



Department of Transportation

Aberdeen Region Office

West Highway 12

PO Box 1767

Aberdeen, South Dakota 57402-1767 605/626-2244

FAX: 605/626-7875

June 15, 2009

ADDENDUM NO. 1

**Re: 029 N-172, PCN i1gz
Roberts County
Wastewater Lagoon Repair**

TO WHOM IT MAY CONCERN:

The following addenda to the plans shall be inserted and made part of your plans for the referenced project:

SPECIAL PROVISIONS: **PEN AND INK CHANGE:** on the Special Provision Checklist change the date for "Special Provision for Indian Employment and Contracting Sisseton-Wahpeton Oyate" from June 3, 2009 to June 15, 2009

Please remove the "Special Provision for Indian Employment and Contracting Sisseton-Wahpeton Oyate" dated June 3, 2009 and replace with the "Special Provision for Indian Employment and Contracting Sisseton-Wahpeton Oyate" dated June 15, 2009.

When sending in your sealed bid please state on the front of the envelope that Addendum No. 1 was received.

Sincerely,

DEPARTMENT OF TRANSPORTATION

Jeff Senst, P.E.
Region Engineer

cc: Plan Holders Humphrey File

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
INDIAN EMPLOYMENT AND CONTRACTING
SISSETON-WAHPETON OYATE**

**PROJECT NO. 029 N-172; PCN i1gz
ROBERTS COUNTY
JUNE 15, 2009**

PURPOSE

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

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

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

DEFINITIONS

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

- A. **Indian:** An enrolled member of a federally recognized Indian tribe.
- B. **Qualified Indian Applicant** is defined as one or more of the following:
 - 1) Applicants approved by the contractor based on job performance on other jobs.
 - 2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
 - 3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.
- C. **Core Crew Employee:** A member of a contractor's or subcontractor's crew who is a regular, permanent employee and is in a supervisory or other key position such that the employer would risk likely financial damage or loss if that position was filled by a person who had not previously worked for that contractor or subcontractor. A regular, permanent employee is one who is and has been on the contractor's payroll for at least one prior construction season, or is an owner of the firm, in contrast with a person who is hired on a project-by-project basis.

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

DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights Office):

- A. Will monitor Contractor and Subcontractors for compliance with the requirements of this special provisions and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provisions.
- B. Will assist the Contractor and Subcontractor with any disputes with the TERO Office or other Tribal entity.
- C. Will establish On-the-Job Training opportunities as specified in the On-the-Job training special provision.

CONTRACTOR RESPONSIBILITIES

- A. Contractors and subcontractors will give preference in employment opportunities under this contract to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin or tribal affiliation to the extent set out in the paragraphs below.
- B. The Contractor and subcontractors will not use pre-employment standards, qualifications, criteria or other personnel requirements as barriers to Indian employment except when such criteria or standards are required by business necessity. The Contractor and Subcontracts have the burden of showing that such criteria or standards are required by business necessity.
- C. The contractor and all subcontractors agrees that Indians will be given preference for at least seventy percent (70%) of the project work force provided that sufficient qualified Indian applicants are available. The phrase "work force" shall not include "core crew employees".
- D. The contractor agrees to require that subcontractors shall meet the Indian preference in employment requirements as specified in the preceding paragraph. Prior to commencing work, contractors and subcontractors are expected to contact the Sisseton-Wahpeton Oyate TERO office concerning an identified core crew, project work force needs and (sub)contractor/TERO interface.
- E. The contractor and subcontractors may recruit and hire workers from whatever sources are available and by whatever process, provided that the contractor and/or subcontractors notify the TERO Office of any job vacancies, positions or any negotiated positions. The contractor shall provide the TERO Director at least forty-eight hours notice to locate and refer a

qualified Indian applicant for any vacancy or new position except when circumstances require that the position be filled within a shorter period of time.

- F. The contractor and all subcontractors will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the State shall determine necessary. This includes submitting the following information on a weekly basis to the Tribal TERO Office:
 - 1. Weekly TERO Employment Report which includes the following data (forms for this item available from the TERO office):
 - a) Wage and Hour Reports
 - b) New Hires or terminations, and disciplinary action taken
 - c) Promotions
 - 2. Copies of official payrolls.
- G. The contractor and subcontractors agree that all qualified Indian employees will be adequately trained for the position for which they are hired. All Indian employees will be evaluated and paid in accordance with current company policies and contract provisions.
- H. Nothing in this Special Provision shall be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractors standards of conduct.

OTHER PROVISIONS

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

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

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

The Sisseton-Wahpeton Oyate has an Indian Preference Subcontracting goal, which has been established at the same level as the Department's DBE goal for this project and is concurrent with the Department's DBE goal. FHWA policy does not permit the Department to extend Indian preference in subcontracting for this project and is satisfied that the Department and the Contractor will seek qualified and DBE-certified Indian firms for this project. The Contractor shall make every reasonable effort to inform certified Indian DBE firms of the subcontracting opportunities of the project and to solicit bids from such firms. Contact the Tribal TERO office at 605-698-3549 or the Department Civil Rights office at 605-773-3540 for assistance.

Contractors should be aware that the Sisseton-Wahpeton Oyate has a Business License Ordinance (Chapter 53, Tribal Code) which the tribe contends is applicable to contractors working on this project. For further information contact the Tribal Tax Office at Tribal Headquarters, Agency Village, SD at 605-698-3911.

ENFORCEMENT

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

The TERO Special Provisions shall apply to an entire project and not just the portion located within the historic exterior boundaries of the Lake Traverse Reservations. The exception would be the TERO fee that is calculated based on the portion located within historic reservation boundaries.

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