



Department of Transportation

Pierre Region Office

104 S. Garfield – Bldg. A
Pierre, South Dakota 57501-5405 605/773-3464
FAX: 605/773-6215

NOTICE TO CONTRACTORS

May 23, 2018

TO: INTERESTED BIDDERS

RE: PROJECT 411C420, 411C421, 411C422, & 411C423
PCN i59R, i59T, i59U, i59V
Campbell, Corson, & Dewey Counties
ASPHALT SURFACE TREATMENT

The South Dakota Department of Transportation (SDDOT) desires to solicit bids for the above referenced project.

A copy of the plans/proposals may be downloaded from the SDDOT Regional Letting website at the following location: <http://sddot.com/business/contractors/bid/region/Default.aspx> or may be obtained in paper format by contacting the Pierre Region Office at 605-773-3464. Contractors that didn't receive this invitation by mail, but downloaded the bidding documents from the website, are encouraged to let the Pierre Region Office know of their intent to bid on this project so that we can get them added to the plan holders list.

The Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on grounds of race, color, religion, national origin, sex, age, or disability in consideration of an award.

Any addenda will be posted on the regional letting website no later than **5:00 P.M. Central Time on Thursday, May 31, 2018**. It will be the Contractor's responsibility to verify that no addenda have been posted prior to submitting bids. Every addenda posted on the website will have a cover sheet attached to it that the contractor will be required to include with their bid. Failure to incorporate changes made through addenda and not submitting all cover sheets will result in an incomplete bid which will subsequently be rejected.

A bid bond **will not** be required for this contract; however, at the time of execution of the contract, the successful bidder shall furnish a performance bond in a sum equal to the full amount of the contract. **Note:** A cashiers check, money order or other monetary instrument in the total amount of the contract, made out to and under the full control of the Department, is acceptable in lieu of a performance bond. Such bond shall remain in effect for not less than one year after date of acceptance of the completed contract by the Department.

A Certificate of Liability Insurance will be required of the successful bidder prior to beginning work.

Prequalification for bids greater than or equal to \$200,000 will be required. If prequalification is required the bidder must be prequalified in accordance with: **Work Type 6 – Asphalt Surface Treatment and Asphalt Crack Sealing**

The required application form for prequalification of bidders can be accessed at the following link:

<https://www.state.sd.us/eforms/secure/eforms/E0945V2-ContractorsPrequalificationStatement2.pdf>

Submit the application to the Classification and Rating Committee in accordance with the Special Provision for Prequalification of Bidders.

The successful bidder must submit the **Fuel Adjustment Affidavit (DOT-208)** form prior to the execution of the contract; therefore, all bidders are encouraged to submit the Fuel Adjustment Affidavit prior to or at the time of bidding.

The enclosed **Contract Proposal (DOT-123)**, **Utilization of Minority Business Enterprises Clauses**, and **Contractor's Affidavit/Declaration** forms shall be submitted with your bid. The bid will be considered incomplete if these forms are not included with your bidding documents.

Sealed bids for the contract will be accepted by the SDDOT via available shipping couriers or may be hand delivered to the Pierre Regional Office until **2:15 P.M. Central Time on Thursday, June 7, 2018**. At that time all submitted bids will be opened. Bids must be received in an envelope with "**Asphalt Surface Treatment**" written on the outside. Be sure to have all required forms signed and notarized as indicated on the forms as failure to do so will result in an incomplete bid. No faxed bids will be accepted.

Mailing & Hand Delivering Address

Attn: Monica Ortbahn
Department of Transportation
104 S. Garfield, Bldg A
2nd Floor, RM 202
Pierre, SD 57501-5405

Please verify that all required information is complete prior to mailing bid documents.

The SDDOT reserves the right to reject any and all bids.

Questions regarding the plans/proposal should be directed to:

John Villbrandt at 605-845-3844 – Mobridge Area Engineer
Eric Stroeder at 605-845-3844 – Mobridge Area Project Engineer Supervisor
Shelley Larson at 605-773-3464 – Senior Region Design Engineer
or Vance Martin at 605-845-6947 – Region Design Engineer

Respectfully,

DEPARTMENT OF TRANSPORTATION

John C. Forman, P.E. – Pierre Region Engineer

cc: J. Hanson – Civil Rights
J. Humphrey – Operations
L. DeMers – DBE Coordinator
J. Koch – Region Materials Engineer
J. Villbrandt, E. Stroeder – Mobridge Area
Project File

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
CONTRACT PROPOSAL

DOT-123
July 2017
1 of 3

CODE	PROJECT			MAINT UNIT	CONTROL REFERENCE	AFE	FUNCTION	BEGIN MRM	END MRM
	PRE	ROUTE	AGR						
4	11	C420				i59R			
4	11	C421				i59T			
4	11	C422				i59U			
4	11	C423				i59V			

CITY AND/OR COUNTY: Campbell, Corson, & Dewey **BUDGET SOURCE:** Building & Improvement Budget

REGION MATERIALS CERTIFICATION REQUIRED: ☐ YES ☒ NO **WIP #:** _____
CERTIFIED INSPECTORS/TESTERS REQUIRED: ☐ YES ☒ NO
TO BE INSTALLED ON CM&P: ☒ YES ☐ NO

TYPE, PURPOSE AND LOCATION OF WORK: Asphalt Surface Treatment of McIntosh, Herried, Eagle Butte, & Isabel Maint. Yards

ESTIMATE OF QUANTITIES AND COST

BID ITEM NUMBER	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
411C420 PCN i59R					
009E0010	Mobilization	Lump Sum	LS	Lump Sum	
330E0300	SS-1h or CSS-1h Asphalt for Fog Seal	1.7	Ton		
330E3000	Sand for Fog Seal	10.0	Ton		
360E0042	CRS-2P Asphalt for Surface Treatment	9.6	Ton		
360E1200	Modified Cover Aggregate	96.8	Ton		
634E0010	Flagging	4.0	Hour	\$28.99	\$115.96
634E0110	Traffic Control Signs	137.0	SqFt		
634E0120	Traffic Control, Miscellaneous	Lump Sum	LS	Lump Sum	
TOTAL A					

ESTIMATE OF QUANTITIES AND COST

BID ITEM NUMBER	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
411C421 PCN i59T					
009E0010	Mobilization	Lump Sum	LS	Lump Sum	
330E0300	SS-1h or CSS-1h Asphalt for Fog Seal	1.4	Ton		
330E3000	Sand for Fog Seal	10.0	Ton		
360E0042	CRS-2P Asphalt for Surface Treatment	7.9	Ton		
360E1200	Modified Cover Aggregate	79.5	Ton		
634E0110	Traffic Control Signs	32.0	SqFt		
634E0120	Traffic Control, Miscellaneous	Lump Sum	LS	Lump Sum	
TOTAL B					

ESTIMATE OF QUANTITIES AND COST

BID ITEM NUMBER	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
411C422 PCN i59U					
009E0010	Mobilization	Lump Sum	LS	Lump Sum	
330E0300	SS-1h or CSS-1h Asphalt for Fog Seal	1.7	Ton		
330E3000	Sand for Fog Seal	10.0	Ton		
360E0042	CRS-2P Asphalt for Surface Treatment	9.5	Ton		
360E1200	Modified Cover Aggregate	95.6	Ton		
634E0010	Flagging	4.0	Hour	\$28.99	\$115.96
634E0110	Traffic Control Signs	137.0	SqFt		
634E0120	Traffic Control, Miscellaneous	Lump Sum	LS	Lump Sum	
TOTAL C					

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
CONTRACT PROPOSAL

DOT-123
July 2017
2 of 3

CODE	PROJECT			MAINT UNIT	CONTROL REFERENCE	AFE	FUNCTION	BEGIN MRM	END MRM
	PRE	ROUTE	AGR						
4	11	C420				i59R			
4	11	C421				i59T			
4	11	C422				i59U			
4	11	C423				i59V			

ESTIMATE OF QUANTITIES AND COST

BID ITEM NUMBER	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
411C423 PCN i59V					
009E0010	Mobilization	Lump Sum	LS	Lump Sum	
330E0300	SS-1h or CSS-1h Asphalt for Fog Seal	1.9	Ton		
330E3000	Sand for Fog Seal	10.0	Ton		
360E0042	CRS-2P Asphalt for Surface Treatment	10.8	Ton		
360E1200	Modified Cover Aggregate	109.1	Ton		
634E0110	Traffic Control Signs	32.0	SqFt		
634E0120	Traffic Control, Miscellaneous	Lump Sum	LS	Lump Sum	
TOTAL D					

GRAND TOTAL OF PROJECT (A+B+C+D)

CONTRACTOR'S PROPOSAL STATEMENT

The undersigned does hereby agree to furnish the labor and/or material in the quantities, at the unit price, for the purpose, in the place and in accordance with attached provisions upon approval of this Proposal by the State Transportation Commission. This document becomes the Contract when signed by the Contractor and a Department of Transportation Representative. The Contractor agrees to provide services in compliance with the Americans with Disabilities Act of 1990. The Contractor agrees to provide a certificate of insurance prior to commencing work, for liability coverage for the duration of the work as per the current edition of the SDDOT Standard Specifications for Roads and Bridges.

SUBSTANTIAL COMPLETION DATE N/A
FIELD WORK COMPLETION DATE Sept. 14, 2018
SUBSCRIBED AND SWORN TO BEFORE ME THE
____ DAY OF _____, 20__

PROPOSED START DATE _____
SIGNATURE _____
PRINTED NAME _____
COMPANY _____
STR. ADDRESS _____
CITY, STATE, ZIP _____
FEDERAL TAX ID NUMBER _____

NOTARY - My Commission Expires _____ (SEAL)

TO BE FILLED OUT BY STATE PERSONNEL:

RECOMMENDED FOR APPROVAL:

		CONSTRUCTION & MAINTENANCE ENGINEER		DATE
AREA / REGION / OPS ENGINEER	DATE	DIRECTOR OF OPERATIONS		DATE
		INTERNAL SERVICES / AUDITS		DATE

APPROVED FOR THE TRANSPORTATION COMMISSION

NAME _____ TITLE _____ DATE _____
APPROVED as per Federal Highway Stewardship Provisions this _____ day of _____, 20__.
PROJECT DEVELOPMENT ENGINEER _____

FUEL ADJUSTMENT AFFIDAVIT

Project Number 411C420, 411C421, 411C422, & 411C423

PCN i59R, i59T, i59U, i59V

County Campbell, Corson, & Dewey Counties

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

**BIDDER MUST EXECUTE THE FOLLOWING:
PARTICIPATION BY MINORITY CONTRACTORS**

Utilization of Minority Business Enterprises Clauses

PROJECT(S): 411C420, 411C421, 411C422, & 411C423

PCN i59R, i59T, i59U, i59V

COUNTY(IES): Campbell, Corson, & Dewey Counties

1. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of his contract. As used in this contract, 'Minority Business Enterprise' or 'MBE' means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. 'Owned and controlled' means a business: (a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and (b) Whose management and daily business operations are controlled by one or more such individuals. 'Minority' means a person who is a citizen or lawful permanent resident of the United States and who is: (a) Black (a person having origins in any of the black racial groups of Africa); (b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race); (c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or (d) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America); (e) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended. Contractors may rely on written representatives by subcontractors regarding their status as minority business enterprise in lieu of an independent investigation.
2. The Contractor agrees to establish and conduct a program which will enable minority business enterprise to be considered fairly as subcontractors and suppliers under this contract. In this connection the Contractor shall . . .
 - (a) Designate a liaison officer who will administer the Contractor's minority business enterprises program.
 - (b) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions.
 - (c) Ensure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of minority business enterprises.
 - (d) Maintain records showing (1) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (2) awards to minority business enterprises on the source list, and (3) specific efforts to identify and award contracts to minority business enterprises.
 - (e) Include the "Utilization of Minority Business Enterprises Clause" in subcontracts which offer substantial minority business enterprises subcontracting opportunities.
 - (f) Cooperate with the State's Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the State's Contracting Officer may from time to time conduct.
 - (g) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (d) above, in such form and manner and at such time (not more often than quarterly) as the State's Contracting Officer may prescribe.
3. The Contractor further agrees to insert in any subcontract hereunder provisions which shall conform substantially to the language of this clause, including this paragraph 3 and to notify the State's Contracting Officer of the names of such subcontractors.
4. The bidder hereby certifies that should he at any time decide to subcontract a portion of the work, he will take affirmative action to seek out and consider minority business enterprises as potential subcontractors. He further certifies that he will maintain records showing the contacts made with potential minority business enterprises subcontractors and the results of such contacts.

Name of Company (print or type)

Date

By _____
Signature of Company Official

Title

BIDDER MUST EXECUTE THE FOLLOWING:

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

CONTRACTOR'S AFFIDAVIT / DECLARATION

PROJECT(S): 411C420, 411C421, 411C422, & 411C423 PCN i59R, i59T, i59U, i59V

COUNTY(IES): Campbell, Corson, & Dewey Counties

(an individual)
(a partnership)
(a corporation)

do hereby certify that I, We or any owner or partner holding a controlling interest, director or officer of the bidder; principal investigator, project director or other position involved in management of the project for which this bid is submitted, have not directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for the project, and that within the last 3 years none of the above have been suspended, debarred, voluntarily excluded or determined ineligible by any federal or state agency, been indicted, convicted, or had a civil judgment rendered against any of the above or the business entity described herein by a court of competent jurisdiction in any matter involving fraud or official misconduct for which we are currently under suspension or debarment. Nor is a proposed suspension or debarment pending against any of the above for any of the above listed reasons.

* * * *

COMPLETE SIGNATURE BLOCK A. or B. BELOW:

A. Signed _____ (an individual)
(a partnership)
(a corporation)
By _____
Title _____
County of _____)
State of _____):SS
Subscribed and sworn to before me this _____ day of _____, 20____.
(SEAL) _____
Notary Public My Commission Expires _____.

* * * *

B. Under the penalty of perjury under the laws of the United States, I hereby certify that the above statement is true and correct.
Signed _____ (an individual)
(a partnership)
(a corporation)
By _____
Title _____

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

PIERRE REGION

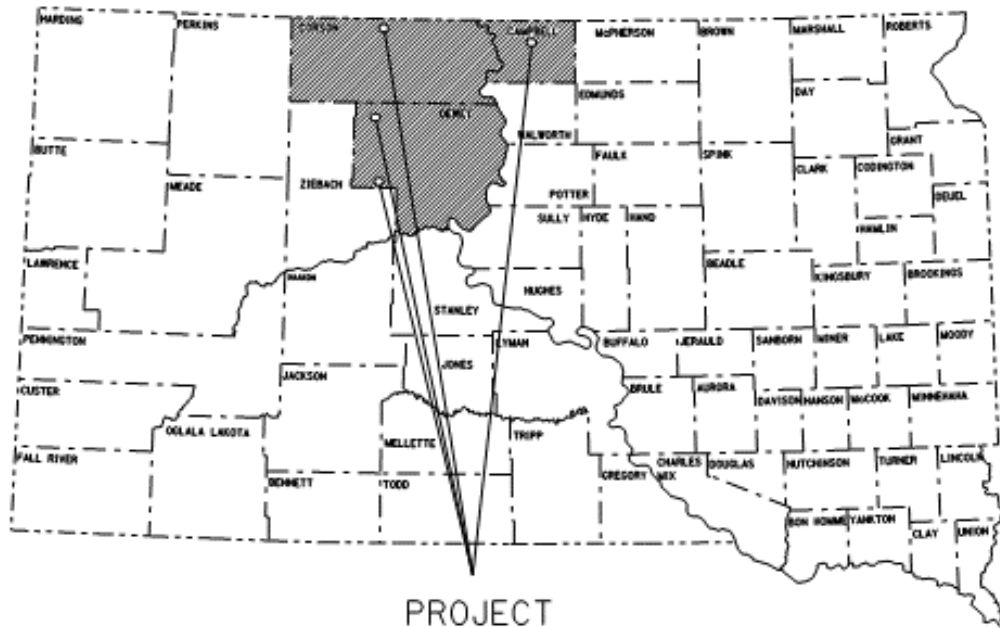
PROPOSAL FOR

PROJECT 411C420, 411C421, 411C422, 411C423

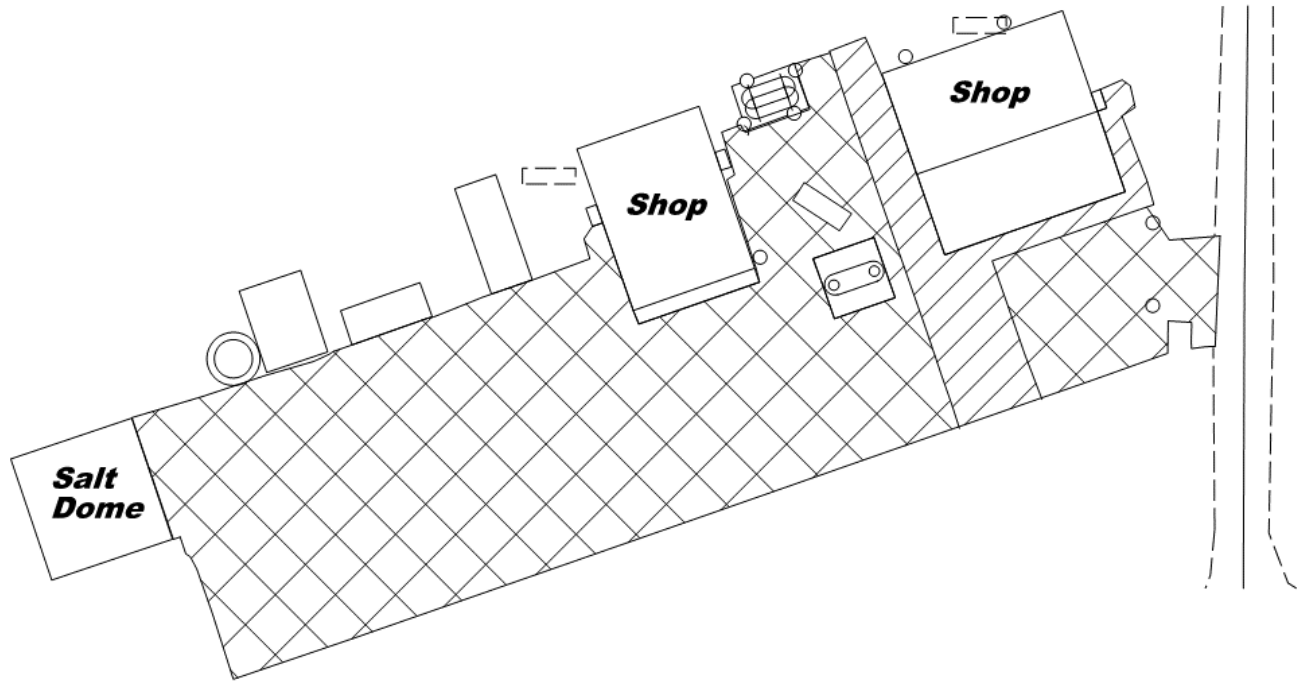
Campbell, Corson, & Dewey Counties

PCN i59R, i59T, i59U, & i59V

Asphalt Surface Treatment

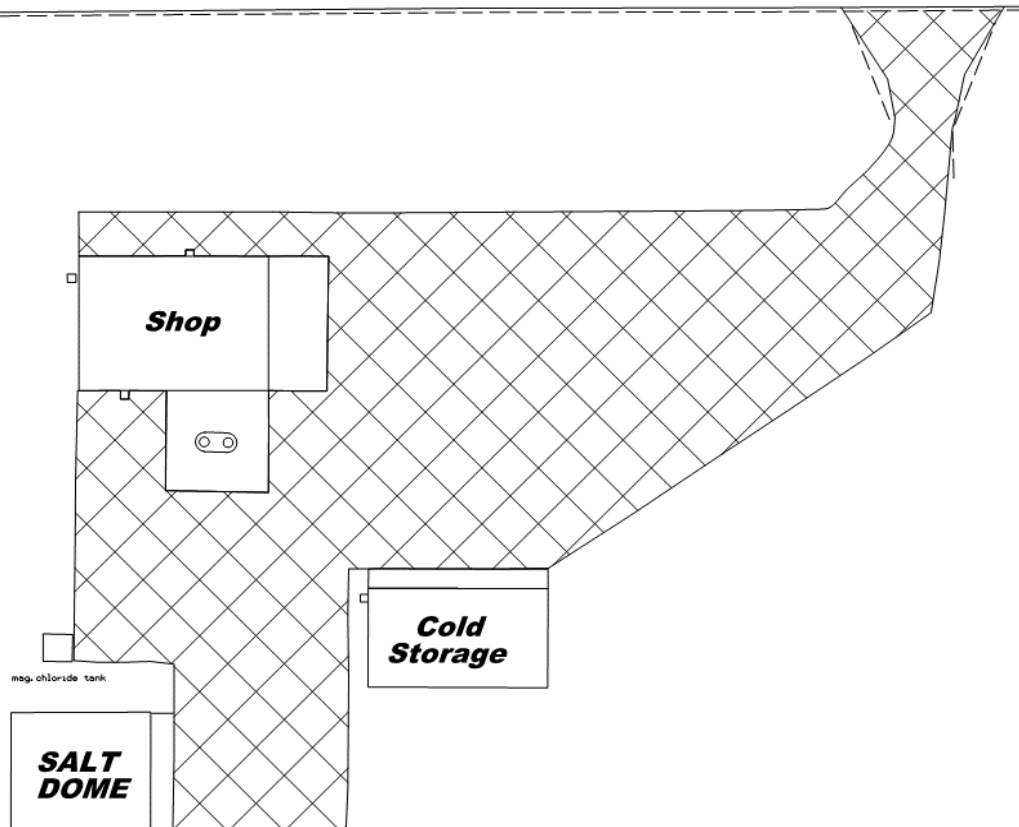


**McIntosh Maintenance Yard
411C421 PCN I59T**

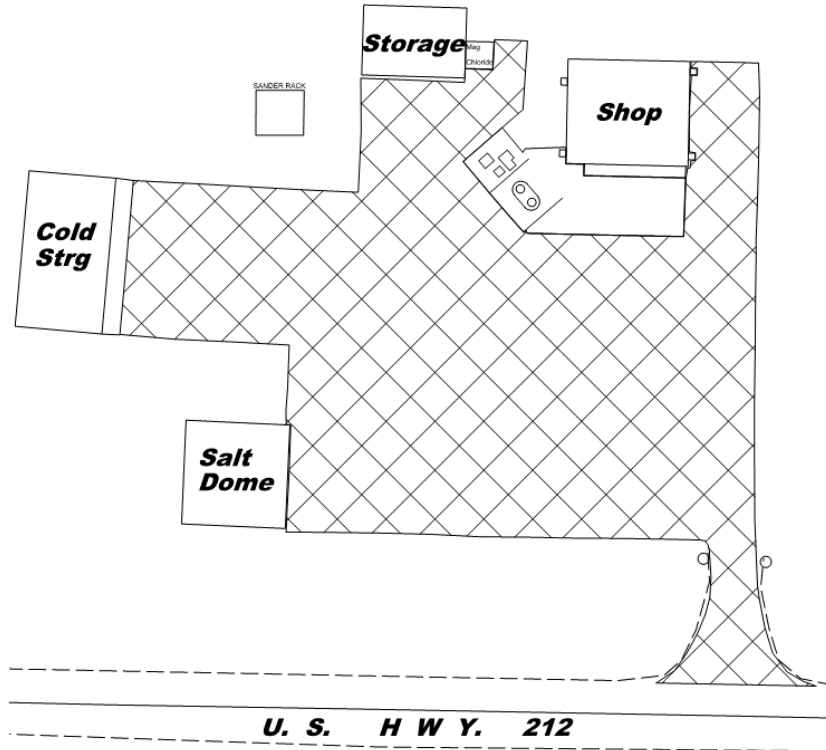


**Herreid Maintenance Yard
411C420 PCN I59R**

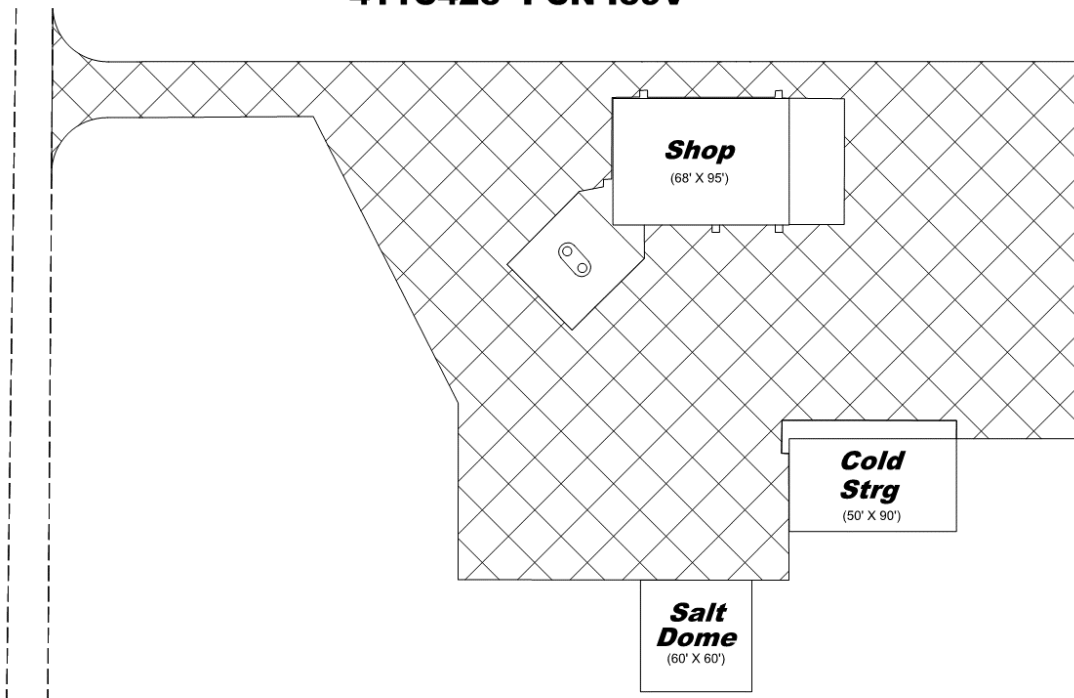
U. S. H W Y. 8 3



**Eagle Butte Maintenance Yard
411C422 PCN I59U**



**Isabel Maintenance Yard
411C423 PCN I59V**



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.

* * * *

REV. 5/3/18

INDEX OF SPECIAL PROVISIONS

PROJECT(S): 411C420, 411C421, 411C422, & 411C423 PCN i59R, i59T, i59U, i59V

COUNTY(IES): Campbell, Corson, & Dewey Counties

TYPE OF WORK: ASPHALT SURFACE TREATMENT

THE FOLLOWING ITEMS ARE INCLUDED IN THIS PROPOSAL FORM:

Special Provision for Contractor Administered Preconstruction Meeting, dated 3/15/16.
Fuel Adjustment Affidavit, DOT form 208 dated 7/15.
Standard Title VI Assurance, dated 3/1/16.
Special Provision For Implementation of Clean Air Act & Federal Water Pollution Control Act,
dated 9/1/97.
Special Provision Regarding Minimum Wage on State Funded Projects, dated 4/30/13.
Wage and Hour Division US Department of Labor Washington DC.
- US Dept. of Labor Decision Number SD180001, dated 4/6/18.
Special Provision for Supplemental Specifications to 2015 Standard Specifications for Roads and
Bridges, dated 4/18/18.
Special Provision for Errata to 2015 Standard Specifications for Roads and Bridges, dated 4/4/18.
Special Provision for Price Schedule for Miscellaneous Items, dated 6/6/18.
Special Provision for Indian Employment and Contracting on the Cheyenne River Reservation.
Special Provision for Indian Employment and Contracting on the Standing Rock Reservation.

Plan sheets 1 thru 8

* * * *

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION
FOR
CONTRACTOR ADMINISTERED PRECONSTRUCTION MEETING**

MARCH 15, 2016

I. DESCRIPTION

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

II. MATERIALS (Not Specified)

III. CONSTRUCTION REQUIREMENTS

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

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

The Contractor's Required Submittals Form is a document outlining information required prior to the completion of the project. This list will include two types of submittals; 1) information required before scheduling a preconstruction meeting and 2) information required before the Contractor begins related work. The Department reserves the right to request additional information not included in the original list of required submittals. The list of required submittals will include, but is not limited to, proposed sequence changes, shop drawings, permits, certifications, mix designs, labor compliance, equal employment opportunity, and disadvantaged business enterprise documents. The Area Engineer will update the Contractor's Required Submittals Form with any project specific requirements and cross out or delete those that do not apply prior to providing the document to the Contractor.

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

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

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

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

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

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

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

At the discretion of the Area Engineer, the preconstruction meeting may be held in person, videoconference, or over the phone. The Contractor's competent superintendent who will be working on this project, as required by Section 5.5, or the Contractors Project Manager, as required by the Special Provision for Cooperation by Contractor and Department (if applicable), is required to attend the preconstruction meeting.

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

IV. METHOD OF MEASUREMENT

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

V. BASIS OF PAYMENT

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

* * * * *

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
IMPLEMENTATION OF CLEAN AIR ACT
AND
FEDERAL WATER POLLUTION CONTROL ACT**

SEPTEMBER 1, 1997

By signing this bid, the bidder will be deemed to have stipulated as follows:

- a) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- b) That the State Transportation Department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION REGARDING
MINIMUM WAGE ON STATE FUNDED PROJECTS**

APRIL 30, 2013

This proposal contains a copy of the most recent United States Department of Labor (USDOL) Davis-Bacon Act Wage Decision, adopted by the South Dakota Transportation Commission.

If the amount of this contract, as awarded, is \$100,000.00 or more, the following wage provisions will apply:

1. The Contractor and each related subcontractor will pay all laborers and mechanics working at the site of work unconditionally and not less than once a week, and without subsequent deduction or rebate of any account, other than permitted payroll deductions. The Contractor and each related subcontractor must compute the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment at rates not less than those rates contained in the USDOL Davis-Bacon Act Wage Decision.
2. 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.
3. The Contractor and each related subcontractor must submit weekly, for each week in which any contract work is performed, a copy of a completed certified weekly payroll report to the South Dakota Department of Transportation (SDDOT) Labor Compliance Officer (LCO), at the following mailing address, within fourteen (14) calendar days of the end of the workweek

Department of Transportation
Labor Compliance Program
700 E. Broadway Avenue.
Pierre, SD 57501-2586

4. Each submitted certified weekly payroll report must set out accurately and completely all information required by the Instructions for SDDOT Statement of Compliance & Certified Payroll Report (located on the SDDOT Labor Compliance website). Each certified weekly payroll report must include the most recent [SDDOT Statement of Compliance Form](#), signed by the Contractor or related subcontractor or his or her agent who pays or supervises the payment of the persons employed

under the contract. The SDDOT will not accept any payroll report which does not include the most recent [SDDOT Statement of Compliance Form](#).

5. The Contractor and each related subcontractor will maintain payrolls and basic records relating thereto during the course of the work and preserve these records for a period of three (3) years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, and guards working at the site of the work. These records must contain the name, address, social security number of each such worker, his or her correct work classification, and hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof). The Contractor and each related subcontractor will make these records available for inspection, copying, or transcription by the LCO and will permit the LCO to interview employees during working hours on the site of the work.
6. The SDDOT will upon its own action, or upon written request of an authorized representative of the USDOL, withhold, or cause to be withheld, from the Contractor or related subcontractor under this contract, or any other contract with the same prime Contractor, as much of the accrued payments, advances, or guarantee of funds as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any related subcontractor, the full amount of wages required by the contract. In the event the Contractor fails to pay any laborer or mechanic, including any apprentice, trainee, or helper employed or working on the site of the work, all or part of the wages required by the contract, the LCO may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds under this contract or any other contract with the same prime Contractor until such violations have ceased.

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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

General Decision Number: SD180001 Mod-1 04/06/2018 SD1

Agency: U.S. DOL
Wage Decision Number: SD180001 SD1
Counties: SD Statewide
Wage Decision Date: 04/06/2018 (Mod-1)

***SUSD2018-001 03-20-2018**

LABORERS

GROUP GL1

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

GROUP GL2

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

GROUP GL3

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

GROUP GL5

Carpenter; Form Builder

GROUP GL6

Concrete Finisher; Painter; Grade Checker

POWER EQUIPMENT OPERATORS

GROUP G01

Concrete Paving Cure Machine; Concrete Paving Joint Sealer; Conveyor; Tractor (farm type with
attachments); Self Propelled Broom; Concrete Routing Machine; Paver Feeder; Pugmill; Skid Steer

GROUP G02

Bull Dozer 80 HP or less; Front End Loader 1.25 CY or less; Self-Propelled Roller (except Hot Mix);
Sheepsfoot/50Ton Pneumatic Roller; Pneumatic Tired Tractor or Crawler (includes Water Wagon and
Power Spray units); Wagon Drill; Air Trac; Truck Type Auger; Concrete Paving Saw

GROUP G03

Asphalt Distributor; Bull Dozer over 80 HP; Concrete Paving Finishing Machine; Backhoes/ Excavators
20 tons or less; Crusher (may include internal screening plant); Front End Loader over 1.25 CY;
Rough Motor Grader; Self Propelled Hot Mix Roller; Push Tractor; Euclid or Dumpster; Material Spreader;
Rumble Strip Machine

GROUP G04

Asphalt Paving Machine Screed; Asphalt Paving Machine; Cranes/Derricks/Draglines/Pile Drivers/Shovels
30 to 50 tons; Backhoes/Excavators 21 to 40 tons; Maintenance Mechanic; Scrapers; Concrete Pump Truck

GROUP G05

Asphalt Plant; Concrete Batch Plant; Backhoes/Excavators over 40 Tons; Cranes/ Derricks/Draglines/Pile
Drivers/Shovels over 50 tons; Heavy Duty Mechanic; Finish Motor Grader; Automatic Fine Grader;
Milling Machine; Bridge Welder

TRUCK DRIVERS

GROUP GT1

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

GROUP GT2

Semi-Tractor and Trailer; Tandem Truck with Pup

ELECTRICIANS

GROUP E01

Electrician

<u>Rates</u>	<u>Fringes</u>
18.86	0.00
17.51	0.00
18.95	0.00
27.96	0.00
21.41	0.00
20.62	0.00
20.66	0.00
22.02	0.00
23.79	0.00
24.77	0.00
21.46	0.00
21.66	4.22
26.42	3.85

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 only as provided in the labor contract clauses (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 based on all rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Survey wage rates are not updated and will remain in effect until a new survey is conducted.

A COPY OF THIS DOCUMENT, COLORED PURPLE, 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****General Decision Number: SD180001 Mod-1 04/06/2018 SD1**

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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: <http://www.sddot.com/business/contractors/labor/wcwr/Default.aspx>

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

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

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

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END OF GENERAL DECISION

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

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

APRIL 18, 2018

The Supplemental Specifications dated April 18, 2018 are in effect for and made a part of this contract.

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

Department Website:

<http://www.sddot.com/business/contractors/specs/2015specbook/Default.aspx>

Operations Support:

605-773-3571

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

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

APRIL 4, 2018

The Supplemental Specifications for Errata dated April 4, 2018 are in effect for and made a part of this contract.

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

Department Website:

<http://www.sddot.com/business/contractors/specs/2015specbook/Default.aspx>

Operations Support:

605-773-3571

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

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

JUNE 6, 2018

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

These prices will be pre-entered in the bidding package for each project or will establish a standard price to be used whenever no project contract unit price exists for that item.

Each unit price listed is considered full compensation for the cost of labor, material, and equipment to provide the item of work and/or material, complete in place, including (but not limited to) royalty, waste of unsuitable materials, equipment rental, overhead, profit, and incidentals.

Items specified in this document may be paid for on progressive estimates without the benefit of a prior approved Construction Change Order.

Specification Section Number	Specification Section Name	Item Name	Price per Item
5.8	Construction Stakes, Lines and Grades	Three-Man Survey Crew	\$160.00/hour
7.7	Public Convenience and Safety	Water	\$15.00/M.Gal
9.3	Payment for extra haul of Materials	Extra Haul	\$0.15/ton mile
120.5 A.5.	Roadway and Drainage Exc. & Emb.	Unclassified Excavation Digouts	\$8.00/cu.yd.
120.5 H.	Roadway and Drainage Exc. & Emb.	Extra Haul	\$0.05/cu.yd. station
120.5 I.	Roadway and Drainage Exc. & Emb.	Water for Embankment	\$15.00/M.Gal
421.5	Undercutting Pipe & Plate Pipe	Undercutting Culverts	\$12.00/cu.yd.
510.5 D.	Timber, Prestressed, and Steel Piles	Timber Pile Splice	\$550.00/each

		Steel Pile Splices (*All Weights)	Splice made after one of the pieces has been driven.
		8 HP*	\$220.00/each
		10 HP*	\$300.00/each
		12 HP*	\$360.00/each
		14 HP*	\$420.00/each
			Splice made before either of the pieces has been driven.
		8 HP*	\$105.00/each
		10 HP*	\$125.00/each
		12 HP*	\$140.00/each
		14 HP*	\$160.00/each
510.5 E	Timber, Prestressed, and Steel Piles	Pile Shoes (Timber Pile)	\$110.00/each
510.5.H	Timber, Prestressed, and Steel Piles	Pile Tip Reinforcement (Steel Pile)	
		10" HP Tip Reinforced	\$120.00/each
		12" HP Tip Reinforced	\$140.00/each
		14" HP Tip Reinforced	\$170.00/each
601.5	Haul Roads	Granular Material	\$12.00/ton
601.5	Haul Roads	Asphalt Concrete (including asphalt)	\$80.00/ton
601.5	Haul Roads	Cover Aggregate	\$25.00/ton
601.5	Haul Roads	Asphalt for Prime	\$700.00/ton
601.5	Haul Roads	Asphalt (Tack, Flush & Surface Treatment)	\$450.00/ton
601.5	Haul Roads	Water	\$15.00/M.Gal
601.5	Haul Roads	Dust Control Chlorides	\$0.35/lb
634.5	Temporary Traffic Control	Flagging	\$28.99/hour
634.5	Temporary Traffic Control	Pilot Car	\$41.88/hour

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**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
INDIAN EMPLOYMENT AND CONTRACTING ON THE
CHEYENNE RIVER RESERVATION**

**PROJECT NO. 411C421, 411C420, 411C422 & 411C23; PCN i59R, i59T, i59U & i59V
CAMPBELL, CORSON & DEWEY COUNTIES
APRIL 25, 2018**

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.

A portion of this project is located within the exterior boundaries of the Cheyenne River Reservation.

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

DEFINITIONS

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

- A. **Indian:** An enrolled member of a federally recognized Indian tribe.
- B. **Qualified Indian Applicant** is defined as one or more of the following:
 - 1) Applicants approved by the contractor based on job performance on other jobs.
 - 2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
 - 3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.
- C. **Core Crew Employee:** A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

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

DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights Office or Area Office):

- A. Will monitor contractor and subcontractors for compliance with the requirements of this special provision and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provision.
- B. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.
- C. Will establish on-the-job training opportunities as specified in the On-the-Job Training Special Provision.
- D. Will provide notification to the TERO Office of the name of the successful low bidder.
- E. Will provide notification to the successful low bidder regarding the TERO requirements.
- F. Will invite a representative of the TERO Office to attend the preconstruction meeting and provide a copy of the preconstruction meeting minutes to the TERO Office.
- G. Will not allow a contractor or subcontractor to commence work until the contractor's or subcontractor's compliance plan has been approved and the Department's Area Office has received a copy of the approved compliance plan or verbal or written notification of approval by the TERO Office

CONTRACTOR RESPONSIBILITIES

- A. The contractor and subcontractor will give preference in employment opportunities under this Agreement to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin, disability, or tribal affiliation to the extent set out in the paragraphs below.
- B. The contractor and subcontractor will not use pre-employment standards, qualifications, criteria, or other personnel requirements as barriers to Indian employment except when such criteria or standards are required by business necessity. The contractor and subcontractor have the burden of showing that such criteria or standards are required by business necessity.

- C. The contractor and subcontractor agree that Indians will be given preference for at least eighty percent (80%) of the project work force provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees".
- D. The contractor, subcontractor, and supplier are required to complete a compliance plan and submit the compliance plan to the TERO Office at least two (2) weeks prior to beginning work. Prior to commencing work, contractors and subcontractors must contact the Cheyenne River Sioux Tribe TERO Office concerning an identified core crew, project work force needs, and (sub)contractor/TERO interface. No contractor, subcontractor, or supplier will begin work until the compliance plan has been approved by the TERO Office. The contractor, any subcontractor, and any supplier must submit a copy of the approved compliance plan to the Department's Area Office prior to commencing work unless arrangements are made for the TERO Office to provide the copy of the compliance plan directly to the Department's Area Office. In lieu of a copy of the approved compliance plan, the Department's Area Office may seek approval directly from the TERO Office.
- E. The contractor will provide the TERO Director at least forty-eight hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, the contractor and subcontractor may recruit and hire workers from whatever sources are available and by whatever process, provided that the contractor and subcontractor notifies the TERO Office of any job vacancies, positions, or any negotiated positions.
- F. The contractor and subcontractor will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the Department determines necessary. The contractor and subcontractor will submit the following information on a weekly basis to the Tribal TERO Office:
 - 1. One copy of the official payroll (as submitted to the Department of Transportation).
 - 2. TERO Weekly Employment Report (forms for the weekly TERO Employment Report available from the TERO Office)
 - 3. The weekly report and copy of the certified payroll will include company's core crew.
- G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.
- H. Nothing in this Special Provision will be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractor's standards of conduct.

OTHER PROVISIONS

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

The Tribal TERO Office will maintain a Job Skills Bank, listing available Indians by job classification based on skill level as indicated on their TERO application. The contractor and 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 three percent (3%) employment rights fee, which is applicable to this project, based on the portion of the project located within the boundaries of the Cheyenne River Reservation. The Department has determined that fifty-three and seven-tenths percent (53.7%) of the project is within those boundaries; therefore the contractor is authorized to include a TERO fee amount based on 53.7% of the total contract dollar amount.

The Cheyenne River Sioux Tribe has a United States Department of Labor, Bureau of Apprenticeship Training approved training program (apprenticeship program) for operating engineers. Under the provision of this apprenticeship program, the Tribal TERO Office may assign one or more apprentices to the contractor for training on this project. The TERO Office will provide employers with information regarding such training including the name, training status, and wage level of each apprentice assigned. The contractor is authorized to include in the contractor's bid an amount necessary to cover the apprenticeship training fee, which is a component of this apprenticeship program. The apprenticeship training fee is one-half of one percent (0.5 of 1%) of the total bid amount, based on the portion of the project which is located within the boundaries of the Cheyenne River Reservation. The Department has determined that fifty-three and seven-tenths percent (53.7%) of the project is within those boundaries; therefore the contractor is authorized to include a training fee amount based on 53.7% of the total contract dollar amount. Contact the Tribal TERO Office for complete details at 605-964-8376.

The Cheyenne River Sioux Tribe has an Indian Preference Subcontracting goal, which has been established at the same level as the Department's DBE goal for this project and is concurrent with the Department's DBE goal. The Tribe recognizes that FHWA policy does not permit the Department to extend Indian preference in subcontracting for this project and is satisfied the Department and the contractor will seek qualified and DBE-certified Indian firms for this project. The contractor will make every reasonable effort to inform certified Indian DBE firms of the subcontracting opportunities of the project and to solicit bids from such firms. Contact the Tribal TERO Office at 605-964-8376 or the Department Civil Rights Office at 605-773-3540 for assistance.

The Department acknowledges that the Cheyenne River Sioux Tribe issues a business license to contractors working on projects within the exterior boundaries of the Cheyenne River Reservation. For further information contact the Tribal TERO Office at 605-964-8376.

ENFORCEMENT

The contractor and all subcontractors are made aware that this Special Provision is made part of the contract requirements, and that the Department of Transportation will monitor and enforce these provisions in a manner similar to other special provisions, as outlined in Division I, General Provisions of the Standard Specifications for Roads and Bridges, 2015 edition.

It is the intent of all parties that this Special Provision be implemented on a cooperative basis without regard to jurisdictional issues. The Department and the Tribe will encourage informal resolutions of problems prior to instituting litigation against a contractor or subcontractor. Nothing will prevent the Tribe or the Department from instituting any litigation against a contractor or subcontractor with regard to the business licensing code, the employment rights code, or any other matter. This Agreement is not intended to be, does not constitute, and will not be construed as a waiver of sovereign immunity by the Tribe or the Department. The Tribe and the Department expressly preserve their sovereign immunity from suit against each other and by all contractors, subcontractors, and other parties.

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
INDIAN EMPLOYMENT AND CONTRACTING ON THE
STANDING ROCK RESERVATION**

**PROJECT NO. 411C421, 411C420, 411C422 & 411C423; PCN i59R, i59T, i59U & i59V
CAMPBELL, CORSON & DEWEY COUNTIES
APRIL 25, 2018**

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.

A portion of this project is located within the exterior boundaries of the Standing Rock Reservation.

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

DEFINITIONS

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

- A. **Indian:** An enrolled member of a federally recognized Indian tribe.
- B. **Qualified Indian Applicant** is defined as one or more of the following:
 - 1) Applicants approved by the contractor based on job performance on other jobs.
 - 2) Applicants who have demonstrated or are presently demonstrating their work qualifications during a probationary work period on this project.
 - 3) Applicants certified by local referral agencies, including Tribal TERO offices, as having adequate skills and training necessary to perform the duties of the position.
- C. **Core Crew Employee:** A contractor's or subcontractor's core crew is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor will be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

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

DEPARTMENT RESPONSIBILITIES

The Department (Civil Rights Office or Area Office):

- A. Will monitor contractor and subcontractors for compliance with the requirements of this special provision and will perform necessary reviews of contractors and subcontractors to ensure compliance with the Special Provision.
- B. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.
- C. Will establish on-the-job Training opportunities as specified in the On-the-Job Training Special Provision.
- D. Will provide notification to the TERO Office of the name of the successful low bidder.
- E. Will provide notification to the successful low bidder regarding the TERO requirements.
- F. Will invite a representative of the TERO Office to attend the preconstruction meeting and provide a copy of the preconstruction meeting minutes to the TERO Office.
- G. Will not allow a contractor or subcontractor to commence work until the contractor's or subcontractor's compliance plan has been approved and the Department's Area Office has received a copy of the approved compliance plan or verbal or written notification of approval by the TERO Office

CONTRACTOR RESPONSIBILITIES

- A. The contractor and subcontractor will give preference in employment opportunities under this Agreement to qualified Indian applicants who can perform the work required regardless of race, color, creed, age, sex, religion, national origin, disability, or tribal affiliation to the extent set out in the paragraphs below.
- B. The contractor and subcontractor will not use pre-employment standards, qualifications, criteria, or other personnel requirements as barriers to Indian employment except when such criteria or standards are required by business necessity. The contractor and subcontractor have the burden of showing that such criteria or standards are required by business necessity.

- C. The contractor agrees that Indians will be given preference for at least seventy percent (70%) of the skilled labor force and one hundred percent (100%) of the general laborers of project work force, as described in the Davis-Bacon Act Wage Decisions, Heavy-Highway scale, provided that sufficient qualified Indian applicants are available. The phrase "work force" will not include "core crew employees".
- D. The contractor and subcontractor are required to complete a compliance plan and submit the compliance plan to the TERO Office at least two (2) weeks prior to beginning work. Prior to commencing work, contractors and subcontractors must contact the Standing Rock Sioux Tribe TERO Office concerning an identified core crew, project work force needs, and (sub)contractor/TERO interface. No contractor or subcontractor will begin work until the compliance plan has been approved by the TERO Office. The contractor and any subcontractor must submit a copy of the approved compliance plan to the Department's Area Office prior to commencing work unless arrangements are made for the TERO office to provide the copy of the compliance plan directly to the Department's Area Office. In lieu of a copy of the approved compliance plan, the Department's Area Office may seek approval directly from the TERO Office.
- E. The contractor will provide the TERO Director at least forty-eight hours' notice to locate and refer a qualified Indian applicant for any vacancy or new position except when circumstances require the position be filled within a shorter period of time. If the TERO Office is unable to fill the vacancy, the contractor and subcontractor may recruit and hire workers from whatever sources are available and by whatever process, provided that the contractor and subcontractor notifies the TERO Office of any job vacancies, positions, or any negotiated positions.
- F. The contractor and subcontractor will provide for maintenance of records and be prepared to furnish such periodic reports documenting compliance under this Special Provision as the Department determines necessary. The contractor and subcontractor will submit the following information on a weekly basis to the Tribal TERO Office:
1. Weekly TERO Employment Report which includes the following data (forms for the weekly TERO Employment Report available from the TERO Office):
 - a) Wage and hour reports
 - b) New hires or terminations, and disciplinary action taken
 - c) Promotions
 2. One copy of the official payroll (as submitted to the Department of Transportation).
 - a) Core crew employees will be identified with a letter "C" beside the employee name.
 - b) Employees referred through the Standing Rock TERO Office or other Indian employees hired locally will be identified with a letter "T" beside the employee name.
- G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.

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

OTHER PROVISIONS

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

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

The contractor is authorized to include in the bid an amount necessary to cover the two percent (2%) employment rights fee, which is applicable to this project, based on the portion of the project located within the boundaries of the Standing Rock Reservation. The Department has determined that twenty and nine-tenths percent (20.9%) of the project is within those boundaries; therefore the contractor is authorized to include a TERO fee amount based on 20.9% of the total contract dollar amount.

The contractor is also authorized to include in the bid an amount necessary to cover the Tribe's approved FHWA Training Program Fee. This Training Fee is one-half of one percent (0.5%) and based on the portion of the project which is located within the boundaries of the Standing Rock Reservation. The Department has determined that twenty and nine-tenths percent (20.9%) of the project is within those boundaries; therefore the contractor is authorized to include a Tribal Training Fee amount based on 20.9% of the total contract dollar amount. Contact the Tribal TERO Office for complete details at 701-854-7295.

For informational purposes, the Standing Rock Sioux Tribe has assessed a fee for water taken from trust lands, tribal-owned lands, or deeded lands owned by members of the Standing Rock Sioux Tribe. If fees are assessed on this project, the Contractor will pay the fee directly to the Standing Rock Sioux Tribe. The TRIBE will not assess any fees for water taken from deeded land owned by non-members of the Standing Rock Sioux Tribe. The contractor will negotiate any fees for water taken from deeded lands owned by non-members of the Tribe directly with the landowner. All fees will be incidental to the applicable unit prices as indicated in the Special Provision for Price Schedule for Miscellaneous Items. For more information regarding fees assessed by the Tribe, contact the Water Resources Department, Standing Rock Sioux Tribe at 701-854-7214.

The Standing Rock Sioux Tribe Environmental Quality Commission has directed that a permit fee of 1% based on the contract amount be imposed on all prime contractors for waste removal and disposal on the Standing Rock Reservation. This permit fee is only applicable for the amount of the project within the reservation boundaries and not for the full contract amount. The contractor is authorized to include in the bid an amount necessary to cover the one percent (1%) environmental quality permit fee which is applicable to this project, based on the portion of the project which is located within the boundaries of the Standing Rock Reservation. The Department has determined that twenty and nine-tenths percent (20.9%) of the project is within those boundaries; therefore the contractor is authorized to include a permit fee amount based

on 20.9% of the total contract dollar amount. Contact the Tribal Environmental Quality Support Services offices at 701-854-3823.

The Standing Rock Sioux Tribe has an Indian Preference Subcontracting goal, which has been established at the same level as the Department's DBE goal for this project and is concurrent with the Department's DBE goal. The Tribe recognizes that FHWA policy does not permit the Department to extend Indian preference in subcontracting for this project and is satisfied the Department and the contractor will seek qualified and DBE-certified Indian firms for this project. The contractor will make every reasonable effort to inform certified Indian DBE firms of the subcontracting opportunities of the project and to solicit bids from such firms. Contact the Tribal TERO Office at 701-854-7295 or the Department's Civil Rights Office at 605-773-3540 for assistance.

ENFORCEMENT

The contractor and all subcontractors are made aware that this Special Provision is made part of the contract requirements, and that the Department of Transportation will monitor and enforce these provisions in a manner similar to other special provisions, as outlined in Division I, General Provisions of the Standard Specifications for Roads and Bridges, 2015 edition.

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