNISHED MIX DESIGN
FOR PCC PAVEMENT**

AUGUST 30, 2018

This work consists of the Contractor establishing a mix design and providing a concrete paving mix for the Portland Cement Concrete (PCC) pavement of sufficient quality to serve the purpose for which the PCC pavement is intended.

Make the following changes to the specifications:

Section 380.3 A. - Delete this section and replace with the following:

A. Concrete Quality, Proportioning, and Field Performance:

- 1. Contractor Responsibility:** The Contractor shall be responsible for the selection of materials meeting the specifications and shall be responsible for the design and composition of all concrete mixes used in the PCC pavement. The Contractor shall be responsible to produce and deliver a concrete paving mix that is uniform, consistent, workable, finishable, and that meets all requirements of the contract. The Contractor shall install a PCC pavement that is homogeneous, consolidated, durable, and free of defects.

The Contractor is responsible for the actual field performance of the concrete mix and any adverse impacts resulting from the materials used on the project and the Contractor's batching, mixing, hauling, placing, consolidating, finishing, and curing of the concrete mix. Department review of the Contractor's proposed mix design under Section 380.3 A.3. does not relieve the Contractor of any obligations set out in this specification or in the contract as a whole.

2. Mix Design Parameters:

On small areas using stationary side formed paving methods, the Engineer may permit the substitution of Class A45 concrete for the concrete paving mix. Class A45 shall meet the requirements of Section 460, except the concrete shall have a minimum 28 day compressive strength of 4000 psi, slump range of between 1 inch and 3 inches, and

shall contain fly ash. Fly ash shall constitute 20% to 25% of the cementitious material at a 1:1 ratio by weight.

For all other areas and any areas where the Contractor utilizes slip form paving equipment, the following requirements shall apply:

a. Mix Design Proportioning: The Contractor shall select mix proportions conforming to the following.

- 1) Combined Aggregate:** Mix designs shall be based on aggregate specific gravities at saturated surface dry (SSD) condition. The mix design process shall produce a mix design that will plot within the optimum limits listed in Chart A. The mix design shall also meet the following requirements when plotted on the 0.45 power chart. The best fit line plotted on the 0.45 power chart shall use a top size of 1 inch aggregate for jointed concrete pavement and 1.5 inch aggregate for Continuously Reinforced Concrete Pavements (CRCP). The combined gradation when plotted on the 0.45 power chart should fit within the limits as defined in Chart B for jointed concrete pavement or Chart C for CRCP. CRCP mix designs shall retain a minimum of 11.5% of the total aggregate above the 1 inch sieve.
- 2) Cementitious Material Content:** The mix design shall establish a cementitious material content (total of cement, fly ash, and other cementitious additions). The minimum cementitious material content shall be 575 pounds per cubic yard. The maximum cementitious material content shall be 800 pounds per cubic yard.
- 3) Fly ash:** Fly ash shall be included in the concrete mixture. Fly ash shall constitute 20% to 25% of the cementitious material at a 1:1 ratio by weight.
- 4) Water/Cementitious Material Ratio:** The mix design shall establish a maximum water/cementitious material ratio, which shall not exceed 0.42 pounds/pounds.
- 5) Coarse Aggregate Percentage:** The mix design shall establish the percentage of coarse aggregates to be used. The minimum coarse aggregate content shall be 55% by weight of total aggregates.
- 6) Air Content:** The volumetrics of the mix design shall be based on 6.5% entrained air content.

b. Contractor Laboratory Trial Batch Testing: The Contractor will obtain laboratory tests on trial batches of the proposed mix design.

- 1) **Procedures:** The trial batch testing must be performed by a competent testing facility. The Department may perform an on-site inspection of the testing facility's mix design procedures and equipment. If the Department, in its sole discretion, deems a testing facility to be incapable of performing accurate, reliable, or valid testing, the Department may require the Contractor to obtain trial batch testing from a different testing facility. Trial batch testing shall be conducted in accordance with the American Concrete Institute Publication 211.1, ASTM C192.

A minimum of four trial batches shall be required; two batches shall have identical proportions of aggregates and two batches shall have identical water/cementitious ratios or cementitious contents. Of the four trial batches, no two trial batches shall contain the same proportions. A different proportion of aggregate must be at least a 1% (of total aggregate) sand change or a 2% (of total coarse aggregate) rock change. A different water/cementitious ratio shall be at least a 0.02 change. A different cementitious content change shall be an addition or subtraction of at least 20 pounds of cementitious materials.

- 2) **Testing Results:** Through the trial batch laboratory testing, the Contractor must demonstrate that the proposed mix design reliably achieves the following laboratory test results:

- a) **Slump:** The slump at 20 minutes after completion of mixing for each trial mix shall be between 1.25 inches and 2.75 inches for slip-formed pavements and between 2.25 inches and 3.75 inches for formed pavements. The initial slump immediately after completion of mixing shall be tested and reported as well. The concrete for the 20 minute slump shall be exposed to ambient air temps between 68°F to 86°F.
- b) **Air content:** The air content for all concrete trial mixes shall have an entrained air content of 6.5% to 8.0%.
- c) **Compressive Strength:** The mix design shall be based upon obtaining an average minimum compressive strength of 5200 psi at 28 days.

A minimum of 3 cylinders at each age and for each trial shall be tested for compressive strength at 7, 14, and 28 days. All 9 cylinders must be made from the same batch of concrete. The cylinders must be consolidated by the rodding method.

- d) Temperature:** The fresh concrete temperature shall be between 68°F and 86°F immediately after completion of mixing.

Consideration for expected field temperatures may be made when evaluating laboratory trials. Changes that cause a deviation from the requirements of this provision for expected field temperatures must be submitted and evaluated by the Concrete Engineer prior to performing trial batches.

- 3) Waiver of Laboratory Trial Batch Requirements:** The Contractor may ask the Department to waive the Contractor's trial batch testing requirements if: (1) the mix design was successfully used on a previous Department project; and (2) the mix design is unchanged or the Contractor has made only minor modifications in the mix design, such as changes in admixtures and cementitious materials with the same ASTM designated type of material or small variations to aggregate proportions. The decision to waive the Contractor's trial batch testing requirements is solely within the discretion of the Department.

The Department's waiver of the laboratory trial batch testing requirements does not in any way relieve the Contractor of any obligations set out in this specification or in the contract as a whole. If required by the Engineer, the Contractor shall perform a plant gradation check or a plant mixed trial batch or both prior to use of the proposed mix design in field production. The Contractor shall submit these results to the Department's Concrete Engineer for Department review.

If the Contractor intends to use another party's successfully used mix design, the Contractor must provide written proof to the Department that the use of the mix design has been authorized by the other party.

- c. Proposed Mix Design Submissions:** A minimum of 40 calendar days prior to the anticipated use in field production, the Contractor shall submit the proposed mix design and supporting documentation to the Department's Concrete Engineer.

If laboratory trial batch testing requirements have not been waived, the Contractor shall submit the results of the trial batch testing with a completed Contractor Concrete Mix Design form (DOT-24). The trial batch testing results shall include all batched weights, admixtures and dosages, aggregate moisture contents, fresh concrete results (initial and 20 minute slump, initial air content, initial unit weight, and initial temperature), actual water/cementitious material ratio, compressive

strengths, aggregate gradations (including production tests), aggregate quality results, and required material certifications. The Contractor shall also supply any additional data, supporting documentation, and samples requested by the Department.

If laboratory trial batch testing has been waived, the Contractor shall submit aggregate gradations (including production tests), and required material certifications with a DOT-24. The Contractor shall also supply any additional data, supporting documentation, and samples requested by the Department.

- 3. Department Review:** The Department will review the Contractor's proposed mix design to determine if it conforms to the Department's materials and proportioning specifications. The Department may also review the Contractor's laboratory trial batch testing to determine compliance with required laboratory trial batch testing procedures and test results. The Department may, in its sole discretion, perform laboratory trial batch testing to replicate, to the Department's satisfaction, the Contractor's laboratory trial batch testing results.

When the Department performs laboratory trial batch testing, the Department will not begin laboratory trial batch testing until the Contractor's trial batch samples have obtained an average compressive strength of at least 4000 psi at 7 days or at least 5200 psi at 28 days. The Department will attempt to replicate one of the submitted mix design trials. Satisfactory replication occurs when the Department's laboratory trial batch samples obtain an average compressive strength of at least 4000 psi at 7 days, at least 5200 psi at 28 days, or the average compressive strength is no more than 10% less than the Contractor's submitted 28 day strength. In the sole discretion of the Department's Concrete Engineer's, the Department may complete the replication process based on adequate strength results prior to 28 days.

If the Department is unable to replicate the Contractor's laboratory trial batch testing to the Department's satisfaction, the Department will perform a second laboratory trial batch testing at the Contractor's request. If the Department is unable to replicate, to the Department's satisfaction, the Contractor's laboratory batch testing results for the proposed mix design after two attempts, the costs involved with any further laboratory trial batch testing will be at the Contractor's expense.

The Contractor will not begin production and placement of the concrete mix until the Department's Concrete Engineer has confirmed, in writing, a successful review consisting of: (1) the Contractor's proposed mix design conforms to the Department's materials and proportioning specifications; and (2) if applicable, the Contractor's laboratory trial batch testing results

comply with required laboratory trial batch testing procedures and test results; and (3) if applicable, the Department has replicated the Contractor's laboratory trial batch testing results to the Department's satisfaction.

- 4. Field Performance and Testing:** In addition to the responsibilities set out in 380.3 A.1, the Contractor shall provide a concrete paving mix conforming to the most recent mix design proposed to and successfully reviewed by the Department. The concrete paving mix provided by the Contractor must also satisfy the following field tests:
- a. Slump:** For the slip-form method, the slump of the concrete shall not be more than 2 inches at the time of placement. For the stationary side form method, the slump of the concrete shall be between 1 inch and 3 inches at the time of placement.
 - b. Entrained Air Content:** All concrete shall contain 6.5% entrained air with an allowable tolerance of +1% to -1.5%. Air shall be entrained by an air-entraining admixture.
 - c. Water/Cementitious Ratio:** The concrete shall not exceed the maximum Water/Cementitious ratio "W/C Ratio" as listed on the mix design. The W/C Ratio will be calculated as per 380.3 B.2 to compare the as-batched concrete against the mix design maximum.
 - d. Admixture Dosages:** The Contractor may adjust the admixture dosages listed on the final mix design submitted for use by the Contractor on the DOT-24 within the manufacturer's guidelines.
 - e. Compressive Strength:** Concrete shall exhibit a minimum compressive strength of 4000 psi at 28 days. The 28 day compressive strength shall be determined in accordance with Section 460.3 B.
- 5. Mix Design Modification:** If, after successful Department review, the Contractor wishes to modify its mix design, the Contractor shall complete and submit a new DOT-24 to the Department's Concrete Engineer. A modification includes, but is not limited to, changes in aggregate source, changes in gradation targets, new admixtures, changes in brand name of admixtures, changes in brand name of cementitious materials, and changes to aggregate percentage splits.

If the Contractor proposes to make modifications to the mix design that the Department's Concrete Engineer deems to be significant, the Contractor will obtain laboratory trial batch testing of the modified mix design in accordance with section 380.3 A.2.b. The Contractor shall submit the laboratory trial batch testing results to the Department's Concrete

Engineer for Department review. Significant modifications include, but are not limited to aggregate source, combined coarse aggregate gradation target, and combined total aggregate gradation target.

If the Contractor proposes to make modifications to the mix design that the Department's Concrete Engineer deems to be minor, the Department will not require the Contractor to perform laboratory trial batch testing but may require the Contractor to perform a plant gradation check or a plant mixed trial batch or both. The Contractor shall submit the results of any plant gradation check and plant mixed trial batch to the Department's Concrete Engineer for Department review. Changes to the aggregate percentage splits will require the Contractor to submit supporting documentation including, but not limited to the basis for the change and gradation test results. Minor modifications include, but are not limited to new admixtures, changes in brand name of admixtures, changes in brand name of cementitious materials, and changes to aggregate percentage splits.

The Department may, upon request from the Contractor, waive or modify the Contractor's laboratory trial batch testing, plant gradation check, or plant mixed trial batch requirement of the modified mix design.

The Contractor will not begin production and placement of the modified concrete mix until the Department's Concrete Engineer has confirmed, in writing, a successful review consisting of: (1) the Contractor's proposed mix design conforms to the Department's materials and proportioning specifications; and (2) if applicable, the Contractor's laboratory trial batch testing results comply with required laboratory trial batch testing procedures and test results; and (3) if applicable, the Department has replicated the Contractor's laboratory trial batch testing results to the Department's satisfaction.

Section 820.1 A. - Delete this section and replace with the following:

- A. Coarse Aggregate for Concrete Pavement:** The coarse aggregate shall consist of ledge rock. Coarse aggregate for Continuously Reinforced Concrete Pavement shall conform to Size #20. Coarse aggregate for all other PCC Pavements shall conform to Size #15.

Mix Design Charts:

Chart A

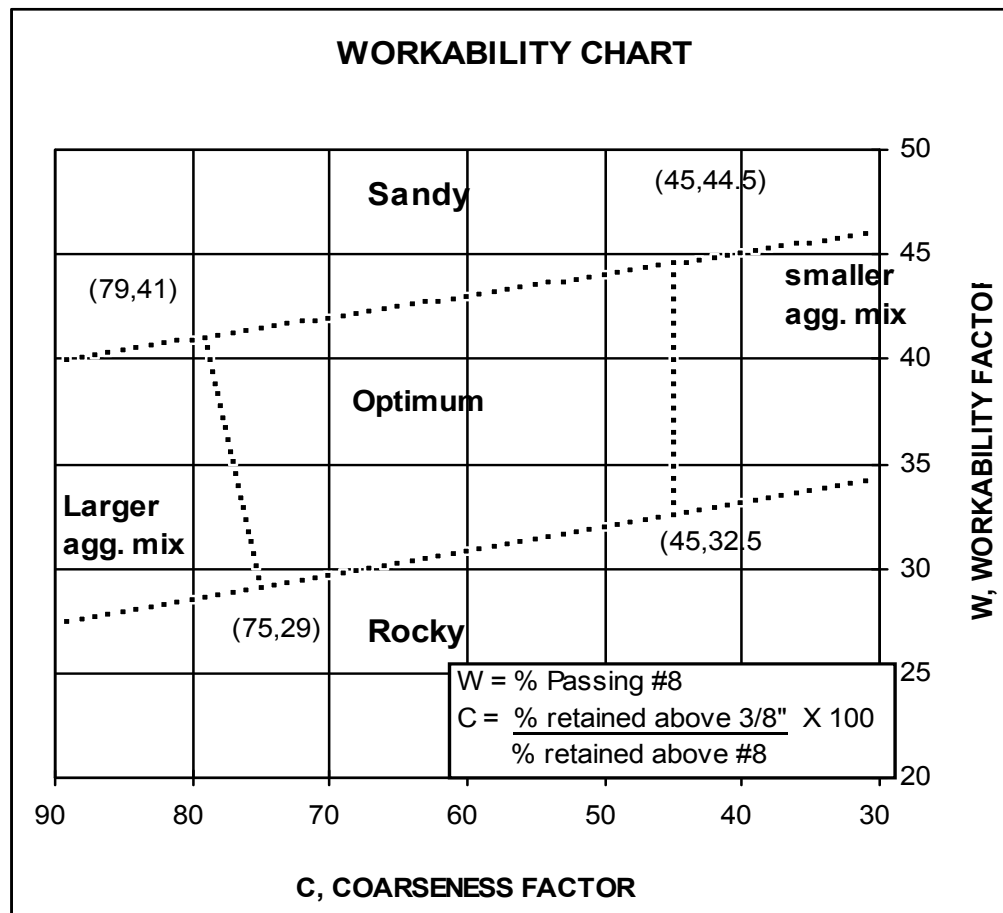


Chart B

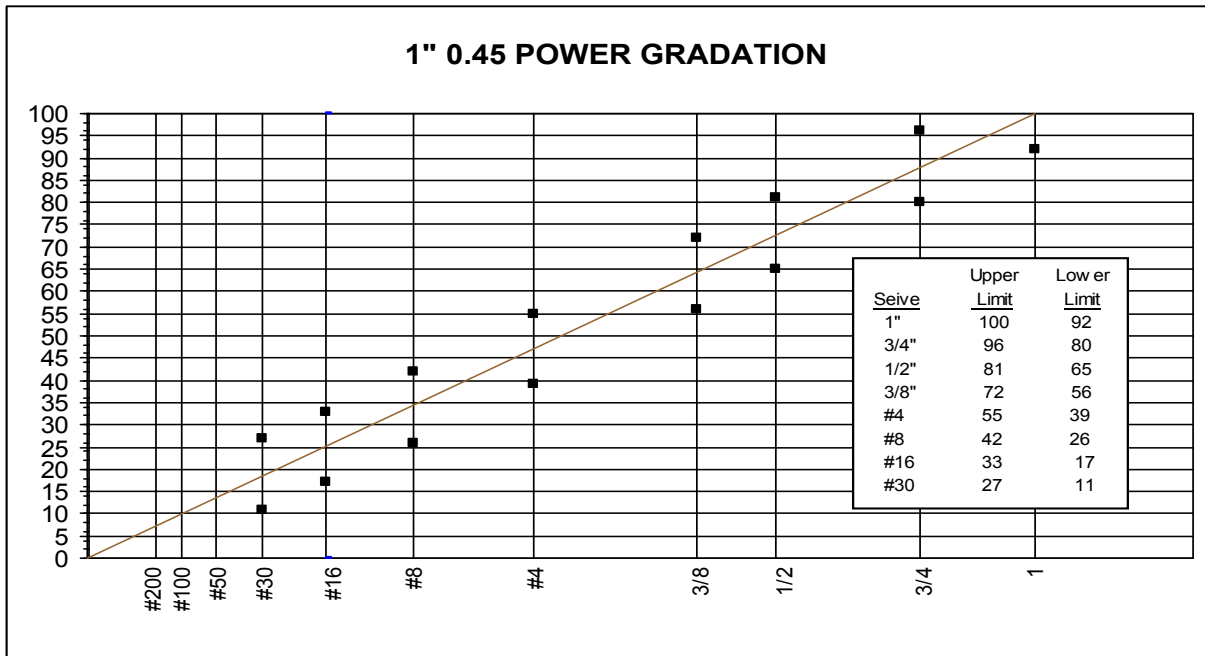
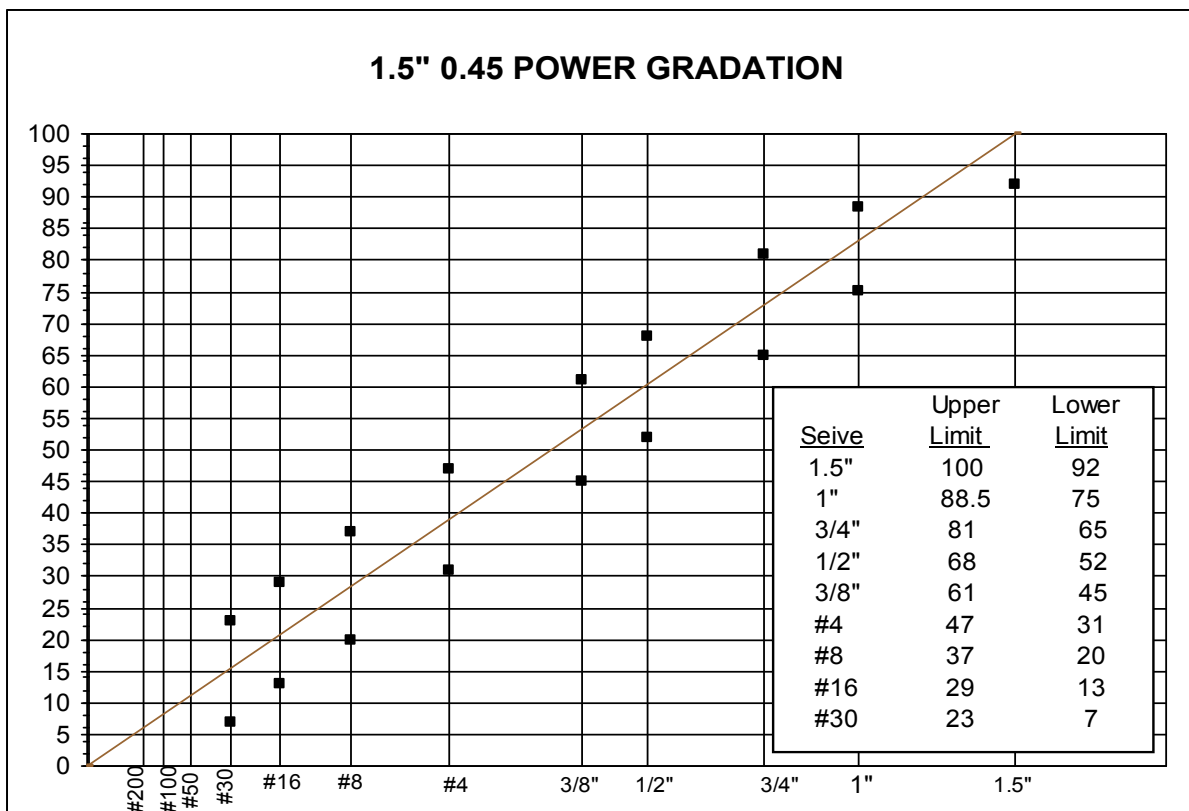


Chart C



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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
DURABLE PAVEMENT MARKINGS**

**PROJECT PT 0907(89)316, PCN 07W7
DAVISON COUNTY**

AUGUST 25, 2025

I. DESCRIPTION

Durable pavement markings, for the purpose of the special provision, include epoxy and polyurea. Water base paint will not be considered a durable marking product.

This work will consist of grooving pavement for durable pavement marking and furnishing and applying durable pavement markings in accordance with the plans, this provision, and as directed by the Engineer.

II. MATERIALS

The Contractor will submit the type of material to be used at the preconstruction meeting prior to application of the durable pavement marking.

A. CERTIFICATIONS

The Contractor will provide the Engineer with a copy of the manufacturer's product data sheet, component certification, and instructions for material application at least 14 calendar days before application work begins. Whenever the manufacturer's recommendations are more stringent than these provisions, the manufacturer's recommendations will apply. The Contractor will provide the Engineer a copy of the certified batch test results, showing the product meets the following requirements, upon delivery of the product to the job site.

B. MATERIAL REQUIREMENTS

- 1. Marking Material:** The Contractor will follow the manufacturer's mixing ratio. No solvents are to be given off to the environment upon application to a pavement surface. The components, when combined, will not contain or produce volatile solvents. If Type II epoxy pavement marking material is

used, it will be completely free of TMPTA (Tri-Methyl Propane Tri-Acrylate) and other multi-functional monomers. All materials will be free of lead, cadmium, mercury, hexavalent chromium, and other toxic heavy metals as defined by the United States Environmental Protection Agency.

a. Color: The pavement marking colors will meet the following:

White: The color will be within the Chromaticity coordinates listed in Tables 1 & 2 when tested in accordance with ASTM E1347 or ASTM E1349

Yellow: The color will match Federal Test Standard Number 595a, Color 13538 or will be within the Chromaticity coordinates listed in Tables 1 & 2 when tested in accordance with ASTM E1347 or ASTM E1349.

TABLE 1

Color	Chromaticity coordinates (corner points)								Y values %			
									With Glass Beads		Without Glass Beads	
	x	y	x	y	x	y	x	y	Min	Max	Min	Max
White	.355	.355	.305	.305	.285	.325	.335	.375	60	--	70	--
Yellow	.560	.440	.490	.510	.420	.440	.460	.400	30	--	35	--

TABLE 1 - Daytime Color Specification Limits for Pavement Markings Material with CIE 2° Standard Observer and 45/0 (0/45) Geometry and CIE D65 Standard Illuminant

TABLE 2

Color	Chromaticity coordinates (corner points)							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	.480	.410	.430	.380	.405	.405	.455	.435
Yellow	.575	.425	.508	.415	.473	.453	.510	.490

TABLE 2 - Nighttime Color Specification Limits for Pavement Marking Retroreflective Material with CIE 2° Standard Observer and Observation Angle = 1.05°, Entrance Angle = 88.76° (beta angle 2 and epsilon = 0°) and CIE Standard Illuminant A

b. Hardness: The type D durometer hardness of the material will not be less than 75 when tested in accordance with ASTM D2240 after the material has cured for 72 hours at 73°F ± 5°F.

c. Adhesion Capabilities: When tested in accordance with the American Concrete Institute Committee 503 testing procedure, the adhesion must be a minimum of 250 psi, or the failure of the system must take place in the substrate. The prepared specimens will be allowed to cure for 72 hours at 73°F ± 5°F.

- d. **Weather Resistance:** Apply the mixed epoxy, both white and yellow, at 15 mils \pm 1 mil thick to 3 inch x 6 inch aluminum panels. Do not apply beads to the epoxy sample. Expose the cured sample in an Environmental Test Chamber meeting the requirements of ASTM G154. Conduct the test for 80 hours at 122°F, alternating four-hour cycles of condensation and ultraviolet light. At the end of the exposure period, the material will show no substantial change in color or gloss.
- e. **Abrasion Resistance:** When the abrasion resistance of the material is tested in accordance with ASTM D4060 with a CS-17 wheel under a load of 1000 grams for 1000 cycles, the wear index will be no greater than 82 (The wear index is the weight in milligrams that is abraded from the sample under the test conditions).
- f. **Chemical Resistance:** Cured markings will be resistant to calcium chloride, sodium chloride, fuels, and oils.
- g. **Wet-Reflective Optics and Glass Beads:** Wet-reflective optics and glass beads will be used as recommended by the durable pavement marking manufacturer for all durable pavement markings on this project. Glass beads will meet the following gradation requirements when tested according to ASTM D1214:

Sieve Size	Percent Passing
#14	100
#18	65 - 80
#30	30 - 50
#50	0 - 5

Glass beads will have a minimum of 70% true spheres.

The glass spheres will be transparent, colorless, and free of milkiness, dark particles, carbon residues, and excessive air inclusions. All glass beads retained on the #18 sieve will be produced from virgin glass by direct melt methods.

The glass beads will be without floatation properties. The glass beads will have dual surface treatment consisting of a moisture resistant silicone treatment and a silane adherence surface treatment.

The wet-reflective optics will contain either clear, white, amber, or yellow tinted beads composed of glass or a composite consisting of a core made from ceramic or glass with an outer layer of microcrystalline ceramic or glass beads. The wet-reflective optics will provide a 50/50 blend of dry to wet ratio of optics. All beads bonded to wet-reflective optics will have a minimum index of refraction of 1.8 for dry

retroreflectivity and 2.4 for wet retroreflectivity when tested using the liquid oil immersion method.

- 2. Epoxy Materials:** The following requirements, in addition to those specified in Section II.B.1 of this special provision, will also apply when the Contractor elects to use epoxy pavement markings.

- a. Classification:** This specification provides for the classification of epoxy pavement marking systems by type.

Modified Polyacrylate - A 100% solids, reflectorized multi-functional polyacrylate system designed for rapid-setting marking.

Type I - A fast cure material suitable for line applications and, under ideal conditions, may not require coning.

Type II - A slow cure material suitable for all applications of pavement markings performed under controlled traffic conditions requiring coning and may require flagging as directed by the Engineer.

Either Modified Polyacrylate, Type I, or Type II epoxy material will be used for epoxy pavement markings except as specified otherwise in the plans.

- b. Composition:** Furnish a two component 100% solids epoxy material containing no fillers or pigment extenders. Follow the manufacturer's mixing ratio when mixing the two components. Mix the components within $\pm 2.5\%$ of the manufacturer's recommended mix ratio.

- c. Pigment and Epoxy Resin:** The pigment and resin component will meet the following percentages by weight:

Material	White	Yellow
Pigment		
TiO ₂ , meeting ASTM D476	18 - 38	12 - 17
Organic Yellow		7 - 9
Epoxy Resin	75 - 82	74 - 82

Test the epoxy content of the epoxy resin in accordance with ASTM D1652 and calculate as the Weight per Epoxy Equivalent (WPE) for both white and yellow. Determine the epoxy content on a pigment free basis. The accepted epoxy content range (WPE) is ± 50 of the manufacturer's target value.

Ensure the activator/curing agent meets the following requirements:

Test the amine value in accordance with ASTM D2074. Ensure the total amine value meets the manufacturer's target value with the acceptance range being ± 50 of the target value.

- d. **Tensile Strength:** The tensile strength of the epoxy paint material, when tested in accordance with ASTM D638, will not be less than 6,000 psi after 72 hours cure at $73^{\circ}\text{F} \pm 5^{\circ}\text{F}$.
3. **Polyurea Materials:** The following requirements, in addition to those specified in Section II.B.1 of this special provision, will also apply when the Contractor elects to use polyurea pavement markings.
- a. **Composition:** The polyurea pavement marking material will consist of 100% solid two part system formulated and designed to provide a simple volumetric mixing ratio of two components (part A and part B). No volatile or polluting solvents or fillers will be allowed.

Upon heating to application temperature, the material will not exude fumes which are toxic or injurious to persons or property.

- b. **Pigment:** White polyurea coating materials will contain not less than 13% by weight rutile titanium dioxide (TiO_2), meeting ASTM D476. Yellow pigments will be an organic yellow and contain no heavy metals.

III. CONSTRUCTION REQUIREMENTS

- A. **Equipment for Durable Pavement Marking:** Equipment furnished will be designed to apply the type of durable pavement marking material selected including reflecting elements or glass beads. The equipment will be capable of applying marking materials in a solid and intermittent line pattern, according to the details in the plans. The equipment will be capable of placing lines on the left and right sides. The left carriage will be capable of placing three lines simultaneously with each line in a solid or intermittent pattern in yellow or white, with each gun applying 4 to 8 inches wide. The equipment will be capable of accumulating the footage of marking applied per gun, individually, each day. Only material application will activate the footage accumulators. The readout will be digital and not adjustable. The equipment will accurately meter the two or more component materials. The equipment will produce and maintain the mixing head temperature, meeting the manufacturer's specifications.

The equipment will be capable of applying reflective elements or glass beads in a pressurized system, synchronized with the spray guns, uniformly across the entire marking. All guns on the spray carriages will be in full view of the operator during operation.

The equipment in the striping train will be capable of displaying a left or right Type C sequential chevron. The Type C sequential chevrons will meet the current Manual on Uniform Traffic Control Devices (MUTCD) standard for minimum size, legible distance, number of elements, and other specifications. All traffic control items mounted on the equipment will be incidental to the other contract items. No separate payment will be made.

B. Grooving for Durable Pavement Marking: When specified in the plans, the Contractor will groove the pavement prior to applying the durable pavement marking in accordance with the following.

Grooving for durable pavement markings will not be allowed on bridge decks. All pavement markings on bridge decks will be surface applied. Unless otherwise specified in the plans, the Contractor will groove the surface for pavement markings as specified below:

The grooving will be performed within the following specifications and tolerances:

Description	Specification	Tolerance
Depth of Groove	Marking Thickness* ¹ + 15 mils	+ 5 mils
Width of Groove	5 to 6 inches	± 1/8 inch
Length of Skip Lines* ²	10 foot 6 inches	± 3 inch
Tapers at ends of lines	6 to 9 inches	
Between Double Lines	4 inches	± 1/2 inch

*¹ Marking thickness will include the thickness of marking material and reflective media.

*² Additional length may be required as specified in the plans.

The equipment will be capable of:

- grooving the total width of the groove in one pass or uniform depths with multiple passes
- grooving without causing damage to the pavement joints or joint sealant material
- providing uniform alignment and depth
- moving continuously to permit a mobile traffic work operation

If damage to joints, joint sealant material, backer rod, etc. occurs, the grooving operation will be stopped and modifications will be made to the grooving operation to prevent further damage. The Contractor may be required to use specially prepared circular diamond blade cutting heads to prevent damage at the joints. Damage caused to joints, the joint sealant material, backer rod, etc will be repaired or replaced by the Contractor, as directed by the Engineer. No additional payment will be made for the repair work or any reapplication of the pavement marking in the area of the repair.

The Contractor will establish a positive means for the removal of grooving residue. Solid residue will be removed from the pavement surfaces before being blown by traffic action or wind. The Contractor will conduct this work to control and minimize airborne dust and similar debris that may become a hazard to motor vehicle operation or a nuisance to property owners. Residue from wet grooving will not be permitted to flow across traffic lanes being used by public traffic or into gutter or drainage facilities. Residue, whether in solid or slurry form, will be disposed of in a manner that will prevent it from reaching any waterway in a concentrated state.

The bottom of the groove will be uniform and free of loose material. The groove will be flat and of uniform depth for the entire width of the groove.

- C. Surface Preparation for Pavement Marking:** When specified in the plans, the Contractor will prepare the pavement surface prior to applying the durable pavement marking in accordance with the following.

In areas where the existing groove meets the required depth and existing markings are still in place, the Contractor will clean the existing groove without adding additional depth beyond the required depth for the new pavement marking, including reflective media as noted in Section III.B of this special provision.

The cleaning will result in the existing pavement marking being adequately scuffed, abraded, and removed by light grinding or abrasive blasting or both to allow proper adhesion of the new durable pavement marking as per manufacturer's recommendations to comply with product warranties.

Existing grooves not meeting the required depth will be re-grooved in accordance with Section III.B of this special provision to the required depth for the new pavement marking, including reflective media.

- D. Seasonal Limitations:** Pavement markings will only be placed between April 1 and October 31 (inclusive) unless the manufacturer recommends a more stringent seasonal limitation.
- E. Application:** Pavement markings will be placed in accordance with the details shown in the plans. Markings will not be applied over a longitudinal joint. Markings will not be applied when the wind or other conditions cause a film of dust to be deposited on the pavement surface before the material can be applied.

The Contractor will place necessary control points for striping and to indicate necessary starting and cutoff points.

The Contractor will use a vacuum truck to clean the pavement in the pavement marking areas unless otherwise specified in the plans. The Contractor will ensure a clean, dry pavement surface free of deleterious material. Cost for this work will be incidental to the contract unit price for durable pavement marking.

The final location of the pavement marking will be placed in the area of road way surface as prepared as per Section III.B or III.C of this special provision.

The material application will be immediately preceded by a minimum of 80 psi air blast. Placement of marking materials will be only on clean, dry pavement with air and pavement temperatures at least 40°F and rising and within the seasonal limitation dates listed above.

The Contractor will apply the durable pavement markings prior to the section being opened to traffic. If weather conditions or seasonal limits prevent placement of durable pavement markings, temporary pavement markings will be applied before the section is opened to traffic and then removed prior to durable pavement marking application at no additional cost to the Department.

Edge marking and lane lines on divided roadways will be applied in the direction of travel.

Tracking of applied pavement marking will not be allowed. The Contractor will adjust the pavement marking operation to prevent tracking. The “no-tracking” will be determined by passing over the line with a passenger car or pickup truck at a speed of 25 to 35 mph in a simulated passing maneuver. A line showing no visual deposition of the material to the pavement surface when viewed from a distance of 50 feet will be considered as showing “no-tracking” and conforming to the requirement for “no-track”.

During pavement marking operations on sections of roadway open to traffic, the Contractor will protect the markings from tracking.

All material heated over the manufacturer’s upper limit on temperature will be discarded.

F. Durable Pavement Marking Application Rates & Thickness: The pavement marking will be applied at the rate and thickness as recommended by the manufacturer. Pavement markings applied at a wet thickness less than 20 mils will not be accepted.

G. Wet-Reflective Optics and Glass Beads: Reflective elements and glass beads will be applied at a rate necessary for meeting the minimum levels of retroreflectivity. Application of wet-reflective optics and glass beads will be a double drop system. For application on epoxy pavement markings, the first drop will consist of a minimum of 4.2 lbs/gallon of reflective elements and the second

drop will consist of a minimum of 16 lbs/gallon of glass beads. For application on polyurea pavement markings, the first drop will consist of a minimum of 4.2 lbs/gallon of wet-reflective optics and the second drop will consist of a minimum of 7 lbs/gallon of glass beads.

Wet-reflective optics and glass beads will be applied immediately after the placement of the marking.

H. Application Tolerances:

- The length of the stripe will not vary more than plus or minus 3 inches from the plans requirement.
- The minimum width of the stripe will be its nominal width as required in the plans with 1/2 inch greater than nominal width allowed provided the variation is gradual and does not detract from the general appearance.
- The stripe will have the same general appearance and width in both daytime and nighttime conditions (no shadowing or shading).
- The length of a 40 foot cycle length (stripe and gap) will not vary more than 3 inches.
- The alignment from the plans requirement or existing markings will not vary more than plus or minus 1 inch in 200 feet.
- The maximum longitudinal deviation from the existing markings at the beginning of the painted roadway segment will not vary more than plus or minus 6 inches.
- Placement of cycle will coincide with the existing markings at each end of the project limits.

Any markings that are outside of these tolerances will be removed and replaced by the Contractor at no cost to the Department. Removal will be performed utilizing equipment that is not detrimental to the final surface, as required by the Engineer. Establishment of application tolerances will not relieve the Contractor of the responsibility to comply as closely as practicable with plan dimensions.

- I. Retroreflectivity Testing General:** The Department will take retroreflectivity readings on the pavement marking lines no sooner than 3 calendar days and no later than 30 calendar days after the completion of all line applications required for an individual highway route using a portable retroreflectometer conforming to 30 meter geometry. Retroreflectivity readings will be taken on a test location with cleaning being limited to light hand brooming.

If replacement of markings cannot be applied within the same year, the contractor will schedule subject work to be completed no later than June 15th in the following year. Upon replacement, the retroreflectivity testing process will be done again requiring new readings.

The Department will randomly select one test location per mile of each edgeline and one test location per mile of centerline (solid and/or skip line will be considered as one centerline). The Department will randomly select one test location on each ramp edgeline and one test location on each ramp gore area. Three retroreflectivity readings will be taken at each test location. The three readings will be averaged and become the reading for that test location.

J. Retroreflectivity Testing Divided Four Lane Two Way Roadways: Each edge line and lane line will be tested. Three readings will be taken at each test location on each edge line and lane line in the direction of travel and will become the test reading for that test location.

K. Retroreflectivity Testing Undivided Two and Four Lane Two Way Roadways with Center Turn Lane: Each edge line and lane line will be tested. Three readings will be taken at each test location on each line in the direction of travel and will become the test reading for that test location.

Each combination solid yellow/skip yellow lines for the turn lane will be tested. Three readings will be taken at each location on each line in one direction, the reflectometer will be turned 180 degrees and three more readings on each line will be taken. The six readings for the centerline(s) will be averaged and become the test reading for that test location. If the random location does not fall on a line, the marking(s) closest to the random location will be tested.

L. Retroreflectivity Testing Two Lane Two Way Roadways: Each edge line and centerline(s) will be tested. Three readings will be taken at each test location on the edge lines in the direction of travel. Three readings will be taken on centerline in one direction, the reflectometer will be turned 180 degrees and three more readings will be taken. The six readings for the centerline(s) will be averaged and become the test reading for that test location. If the random location for the centerline(s) does not fall on a line, the marking(s) closest to the random location will be tested.

M. Retroreflectivity Testing Interstate Interchange Off and On Ramps: Each edge line will be tested. Three readings will be taken at each test location on the edge line in the direction of travel, the three readings averaged and the result will become the test reading for that test location.

N. Retroreflectivity Testing Interstate Interchange Off and On Ramp Gore Areas: The 12 inch edge line on mainline interstate and the 12 inch edge line on the ramp that, in combination, form a "V" at an interstate gore area will be tested. Three readings will be taken at each test location on the edge line in the direction of travel, the three readings averaged and the result will become the test reading for that test location.

- O. Retroreflectivity Requirements:** The pavement markings will meet the following minimum retroreflectivity requirements.

Pavement Marking Color	Minimum Value
White	331 mcd/m ² /lux
Yellow	206 mcd/m ² /lux

- P. Non-conformance:** All pavement markings not conforming to the requirements of the contract will be considered under the provisions of Section 5.3 and may be required to be removed. Additional retroreflectivity readings will be taken by the Department to determine the limits of removal. The removal will be accomplished using suitable sand blasting or grinding equipment unless the Engineer authorizes other means. The removal process will remove at least 90% of the deficient line, with no excessive scarring of the existing pavement. The removal width will be one inch wider all around the nominal width of the pavement marking to be removed. Removal and replacement of the pavement markings will be at Contractor's expense, with no cost incurred by the Department.

IV. METHOD OF MEASUREMENT

- A. Grooving for Durable Pavement Marking:** Grooving will be measured to the nearest foot, along the length of the groove for the width of the grooving specified.
- B. Grooving for Durable Pavement Marking Arrow:** Grooving for durable pavement marking arrow will be measured by the count of each arrow type specified.
- C. Grooving for Durable Pavement Marking Area:** Grooving for durable pavement marking area will be measured to the nearest square foot.
- D. Surface Preparation for Pavement Marking:** Surface preparation for pavement marking will be measured to the nearest foot, square foot, or each as required by the respective contract item.
- E. Durable Pavement Marking:** Durable pavement markings, of the width and color specified, will be measured to the nearest foot.
- F. Durable Pavement Marking Arrow:** Durable pavement marking arrows will be measure by count of each type specified.
- G. Durable Pavement Marking Area:** Durable pavement marking areas will be measured to the nearest square foot.

V. BASIS OF PAYMENT

- A. Grooving for Durable Pavement Marking:** Grooving for durable pavement marking will be paid at the contract unit price per foot for the width of groove specified. Payment will be full compensation for equipment, labor, materials, and all incidentals required.
- B. Grooving for Durable Pavement Marking Arrow:** Grooving for durable pavement marking arrow will be paid for at the contract unit price per arrow type specified. Payment will be full compensation for equipment, labor, materials, and all incidentals required.
- C. Grooving for Durable Pavement Marking Area:** Grooving for durable pavement marking area will be paid for at the contract unit price per each square foot. Payment will be full compensation for equipment, labor, materials, and all incidentals required.
- D. Surface Preparation for Pavement Marking:** Surface preparation for pavement marking will be at the contract unit price per foot, square foot, or each as required by the respective contract item. Payment will be full compensation for equipment, labor, materials, and all incidentals required.
- E. Durable Pavement Marking:** Cost for durable pavement marking will be paid at the contract unit price per foot for Durable Pavement Marking. Payment will be full compensation for all items necessary to complete the work including, but not limited to, all traffic control, equipment, labor, materials, and all incidentals required.
- F. Durable Pavement Marking Arrow:** Durable pavement marking arrows of the type specified will be paid for at the contract unit price per each. Payment will be full compensation for all items necessary to complete the work including, but not limited to, all traffic control, equipment, labor, materials, and all incidentals required.
- G. Durable Pavement Marking Area:** Durable pavement marking areas will be paid for at the contract unit price per square foot. Payment will be full compensation for all items necessary to complete the work including, but not limited to, all traffic control, equipment, labor, materials, and all incidentals required.

* * * * *

THE FOLLOWING UTILITY COMPANIES ARE INVOLVED ON

PROJECT PT 0907(89)317, Davison County, PCN 07W7

The contractor shall contact the following utilities in a sufficient amount of time prior to starting work. The companies will identify their facilities and it is the responsibility of the contractor and the company to coordinate their work to avoid damage to existing facilities and to allow for relocation of facilities as may be required for grading work:

The following utilities were determined to be involved and were formally notified on April 18, 2024, that if their facility is located within the existing public right-of-way, any adjustment of their facility would have to be accomplished at no cost to the State, **within 90 days from receipt of the notice, unless other arrangements are made with the Area Engineer.**

- (1) SDN Communications
2900 W 10th Street
Sioux Falls, SD 57104

CONTACT: LAWRENCE ESCOBIN, TELE. #605-978-1094 or CELL: #605-310-7238

Lawrence.Escobin@SDNCommunications.com

SDN has fiber optic facilities running west-to-east through the four areas of construction in the public right-of-way. SDN's fiber optic was installed at approximately 100' L of the west bound centerline for the entire duration of project limits. SDN stated fiber optic facilities will not conflict with work at approximately STA. 55+00-100' L, STA. 266+62-100' L and alignment DRXR379R. SDN's fiber optic line crosses alignment DR377L east-to-west at approximately STA. 27+50 with a 3' cut to grade change. SDN plans on relocating this fiber north to cross alignment DR377L at approximately 50+00. SDN intentions are to have their contractor coordinate with the SDDOT contractor on-site at the time of construction of alignment DR377L and has requested notification 2 weeks in advance of construction. Lawrence Escobin from SDN can be reached at: (605) 978-1094. As the Company'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.

- (2) Lumen (formerly CenturyLink)
125 S Dakota Avenue
Sioux Falls, SD 57104

CONTACT: ANDREW WIXON, TELE. #605-681-2049

Andrew.Wixon@lumen.com

Lumen has fiber optic facilities crossing north-to-south at approximately STA. 378+00 through the construction limits of 401st Avenue's right-of-way. Lumen has determined this fiber crossing to conflict with alignment DR377L as their fiber has a depth of 3' through this alignment. Lumen intends to lower their fiber optic in this location in Spring of 2025. The fiber optic was directionally drill under the interstate at a depth of 4'. As the Company'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.

(3) Santel Communications

P.O. Box 67

Woonsocket, SD 57385-0067

CONTACT: MARK WILSON, TELE. #605-796-8129 or On-Site Contact: BRAYDEN LEISCHNER

MWilson@Santel.Coop

BLeischner@Santel.Coop

Santel has determined that they do have facilities within the work limitations of the project. Santel crosses Interstate Hwy 90's right-of-way at approximately STA. 64+50 that is not depicted in the plans. Santel installed this fiber at a minimum 4' depth of cover. Santel determined this crossing to be not in conflict with the construction plans. As the Company's facilities are in existing 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.

(4) East River Electric Power Cooperative, Inc.

P.O. Box 227

211 S. Harth Ave.

Madison, SD 57042

CONTACT: JORDAN BROWN, TELE. #605-256-8231 or CELL 605-291-9302

JBrown@EastRiver.Coop

East River states that after review of the construction plans, East River has determined that they do have facilities all throughout the project limits and that they do not believe they are in conflict anywhere and should be out of the way as they used the SDDOT construction Plan Set when they rebuilt their line in this area. As the Company's facilities are in existing 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) Central Electric Cooperative

PO Box 850

Mitchell, SD 57301

CONTACT: BRIAN BULTJE, TELE. #605-996-7516

BrianB@CentraleC.Coop

After review of the construction plans, Central Electric has determined that they do not have any facilities within the project.

(6) Davison Rural Water System

PO Box 668

Mitchell, SD 57301

CONTACT: JAKE JONES, TELE. #605-996-2266 or CELL 605-630-5635

Jake@DRW-HRW.com

Davison Rural Water states that after review has installed facilities within the construction limits that are not in conflict. Davison Rural Water has a waterline crossing Interstate Hwy 90 at approximately STA. 377+90 L diagonally southeast to approximately 378+15 R. This waterline crossing was placed with 8' of cover under the Interstate Hwy 90's right-of-way. As the Company's facilities are in existing public right-of-way as well as in private easement, 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 1, 2025

Section 630.2 B. – 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. – 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.

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**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

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.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
BUY AMERICA
FOR MANUFACTURED (COMPOSITE) PRODUCTS**

OCTOBER 1, 2025

Section 6.9 C – Page 64 – Delete and replace with the following:

- C. 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.

Section 6.9 F 2.b – Page 65 – Delete and replace with the following:

- 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.

* * * * *

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).

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
DISADVANTAGED BUSINESS ENTERPRISE**

FEBRUARY 9, 2024

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:

Reporting Period:	Reporting Deadline:
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).

**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

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:

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, 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).

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).

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.

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).

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

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 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).

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

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.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 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.

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.

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. 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, 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/WHDL/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.

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 contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a 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

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.

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**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

***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; Oilier/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

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.

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

<u>Rates</u>	<u>Fringes</u>
22.38	0.00

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
REGARDING
STORM WATER DISCHARGES
TO WATERS OF THE STATE**

MAY 8, 2018

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:

<http://denr.sd.gov/des/sw/IPermits/ConstructionGeneralPermit2018.pdf>

The Contractor may also obtain a printed copy of the permit from the SDDOT Project Development office or from the SDDOT Area Office assigned to this project.

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