



Department of Transportation

Rapid City Region Office

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April 4, 2022

ADDENDUM NO. 1

RE: April 19, 2022 Rapid City Region Office Informal Letting
000P-492 & 000N-492, Fall River & Oglala Lakota County, PCN i6nx & i6ny
Lighting Repair

TO WHOM IT MAY CONCERN:

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

PROPOSAL:

- Include in the proposal the Special Provision for Indian Employment and Contracting on the Pine Ridge Reservation.

PLANS:

- No change.

Sincerely,

John Rehorst
Region Design Engineer

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

**SPECIAL PROVISION FOR
INDIAN EMPLOYMENT AND CONTRACTING ON THE
PINE RIDGE RESERVATION**

**PROJECT NO. 000P-492 & 000N-492; PCN i6NX & i6NY
FALL RIVER & OGLALA LAKOTA COUNTIES
APRIL 4, 2022**

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 Pine Ridge 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 has 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.
- D. Will assist the contractor and subcontractor with any disputes with the TERO Office or other Tribal entity.
- E. Will establish on-the-job training opportunities as specified in the On-the-Job Training Special Provision.
- F. Will provide notification to the TERO Office of the name of the successful low bidder.
- G. Will provide notification to the successful low bidder regarding the TERO requirements.
- H. 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.
- I. 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 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 Oglala 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 that 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. Copies of official payrolls.
- G. The contractor and subcontractor agree that all qualified Indian employees will be adequately trained for the position for which they are hired. The contractor and subcontractor will evaluate and pay all Indian employees in accordance with current company policies and contract provisions.
- H. Nothing in this Special Provision will be construed to interfere with the contractor's ability to dismiss any employee for cause including, but not limited to, lack of adequate skills or training, inability to perform by virtue of state or federal law, or breach of the contractor's standards of conduct.

OTHER PROVISIONS

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

The Tribal TERO Office will maintain a Job Skills Bank, listing available Indians by job classification based on skill level as indicated on their TERO application. The contractor and 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 four percent (4%) employment rights fee, which is applicable to this project, based on the portion of the project located within the boundaries of the Pine Ridge Reservation. The Department has determined that ninety-seven percent (97%) of the project is within those boundaries; therefore the contractor is authorized to include a TERO fee amount based on 97% of the total contract dollar amount.

The contractor is authorized to include in the bid an amount necessary to cover the work permit fee of \$250.00 per employee based on the following criteria: 1) The Tribe has the right to dispute individuals listed as a core crew employee and require the prime contractor and subcontractor to provide evidence that the individual meets the definition of a core crew employee; 2) All approved core crew employees are exempt from work permit fees; and 3) All TERO Certified Tribal members are exempt from work permit fees whether considered a core crew employee or not. Contact the Tribal TERO Office for complete details at 605-867-5167.

The Department acknowledges that the Oglala Sioux Tribe issues a business license to contractors working on projects within the exterior boundaries of the Pine Ridge Reservation. For further information regarding the business license, contact the Tribal Revenue Office at 605-867-8432.

The Oglala 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 605-867-5167 or the Department Civil Rights office at 605-773-3540 for assistance.

The Oglala Sioux Tribe Environmental Protection Agency (EPA) has directed that a permit fee of one percent (1%) based on the contract amount be imposed on all prime contractors for waste removal and disposal on the Pine Ridge 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%) EPA solid waste disposal permit fee which is applicable to this project, based on the portion of the project which is located within the boundaries of the Pine Ridge Reservation. The Department has determined that ninety-seven percent (97%) of the project is within those boundaries; therefore the contractor is authorized to include a permit fee amount based on 97% of the total contract dollar amount. Contact the Tribal Environmental Protection Program offices at 605-867-5736.

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.

The TERO Special Provision will apply to the entire project and not just the portion located within the boundaries of the Pine Ridge Reservation with the exception of the fees that are calculated based on the portion located within reservation boundaries.

It is the intent of all parties that this Special Provision be implemented on a cooperative basis without regard to jurisdictional issues. Nothing in this Agreement 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.
