

EXTERNAL CIVIL RIGHTS MANUAL

JANUARY 2009

Prepared by

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
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INTRODUCTION

As a recipient of federal funds, the North Dakota Department of Transportation (NDDOT) is required to comply with the rules and regulations of the U.S. Department of Transportation, Federal Highway Administration, as they pertain to the federal-aid highway program.

NDDOT's internal and external civil rights programs are a function of the Civil Rights Division. The Civil Rights Division is located in the central office (Room 413) and is staffed by a Civil Rights Division Director (Deb Igoe), two Civil Rights Officer II positions (Jackie Lipp and Becky Hanson), and one Administrative Assistant II position (Erika Lorenz-Perry). Deb Igoe has responsibility for overall internal and external civil rights program management. Jackie Lipp assists in the development, implementation, and monitoring of NDDOT's Title VI, Title VII, contract compliance, labor compliance, equal employment opportunity (EEO), and disadvantaged business enterprise (DBE) programs. Becky Hanson assists in the development, implementation, and monitoring of NDDOT's on-the-job training (OJT) and DBE programs. Erika Lorenz-Perry provides administrative office support.

Many of the internal and external civil rights monitoring responsibilities have been delegated to the districts. Primary civil rights responsibilities are delegated to the district engineers. They, in turn, delegate the internal EEO responsibilities and external labor compliance and contract compliance monitoring to their staff.

This manual deals only with the external civil rights program and includes:

- I. General EEO Requirements
- II. On-the-Job Training
- III. Disadvantaged Business Enterprise
- IV. Contract Compliance
- V. Labor Compliance
- VI. Contract Special Provisions

Each district is responsible for keeping the Civil Rights Division informed of any EEO, OJT, DBE, contract compliance, and labor compliance activities, either positive or negative, in a timely manner. The Civil Rights Division Director and Civil Rights Officers are available for technical assistance at any time by contacting the Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, phone/email:

| | |
|-------------------------------|--|
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I. GENERAL EEO REQUIREMENTS

A. Pre-Job Conference

1. Monitoring of the various equal employment opportunity (EEO), on-the-job training (OJT), disadvantaged business enterprise (DBE), and labor compliance contract special provisions begins with the *pre-job conference. The *Pre-Job Conference—Equal Employment Opportunity, Labor Standards, and DBE Participation Information (SFN 9423 - Rev. 01-2008)* **MUST** be completed at this time. The form covers contract special provisions, labor compliance and EEO contract compliance job-site interviews; required posters and notices on federal-aid projects; general EEO, DBE, and labor compliance requirements; and required records and reports.

***NOT** required for stockpiles or other small projects lasting less than three weeks (usually small seal jobs).

2. Most federally-aided highway construction contracts contain DBE program requirements that **MUST** be achieved prior to the scheduled bid opening and/or prior to the actual award of the contract. This includes providing a list of the DBE firms that will be used on the project. The Civil Rights Division reviews and analyzes this and other required information and documentation submitted by the apparent low bidders and DBE firms and prepares the DBE participation review (race-conscious) and DBE participation review (race-neutral) forms.
 - a) The information contained on each DBE participation review form is presented to the DBE Participation Review Committee. Based on the information, the committee makes a recommendation to the NDDOT Director to either award or not award the contract. Other special conditions and considerations made by the committee and/or the Director and agreed to by the apparent low bidder are also noted on the review form.
 - b) Following contract award, the Civil Rights Division provides two copies of the DBE participation review form and other pertinent information to the appropriate assistant district engineer. The assistant district engineer **MUST** keep one copy and provide the second copy to the district, city, county, or consultant project manager-engineer for use in monitoring DBE participation on the project.
3. Once a contract is awarded, the prime contractor will notify the district, city, county, or consultant project manager-engineer as to when work on the project will be started. The district, city, county, or consultant project manager-engineer **MUST** arrange a date and a location for the pre-job conference that is mutually agreeable to the prime contractor. The district, city, county, or consultant project manager-engineer **MUST** invite representatives typically from the following organizations:
 - a) Department of Transportation District Office;
 - b) City and County (if available);

- c) Railroads;
 - d) Workforce Safety and Insurance; and
 - e) Federal Highway Administration (for interstate and NH projects exceeding \$3,000,000).
4. The **PRIME CONTRACTOR MUST** invite representatives from utility companies, when appropriate. The **PRIME CONTRACTOR MUST** also notify and invite all non-DBE subcontractors and all DBE subcontractors, regular dealers, and manufactures intended for use on the project and **MUST** encourage their attendance, as required under the DBE special provisions.
 5. The district, city, county, or consultant project manager-engineer is responsible for the conference location, agenda, notification of applicable representatives, and completion of the pre-job conference form and any other conference minutes.
 6. Any written conference minutes **MUST** be prepared in letter form to the Construction Services Division Engineer, and a copy **MUST** be attached to the original of the pre-job conference form.
 7. It is the **PRIME CONTRACTOR'S** responsibility to discuss any project issues necessary for joint DBE program compliance on the part of the prime contractor, non-DBE subcontractors, and their DBE subcontractors, regular dealers, and manufacturers, as required under the DBE special provisions.
 8. The pre-job conference form **MUST** include the names and organizations of all personnel attending the conference and **MUST** be signed and dated by the individual completing the form. The prime contractor **MUST** also sign and date the *Certification of Receipt* included on page 6 of the form.
 9. The original of the completed pre-job conference form and a copy of any other conference minutes **MUST** be retained in the project file that is sent to the Construction Services Division when the contract is finalized. One copy each of the completed pre-job conference form and any other conference minutes **MUST** be sent to the Civil Rights Division, the prime contractor, and the participants.
 10. If any of the non-DBE subcontractors and intended DBE firms are **NOT** represented at the pre-job conference, the **PRIME CONTRACTOR MUST** send them a copy of the completed pre-job conference form and any other conference minutes, as required under the DBE special provisions.
 11. The following items **MUST** be covered at the pre-job conference by the assistant district engineer or the district, city, county, or consultant project manager-engineer:
 - a) All federally-aided highway construction contracts contain the following special provisions:
 - (1) *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)—*

Outlines contractor requirements relating to wages, payrolls, labor compliance statements, and general EEO responsibilities.

- (2) *Labor Rates from U. S. Department of Labor*—Specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction.
- (3) *EEO Affirmative Action Requirements (6-27-02)*—Establishes a statewide employment goal of 6.9% for females in each trade and an assigned percentage goal, by county, for minorities in each trade. Failure by a prime contractor or a subcontractor to achieve these goals, or to prove good faith efforts in an attempt to achieve the goals, may result in a determination of noncompliance by NDDOT should the prime contractor or subcontractor be selected for an in-depth contract compliance review.
- (4) *Prompt Payment and Retainage (1-18-08)*—Requires the prime contractor to pay the subcontractor the amount due for work done or services rendered, less applicable retainage **NOT** to exceed 2%, from the current progress payment within 20 calendar days of receipt of payment from NDDOT, or owning agency, unless the prime contractor has just cause to **NOT** make payment. The prompt payment includes the release of retainage monies held within 20 days after the work is satisfactorily completed as determined by NDDOT. The prompt payment procedures and release of retainage applies to all tiers of subcontracts.

b) Generally, all contracts (state and federally funded) contain *Special Provision On-the-Job Training Program (4-1-08)*.

- (1) Trainee positions are assigned to prime contractors and are **NOT** project specific. The number of trainee positions assigned will be determined by applying a formula based on calculations involving specific project specification numbers on applicable projects funded with federal highway dollars awarded by NDDOT to a prime contractor from October 1 to September 30 of each year.
- (2) In early **April**, a summary of the trainees required to date and the OJT program package is sent to participating prime contractors. The package is also available to prime contractors and subcontractors, upon request, and is sent to prime contractors as they become eligible for trainees throughout the remainder of the year.
- (3) Contractors are responsible for the recruitment and placement of trainees.
 - (a) Contractors **MUST** employ minority, female, or economically disadvantaged individuals for all trainee positions assigned in accordance with the OJT program.

- (b) Additional positions requested by the contractor may be filled by individuals outside of these targeted groups.
 - (c) The economically disadvantaged designation can **ONLY** be obtained from Job Service North Dakota. Applicants **MUST** be referred to Job Service for screening and certification.
- (4) All paperwork regarding the trainees **MUST** be filed in a timely manner. Progress payments will be withheld from the prime contractor if the Civil Rights Division has problems obtaining the necessary paperwork.
- (a) Contractors are responsible for submitting the *Request for On-the-Job Training Program Approval (SFN 9762 - Rev. 08-2006)* directly to the Civil Rights Division. All requests **MUST** be submitted by **April 15** or within **15** days of notification of additional trainee assignments.
 - (b) Trainees **MUST** be approved before they can begin work under the OJT program. Contractors are required to submit the trainee's name and a completed application form to the Civil Rights Division for review and approval.
 - (c) Written certification of an individual as economically disadvantaged **MUST** be obtained from Job Service North Dakota and **MUST** be provided to the Civil Rights Division as part of the approval process of trainees.
 - (d) Contractors are paid \$4.00 for each hour of training provided in accordance with the OJT program. Program reimbursement is made directly to the prime contractor. To request reimbursement, contractors **MUST** complete a *Voucher for On-the-Job Training Program Hourly Reimbursement (SFN 51023 - Rev. 12-2007)* for each trainee. The completed vouchers **MUST** be submitted to the Civil Rights Division for approval and processing by the **15th** day of every following month the trainee is employed under the OJT program.
- (5) Once a trainee has been approved, district, city, county, or consultant project staff is responsible for monitoring contractor payrolls for the payment of correct wage rates and fringe benefits, where applicable.
- (6) NDDOT's OJT supportive services consultant will be counseling the targeted group trainees and monitoring their progress under the program. To facilitate counseling sessions, the OJT supportive services consultant will contact contractors for the location of the trainees. Contractors **MUST** make the trainees available for counseling.

- (7) The current OJT supportive services consultant is Wold Engineering, P.C. Contact Bill Prichard or Lisa Rhodes at Wold Engineering, P.C., 316 Eastdale Drive, Bismarck, ND 58501, email wepc@btinet.net, or phone 701-258-9227.
- c) Most federally-aided highway construction contracts will contain either the *Special Provision Disadvantaged Business Enterprise Program (Race-conscious) (dated 3-11-08 and earlier)* or the *Special Provision Disadvantaged Business Enterprise Program (Race-neutral) (dated 2-8-08 and earlier)*.
- d) The race-conscious special provision specifies a percentage of the bid price to be subcontracted or expended to DBE firms. Prime contractors **MUST** meet assigned goals or show that good faith efforts were made in an attempt to meet the goals. Prime contractors are required to provide a list of the DBE firms intended for use on the project at the time of bid submittal.
- e) The race-neutral special provision assists all small businesses in the subcontract and supply selection process and is completely race and gender neutral. Prime contractors are required to provide a list of the DBE firms intended for use on the project by noon on the next work day following the bid opening.
- f) Under both the race-conscious and the race-neutral special provisions, the apparent low bidder **MUST** provide:
- (1) A Form C [*Notification of Intent to Use DBE (RC) (SFN 52752 - Rev. 11-2006 and earlier)* or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] to the **CIVIL RIGHTS DIVISION** for each DBE intended for use on the project.
 - (2) A *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)* to the **CONSTRUCTION SERVICES DIVISION** for each DBE intended for use on the project (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers).
 - (3) A *Record of DBE Project Payments (SFN 53664 - 09-2006)* to the **CIVIL RIGHTS DIVISION**, on a semiannual basis, to document actual payments made to DBE firms for work performed.
 - (4) A completed *DBE Participation Certification (SFN 14268 - Rev. 10-2008)* to the **CONSTRUCTION SERVICES DIVISION**, with a copy to the district, city, county, or consultant project manager-engineer, upon completion of the contract to verify DBE participation.
- g) For the life of the project, the **PRIME CONTRACTOR** is responsible for the DBE firms listed on the Form C's and the work they are to perform and for the specific bid items or products the prime contractor committed to during the pre-award process (work the prime contractor intends to perform itself and

work the prime contractor intends to subcontract or expend to non-DBE firms where DBE firms quoted but were **NOT** used).

- h) It is the **PRIME CONTRACTOR'S** responsibility to:
 - (1) Monitor the DBE firms' performance on the project.
 - (2) Ensure the DBE firms perform a commercially useful function.
 - (3) Ensure the prime contractor and its subcontractors, suppliers, regular dealers, and manufacturers comply with the requirements of the applicable DBE special provision.
- i) Prime contractors are encouraged to provide a copy of the applicable DBE special provision to their intended DBE firms.

12. At this point of the conference, the **PRIME CONTRACTOR MUST** be invited to discuss the following with those in attendance:

- a) The DBE firms that will be working on the project and the items of work they are to perform.
- b) The time period for the work to be performed by the DBE firms.
- c) Any other project issues necessary for DBE program compliance on the part of the prime contractor, non-DBE subcontractors, and their DBE subcontractors, regular dealers, and manufacturers. Items may include but are not limited to: project scheduling, expected overtime, payment schedule, Davis-Bacon wage and payroll requirements, pit and batch plant (concrete or asphalt) locations, quantities, length of haul, type of road, etc.

13. The following additional items **MUST** be reviewed by the assistant district engineer or the district, city, county, or consultant project manager-engineer with those attending the pre-job conference:

- a) The unfulfilled obligations by a contractor or DBE process applies to all tiers of subcontracts. Refer to *Special Provision Disadvantaged Business Enterprise Program (Race-conscious)*.
- b) The prompt payment and retainage procedures apply to all tiers of subcontracts. Refer to Special Provision Prompt Payment and Retainage.
- c) The chain of command for resolving issues during construction is:
 - (1) From the district, city, county, or consultant project manager-engineer to the assistant district engineer.

- (2) From the assistant district engineer to the Construction Services Division.
- (3) The Construction Services Division will inform the Civil Rights Division of field issues and discuss possible resolutions. This is designed to maintain uniformity in interpreting federal and NDDOT policies and standard operating procedures.

d) Labor Compliance and EEO Contract Compliance Job-site Interviews

- (1) Each prime contractor with a project in a district's jurisdiction **MUST** have *labor compliance job-site interviews conducted on a portion of their project workforce at least once annually. Only one project per prime contractor need be selected for interviews.
- (2) Every subcontractor, regardless of the number of subcontracts they hold in the district, **MUST** have *labor compliance job-site interviews conducted on at least one project annually.

***NOT** required for contracts and subcontracts under \$10,000 where work on the project is sporadic and of short duration (three weeks or less).

- (3) **NO** interviews should be conducted with bona fide owner-operators of trucks or with haulers and suppliers of petroleum products.
- (4) Labor compliance and EEO contract compliance job-site interviews **MUST** also be conducted on those projects scheduled for in-depth contract compliance reviews. The Civil Rights Division conducts between ten and fifteen contract compliance reviews annually. Assistant district engineers and district, city, county, and consultant project managers-engineers will receive prior notification of scheduled reviews.
- (5) One copy of each of the completed interview forms **MUST** be forwarded to the **CIVIL RIGHTS DIVISION** within **FOURTEEN** calendar days of the date the interviews were conducted and the payroll information was verified. The originals of the forms **MUST** be placed in the project file that is sent to the Construction Services Division when the contract is finalized.

e) Federal-aid Highway Construction Contractors Annual EEO Report (FHWA 1391)

- (1) Contractors are required, by law and federal regulation (23 USC 140a and 23 CFR Part 230), to complete and file the *Federal-aid Highway Construction Contractors Annual EEO Report (FHWA 1391 - Rev. 04-2005)*. This report **MUST** be submitted by all prime contractors and covered subcontractors (subcontracts of \$10,000 or more) that

have been active on federally-aided highway construction projects during the month of July **ONLY** for the duration of the project.

- (2) As of the 2002 construction season, NDDOT is participating in an information collection pilot program whereby contractors are allowed to submit one consolidated report inclusive of all federal-aid projects.
- (3) In early **July**, the Civil Rights Division will mail the report form to all qualified contractors with instructions to complete and return the report directly to the **CIVIL RIGHTS DIVISION** by no later than **August 10**. Any questions concerning the report should be referred to the **CIVIL RIGHTS DIVISION**.

f) Bulletin Boards

- (1) NDDOT has combined all of the required EEO and U.S. Department of Labor posters and notices into one *Poster Board (DOT 3350 - Rev. 03-2003)*. This poster board **MUST** be provided to the prime contractor and each subcontractor attending the pre-job conference.
- (2) In addition to the poster board, or its equivalent, contractors **MUST** display the federal Davis-Bacon wage rate decision applicable to the project (incorporated into the contract) and their company discrimination complaint procedure (a sample is attached to the pre-job conference form).
- (3) Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster board and Davis-Bacon wage rate decision.
- (4) Three-ring binders may be used in place of bulletin boards **ONLY** if the contractor is on the project for less than one week (seven calendar days); or if the contractor is extremely mobile on the project, for example: paint strippers, guardrail installers, fencers, etc. However, project employees **MUST** feel comfortable in accessing the information in the three-ring binder.
- (5) Another allowable method for complying with bulletin board requirements is for the contractor to provide individual copies of their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure to all employees at the beginning of **EACH** construction season and to all new employees hired throughout the remainder of the year. However, the contractor **MUST** keep written documentation, including signatures of employees, and be able to produce the documentation upon request. The other posters and notices **MUST** then be discussed at periodic EEO meetings held

throughout the year. Again, documentation **MUST** be kept to verify that this information is being brought to the attention of the employees.

g) Pit Information

- (1) At the time of the pre-job conference, the prime contractor **MUST** inform the assistant district engineer or the district, city, county, or consultant project manager-engineer of the pits to be used on the project by the prime contractor and each subcontractor. A determination **MUST** then be made as to whether the federal Davis-Bacon wage rates will apply to work performed at the pits.
- (2) The Davis-Bacon and Related Acts (DBRA) **DO NOT** apply to a pit or batch plant site (concrete or asphalt) when it is determined to **NOT** be included in the **site of the work** of a federal or federally-aided contract or project.
- (3) The definition for **site of the work** has undergone many changes due to challenges to the U.S. Department of Labor's (USDOL's) interpretation of DBRA. The courts have significantly narrowed the definition previously used. In January 2001, USDOL released the following new definition modifying 29 CFR 5.2 (j)(1):

"The site of the work definition includes material or supply sources, tool yards, job headquarters, etc., in the site of the work only where they are **dedicated** to the covered construction project **and** are **adjacent or virtually adjacent** to the location where the building or work is being constructed."

- (4) The new definition applies to all federal-aid projects **let to contract** (**NOT** awarded) after **January 19, 2001**.

- (5) Also changed is:

"The regulatory definition of construction to provide that the off-site transportation of materials, supplies, tools, etc., is **not** covered unless such transportation occurs between the construction work site and a **dedicated** facility located **adjacent or virtually adjacent** to the construction site."

- (6) The key is **dedicated** to the job site **AND adjacent or virtually adjacent** to the location where the work is being constructed. NDDOT has defined **adjacent or virtually adjacent** as a pit or batch plant (concrete or asphalt) whose boundary is located **within one-half mile** of the closest right of way boundary to the project. The distance is measured as one-half mile from the boundary to the pit or batch plant site

(concrete or asphalt) to the closest project boundary, **as the crow flies**, **NOT** to the middle of the project.

- (7) The federal regulations further define **site of the work** as:
- (a) “1 (1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established **specifically for the performance of the contract or project.**”
 - (b) “1 (2) Except as provided in paragraph 1 (3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work provided they are **dedicated exclusively, or nearly so**, to performance of the contract or project **and** provided they are **adjacent or virtually adjacent** to the site of the work as defined in paragraph 1 (1) of this section.”
 - (c) “1 (3) **Not included** in the site of the work are **permanent** home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are **established** by a supplier of materials for the project **before opening of bids and not on the site of work** as stated in paragraph 1 (1) of this section, are **not** included in the site of the work. Such permanent, previously established facilities are **not** part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.”
- (8) If the boundary to a pit or batch plant site (concrete or asphalt) is located **more than one-half mile** from the closest right of way boundary to the project, DBRA **DOES NOT** apply. It **DOES NOT** matter when the project was **let to contract (NOT awarded)** because the pit or batch plant site (concrete or asphalt) is **more than one-half mile** away.
- (9) If the boundary to a pit or batch plant site (concrete or asphalt) is located **one-half mile or less** from the closest right of way boundary to the project,
- (a) DBRA **DOES NOT** apply if the pit or batch plant site (concrete or asphalt) **HAS BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract (NOT awarded)**.

- (b) DBRA **DOES** apply if the pit or batch plant site (concrete or asphalt) **HAS NOT BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract** (**NOT** awarded).
- (10) The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mix concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are activities **NOT** covered by DBRA. This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site. Such bona fide material suppliers are **NOT** considered contractors under DBRA. Thus, their employees are **NOT** due Davis-Bacon wages and payrolls are **NOT** required. What constitutes a sufficient quantity of sales to the general public depends on the circumstances in each case, but **MUST** be **more than mere token sales**.
- (11) The supplier **MUST** be able to demonstrate that he or she has **routinely been selling to the general public from the aggregate source** and that the pit was opened for that use, **NOT** for the federal-aid project in question. In other words, if they are normally considered a supplier but they opened the pit just for the federal-aid project, **AND** the pit is located **one-half mile or less** from the closest right of way boundary to the project, they would be considered a contractor and **NOT** a supplier. Consequently, Davis-Bacon wages would be due and payrolls would be required.
- (12) If DBRA **DOES** apply to a pit or batch plant site (concrete or asphalt), the employees who perform tasks directly related to producing the product are covered, including the truck drivers who haul the materials from the pit or batch plant site (concrete or asphalt) to the project, regardless of whose payroll they appear on.
- (13) It **DOES NOT** matter who owns the pit, who is crushing, or who is producing the product. What matters is whether the site is **dedicated** to the covered construction project **AND** is **adjacent or virtually adjacent** to the project.
- (14) In addition, it **DOES NOT** matter if the pit is a state-optioned pit. If the pit is located **more than one-half mile** from the closest right of way boundary to the project, DBRA **DOES NOT** apply.
- (15) If rubble or other material is hauled from a project to a location designated in the plans and specifications for the project, DBRA **DOES** apply. If no location is designated in the plans and specifications, and the truck drivers are hauling the rubble or material from the project to a location determined to **NOT** be a **site of the work**, DBRA **DOES NOT** apply.

- (16) Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, Davis-Bacon wage rates **MUST** be paid and payrolls **MUST** be generated and submitted for all portions or segments of the contract. Consequently, the principles described above apply to pits and batch plants (concrete or asphalt) used for the contract. For example:

A contract has three portions or segments, of which two are federally funded and one is strictly state funded. There is a two and one-half mile gap between the state funded portion or segment and the next closest federally funded portion or segment. Material is being hauled from a pit site located **less than one-half mile** from the closest right of way boundary to the state funded portion or segment.

- (a) Because two of the portions or segments are federally funded, the entire project is viewed as federally funded.
 - (b) Since the pit site is located **less than one-half mile** from the closest right of way boundary to the state funded portion or segment,
 - (i) DBRA **DOES NOT** apply if the pit site **HAS BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract (NOT awarded)**.
 - (ii) DBRA **DOES** apply if the pit site **HAS NOT BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract (NOT awarded)**.
 - (c) DBRA applies to anyone working **adjacent** (within one-half mile) to the boundaries of the project site, generally at a pit or batch plant site (concrete or asphalt).
 - (d) If material is hauled from that same pit site to any one of the other two portions or segments, which are **NOT adjacent** to the pit site, DBRA still applies because the portions or segments are looked at as a whole.
- (17) There are times when, at the end of a project, NDDOT adds another mile or two to the project through the issuance of a change order. If it was previously determined that the boundary to a pit or batch plant site (concrete or asphalt) was located **more than one-half mile** from the closest right of way boundary to the project; but the added segment brings the boundary to the pit or batch plant site (concrete or asphalt) **within one-half mile** of the project boundary:

- (a) Those employees working on the additional segment under the change order would be due Davis-Bacon wages and payrolls would be required.
 - (b) Those employees hauling from and working at the pit or batch plant site (concrete or asphalt) under the change order would be due Davis-Bacon wages and payrolls would be required **ONLY** if the pit or batch plant site (concrete or asphalt) **WAS NOT** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract** (**NOT** awarded).
- (18) The district, city, county, or consultant project manager-engineer **MUST** use his or her best judgment to determine whether a location in question is considered a **site of the work**. If the district, city, county, or consultant project manager-engineer has questions or is unsure whether a pit or batch plant site (concrete or asphalt) is covered, he or she **MUST** consult the **CIVIL RIGHTS DIVISION**.

h) Trucking Operations

- (1) The **PRIME CONTRACTOR** is responsible for monitoring DBE performance on the project. The prime contractor **MUST** ensure that the DBE performs a commercially useful function and performs the work committed to at the time of contract award.
- (2) The **PRIME CONTRACTOR** is also responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and payrolls as required and monitoring and verifying the status of all truck owner-operators working on the project or the **site of the work**, either directly for the prime contractor or for its subcontractors.
- (3) Commercially Useful Function:
 - (a) The DBE **MUST** be responsible for the management and supervision of **their portion of the trucking operation**.
 - (b) The DBE's supervisor **MUST** be on the project **at all times**.
 - (c) The DBE **MUST**, itself, own and operate **at least one fully licensed, insured, and operational truck** used on the contract. The truck **DOES NOT** have to be on the project **at all times**.
 - (d) The DBE **MUST** perform **at least 30% of the total cost** of their contract **with their own workforce**, or whatever percent was committed to during the DBE participation review process.

- (e) Leased trucks **MUST** display the ***name and identification number*** (USDOT number issued for interstate commerce) of the DBE.
- (4) Counting DBE Participation:
- (a) The DBE receives credit for the ***total value*** of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. This includes those units leased from a commercial truck dealer, such as Nelson International, Inc., Peterbilt of Fargo, Inc., W.W. Wallwork, etc. Leases from non-commercial sources may also be allowed but **MUST** be submitted to the **CIVIL RIGHTS DIVISION** for review and approval ***prior to use*** on a contract.
 - (b) The DBE may lease trucks from another DBE, including a DBE owner-operator. The DBE receives credit for the ***total value*** of the transportation services the lessee DBE provides on the contract.
 - (c) The DBE may lease trucks from a non-DBE, including an owner-operator. The DBE receives credit for the ***total value*** of the transportation services the non-DBE lessee provides on the contract ***not to exceed the value of the transportation services provided by DBE-owned trucks on the contract***. The DBE receives credit **ONLY** for the ***fee or commission*** it receives as a result of any additional participation provided on the contract by the non-DBE lessee under the lease agreement.
 - (d) All leases **MUST** indicate:
 - (i) That the DBE has exclusive use of and control over the truck.
 - (ii) That this **DOES NOT** preclude the leased truck from working for others during the term of the lease, with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
 - (iii) That the leased truck **MUST** display the name and identification number (USDOT number issued for interstate commerce) of the DBE.
- (5) Subcontractors:
- (a) If the prime contractor is using subcontractors for hauling, whether on a federal-aid project or **NOT**, approved *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* forms

and subcontract agreements between the prime contractor and the subcontractor are required **prior** to performing any hauling. When the contract is federally funded, the *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)* **MUST** also be included in the subcontract agreements because it contains more than just the labor standards provisions. This applies to all tiers of subcontracts.

- (b) If the prime contractor is using subcontractors for hauling on a federal-aid project or the **site of the work**, the labor standards provisions and the applicable Davis-Bacon wage rate decision **MUST** be incorporated into the subcontract agreement. The subcontractor **MUST** pay its employees the proper Davis-Bacon wage rates, including applicable fringe benefits, and provide weekly payrolls. This applies to all tiers of subcontracts.
- (c) This **DOES NOT** apply to the transportation of materials and manufactured component products that the contractor purchases from off-site commercial producers.

(6) Truck Owner-Operators:

- (a) Bona fide owner-operators of trucks **ONLY** are **NOT** covered under DBRA. However, if the prime contractor or a subcontractor is using owner-operators for hauling on a federal-aid project or the **site of the work**, they **MUST** appear on either the prime contractor's or the subcontractor's payrolls as:
 - (i) Owner-operator's name, address, and social security number with the notation **owner-operator** after the name.
 - (ii) Vehicle identification number or license plate number of the vehicle being driven.
 - (iii) Truck number being used on scale tickets and haul sheets.
 - (iv) Neither the hours worked nor the wages paid need be shown.
- (b) The actual owner-operator **MUST** drive the truck at all times. If, for any reason, he or she **DOES NOT** drive the truck, even for a short period of time, the replacement driver **MUST** be paid Davis-Bacon wages, including applicable fringe benefits, and **MUST** appear on project payrolls showing the hours worked and the wages paid.

- (c) To determine bona fide owner-operator status, the **PRIME CONTRACTOR MUST** request and verify the following:
 - (i) Owner-operator's name.
 - (ii) Valid commercial drivers license.
 - (iii) Vehicle registration in the owner-operator's name.
 - (iv) Current vehicle license number.
 - (v) Truck number that will or is being used on scale tickets and haul sheets.
 - (vi) Copies of any signed lease or rental agreements for owner-operator trucks. The lease **MUST** be between the driver and a reputable dealership (i.e., Nelson International, Inc., Peterbilt of Fargo, Inc., W. W. Wallwork, etc.); **NOT** the driver and the prime contractor or the driver and a subcontractor on the project.

B. Monthly EEO Project Inspection Report

1. The *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 08-2006)* **MUST** be submitted monthly by district, city, county, and consultant project managers-engineers for each active federal-aid highway construction project under their supervision.
 - a) If a contractor's bulletin board is **NOT** current, the district, city, county, or consultant project manager-engineer **MUST** state what corrective action was requested and the date by which the corrective action is to be implemented. Contractors are required to display three items on their project bulletin boards:
 - (1) *Poster Board (DOT 3350 - Rev. 03-2003)*, or its equivalent, provided by NDDOT;
 - (2) Davis-Bacon wage rate decision found in the contract; and
 - (3) Company discrimination complaint procedure (a sample is attached to the pre-job conference form).
 - b) Special emphasis is being placed on monitoring **ALL** trucking operations due to an increase in the number of wage rate complaints being filed at the end of each construction season. During production, the **PRIME CONTRACTOR MUST** monitor the trucking operations to ensure compliance with both the DBE and

the labor standards provisions of the contract. Refer to paragraph A, 13, h of this section (page I-13).

- (1) The district, city, county, or consultant project manager-engineer **MUST** review the trucking operations and procedures, including the required documentation, with the prime contractor at least once during the first two weeks of hauling on the project. This **MUST** be noted on the Monthly EEO Project Inspection Report.
 - (2) If a DBE trucking firm is **NOT** fulfilling the commitments agreed to on Form C and the DBE participation review form, or other trucking requirements are **NOT** being met, the **PRIME CONTRACTOR MUST** be required to take corrective action to ensure compliance with the contract requirements. Any corrective action requested and the date by which the corrective action is to be implemented **MUST** be noted on the Monthly EEO Project Inspection Report.
- c) The requirement for the district, city, county, or consultant project manager-engineer to attach and forward the FHWA 1391 reports with the Monthly EEO Project Inspection Report for the month of July has been deleted from the report. Refer to paragraph C of this section (below).
 - d) Information concerning the scheduling of labor compliance job-site interviews **MUST** also be noted on the Monthly EEO Project Inspection Report.
2. The Monthly EEO Project Inspection Report **MUST** be submitted to the **CIVIL RIGHTS DIVISION** by the **tenth** calendar day of the following month. A copy of the report **MUST** be retained for the project file that is sent to the Construction Services Division when the contract is finalized.

C. Federal-aid Highway Construction Contractors Annual EEO Report (FHWA 1391)

1. The *Federal-aid Highway Construction Contractors Annual EEO Report (FHWA 1391 - Rev. 04-2005)* is required by law and federal regulation (23 USC 140a and 23 CFR Part 230). The report **MUST** be submitted by all prime contractors and covered subcontractors (subcontracts of \$10,000 or more) that have been active on federally-aided highway construction projects during the month of July **ONLY** for the duration of the project.
2. As of the 2002 construction season, NDDOT is participating in an information collection pilot program whereby contractors are allowed to submit one consolidated report inclusive of all federal-aid projects.
3. In early **July**, the Civil Rights Division will mail the report form to all qualified contractors with instructions to complete and return the report directly to the **CIVIL RIGHTS DIVISION** by no later than **August 10**. A copy of the form and letter to the qualified

contractors will be sent to the assistant district engineers and to all city, county, and consulting engineers.

4. Any questions concerning the report should be referred to the **CIVIL RIGHTS DIVISION**. However, the following general instructions apply:
 - a) Any prime contractor or subcontractor (no matter what tier) with a federal-aid contract of \$10,000 or more **MUST** complete and submit one form with its company-wide employment data. Truck owner-operators, haulers of petroleum products, brokers, vendors, suppliers, regular dealers, and manufacturers are **NOT** considered contractors and are **NOT** required to file the report.
 - b) If work was performed on a federal-aid project in **NORTH DAKOTA** at any time during the month of **July**, a form FHWA 1391 is required. If no work was done during the last full pay period in July, **ONLY** the top part of the form (through Block 5) need be completed.
 - c) The staffing figures to be reported under workforce data **MUST** be limited to the workforce involved in **HIGHWAY CONSTRUCTION WORK ONLY** who were on board in all or any part of the last full pay period preceding the end of July (even if the contractor **DID NOT** work the full pay period). A full pay period is seven calendar days. For example: If, for the year 2009, a contractor's pay period normally ends on a:

| | |
|-----------|--|
| Sunday | - the report will cover the period ending July 26; |
| Monday | - the report will cover the period ending July 27; |
| Tuesday | - the report will cover the period ending July 28; |
| Wednesday | - the report will cover the period ending July 29; |
| Thursday | - the report will cover the period ending July 30; |
| Friday | - the report will cover the period ending July 31; |
| Saturday | - the report will cover the period ending July 25. |
 - d) **ONLY** project personnel **MUST** be reported. Those company officials and supervisors who are on projects a majority of the time **MUST** be included. Company personnel who are on projects for **ONLY** short periods and who **DO NOT** have daily, on-site responsibilities for project activity **MUST NOT** be included. Home office personnel (primarily clerical) who are **NOT** assigned exclusively to a project and who **DO NOT** appear on project payrolls **MUST NOT** be reported.
 - e) The staffing figures to be reported in Table A **MUST** include journeyworkers **ONLY**. Apprentices and on-the-job trainees **MUST** be reported separately in Tables B and C. The most appropriate job classification **MUST** be used since there is no provision for write-in categories. For example: Welders, greasers, and oilers **MUST** be shown as mechanics; operators of striping trucks as equipment operators; etc.

- f) The figures in the two **TOTAL EMPLOYEES** columns (male and female) **MUST** equal the figures in the two **TOTAL MINORITIES** columns (male and female) plus the two **WHITE NOT OF HISPANIC ORIGIN** columns (male and female). The figures in the two **TOTAL MINORITIES** columns (male and female) **MUST** equal the total of the figures in the two **BLACK NOT OF HISPANIC ORIGIN, HISPANIC, AMERICAN INDIAN OR ALASKAN NATIVE, and ASIAN OR PACIFIC ISLANDER** columns (male and female).
- g) Women are **NOT** to be reported as minorities unless they are members of one of the four ethnic minority groups.
- h) The staffing figures to be reported in Tables B and C **MUST** include **ONLY** apprentices and on-the-job trainees and **MUST** be entered as indicated above. Project personnel **MUST ONLY** be reported as apprentices and on-the-job trainees if they are currently enrolled in recognized and approved (by NDDOT or the Bureau of Apprenticeship and Training, U. S. Department of Labor) apprenticeship and on-the-job training programs.
- i) The apprentices and trainees **MUST** be shown in the job classification for which they are receiving training, **NOT** as semi-skilled or unskilled laborers.
- j) The number of apprentices and on-the-job trainees shown in Table C **MUST** equal the number of apprentices and on-the-job trainees shown in Table B.
- k) The report **MUST** be checked to ensure that it has been filled out completely, that the figures balance across and down, and that the report has been signed and dated by an official or representative of the company.

The following may be obtained from the Civil Rights Division, phone: 328-2605, fax: 328-1965, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- *Federal-aid Highway Construction Contractors Annual EEO Report (FHWA 1391 - Rev. 04-2005)*
www.dot.nd.gov/forms/fhwa1391form.pdf
- *Labor Compliance and EEO Contract Compliance Job-site Interview (SFN 9426 - Rev. 01-2008)*
www.dot.nd.gov/forms/sfn09426.pdf
- *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn09425.pdf
- **Poster Board (DOT 3350 - Rev. 03-2003)*
- *Pre-Job Conference – Equal Employment Opportunity, Labor Standards, and DBE Participation Information (SFN 9423 - Rev. 01-2008)*
www.dot.nd.gov/forms/sfn09423.pdf

***NOT** available on the Web site.

- *Record of DBE Project Payments (SFN 53664 - 09-2006)*
www.dot.nd.gov/forms/sfn53664.pdf
- *Request for On-the-Job Training Program Approval (SFN 9762 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn09762.pdf
- *Voucher for On-the-Job Training Program Hourly Reimbursement (SFN 51023 - Rev. 12-2007)*
www.dot.nd.gov/forms/sfn51023.pdf

The following forms may be obtained from the Construction Services Division, phone: 328-2563, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- *DBE Participation Certification (SFN 14268 - Rev. 10-2008)*
www.dot.nd.gov/forms/sfn14268.pdf
- *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)*
www.dot.nd.gov/forms/sfn05682.pdf
- *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)*
www.dot.nd.gov/forms/sfn07721.pdf

EXHIBIT I-A: PRE-JOB CONFERENCE – EQUAL EMPLOYMENT OPPORTUNITY, LABOR STANDARDS, AND DBE PARTICIPATION INFORMATION

North Dakota Department of Transportation, Civil Rights Division SFN 9423 (Rev. 01-2008)

To access SFN 9423, click on the following:

www.dot.nd.gov/forms/sfn09423.pdf

EXHIBIT I-B: MONTHLY EEO PROJECT INSPECTION REPORT

North Dakota Department of Transportation, Civil Rights Division

SFN 9425 (Rev. 08-2006)

To access SFN 9425, click on the following:

www.dot.nd.gov/forms/sfn09425.pdf

EXHIBIT I-C: FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT
Form FHWA 1391 (Rev. 04-2005)

To access Form FHWA 1391, click on the following:

www.dot.nd.gov/forms/fhwa1391form.pdf

II. ON-THE-JOB TRAINING

Under 23 Code of Federal Regulations Part 230, NDDOT is required to provide training and skill improvement opportunities to assure the increased participation of minorities, women, and economically disadvantaged persons in all phases of the highway construction industry. The Civil Rights Division has the overall responsibility for developing, implementing, and monitoring NDDOT's On-the-Job Training Program. The monitoring of contractor payrolls for the payment of correct wage rates and fringe benefits, where applicable, has been delegated to the districts.

A. Special Provision On-the-Job Training Program

With the exception of contracts funded solely with county funds and emergency relief projects that are **NOT** included in NDDOT's bid openings, all contracts (state and federally funded) contain *Special Provision On-the-Job Training Program (4-1-08)*.

B. Trainee Assignments

1. Trainee positions are assigned to prime contractors and are **NOT** project specific. The number of trainee positions assigned will be determined by applying a formula based on calculations involving specific project specification numbers on applicable projects funded with federal highway dollars awarded by NDDOT to a prime contractor from October 1 to September 30 each year. The dollar value of contracts subject to Tribal Employment Rights Ordinances (TERO) and concrete pavement repair (CPR), electrical, rest area, signing, and striping contracts are excluded.
2. In early **April** each year, the Civil Rights Division sends a summary of the trainees required to date and an on-the-job training (OJT) program package to participating prime contractors. The OJT program package is also provided to prime contractors and subcontractors, upon request, and as prime contractors become eligible for trainees throughout the remainder of the year.
3. The number of trainees assigned to each prime contractor in the summary provided in April will increase proportionately for any applicable federally funded contracts awarded to them between April 1 and September 30, to a maximum of four (4) trainees. Contracts awarded after September 30 will be included in the following year's OJT program.
4. Contractors **NOT** qualifying for the OJT program, or contractors desiring to train more than the assigned number of trainees, may apply to the Civil Rights Division for additional trainee positions. Approval of additional positions is at the sole discretion of NDDOT. The Civil Rights Division takes into consideration whether there is enough work for the trainee to successfully complete the program, whether the contractor will be exceeding the allowable ratio of trainees to journeyworkers (generally considered to be one trainee or apprentice to every three to five journeyworkers), etc.

5. If approved, additional trainee positions may be filled by individuals outside of the targeted groups (minority, female, and economically disadvantaged). The contractor may pay the reduced training rates to additional trainees outside of the targeted groups and receive the hourly reimbursement for those trainees.
6. A prime contractor may reassign or delegate one or more of the assigned trainee positions to subcontractors, with the approval of the Civil Rights Division. The subcontractor **MUST** have work enough to support the trainee(s). In other words, a trainee **MUST** be able to accumulate enough hours to complete the training program. The **PRIME CONTRACTOR** will be held responsible for the subcontractor's compliance with the training requirement. In addition, OJT program reimbursement will be made directly to the prime contractor.
7. Contractors may transfer trainees from one project to another (state and federally funded) in order to complete the OJT program. If transfers are made, the Civil Rights Division **MUST** be notified; and the contractor **MUST** document when the transfer was made. The training hours will count toward overall OJT program completion.
8. Contractors may use trainees on projects subject to TERO requirements as part of the core crew or as part of the skilled labor supplied by the contractor.
9. Contractors may use trainees on municipal, private, or other non-highway work and work performed out of state. The training hours will count toward overall OJT program completion; however, no program reimbursement will be made for those hours. In addition, the hours will be limited to no more than 25 percent of the total hours required under the training curriculum.
10. Contractors may **NOT** use one trainee to fill multiple trainee positions. For instance, a subcontractor may **NOT** use the same trainee in the same training program to simultaneously fill two or more trainee positions reassigned to them by prime contractors.
11. Contractors may use a trainee on a piece of equipment in groups 1-3 or 4-6 for one assigned trainee position, then once that trainee has completed the program, the trainee may be trained on a different piece of equipment in groups 1-3 or 4-6 to fulfill a second assigned trainee position. However, when a trainee is used a second time within a group, the trainee **MUST** be paid at the higher wage rate described in paragraph F, 3 of this section (page II-6). The power equipment operator groups are referenced to the federal Davis-Bacon wage rates contained in the contract proposal.

C. Training Program Approvals

1. To use the OJT program, contractors **MUST** notify the Civil Rights Division using the *Request for On-the-Job Training Program Approval (SFN 9762 - Rev. 08-2006)*. A completed request form and a copy of the actual training curriculum the contractor intends to use, contained in the OJT program package, **MUST** be submitted for each trainee. Contractors **MUST** select training programs based on their individual needs in

order that the trainees may be retained as journeyworkers after their programs have been completed.

2. Requests **MUST** be submitted by **April 15**, or within **15** days of notification of additional trainee assignments. The Civil Rights Officer signs the request form indicating its approval and returns a copy to the contractor.
3. Contractors may develop their own training programs if the job classifications in which they desire to train are **NOT** included in the OJT program package. The training programs **MUST** be submitted to the Civil Rights Division, in their entirety, for approval by NDDOT and the Federal Highway Administration **BEFORE** the trainee begins work under the OJT program. Instructions for preparing and requesting approval of such programs are included in the OJT program package.
4. Contractors may train an individual on a combination of equipment if each piece of equipment falls within the same groups of power equipment operators identified in the training curricula (groups 1-3 and groups 4-6). For example, a **utility operator** may receive training on a broom, a front-end loader less than 1½ cubic yards, or other piece of equipment that is used around a paver if each piece falls within either groups 1-3 or groups 4-6. When multiple wage rates apply, the trainee's wage **MUST** be based on the equipment being operated at the time or on the highest of the applicable wage rates.
5. Use of the classification ***pickup machine operator (asphalt dump-person)*** as a group 4 power equipment operator is considered standard industry practice. The classification is defined as: ***Operates the controls on the pickup machine that runs in front of the paver, trips the levers on the dump trucks, and balances the loads for the paver. The pickup machine operates on similar principles as a shouldering machine.***
6. Contractors may request to change from a previously approved program to another program. To request a change, a revised *Request for On-the-Job Training Program Approval (SFN 9762 - Rev. 08-2006)*, together with a copy of the new training curriculum, **MUST** be submitted to the Civil Rights Division for approval. The new program is approved in the same manner as the original program.
7. Classroom training may also be used to train employees. The contractor is required to submit a proposed classroom training curriculum to the Civil Rights Division for approval if the contractor wishes to count the classroom hours as training hours. The classroom training curriculum **MUST** define the type of training the individual will receive and the minimum number of hours required.
 - a) The Civil Rights Division will determine the number of hours of credit each trainee will receive toward his or her training. Contractors will be reimbursed for classroom training hours **ONLY** after the trainee has completed 80 hours of work on a highway construction project(s).
 - b) With the exception of qualified testing technicians, reimbursement for classroom training will be limited to 60 hours per trainee per construction

season. Reimbursement for classroom training required under NDDOT's Transportation Technician Qualification Program will be at NDDOT's discretion.

8. All nonunion training programs **MUST** be approved by the Civil Rights Division. Union apprenticeship and on-the-job training programs registered with the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, are recognized by NDDOT. These programs are acceptable under the OJT program provided the trainees or apprentices are minority, female, or economically disadvantaged, or the contractor has requested and received approval for additional trainee positions. However, contractors **MUST** produce indenture papers in order to be eligible for reimbursement, to pay the trainees or apprentices less than the applicable Davis-Bacon wage rate established for the job classification concerned, and to receive credit toward compliance with the OJT program.

D. Trainee Approvals

1. The Civil Rights Division approves all trainees for participation in the OJT program. Contractors are responsible for the recruitment and placement of trainees. The trainee's name and a completed application form **MUST** be submitted to the Civil Rights Division for review and approval **BEFORE** the trainee begins work under the OJT program.
2. Contractors **MUST** employ minority, female, or economically disadvantaged individuals for all trainee positions assigned in accordance with the OJT program. Additional positions requested by the contractor may be filled by individuals outside of these targeted groups.
3. To be considered economically disadvantaged, applicants **MUST** meet specific financial eligibility criteria and **MUST** be referred to Job Service North Dakota for screening and certification. Job Service is the **ONLY** agency NDDOT recognizes as being able to designate an individual as economically disadvantaged.
 - a) The contractor **MUST** have documentation from Job Service for each employee they intend to use under this category. This written documentation **MUST** be provided to the Civil Rights Division, with the other required information, as part of the approval process of trainees.
 - b) If the contractor is unable to produce this documentation, they will **NOT** be eligible for reimbursement for that particular trainee, will **NOT** be allowed to pay that trainee less than the applicable Davis-Bacon wage rate established for the job classification concerned, and will **NOT** receive credit toward compliance with the OJT program.
 - c) Nonminority males used to fill additional trainee positions approved by NDDOT **DO NOT** have to be certified as economically disadvantaged.

4. A contractor may **NOT** employ an individual as a trainee in a classification in which that individual has successfully completed a training course leading to journeyworker status, or in which the individual has been previously employed as a journeyworker.
5. Individuals enrolled in the truck driver training program **MUST** possess appropriate driver permits or licenses for the operation of Class A, B, and C trucks. The contractor's application form **MUST** be designed to include proper questions to ascertain this information.
6. A contractor may terminate the training period of a trainee who has completed 90% or more of the required number of training hours and advance the trainee to journeyworker status.
7. When a trainee completes the program, the contractor **MUST** notify the Civil Rights Division. The Civil Rights Division issues a certificate of completion and a laminated, wallet-size certificate to each trainee graduate.

E. Voucher for On-the-Job Training Program Hourly Reimbursement

1. Contractors are reimbursed \$4.00 per hour for each hour of training provided in accordance with the OJT program. If a trainee position was delegated to a subcontractor, program reimbursements will be made to the prime contractor.
2. If a trainee was provided classroom training under a pre-approved training curriculum, or a training curriculum submitted to and approved by the Civil Rights Division, the contractor will be reimbursed for those hours **ONLY** after the trainee has completed 80 hours of work on a highway construction project(s).
 - a) With the exception of qualified testing technicians, reimbursement for classroom training will be limited to 60 hours per trainee per construction season.
 - b) Reimbursement for classroom training required under NDDOT's Transportation Technician Qualification Program will be at NDDOT's discretion.
3. To request reimbursement, contractors **MUST** complete a *Voucher for On-the-Job Training Program Hourly Reimbursement (SFN 51023 - Rev. 12-2007)* for each trainee employed in the OJT program. The completed vouchers **MUST** be submitted to the Civil Rights Division for approval and processing by the **15th** day of every following month the trainee is employed under the OJT program.

F. Minimum Wage Rates

1. Basic hourly rates for all job classifications and fringe benefit payments, where applicable, are established by the U.S. Department of Labor under the Davis-Bacon and

Related Acts. These rates are included in all federally-aided highway construction contracts as *Labor Rates from U.S. Department of Labor*.

2. During the first half of the training program, the contractor may pay the trainee 80 percent of the established Davis-Bacon wage rate for the job classification concerned. However, if 80 percent of the rate falls below the lowest established laborer rate for the project, the contractor **MUST** pay that laborer rate. The contractor may then pay 85 percent of the Davis-Bacon wage rate during the third quarter of training and 90 percent of the Davis-Bacon wage rate during the fourth quarter. See paragraph G of this section (below) for information concerning the payment of fringe benefits.
3. Under the power equipment operator training programs **ONLY**, once a trainee has completed a training program in either groups 1-3 or groups 4-6, the contractor may enroll the trainee in another training program on a different piece of equipment in either groups 1-3 or groups 4-6. However, the minimum wage under the second program **CANNOT** be less than 85 percent of the journeyworker rate for the first two quarters of training, 90 percent of the journeyworker rate for the third quarter, and 95 percent of the journeyworker rate for the fourth quarter.
4. For the purpose of the OJT program, a quarter is 25 percent of the hours worked by each trainee and **DOES NOT** represent three months of the year. For example, the first two quarters of a 550-hour training curriculum would end after 275 hours, the third quarter after 138 hours, and the fourth after 137 hours.

G. Payment of Fringe Benefits

1. On-the-job trainees and apprentices **MUST** be paid fringe benefits in accordance with the provisions of the training or apprenticeship program. If the training or apprenticeship program **DOES NOT** specify or mention fringe benefits, trainees and apprentices **MUST** be paid the full amount of fringe benefits listed in the wage rate decision for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprenticeship classification, fringes **MUST** be paid in accordance with that determination. If that is the case, trainees **MUST** receive the same fringe benefits as apprentices.
2. NDDOT's OJT program package specifies that on-the-job trainees be paid full fringe benefits, where applicable.
3. The contractor has the option of paying the fringe benefits into approved plans, funds, or programs or directly to his or her employees.

H. Monitoring Payrolls

1. The district, city, county, or consultant project manager-engineer is responsible for monitoring weekly payrolls for the payment of correct wage rates and fringe benefits, where applicable, and to assure that when the trainees have completed the specified number of hours, their wage rates are increased accordingly. The pay increments can

be found on the *Minimum Wage Scale* in NDDOT's OJT program package, or may be obtained from the Civil Rights Division.

2. Payrolls are **NOT** required from contractors working on state-aided projects even though a trainee is working on the project. If problems occur on these projects, the Civil Rights Division **MUST** be notified **IMMEDIATELY**.
3. The Civil Rights Division will maintain a master list, by contractor name and trainee name, to aid project staff in monitoring payrolls for trainees working on multiple projects.

I. Trainee Counseling

1. NDDOT's OJT supportive services consultant will be counseling the targeted group trainees and monitoring their progress under the program. To facilitate counseling sessions, the OJT supportive services consultant will contact contractors for the location of the trainees. Contractors **MUST** make the trainees available for counseling.
2. Each trainee will be counseled during his or her first two weeks on the job if at all possible. Ideally, each trainee will then be counseled once more within two to four weeks of the initial visit, unless there are problems that warrant another visit.
3. In addition to visiting with the trainee, the OJT supportive services consultant will be talking with the district, city, county, or consultant project manager-engineer and the contractor's project superintendent about the trainee's progress.
4. If a contractor questions the OJT supportive services consultant's presence on the job, they should be reassured that the consultant has a contract with NDDOT to provide this service.
5. The OJT supportive services consultant is also available to help project personnel when they have questions concerning the OJT program or the trainees themselves.
6. The current OJT supportive services consultant is Wold Engineering, P.C. Contact Bill Prichard or Lisa Rhodes at Wold Engineering, P.C., 316 Eastdale Drive, Bismarck, ND 58501, email: wepc@btinet.net or phone 701-258-9227.

J. Unfulfilled Trainee Positions

For a variety of reasons, a contractor may **NOT** fulfill the assigned number of trainee positions during a construction season. At the end of the construction season, the Civil Rights Division will notify those contractors and request documentation as to why the assigned trainee positions were **NOT** fulfilled. The Civil Rights Division will make a decision, on a case-by-case basis, whether the trainee positions will be carried over to the next construction season.

The following may be obtained from the Civil Rights Division, phone: 328-3116, fax: 328-1965, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- NDDOT's OJT Program Package, including the *Minimum Wage Scale*
www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf
- *Request for On-the-Job Training Program Approval (SFN 9762 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn09762.pdf
- *Voucher for On-the-Job Training Program Hourly Reimbursement (SFN 51023 - Rev. 12-2007)*
www.dot.nd.gov/forms/sfn51023.pdf

EXHIBIT II-A: NORTH DAKOTA DEPARTMENT OF TRANSPORTATION ON-THE-JOB TRAINING PROGRAM

To access the current On-the-Job Training Program, click on the following:

www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf

EXHIBIT II-B: REQUEST FOR ON-THE-JOB TRAINING PROGRAM APPROVAL

North Dakota Department of Transportation, Civil Rights Division

SFN 9762 (Rev. 08-2006)

To access SFN 9762, click on the following:

www.dot.nd.gov/forms/sfn09762.pdf

EXHIBIT II-C: VOUCHER FOR ON-THE-JOB TRAINING PROGRAM HOURLY REIMBURSEMENT

North Dakota Department of Transportation, Civil Rights Division

SFN 51023 (Rev. 12-2007)

To access SFN 51023, click on the following:

www.dot.nd.gov/forms/sfn51023.pdf

III. DISADVANTAGED BUSINESS ENTERPRISE

Under 49 Code of Federal Regulations Part 26, NDDOT is required to implement a Disadvantaged Business Enterprise (DBE) Program to ensure nondiscrimination in the award and administration of federally assisted highway construction contracts. The Civil Rights Division has the overall responsibility for developing, implementing, and monitoring NDDOT's DBE Program. Day-to-day project monitoring has been delegated to the districts.

A. Special Provisions Disadvantaged Business Enterprise Program

1. Most federally-aided highway construction contracts will contain either the *Special Provision Disadvantaged Business Enterprise Program (Race-conscious) (dated 3-11-08 and earlier)* or the *Special Provision Disadvantaged Business Enterprise Program (Race-neutral) (dated 2-8-08 and earlier)*.
2. The race-conscious special provision specifies a percentage of the bid price to be subcontracted or expended to DBE firms. Prime contractors **MUST** meet assigned goals or show that good faith efforts were made in an attempt to meet the goals. Prime contractors are required to provide a list of the DBE firms intended for use on the project at the time of bid submittal.
3. The race-neutral special provision assists all small businesses in the subcontract and supply selection process and is completely race and gender neutral. Prime contractors are required to provide a list of the DBE firms intended for use on the project by noon on the next work day following the bid opening.
4. Under both the race-conscious and the race-neutral special provisions, the apparent low bidder **MUST** provide:
 - a) A Form C [*Notification of Intent to Use DBE (RC) (SFN 52752 - Rev. 11-2006 and earlier)* or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] to the **CIVIL RIGHTS DIVISION** for each DBE intended for use on the project.
 - b) A *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)* to the **CONSTRUCTION SERVICES DIVISION** for each DBE intended for use on the project (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers).
 - c) A *Record of DBE Project Payments (SFN 53664 - 09-2006)* to the **CIVIL RIGHTS DIVISION**, on a semiannual basis, to document actual payments to DBE firms for work performed.
 - d) A completed *DBE Participation Certification (SFN 14268 - Rev. 10-2008)* to the **CONSTRUCTION SERVICES DIVISION**, with a copy to the district, city, county, or consultant project manager-engineer, upon completion of the contract to verify DBE participation.

B. DBE Participation Review (RC) and DBE Participation Review (RN)

1. For contracts that contain the race-conscious special provision:
 - a) The prime contractor **MUST** complete and submit the *Disadvantaged Business Enterprise Participation (RC) Form A (SFN 52750 - Rev. 12-2006 and earlier)* with the proposal at the time of bid submittal.
 - (1) Form A **MUST** list the DBE firms intended for use on the project. If the prime contractor intends to use DBE quotes received by a subcontractor over \$500,000, the prime contractor **MUST** attach the subcontractor's Form A to the prime contractor's Form A.
 - (2) If the assigned goal has **NOT** been met and the prime contractor intends to do the work itself, the prime contractor **MUST** note the specific bid item numbers and the names of the DBE firms that quoted the work but were **NOT** used in the appropriate block on Form A.
 - (3) If the assigned goal has **NOT** been met and DBE quotes were received but **NOT** used based on the bid differential concept, the names of the DBE firms that quoted **MUST** be noted in the appropriate block on Form A. The actual bid differential analysis **MUST** be submitted to the **CIVIL RIGHTS DIVISION** within five (5) working days after the bid opening as described in paragraph B, 1, c of this section (below).
 - b) If the assigned goal has **NOT** been met, the apparent low bidder **MUST** submit documentation of the efforts it made in affirmatively soliciting and receiving quotes from DBE firms, in providing assistance to DBE firms during the quoting process, and in considering and using the quotes of DBE firms in accordance with the special provision. This includes the bid differential analysis described in paragraph B, 1, c of this section (below). The documentation **MUST** be submitted to the Civil Rights Division within five (5) working days after the bid opening.
 - c) If the assigned goal has **NOT** been met, for work the apparent low bidder intends to subcontract or expend to non-DBE firms, where DBE firms quoted but were **NOT** used, the apparent low bidder **MUST** provide a bid differential analysis of the DBE and non-DBE quotes it received to the **CIVIL RIGHTS DIVISION** within five (5) working days after the bid opening. The analysis **MUST** contain:
 - (1) A comparison of each item bid by a DBE with like items bid by a non-DBE.

- (2) A clear explanation of the difference in the bid calculations for each item of work affected, including a comparison by total dollar value and percentage of difference between the DBE and the non-DBE.
 - (3) If a DBE is used **ONLY** for a portion of a bid item, an explanation as to why the DBE was **NOT** used for the entire bid item. For example, if there is \$1 million worth of trucking on a project and the DBE will be used for \$100,000 of the trucking, the apparent low bidder **MUST** show why the DBE was **NOT** used for the remaining \$900,000 of the trucking.
 - d) If, based on the bid differential analysis, NDDOT determines a DBE quote should have been used where a non-DBE quote was used, the apparent low bidder will be given the opportunity to commit to using the DBE, to resubmit a corrected Form A, and to complete a Form C prior to contract award.
2. For contracts that contain the race-neutral special provision, the apparent low bidder **MUST** complete and submit the *Disadvantaged Business Enterprise Participation (RN) Form A (SFN 52012 - Rev. 12-2006 and earlier)* to the Civil Rights Division by noon on the next work day following the bid opening. Form A **MUST** list the DBE firms intended for use on the project. If the apparent low bidder intends to use DBE quotes received by a subcontractor, the apparent low bidder **MUST** attach the subcontractor's Form A to the apparent low bidder's Form A.
3. Under both the race-conscious and the race-neutral special provisions, the prime contractor, or apparent low bidder, and any subcontractor that listed DBE participation on Form A **MUST** complete a Form C [*Notification of Intent to Use DBE (RC) SFN 52752 - Rev. 11-2006 and earlier*] or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] for each DBE intended for use on the project.
- a) The Form C's **MUST** be submitted to the **CIVIL RIGHTS DIVISION** within ten (10) working days after the bid opening, unless NDDOT grants an extension of time.
 - b) Form C lists the DBE, the bid items, and the prices and is signed by the prime contractor or subcontractor and the DBE.
 - c) If the information on a Form C differs from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **MUST** be provided with the Form C.
 - d) Form C is **NOT** a contract, however, and **DOES NOT** take the place of any contract. It is an indication to NDDOT that all of the DBE firms listed on Form A understand they will be used on the project.
4. The Civil Rights Division compares the Form A's and the Form C's, along with other required information and documentation submitted by the prime contractor, or apparent low bidder, and the DBE firms and prepares the *DBE Participation Review - Race-conscious (SFN 13743a)* and the *DBE Participation Review - Race-neutral (SFN 13743b)* forms. The following information is noted on the forms:

- a) The information from the Form A's and Form C's concerning intended DBE participation.
- b) Any additional DBE participation committed to prior to contract award.
- c) If an assigned goal was **NOT** met, the specific good faith effort steps the prime contractor, or apparent low bidder, made in an attempt to meet the goal.
- d) If an assigned goal was **NOT** met, the specific bid item numbers for work the prime contractor, or intended low bidder, intends to perform with its own workforce* and equipment* and the names of the DBE firms that quoted the work but were **NOT** used.
- e) If an assigned goal was **NOT** met, the bid differential analysis the prime contractor, or apparent low bidder, made of the DBE and non-DBE quotes it received.

*Own workforce are employees who are on the prime contractor's, or apparent low bidder's, payroll and for whom the prime contractor, or apparent low bidder, contributes to unemployment, social security, and workers compensation. Equipment is that which is titled, licensed, and insured in the prime contractor's, or apparent low bidder's, name or leased from a bona fide equipment supplier. It is **NOT** acceptable to use equipment or employees from an affiliate or subsidiary firm in lieu of the prime contractor's, or apparent low bidder's, equipment and employees.

- 5. The information contained on each DBE participation review form is presented to the DBE Participation Review Committee. Based on the information, the committee makes a recommendation to the NDDOT Director to either award or not award the contract. ***Other special conditions and considerations made by the committee and/or the Director and agreed to by the prime contractor, or apparent low bidder, are also noted on the DBE participation review form.***
- 6. Following contract award, the Civil Rights Division provides two copies of each DBE participation review form to the appropriate assistant district engineer. Attached to each copy of the review form is a copy of the Form C's and a copy of the DBE quotes, when available.
- 7. The assistant district engineer **MUST** retain one copy and provide the second copy to the district, city, county, or consultant project manager-engineer.
- 8. The assistant district engineer or district, city, county, or consultant project manager-engineer **MUST** use ***these forms*** when approving the *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* forms and subcontract agreements, as described in paragraph D, 3 of this section (page III-12).

9. The information contained on the original Form A that is completed and submitted with the bid proposal is preliminary and may **NOT** be correct or complete. Therefore, when approving requests to sublet and subcontract agreements, the assistant district engineer or the district, city, county, or consultant project manager-engineer **MUST NOT** rely on the Form A that is included with the copy of the signed proposal they received from the Construction Services Division.

C. Prime Contractor Responsibilities

1. Proposed Progress Chart
 - a) Before the award of the contract, the prime contractor, or apparent low bidder, **MUST** create a *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)* for each DBE to be used on the project (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers). The progress charts **MUST** accompany the signed proposal.
 - b) The progress chart details each DBE's type of work, designates when the prime contractor and DBE are expected to start, and when their phase of the work will be completed.
 - c) The prime contractor, or apparent low bidder, **MUST** supply all charts to the **CONSTRUCTION SERVICES DIVISION** and the appropriate chart to each DBE to be used on the project.
 - d) The progress charts are important for several reasons. They are used to track the prime contractor's and each DBE's progress. When a prime contractor or DBE shows a start date and **DOES NOT** show up, the district, city, county, or consultant project manager-engineer **MUST** document the omission and enquire, in writing, as to when the prime contractor or DBE will be starting. The district, city, county, or consultant project manager-engineer **MUST** request a revised progress chart that shows the timeframe for completing the work.
2. Pre-Job Conference
 - a) It is the **PRIME CONTRACTOR'S** responsibility to notify and invite all subcontractors and the DBE firms listed on Form C to the pre-job conference described in paragraph D, 1 of this section (page III-11), as required under the DBE special provisions.
 - b) If the DBE is unable to attend the pre-job conference, it is the **PRIME CONTRACTOR'S** responsibility to provide a copy of the pre-job conference form and any other conference minutes to the DBE, as required under the DBE special provisions.
 - c) At the pre-job conference, the prime contractor and DBE firms **MUST** review Form C [*Notification of Intent to Use DBE (RC) (SFN 52752 - Rev. 11-2006* and

earlier) or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] and the *DBE Participation Review - Race-conscious (SFN 13743a)* or *DBE Participation Review - Race-neutral (SFN 13743b)* form, both of which describe the type of work and amount of participation the DBE firms will be doing.

- d) It is also the **PRIME CONTRACTOR'S** responsibility to discuss any project issues necessary for joint DBE program compliance on the part of the prime contractor, non-DBE subcontractors, and their DBE subcontractors, regular dealers, and manufacturers, as required under the DBE special provisions. Items may include but are not limited to:
- (1) The DBE firms that will be working on the project.
 - (2) The items of work the DBE firms are to perform.
 - (3) The time period for the work to be performed by the DBE firms.
 - (4) Other items such as project scheduling, expected overtime, payment schedule, Davis-Bacon wage and payroll requirements, pit and batch plant (concrete or asphalt) locations, quantities, length of haul, type of road, etc.

3. Monitoring DBE Performance

- a) For the life of the project, the **PRIME CONTRACTOR** is responsible for the DBE firms listed on Form C and the work they are to perform and for the specific bid items or products the prime contractor committed to during the pre-award process (work the prime contractor intends to perform itself and work the prime contractor intends to subcontract or expend to non-DBE firms where DBE firms quoted but were **NOT** used).
- b) It is the **PRIME CONTRACTOR'S** responsibility to:
- (1) Monitor DBE performance on the project;
 - (2) Ensure the DBE firms perform a commercially useful function; and
 - (3) Ensure the **PRIME CONTRACTOR** and its subcontractors, suppliers, vendors, regular dealers, and manufacturers comply with the requirements of the applicable DBE special provision.

4. Monitoring Trucking Operations

Special emphasis is being placed on monitoring **ALL** trucking operations due to an increase in the number of wage rate complaints being filed at the end of each construction season. During production, the prime contractor **MUST** monitor **ALL** trucking operations to ensure compliance with both the DBE and the labor standards provisions of the contract. This includes obtaining subcontracts and payrolls as required

and monitoring and verifying the status of all truck owner-operators working on the project or the **site of the work** either directly for the prime contractor or for its subcontractors.

a) DBE Program

(1) In determining whether a DBE trucking firm is performing a commercially useful function, the prime contractor **MUST** consider the following factors:

- (a) The DBE **MUST** be responsible for the management and supervision of **their portion of the trucking operation**.
- (b) The DBE's supervisor **MUST** be on the project **at all times**.
- (c) The DBE **MUST** itself own and operate **at least one fully licensed, insured, and operational truck** used on the contract. The truck **DOES NOT** have to be on the project **at all times**.
- (d) The DBE **MUST** perform **at least 30% of the total cost** of their contract **with their own workforce**, or whatever percent was committed to during the DBE participation review process.
- (e) Leased trucks **MUST** display the **name and identification number** (USDOT number issued for interstate commerce) of the DBE.

(2) Counting DBE Participation:

- (a) The DBE receives credit for the **total value** of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. This includes those units leased from a commercial truck dealer, such as Nelson International, Inc., Peterbilt of Fargo, Inc., W. W. Wallwork, etc. Leases from non-commercial sources may also be allowed but **MUST** be submitted to the **CIVIL RIGHTS DIVISION** for review and approval **prior to use** on the contract.
- (b) The DBE may lease trucks from another DBE, including a DBE owner-operator. The DBE receives credit for the **total value** of the transportation services the lessee DBE provides on the contract.
- (c) The DBE may lease trucks from a non-DBE, including an owner-operator. The DBE receives credit for the **total value** of the transportation services the non-DBE lessee provides on the contract **not to exceed the value of the transportation services provided by DBE-owned trucks on the contract**. The DBE

receives credit only for the **fee or commission** it receives as a result of any additional participation provided on the contract by the non-DBE lessee under the lease arrangement.

- (d) All leases **MUST** indicate:
- That the DBE has exclusive use of and control over the truck.
 - That this **DOES NOT** preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
 - That the leased truck **MUST** display the name and identification number (USDOT number issued for interstate commerce) of the DBE.

b) Labor Compliance (Davis-Bacon and Payroll Requirements)

(1) Subcontractors:

- (a) If the prime contractor is using subcontractors for hauling, whether on a federal-aid project or **NOT**, approved *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* forms and subcontract agreements between the prime contractor and the subcontractors are required **prior to performing any hauling**. When the contract is federally funded, the *Required Contract Provisions, Federal-aid Construction Contracts (U. S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)* **MUST** also be included in the subcontract agreements because it contains more than just the labor standards provisions. This applies to all tiers of subcontracts.
- (b) If the prime contractor is using subcontractors for hauling on a federal-aid project or the **site of the work**, the labor standards provisions and the applicable wage rate decision **MUST** be incorporated into the subcontract agreements. The subcontractors **MUST** pay their employees the proper Davis-Bacon wage rates, including applicable fringe benefits, and provide weekly payrolls. This applies to all tiers of subcontracts.
- (c) This **DOES NOT** apply to the transportation of materials and manufactured component products that the contractor purchases from off-site commercial producers.

(2) Owned and Leased Vehicles:

Prime contractors and approved subcontractors may operate their own or leased hauling equipment using their own employees.

(3) Owner-Operators:

(a) Prime contractors and approved subcontractors may use independent owner-operators for truck hauling on a federal-aid project or the *site of the work*. Bona fide owner-operators of trucks **ONLY** are **NOT** covered under the Davis-Bacon and Related Acts but **MUST** appear on either the prime contractor's or the subcontractor's payrolls as:

- Owner-operator's name, address, and social security number with the notation **owner-operator** after the name.
- Vehicle identification number or license plate number of the vehicle being driven.
- Truck number that will or is being used on scale tickets and haul sheets.
- Neither hours worked nor wages paid need be shown.

(b) The actual owner-operator **MUST** drive the truck at all times. If, for any reason, he or she **DOES NOT** drive the truck, even for a short period of time, the replacement driver **MUST** be paid Davis-Bacon wages, including applicable fringe benefits, and **MUST** appear on project payrolls showing hours worked and wages paid.

(c) To determine bona fide owner-operator status, the **PRIME CONTRACTOR MUST** request and verify the following documentation:

- Owner-operator's name.
- Valid commercial drivers license.
- Vehicle registration in the owner-operator's name.
- Current vehicle license number.
- Truck number that will or is being used on scale tickets and haul sheets.

- Copies of any signed lease or rental agreements for owner-operator trucks. The lease **MUST** be between the driver and a reputable dealership (i.e., Nelson International, Inc., Peterbilt of Fargo, Inc., W.W. Wallwork, etc.); **NOT** the driver and the prime contractor or the driver and a subcontractor on the project.

- (d) Trucks leased by DBE firms **MUST** display the name and identification number (USDOT number issued for interstate commerce) of the DBE.
- (e) The prime contractor **MUST** provide the required documentation for determining bona fide owner-operator status, upon request, to the district, city, county, or consultant project manager-engineer. The information **MUST** be used by the district, city, county, or consultant project manager-engineer when reviewing trucking operations.

5. Records and Reports

- a) Prime contractors and subcontractors **MUST** maintain records and documents of payments to DBE firms for three (3) years following satisfactory completion of the contract work. These records **MUST** be made available for inspection, upon request, by any authorized representative of NDDOT or the U.S. Department of Transportation. This requirement also applies to certified DBE firms.
- b) Prime contractors and subcontractors **MUST** keep a running tally of actual payments made to DBE firms for work committed to them at any time during the life of the contract. Prime contractors and subcontractors are required to complete the *Record of DBE Project Payments (SFN 53664 - 09-2006)* on a semiannual basis. The record **MUST** be submitted to the **CIVIL RIGHTS DIVISION** by the **tenth** (10th) working day after the October-March and the April-September reporting periods. The record **MUST** contain the name of the prime contractor or subcontractor, the name of the DBE, the project number, the bid opening date, the amount paid, and the date of payment to the DBE for the reporting period **ONLY**.
- c) The prime contractor **MUST** submit a completed *DBE Participation Certification (SFN 14268 - Rev. 10-2008)*, signed by the prime contractor or subcontractor and the DBE, to the **CONSTRUCTION SERVICES DIVISION**, with a copy to the district, city, county, or consultant project manager-engineer, upon completion of the contract to verify DBE participation. This includes DBE firms used that were **NOT** included on a Form A or a Form C.

6. Refer to paragraph E of this section for additional information concerning commercially useful function (page III-14).

7. Refer to paragraph F of this section for information concerning unfulfilled obligations by a contractor and a DBE (page III-16).

D. On-site Monitoring by Project Manager-Engineer

The following activities and procedures **MUST** be monitored by the district, city, county, or consultant project manager-engineer. Proper documentation concerning these items **MUST** be made and kept in the project records and diaries. In addition, the district, city, county, or consultant project manager-engineer **MUST IMMEDIATELY** notify the DBE Liaison Officer, Civil Rights Division, of any questions or issues concerning discrimination of any kind and any labor compliance problems or concerns.

1. Pre-Job Conference
 - a) DBE and prompt payment and retainage special provision items to be discussed at the pre-job conference include:
 - (1) Participating DBE firms and the work they will perform;
 - (2) Time period for the work to be performed;
 - (3) Other project issues necessary for DBE program compliance by the prime contractor, non-DBE subcontractors, and DBE subcontractors, regular dealers, and manufacturers;
 - (4) Unfulfilled obligations by a contractor or DBE process applies to all tiers of subcontracts;
 - (5) Prompt payment procedures apply to all tiers of subcontracts;
 - (6) Final payment and release of retainage applies to all tiers of subcontracts; and
 - (7) Line of communication for raising and resolving issues or concerns.
 - b) See Section I of this manual for general instructions and an outline of the items to be discussed at the pre-job conference.
2. Field monitoring by the district, city, county, or consultant project manager-engineer **MUST** include:
 - a) Request to sublet forms and subcontracts for all DBE and non-DBE firms, regardless of whether they are listed on Form C and the DBE participation review form (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers);

- b) Payrolls for all DBE and non-DBE firms with subcontracts, received and checked for accuracy; and
- c) Prime contractors, non-DBE firms, and DBE firms fulfilling obligations spelled out on the DBE participation review form.
- d) See also the Construction Services Division's *Construction Records Manual*. This manual is available at:

www.dot.nd.gov/manuals/construction/constr-records/constructionmanual.htm

3. Request to Sublet and Subcontract Approval

- a) Following contract award, the Civil Rights Division sends two copies of each *DBE Participation Review - Race-conscious (SFN 13743a)* and *DBE Participation Review - Race-neutral (SFN 13743b)* form to the appropriate assistant district engineer. Attached to each copy of the review form is a copy of the Form C's and a copy of the DBE quotes, when available. The forms also contain:
 - (1) The information from the form A's and the Form C's concerning intended DBE participation.
 - (2) Any additional DBE participation committed to prior to contract award.
 - (3) If an assigned goal was **NOT** met, the specific good faith effort steps the apparent low bidder made in an attempt to meet the goal.
 - (4) If an assigned goal was **NOT** met, the specific bid item numbers for work the apparent low bidder intends to perform with its own workforce* and equipment* and the names of the DBE firms that quoted the work but were **NOT** used.
 - (5) If an assigned goal was **NOT** met, the bid differential analysis the apparent low bidder made of the DBE and non-DBE quotes it received.

*Own workforce are employees who are on the prime contractor's, or apparent low bidder's, payroll and for whom the prime contractor, or apparent low bidder, contributes to unemployment, social security, and workers compensation. Equipment is that which is titled, licensed, and insured in the prime contractor's, or apparent low bidder's, name or leased from a bona fide equipment supplier. It is **NOT** acceptable to use equipment or employees from an affiliate or subsidiary firm in lieu of the prime contractor's, or apparent low bidder's, equipment and employees.

- b) The assistant district engineer **MUST** retain one copy of the review form and provide the second copy to the district, city, county, or consultant project manager-engineer.

- c) The district, city, county, or consultant project manager-engineer **MUST** verify the type and amount of work performed by all DBE subcontractors on federal-aid construction projects. This verification is accomplished by comparing the monetary and material amounts shown on Form C [*Notification of Intent to Use DBE (RC) (SFN 52752 - Rev. 11-2006 and earlier)* or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] and the *DBE Participation Review - Race-conscious (SFN 13743a)* or *DBE Participation Review - Race-neutral (SFN 13743b)* form with the *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* form.
- d) Any discrepancies found between the above documents **MUST** be clarified by the prime contractor and approved by the district, city, county, or consultant project manager-engineer ***before the request to sublet is approved.***
- e) District, city, county, and consultant project managers-engineers **DO NOT** have to monitor any other bid items for DBE participation compliance.
- f) The original of **EVERY** approved request to sublet **MUST** be submitted to the **CONSTRUCTION SERVICES DIVISION**, with a copy to the **CIVIL RIGHTS DIVISION**, as soon as they are available. They should **NOT** be held until the end of the project. The information on the form is used to monitor non-DBE and DBE commitments and to complete a semiannual DBE report required by the Federal Highway Administration (FHWA).

4. Trucking Operations

- a) The district, city, county, or consultant project manager-engineer **MUST** review the trucking operations and procedures, including the required documentation for determining bona fide owner-operator status, with the prime contractor at least once during the first two weeks of hauling on the project. This **MUST** be noted on the *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 08-2006)*.
- b) If a DBE trucking firm is **NOT** fulfilling the commitments agreed to on Form C and the DBE participation review form, or other trucking requirements are **NOT** being met, the prime contractor **MUST** be notified. It is the **PRIME CONTRACTOR'S** responsibility to take corrective action to ensure compliance with the DBE and labor standards provisions of the contract.
- c) Any corrective action requested and the date by which the corrective action is to be implemented **MUST** be noted on the *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 08-2006)*.

5. See paragraph E of this section (page III-14) for information concerning commercially useful function.

6. See paragraph F of this section (page III-16) for information concerning unfulfilled obligations by a contractor and a DBE.

E. Commercially Useful Function

1. NDDOT counts expenditures to a DBE toward DBE goals **ONLY** if the DBE is performing a commercially useful function on that contract.
 - a) A DBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE **MUST** also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - b) To determine whether a DBE is performing a commercially useful function, NDDOT **MUST** evaluate the amount of work subcontracted, industry practices, whether the amount the DBE is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - c) A DBE **DOES NOT** perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, NDDOT **MUST** examine similar transactions, particularly those in which DBE firms **DO NOT** participate.
 - d) If a DBE **DOES NOT** perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NDDOT **MUST** presume it is **NOT** performing a commercially useful function.
 - e) When a DBE is presumed **NOT** to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. NDDOT may determine the DBE is performing a commercially useful function given the type of work involved and normal industry practices.
 - f) NDDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration but are **NOT** administratively appealable to USDOT.

2. DBE Trucking

NDDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- a) The DBE **MUST** be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and

there **CANNOT** be a contrived arrangement for the purpose of meeting DBE goals.

- b) The DBE **MUST** itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates and using drivers it employs.
 - d) The DBE may lease trucks from another DBE, including an owner-operator certified as a DBE. A DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e) The DBE may also lease trucks from a non-DBE, including an owner-operator. A DBE that leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessee **NOT** to exceed the value of transportation services provided by DBE-owned trucks on the contract. The DBE receives credit **ONLY** for the fee or commission it receives as a result of any additional participation provided on the contract by the non-DBE lessee under the lease arrangement.
 - f) For purposes of this paragraph 2, a lease **MUST** indicate that the DBE has exclusive use of and control over the truck. This **DOES NOT** preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
 - g) Leased trucks **MUST** display the name and identification number (USDOT number issued for interstate commerce) of the DBE.
3. If there is a question concerning the total value of services provided by a DBE with owned equipment, or a question regarding employees who are driving, a truck registration card check **MUST** be made to determine truck ownership and driver relationships. Information needed for a registration card check includes:
- a) Driver's name;
 - b) Valid commercial drivers license;
 - c) Truck owner (from registration card);
 - d) Truck license number;
 - e) Truck number being used on scale tickets and haul sheets;
 - f) Truck make and model; and
 - g) Copies of signed lease or rental agreements.
4. This information **MUST** be used to establish employee and owner-operator relationships and how drivers are listed on payrolls.

F. Unfulfilled Obligations

1. For contracts that contain the race-conscious special provision, the contractor is expected to make good faith efforts throughout the duration of the contract. NDDOT will use the following process when a contractor or DBE **DOES NOT** fulfill its obligations in any of the following situations:
 - a) The contractor believes the DBE is unable to perform the contract;
 - b) The prime contractor is unable to perform the full amount of work committed to be completed by the prime contractor's workforce* and equipment* at the time of award; or
 - c) The non-DBE the prime contractor committed to using at the time of award is unable to perform the full amount of work.

*Own workforce are employees who are on the prime contractor's, or apparent low bidder's, payroll and for whom the prime contractor, or apparent low bidder, contributes to unemployment, social security, and workers compensation. Equipment is that which is titled, licensed, and insured in the prime contractor's, or apparent low bidder's, name or leased from a bona fide equipment supplier. It is **NOT** acceptable to use equipment or employees from an affiliate or subsidiary firm in lieu of the prime contractor's, or apparent low bidder's, equipment and employees.

2. The prime contractor and the non-DBE or DBE subcontractor, supplier, regular dealer, vendor, broker, or manufacturer shall all **IMMEDIATELY** give oral and written notice to the district, city, county, or consultant project manager-engineer of the failure to perform, stating the nature of the failure.
3. If NDDOT concurs that a substitution is warranted, the prime contractor will seek, through the Construction Services and Civil Rights Divisions, and with the assistance of the DBE supportive services consultant, a DBE to perform the work instead. All DBE firms currently certified in the specific area of work needed to be performed will be contacted, in writing or by phone, and quotes solicited.
4. If available, a DBE **WILL** be selected to perform a dollar value of work equal to the value of the commitment **NOT** achieved, unless the contractor can demonstrate the DBE quote is **unreasonable** using the bid differential process contained in the race-conscious special provision. The prime contractor **MUST** submit copies of all quotes, together with the comparison, to the **CONSTRUCTION SERVICES** and **CIVIL RIGHTS DIVISIONS** for their review and concurrence of **unreasonableness**.
5. In instances where trucking replacements are sought, either DBE firms or non-DBE firms **MUST** be selected until enough trucks can be provided to cover **ALL** of the trucking required on the project.

6. The prime contractor is responsible for any additional costs incurred as a result of either the prime contractor's or subcontractor's (quoting over \$500,000) failure to fulfill the original commitment or the DBE's or non-DBE's failure to perform.
7. If NDDOT determines that a prime contractor or subcontractor should be sanctioned for any of the following, NDDOT will provide written notice to the prime contractor or subcontractor informing them of the sanction:
 - a) **NOT** paying a DBE in a timely manner;
 - b) **NOT** having a DBE perform the specified dollar amount of work (subject to plan quantity changes), tasks, or bid items; or
 - c) For otherwise **NOT** fulfilling the requirements of the DBE special provision.
8. If NDDOT determines that a DBE should be sanctioned for any of the following, NDDOT will provide written notice to the DBE informing them of the sanction:
 - a) Failure to perform;
 - b) Failure to pay contract-related bills in a timely manner;
 - c) Failure to perform a commercially useful function;
 - d) Failure to notify the prime contractor, orally and in writing, if they are unable to perform a commercially useful function; or
 - e) For otherwise **NOT** fulfilling the requirements of the DBE special provision.
9. The contractor or DBE has **FOURTEEN** (14) calendar days, from receipt of the certified notification, to make a written request for a hearing.
10. If NDDOT **DOES NOT** receive a written request for a hearing, or if the contractor or DBE **DOES NOT** provide sufficient evidence at the hearing that the provisions have been met, NDDOT may suspend the contractor's or DBE's bidding or quoting privileges and **NOT** allow the contractor or DBE to participate in one or more scheduled bid openings after the date the sanction is imposed.
11. Other grounds for sanctions may include but are not limited to:
 - a) Repeated instances of failure to perform the contract requirements;
 - b) Repeated instance of late contract-related payments; or
 - c) Documented fraudulent practices.
12. Further sanctions which may be imposed by NDDOT for failure on the part of the contractor may include:

- a) Withholding the contractor's progress payment until the contractor complies with all DBE contract provisions;
- b) Deducting, from the contractor's progress payments, the dollar amount of DBE participation committed to but **NOT** achieved by the contractor;
- c) Finding the contractor in default;
- d) Taking other corrective action determined by NDDOT to be appropriate; or
- e) Any combination of the above.

G. Prompt Payment

1. The prime contractor **MUST** pay the subcontractor the amount due for work done or services rendered, less applicable retainage **NOT** to exceed 2%, from the current progress payment within **TWENTY** (20) calendar days of receipt of payment from NDDOT, or the owning agency, unless the prime contractor has **just cause** to **NOT** make payment.
2. If the prime contractor withholds payment from the subcontractor, the prime contractor **MUST IMMEDIATELY** notify the subcontractor and the district, city, county, or consultant project manager-engineer, in writing, of the reasons for withholding payment. The subcontractor may also notify the district, city, county, or consultant project manager-engineer if prompt payment has **NOT** been made.
3. If NDDOT, or the owning agency, determines the prime contractor is withholding payment **without just cause**, interest will accrue at the rate provided by NDCC §§13-01.1-02. The prime contractor is responsible for paying the accrued interest starting on the **21st** calendar day after the prime contractor receives payment.
4. If the prime contractor is withholding subcontractor payments **without just cause**, NDDOT, or the owning agency, may suspend all payments due to the prime contractor until the subcontractor is properly paid and the prime contractor agrees to make payments as specified.
5. If NDDOT, or the owning agency, determines there **is just cause** for withholding payment, interest will **NOT** accrue on the amount due.
6. These prompt payment procedures apply to all tiers of subcontracts and are based on 49 CFR 26.29.

H. Retainage

1. If the prime contractor elects to use retainage on subcontract work, prompt payment shall also include the release of retainage monies that have been withheld from the

subcontractor, within **TWENTY** (20) days after the subcontractor's work is **satisfactorily completed**.

2. Non-bonded subcontractors **MUST** submit proof of payment for all material bills and wages to the prime contractor before the prime contractor is required to pay the retainage.
3. If retainage is **NOT** released as per this provision, interest will accrue at the rate provided by NDCC §§13-01.1-02 beginning the **21st** calendar day after the subcontractor's work is **satisfactorily completed**.
4. NDDOT, or the owning agency, will determine whether the subcontractor's work has been **satisfactorily completed**. A subcontractor's work is **satisfactorily completed** when all of the tasks called for in the subcontract have been accomplished, documented in accordance with the contract, and paid for on a pay estimate. To be **satisfactorily complete**, a subcontractor **MUST** provide all necessary final documentation required in the contract. Final documentation may include but is not limited to: certified payrolls, materials certification, haul road releases, pit receipts of payment, pit releases, night watchman reports, warranties, operating manuals, product literature, verification of final quantities, and the *DBE Participation Certification (SFN 14268 - Rev. 10-2008)*.
5. The release of retainage applies to all tiers of subcontracts.
6. The district, city, county, or consultant project manager-engineer **MUST** inform the prime contractor, in writing, whether the work performed by a subcontractor has been **satisfactorily completed**. A copy **MUST** be sent to the subcontractor.
7. Stamps placed on the subcontractor's notice to the district, city, county, or consultant project manager-engineer may be used for this purpose. The stamps **MUST** contain the following language:

| |
|--|
| <p>The following items described in this notice have been satisfactorily completed:</p> <p>Signed: _____</p> <p>Date: _____</p> <p>Items: _____</p> <p>_____</p> <p>This determination does not waive the owner's legal rights outlined in Section 105.14 of NDDOT Standard Specifications.</p> |
|--|

The following items described in this notice have not been satisfactorily completed:

Signed: _____

Date: _____

Items: _____

Reason: _____

I. Resolution of Nondiscriminatory DBE Issues and Concerns

1. Issues and concerns raised by prime contractors or DBE firms during the life of the project **MUST** be brought to the attention of the district, city, county, or consultant project manager-engineer. If the district, city, county, or consultant project manager-engineer is unable to resolve the issue at the project level, the assistant district engineer **MUST** be notified. If the assistant district engineer is unable to resolve the issue, the Construction Services Division **MUST** be contacted.

2. The procedures to be followed for resolving nondiscriminatory DBE issues and concerns that **CANNOT** be resolved at the district level are:
 - a) The prime contractor or DBE **MUST** provide a written notice to the district, city, county, or consultant project manager-engineer including:
 - (1) A statement concerning the nature of the complaint;
 - (2) The name of the person or company against whom the complaint is being filed;
 - (3) The date the complaint occurred;
 - (4) The identity of the project where the complaint occurred; and
 - (5) The name of the person filing the complaint.

- b) The district, city, county, or consultant project manager-engineer **MUST** notify the assistant district engineer and the Construction Services Division of the complaint. The Construction Services Division **MUST** notify the DBE Liaison Officer who, in turn, **MUST** notify FHWA.
- c) Oral complaints are accepted but are **NOT** formally acted upon until a written notice of the complaint is received.
- d) If the complaint is incomplete, the person filing the complaint will be asked to provide additional information.
- e) If the complaint is complete, it will be categorized by the DBE Liaison Officer as:
 - (1) A contract administration issue when it involves:
 - (a) A commercially useful function (work performed, materials, personnel, or equipment);
 - (b) Honoring commitment to DBE firms;
 - (c) Honoring commitment to prime contractor;
 - (d) DBE substitution;
 - (e) Good faith efforts;
 - (f) Timely payment to DBE and non-DBE firms; or
 - (g) Unfulfilled obligations by a prime contractor or DBE.
 - (2) A Title VI issue if the individual filing the complaint feels he or she has been discriminated against. The individual will be instructed to follow NDDOT's Title VI complaint process.
 - (3) Other.
- f) The complaint will be forwarded to the person against whom the complaint was filed for his or her review and reply.
- g) A review team, consisting of NDDOT staff from the Civil Rights Division and the Construction Services Division, will be formed. The review team will be headed by the Construction Services Division when the issue concerns contract administration and by the DBE Liaison Officer when the issue concerns discrimination, excluding Title VI issues. Title VI issues will be investigated by

FHWA. NDDOT may also request an informal hearing between the affected parties.

- h) The review team will define the issue or issues; identify applicable laws, procedures, contract requirements, etc., that may have been violated; and determine if the alleged complaint is supported by the facts.
- i) The review team will make a recommendation to the NDDOT Director for corrective action to be taken and/or for sanctions against either party to be invoked.
- j) Both parties will be notified of the corrective action and/or sanctions and of their right to request a hearing. The parties will be given fourteen (14) calendar days in which to request a hearing.
- k) If a hearing is requested, the hearing will be held before the Deputy Director for Engineering. **ONLY NEW** information or specific arguments **NOT** previously heard by the review team may be presented. The hearing will be recorded.
- l) Following the hearing, or if no hearing is requested, the Deputy Director for Engineering will make a final recommendation to the Director for corrective action to be taken and/or for sanctions to be invoked.
- m) The Director will make the final decision and will notify both parties, in writing, by certified mail.
- n) The parties will be notified of their right to appeal decisions on discrimination issues **ONLY**. Decisions on contract administration issues are **NOT** appealable.

The following forms may be obtained from the Civil Rights Division, phone: 328-2605, fax: 328-1965, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- *Monthly EEO Project Inspection Report (SFN 9425 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn09425.pdf
- *Record of DBE Project Payments (SFN 53664 - 09-2006)*
www.dot.nd.gov/forms/sfn53664.pdf

The following forms may be obtained from the Construction Services Division, phone: 328-2563, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- *DBE Participation Certification (SFN 14268 - Rev. 10-2008)*
www.dot.nd.gov/forms/sfn14268.pdf
- *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)*
www.dot.nd.gov/forms/sfn05682.pdf

- *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)*
www.dot.nd.gov/forms/sfn07721.pdf

EXHIBIT III-A: SAMPLE DBE PARTICIPATION (RC) - FORM A (SFN 52750)

SP DBE -- Race-conscious
 March 11, 2008
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DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (RC)

North Dakota Department of Transportation, Civil Rights Division
 SFN 52750 (Rev. 12-2006)

FORM A

| | | |
|--------------------------------------|---------------------------------|------------------------------------|
| Contractor ABC Construction, Inc. | | Phone 701-777-7000 |
| Job No. 10 | Project No. IM-3-030(010)000 | Bid Opening Date April 17, 2009 |

All DBE firms who quoted this project must be listed in either 1, 2, or 3 below.

At the time of bid submittal, all bidders must provide a list of the DBE firms intended for use on this project, including all tiers of subcontracting. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the bidder intends to use DBE quotes received from a subcontractor over \$500,000, the bidder **must** attach the subcontractor's Form A to the bidder's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. If the assigned project goal has not been achieved, and the bidder intends to do specific bid items with their own employees and equipment, or products to be supplied by the bidder, the specific bid items or products and DBE firms not used must be listed below.

- Own employees are individuals who are on the primes payroll, for which the prime contractor contributes to unemployment, social security, and workers compensation.
- Equipment is that which is titled, licensed, and insured in the prime contractors name or leased from a bonafied equipment supplier. It is not acceptable to use equipment or employees from an affiliate or subsidiary firm in lieu of the prime contractors own equipment and employees.

| Name of DBE Firm | Bid item numbers or products to be supplied by the bidder |
|------------------|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |

2. DBE firms not used due to bid differential are listed below.

| | |
|---------------------------------|----------|
| DBE Firm A-1 Gravel Products | DBE Firm |
| DBE Firm | DBE Firm |
| DBE Firm | DBE Firm |
| DBE Firm | DBE Firm |

3. For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract.

- If the DBE firm will perform only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number. **The bidder must state why the DBE was not used for the entire bid item.**
- For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own employees and equipment.**
- For DBE trucking firms, **list the amount of hauling to be performed by the DBE with its own trucks and employees;** or the fees or commissions earned on non-DBE leased trucks. However, if the DBE is leasing trucks from a non-DBE firm, including an owner-operator, you can count the total value of the services provided by the non-DBE, not to exceed the total value of the services provided by the DBE-owned trucks. (See page 14, number 4, of this special provision for more detailed information.)

FORM A (continued)

If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the apparent low bidder or subcontractor **must** provide, with the Form C, a written explanation for the difference.

The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.

DBE bidders **must** list the work they will perform with their **own employees and equipment** and any work subcontracted to or materials purchased from other DBEs.

| | |
|---|---|
| Name of DBE Firm MY Trucking Company | |
| List Specific Bid Item Numbers or Products to be Supplied 6, 7 (Haul Only) | Total Contract Dollar Value \$ 100,000 |
| Percent DBE will do with own employees/equipment = 50 % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = 50 % | |

| | |
|--|---|
| Name of DBE Firm Acme Excavating, Inc. | |
| List Specific Bid Item Numbers or Products to be Supplied 3, 5, 9 | Total Contract Dollar Value \$ 175,404 |
| Percent DBE will do with own employees/equipment = 100 % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| Name of DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own employees/equipment = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| Name of DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own employees/equipment = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| Name of DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own employees/equipment = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| Name of DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own employees/equipment = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

Use additional pages, following the same format, if necessary.

The NDDOT DBE Liaison Officer can be contacted at:

| | |
|---------------------------------|------------------------------------|
| CIVIL RIGHTS DIVISION | digoe@nd.gov |
| ND DEPARTMENT OF TRANSPORTATION | phone (701) 328-2576 |
| 608 E BOULEVARD AVE | fax (701) 328-1965, (701) 328-0343 |
| BISMARCK ND 58505-0700 | |

EXHIBIT III-B-2: SAMPLE NOTIFICATION OF INTENT TO USE DBE (RC) - FORM C (SFN 52752)

NOTIFICATION OF INTENT TO USE DBE (RC)
 North Dakota Department of Transportation, Civil Rights Division
 SFN 52752 (Rev. 11-2006)

SP DBE -- Race-conscious
 March 11, 2008
 Page 21 of 21

FORM C

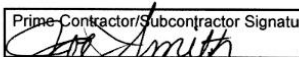
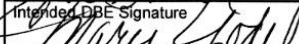
1. The prime contractor and any subcontractors who listed DBE Participation on Form A **must** complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.
2. If the information on a Form C **differs** from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **must** be provided by the prime contractor or subcontractor with the
3. The Form C **must be signed** by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page **must** be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).
4. The forms **must** be returned to the NDDOT Civil Rights Division **within ten working days** after the bid opening. Forms may be faxed to the Civil Rights Division at (701) 328-1965 or (701) 328-0343. **Award will not be made** until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

| | |
|---|------------------------------------|
| Prime Contractor or Subcontractor ABC Construction, Inc. | Project No. IM-3-030(010)000 |
| Intended DBE MY Trucking Company | Bid Opening Date April 17, 2009 |
| | Job No. 10 |

| Bid Item Nos. | Work Description | Units | Approx. Quantity | Unit Costs | Amount |
|---------------|------------------|-------|------------------|--------------|---------|
| 6, 7 | Haul Only | ton | 40,000 | 2.50 | 100,000 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Total | 100,000 |

Comments

| | | |
|---|-------------------------|-----------------|
| Prime Contractor/Subcontractor Signature  | Title Vice President | Date 4/22/09 |
| Intended DBE Signature  | Title President | Date 4/22/09 |

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Division, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, digoe@nd.gov, phone (701) 328-2576, or fax (701) 328-1965 or (701) 328-0343.

EXHIBIT III-B-3: SAMPLE NOTIFICATION OF INTENT TO USE DBE (RC) - FORM C (SFN 52752)

NOTIFICATION OF INTENT TO USE DBE (RC)

North Dakota Department of Transportation, Civil Rights Division
SFN 52752 (Rev. 11-2006)

SP DBE -- Race-conscious
March 11, 2008
Page 21 of 21

FORM C

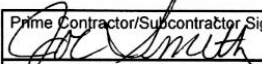

1. The prime contractor and any subcontractors who listed DBE Participation on Form A **must** complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.
2. If the information on a Form C **differs** from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **must** be provided by the prime contractor or subcontractor with the
3. The Form C **must be signed** by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page **must** be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).
4. The forms **must** be returned to the NDDOT Civil Rights Division **within ten working days** after the bid opening. Forms may be faxed to the Civil Rights Division at (701) 328-1965 or (701) 328-0343. **Award will not be made** until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

| | | |
|---|------------------------------------|---------------|
| Prime Contractor or Subcontractor ABC Construction, Inc. | Project No. IM-3-030(010)000 | |
| Intended DBE Four Corners Striping | Bid Opening Date April 17, 2009 | Job No. 10 |

| Bid Item Nos. | Work Description | Units | Approx. Quantity | Unit Costs | Amount |
|---------------|---------------------------|-------|------------------|--------------|-----------|
| 63 | Traffic Control Signs | UNIT | 2,286 | 2.93 | 6,697.98 |
| 65 | Grooved P-P Pvmt. Mkg. 4" | LF | 5,000 | 2.66 | 13,300.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Total | 19,997.98 |

| | |
|-----------------|-------|
| Comments | <hr/> |
| | |
| | |

| | | |
|---|-------------------------|-----------------|
| Prime Contractor/Subcontractor Signature  | Title Vice President | Date 4/23/09 |
| Intended DBE Signature  | Title Owner | Date 4/23/09 |

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Division, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, digoe@nd.gov, phone (701) 328-2576, or fax (701) 328-1965 or (701) 328-0343.

EXHIBIT III-C: SAMPLE DBE PARTICIPATION REVIEW - RACE-CONSCIOUS (SFN 13743a)

DBE PARTICIPATION REVIEW – RACE-CONSCIOUS

North Dakota Department of Transportation, Civil Rights Division

SFN 13743a (Rev. 8-2006)

GOAL: 12%

ACH: 11.01%

11.81% after bid submittal

| | |
|-------------------------------|---|
| BID OPENING April 17, 2009 | APPARENT LOW BIDDER ABC Construction, Inc. |
| JOB NUMBER 10 | PROJECT NUMBER IM-3-030(010)000 |
| LOW BID \$ 2,500,000.00 | |

DBEs LISTED ON FORM A

| DBE | AMOUNT | % ACH | DBE % | BID ITEM/PRODUCT SUPPLIED |
|-----------------------|---------------------------|-------|-----------------------------------|---------------------------|
| MY Trucking Company | \$ 100,000 | 4.0 | 50% DBE/ 50% Non- DBE | 6 and 7 (haul only) |
| Acme Excavating, Inc. | *\$ 175,407 \$ 175,404 | 7.0 | 100% | 3, 5, 9 |

ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL

| DBE | AMOUNT | % ACH | DBE % | BID ITEM/PRODUCT SUPPLIED |
|-----------------------|-----------|-------|-------|---------------------------|
| Four Corners Striping | \$ 19,998 | 0.8 | 100% | 63 and 65 |

DBE BID ITEMS ABC CONSTRUCTION, INC., WILL DO WITH THEIR OWN FORCES:

Contractor indicated none.

DBEs NOT USED BECAUSE ABC CONSTRUCTION, INC., WILL DO THE WORK:

Contractor indicated none.

DBEs NOT USED DUE TO BID DIFFERENTIAL:

A-1 Gravel Products

Did the contractor?

| STEP | TASKS | YES | NO | COMMENTS |
|------|--|-----|----|--|
| 1 | Advertise | X | | Advertised in the Supportive Services Newsletter |
| 2 | Offer Assistance in Advertising | X | | |
| 3 | Discussions with DBEs | X | | Had discussions with one DBE firm. |
| 5 | Sign in or Call in Timely/Be Available | X | | |
| 6 | Receive/Evaluate All Quotes | X | | |
| 8 | Submit Form A as Required | X | | |
| 9 | Submit Form B as Required | X | | Received 4/24/09 |
| 10 | Submit Form C as Required | X | | Received 4/24/09 |
| 12 | Submit GFE Documentation as Required | X | | Received 4/24/09 |
| 13 | Bid Differential Analysis | X | | Received 4/24/09 |

Comments:

4-27-09: *Acme Excavating is shown on Form A for \$175,404 and Form C shows \$175,407. The discrepancy is due to rounding.

4-27-09: GFE documentation to Construction Services for review.

5-1-09: Received review from Construction Services. It is noted that four DBE firms quoted on this project: MY Trucking Company, Acme Excavating, Inc., Four Corners Striping, and A-1 Gravel Products. **Three of the DBE firms are being used** by the prime contractor.

Construction Services notes that ABC Construction is using Fine Sand & Gravel, Inc., a non-DBE, for crushing the hot bituminous pavement Class 27 (bid item 4):

Fine Sand & Gravel, Inc. \$ 56,539
A-1 Gravel Products \$ 103,746, or 45.5% higher

Construction Services notes that ABC Construction thought they had a lower, non-DBE quote for the traffic control and pavement marking items. However, in reviewing the quotes again, they found Four Corners Striping was actually lower. ABC Construction has committed to using Four Corners Striping.

5-7-09: Received a Form C for Four Corners Striping.

ri

RECOMMENDATION BY DBE PARTICIPATION REVIEW COMMITTEE

| DATE | NAME | AWARD | NOT AWARD | AWARD SUBJECT TO |
|-------------|-------------|--------------|------------------|-------------------------|
| | | | | |
| | | | | |
| | | | | |

Comments:

EXHIBIT III-D: SAMPLE DBE PARTICIPATION (RN) - FORM A (SFN 52012)

SP DBE -- Race-neutral
February 8, 2008
Page 13 of 17

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION(RN) North Dakota Department of Transportation, Civil Rights Division SFN 52012 (Rev. 12-2006)

FORM A

| | | |
|---|--|------------------------------------|
| Contractor Super Contracting Co., Inc. | | Phone 701-888-8000 |
| Job No. 5 | Project No. IM-1-010(001)100 & IM-1-001(010)000 | Bid Opening Date April 17, 2009 |

By noon (Central time) on the next work day following the bid opening, all apparent low bidders must provide a list of the DBE firms intended for use on this project to the NDDOT Civil Rights Division. The information provided may be submitted on this Form A or on a computer-generated form, giving the same information, attached to this Form A. If the prime contractor intends to use DBE quotes received from a subcontractor, the prime contractor **must** attach the subcontractor's Form A to the prime contractor's Form A.

PRINT ALL NUMBERS CLEARLY AND LEGIBLY.

1. For each DBE firm, list the specific bid item numbers to be performed and the total dollar value of the contract:
 - a. If the DBE firm is perform do only a portion of a bid item (supply, haul, etc.), this **must** be so noted, in parenthesis, after the bid item number **the bidder must state why the DBE was not used for the**
 - b. For DBE subcontractors, suppliers (regular dealers), and manufacturers, **list only the amount of work to be completed with each DBE's own employees and equipment.**
 - c. For DBE trucking firms, **list the amount of hauling to be performed by the DBE with its own trucks and employees;** or the fees or commissions earned on non-DBE leased trucks. However, if the DBE is leasing trucks from a non-DBE firm, including an owner-operator, you can count the total value of the services provided by the non-DBE, not to exceed the total value of the services provided by the DBE-owned trucks). (See page 9, number 4, of this special provision for more detailed information.)
2. DBE prime contractors **must** list the work they will perform with their **own forces** and any work subcontracted to or materials purchased from other DBEs.
3. If the information provided on Form C **differs** from the information provided on this Form A (bid item numbers, quantities, or dollar amounts), the apparent low bidder or subcontractor **must** provide, with the Form C, a written explanation for the difference.
4. The apparent low bidder or subcontractor **must** use the DBEs listed for the intended work indicated on Form C.
5. DBE bidders **must** list the work they will perform with their **own employees and equipment** and any work subcontracted to or materials purchased from other DBEs.

| | |
|---|---|
| DBE Firm A-1 Gravel Products | |
| List Specific Bid Item Numbers or Products to be Supplied 10 | Total Contract Dollar Value \$ 13,500.00 |
| Percent DBE will do with own equipment/forces = 100 % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own equipment/forces = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

| | |
|---|-----------------------------------|
| DBE Firm | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ |
| Percent DBE will do with own equipment/forces = % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = % | |

FORM A (continued)

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

| | | |
|---|-----------------------------------|-------------------------------|
| DBE Firm | | |
| List Specific Bid Item Numbers or Products to be Supplied | Total Contract Dollar Value \$ | |
| Percent DBE will do with own equipment/forces = | % | If Regular Dealer, X 60% = \$ |
| Percent Non-DBE will do (trucking only) = | % | |

Use additional pages, following the same format, if necessary.

The NDDOT DBE Liaison Officer can be contacted at: CIVIL RIGHTS DIVISION
 ND DEPARTMENT OF TRANSPORTATION
 608 E BOULEVARD AVE
 BISMARCK ND 58505-0700

 digoe@nd.gov
 phone (701) 328-2576
 fax (701) 328-1965, (701) 328-0343

EXHIBIT III-E: SAMPLE NOTIFICATION OF INTENT TO USE DBE (RN) - FORM C (SFN 52160)

NOTIFICATION OF INTENT TO USE DBE (RN)
 North Dakota Department of Transportation, Civil Rights Division
 SFN 52160 (Rev. 12-2006)

SP DBE -- Race-neutral
 February 8, 2008
 Page 17 of 17

FORM C

1. The prime contractor and any subcontractors who listed DBE Participation on Form A **must** complete a Form C for each of their respective, intended DBEs. The prime contractor is responsible for the completion and submission of a Form C for each DBE commitment made by any lower-tier subcontractor.
2. If the information on a Form C **differs** from the information provided on Form A (bid item numbers, quantities, or dollar amounts), a written explanation for the difference **must** be provided by the prime contractor or subcontractor with the Form C.
3. The Form C **must be signed** by the prime contractor or subcontractor and their respective, intended DBE. If Form C contains additional pages or an attachment, each page **must** be signed by the intended DBE. Signatures do not have to be original (faxed signatures are acceptable).
4. The forms **must** be returned to the NDDOT Civil Rights Division **within ten working days** after the bid opening. Forms may be faxed to the Civil Rights Division at (701) 328-1965 or (701) 328-0343. **Award will not be made** until a Form C is received for each intended DBE listed on Form A.

This form is NOT a contract and does not take the place of any contract. It is an indication to NDDOT that all DBEs listed on Form A understand they will be used on this project.

| | |
|--|--|
| Prime Contractor or Subcontractor Super Contracting Co., Inc. | Project No. IM-1-010(001)100 & IM-1-001(010)000 |
| Intended DBE A-1 Gravel Products | Bid Opening Date April 17, 2009 |
| | Job No. 5 |

| Bid Item Nos. | Work Description | Units | Approx. Quantity | Unit Costs | Amount |
|---------------|-------------------------------|-------|------------------|--------------|---------------------|
| 10 | Aggregate Base Course Class 5 | Ton | 2,000 | 6.75 | \$ 13,500.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | Total | \$ 13,500.00 |

Comments

| | | |
|---|--------------------|-----------------|
| Prime Contractor/Subcontractor Signature <i>John Jones</i> | Title President | Date 4/23/09 |
| Intended DBE Signature <i>Pearl Olson</i> | Title Owner | Date 4/23/09 |

The NDDOT DBE Liaison Officer can be contacted at the Civil Rights Division, ND Department of Transportation, 608 E. Boulevard Ave., Bismarck, ND 58505-0700, digoe@nd.gov, phone (701) 328-2576, or fax (701) 328-1965, (701) 328-0343..

EXHIBIT III-F: SAMPLE DBE PARTICIPATION REVIEW - RACE-NEUTRAL (SFN 13743b)

DBE PARTICIPATION REVIEW – RACE-NEUTRAL

North Dakota Department of Transportation, Civil Rights Division
SFN 13743b (Rev. 8-2006)

| | |
|-------------------------------|---|
| BID OPENING April 17, 2009 | APPARENT LOW BIDDER Super Contracting, Inc. |
| JOB NUMBER 5 | PROJECT NUMBER IM-1-010(001)100 & IM-1-001(010)000 |
| LOW BID \$ 500,500.00 | |

DBEs LISTED ON FORM A

| DBE | AMOUNT | % ACH | DBE % | BID ITEM/PRODUCT SUPPLIED |
|---------------------|-----------|-------|-------|---------------------------|
| A-1 Gravel Products | \$ 13,500 | 2.7 | 100 | 10 |
| | | | | |

ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL

| DBE | AMOUNT | % ACH | DBE % | BID ITEM/PRODUCT SUPPLIED |
|-----|--------|-------|-------|---------------------------|
| | \$ | | | |

RECOMMENDATION BY DBE PARTICIPATION REVIEW COMMITTEE

| DATE | NAME | AWARD | NOT AWARD | AWARD SUBJECT TO |
|------|------|-------|-----------|------------------|
| | | | | |
| | | | | |
| | | | | |

Did the contractor?

| STEP | TASKS | YES | NO | COMMENTS |
|------|---------------------------|-----|----|-------------------|
| 1 | Submit Form A as Required | X | | Received 4-20-09. |
| 2 | Submit Form B as Required | X | | Received 4-27-09. |
| 3 | Submit Form C as Required | X | | Received 4-27-09. |

| |
|-------------------------------------|
| <p>Comments:</p> |
|-------------------------------------|

EXHIBIT III-G: SAMPLE PRIME CONTRACTOR'S REQUEST TO SUBLET (SFN 5682)







PRIME CONTRACTOR'S REQUEST TO SUBLET

North Dakota Department of Transportation, Construction
SFN 5682 (Rev. 09-2008)

| | | |
|--|------------------|--|
| Project Number 10 | County Ramsey | Project IM-3-030(010)000 |
| Subcontractor MY Trucking Company | | Address P. O. Box 100, Grand Forks, ND 58203-0100 |
| Prime Contractor ABC Construction, Inc. | | Address P. O. Box 505, Devils Lake, ND 58301 |


The subcontract between the subcontractor and prime contractor specified above contains all the pertinent provisions and requirements of the prime contract with the North Dakota Department of Transportation (NDDOT). It is specifically agreed and understood by and between the prime contractor and the subcontractor that should the Deputy Director for Engineering of the NDDOT determine that progress on any sublet item of work is not satisfactory, he shall notify the prime contractor in writing of that fact, and the prime contractor shall have the right to terminate the subcontract by giving written notice thereof to the subcontractor, and the subcontractor shall have no cause of action against the prime contractor or the state of North Dakota for such termination.

SUBCONTRACTORS who are **NOT PREQUALIFIED**, certified as Disadvantaged Business Enterprise (DBE), or registered with the Department for the type of work being subcontracted must submit a Subcontractor Registration Form (SFN 52243) with this request.

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--------------------------|---|--------------------|-------------------------------------|--------------------------------------|---------------------------------------|--|--------------------------|---|-------------------------------------|--------------------------|---|-------------------------------------|--------------------------|---------------------------------------|-------------------------------------|--------------------------|--|-------------------------------------|--------------------------|---|-------------------------------------|--------------------------|--------------------------------------|-------------------------------------|--------------------------|--|-------------------------------------|--------------------------|---|--|--|--|------------------|--|---|-------------------|--|-------------------------|--|--|--|---|--|---|------------|----------------|--|-------------------------------------|--------------------------|---------------------------------------|-------------------------------------|--------------------------|--|-------------------------------------|--------------------------|---|-------------------------------------|--------------------------|--------------------------------------|-------------------------------------|--------------------------|--|-------------------------------------|--------------------------|---|--|--|---|------------------|--|
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td colspan="2">Name Mary Yodel</td></tr> <tr><td colspan="2">Title President</td></tr> <tr><td colspan="2">Subcontractor MY Trucking Company</td></tr> <tr><td colspan="2">I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract:</td></tr> <tr> <td style="text-align: center;"> <table style="width: 100%;"> <tr> <td style="text-align: center;">APPLICABLE</td> <td style="text-align: center;">NOT APPLICABLE</td> <td></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Labor Rates from Department of Labor.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Other Federal Aid provisions. (i.e., Buy America, etc.)</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>EEO Affirmative Action requirements.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Disadvantaged Business Enterprise Program Special Provision.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Plans, Specifications, Supplemental Specifications, Specification Provisions, and all other contract documents.</td> </tr> </table> </td> <td colspan="2"></td> </tr> <tr> <td>Signature </td> <td colspan="2">Date 5/8/2009</td> </tr> </table> | Name Mary Yodel | | Title President | | Subcontractor MY Trucking Company | | I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract: | | <table style="width: 100%;"> <tr> <td style="text-align: center;">APPLICABLE</td> <td style="text-align: center;">NOT APPLICABLE</td> <td></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Labor Rates from Department of Labor.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto.</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Other Federal Aid provisions. 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| Subcontractor MY Trucking Company | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Signature  | Date 5/8/2009 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Name Joe Smith | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Title Vice President | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Prime Contractor ABC Construction, Inc. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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ITEMS COVERED BY SUBCONTRACT

| SPEC. NUMBER | ITEM. NUMBER | APPROX. QUANTITY | UNIT | WORK DESCRIPTION | SUBCONTRACT AMOUNT |
|--------------|--------------|------------------|------|---|--------------------|
| 302 408 | 6, 7 | 40,000 | Tons | Hauling Aggregate Base Course and Hot Bituminous Pavement | \$ 100,000 |
| TOTAL | | | | | \$ 100,000 |

| | | | |
|---|-----------------|--------------------------------------|-------------------------------------|
| Approved:  Project Engineer | Date 5/12/09 | Percent Sublet This Request 4.00% | Total Percent Sublet to Date 13% |
|---|-----------------|--------------------------------------|-------------------------------------|

Prime Contractor: Submit **original** form to the Project Engineer. One copy of the executed subcontract must be attached.
Project Engineer: Submit **original** form to Construction Services and submit one **copy** of form to Civil Rights Office.

EXHIBIT III-H: SAMPLE DBE PARTICIPATION CERTIFICATION (SFN 14268)

DBE PARTICIPATION CERTIFICATION


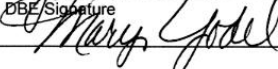
North Dakota Department of Transportation, Construction
SFN 14268 (Rev. 10-2008)

Complete this form for each disadvantaged business enterprise (DBE) for which a Form C (Notification of Intent to Use DBE) was submitted in accordance with the Disadvantaged Business Enterprise Program Special Provision. The DBE, intended amount, and bid item numbers must reflect what was entered on Form C. If additional DBE participation is realized during the course of the project, this form must be completed and submitted for **ONLY** those additional DBE firms that are certified by NDDOT. In those instances, "not intended" should be entered in the "\$ Amount Intended" column.

This statement certifies that the DBE firm listed below performed on the project in accordance with the Disadvantaged Business Enterprise Program Special Provision. The following is a true and accurate statement of the monetary amount of the intended participation and the actual amount paid to the DBE.

| | | |
|--|--|-------------------------------|
| Prime Contractor ABC Construction, Inc. | | Bid Opening Date 4/17/2009 |
| DBE Firm MY Trucking Company | Project Number IM-3-030(010)000 | Job Number 10 |
| Amount Intended \$ 100,000 | Bid Item Numbers 6 and 7 (Haul Only) _____ _____ _____ | Amount Paid \$ 100,000 |

REMARKS

| | | |
|---|-------------------------|--------------------|
| Prime Contractor Signature  | Title Vice President | Date 11/13/2009 |
| DBE Signature  | Title President | Date 11/13/2009 |

Distribution:

Original - Construction Services

INSTRUCTIONS FOR COMPLETING PROPOSED PROGRESS CHART

The following items are to be completed by the Contractor:

1. Fill in block showing Project No., County, Contractor's Firm Name, and Proposed Starting Date.
2. Bar Diagrams - Show a bar chart for each major construction operation involving bid items which total 10% or more of the total contract cost, and for any other controlling items of work which must be completed, wholly or in part, to permit continuation of progress. (Refer to the listing shown below for common construction operations.) Place each bar in the appropriate time frames to represent the calendar periods estimated for performing that operation.
3. Rate of Completion - Show estimated cumulative percent completion to date of total contract for end of each month.

NOTE: When the contract time allowed for completion is based on working days, the number of working days allowed will be computed from the contractor's proposed starting date and the approximate completion date specified in the Proposal, using the schedule of estimated working days shown in Section 103-2.4 of the Standard Specifications. The allowable working days determined by this computation will not exceed the maximum number of working days specified in the Proposal. The information submitted by the contractor and accepted by the Department of Transportation in no way changes the time for completion in the proposal.

| SPEC. NOS. | TYPE OF OPERATION |
|------------|--|
| 203/714 | Excavation, Borrow, Drainage |
| 210 | Structural Excavation, Structural Fill, Foundation |
| 230/234 | Preparation |
| 302 | Subgrade Preparation, Stabilized Subgrade |
| 302 | Aggregate Surface Course |
| 401 | Aggregate Base Course |
| 402 | Prime Coat, Fog Coat |
| 405 | Cold Bituminous Pavement |
| 406 | Remove and Salvage Bituminous Pavement |
| 407 | Hot Bituminous Pavement |
| 408 | Hot Recycled Bituminous Pavement |
| 410 | Hot Bituminous Pavement (Quality Control) |
| 420 | Milling Pavement Surface |
| 550 | Bituminous Seal Coat |
| 560 | Portland Cement Concrete Pavement |
| 602/612 | Recycled Portland Cement Concrete Pavement |
| 602/612 | Concrete Structures (Sub-Structure), Reinf. Steel |
| 604 | Concrete Structures (Super-Structure), Reinf. Steel |
| 616 | Prestressed Concrete Beams |
| 618 | Structural Steel |
| 622 | Timber Structures |
| 626 | Piling |
| 630 | Cofferdams |
| 638 | Painting |
| 650 | Structural Plate Culverts |
| 708 | Bridge Deck Overlays |
| 710 | Seeding, Sodding, Mulching, Riprap, Soil Retention Blanket |
| 714 | Temporary By-Pass |
| 722 | Culverts, Storm Drains, and Underdrains |
| 724 | Catch Basins, Manholes, Inlets |
| 748/750 | Watermains, Waterlines, and Sewerlines |
| 752 | Curb and Gutter, Sidewalk and Driveways |
| 754 | Fencing |
| 762 | Highway Signs |
| 764 | Pavement Marking |
| 770 | Guardrail |
| 772 | Highway Lighting |

IV. CONTRACT COMPLIANCE

Under 23 Code of Federal Regulations Part 230, Subpart D, NDDOT is responsible for assuring contractor compliance with the requirements of federal-aid highway construction contracts, including the equal employment opportunity (EEO), on-the-job training (OJT), disadvantaged business enterprise (DBE), and labor compliance responsibilities set forth in 23 Code of Federal Regulations Part 230; 49 Code of Federal Regulations Part 26; 41 Code of Federal Regulations Part 60; 49 Code of Federal Regulations Part 29; and 29 Code of Federal Regulations Parts 1, 3, 5, 6, and 7. The Civil Rights Division has the overall responsibility for monitoring and assuring prime contractor and covered subcontractor compliance with the above federal rules and regulations. Day-to-day project monitoring has been delegated to the districts.

A. Contract Special Provisions

1. All federally-aided highway construction contracts contain the following special provisions relative to the equal employment opportunity (EEO) responsibilities of contractors:
 - a) *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)*. This special provision:
 - (1) Includes requirements **NOT** to discriminate and to take affirmative action to assure EEO as required by the Civil Rights Act of 1964, as amended;
 - (2) Provides for the maintenance of statistical records, company reports, and related materials and information; and
 - (3) Includes DBE requirements to assure that eligible businesses, as defined in 49 Code of Federal Regulations Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds.
 - b) *EEO Affirmative Action Requirements (6-27-02)*. This special provision:
 - (1) Specifies a statewide employment goal of 6.9 percent for females in each trade and an assigned percentage goal, by county, for minorities in each trade; and
 - (2) Includes additional affirmative action steps contractors are required to implement to assure EEO in achieving the minority and female employment goals.
 - c) Prime contractors are required to include these special provisions in all subcontracts of \$10,000 or more and to further require their inclusion in any

lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.

- d) All federally-aided highway construction contracts contain the following special provisions relative to the labor compliance responsibilities of contractors:
 - (1) *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)*. This special provision includes specific requirements for compliance with the rules, regulations, and relevant orders of the U.S. Department of Labor as they pertain to the Davis-Bacon and Related Acts.
 - (2) *Labor Rates from U.S. Department of Labor*. This special provision specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction.
- e) Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.
- f) With the exception of contracts funded solely with county funds and emergency relief projects that are **NOT** included in NDDOT's bid openings, all contracts (state and federally funded) contain *Special Provision On-the-Job Training Program (4-1-08)*. This special provision:
 - (1) Includes the formula used to determine the number of trainee positions assigned to prime contractors and
 - (2) Specifies standards contractors are required to follow in order to fulfill the training requirement.
- g) Most federally-aided highway construction contracts will contain either the *Special Provision Disadvantaged Business Enterprise Program (Race-conscious) (dated 3-11-08 and earlier)* or the *Special Provision Disadvantaged Business Enterprise Program (Race-neutral) (dated 2-8-08 and earlier)*.
 - (1) The race-conscious special provision specifies a percentage of the bid price to be subcontracted or expended to DBE firms. Prime contractors **MUST** meet assigned goals or show that good faith efforts were made in an attempt to meet the goals. Prime contractors are required to provide a list of the DBE firms intended for use on the project at the time of bid submittal.
 - (2) The race-neutral special provision assists all small businesses in the subcontract and supply selection process and is completely race and gender neutral. Prime contractors are required to provide a list of the

DBE firms intended for use on the project to the **CIVIL RIGHTS DIVISION** by noon on the next work day following the bid opening.

- (3) Under both the race-conscious and the race-neutral special provisions, the apparent low bidder **MUST** provide:
 - (a) A Form C [*Notification of Intent to Use DBE (RC) SFN 52752 - Rev. 11-2006 and earlier*) or *Notification of Intent to Use DBE (RN) (SFN 52160 - Rev. 12-2006 and earlier)*] to the **CIVIL RIGHTS DIVISION** for each DBE intended for use on the project.
 - (b) A *Proposed Progress Chart (SFN 7721 - Rev. 10-2007)* to the **CONSTRUCTION SERVICES DIVISION** for each DBE intended for use on the project (excluding oil haulers, suppliers, brokers, vendors, regular dealers, and manufacturers).
 - (c) A *Record of DBE Project Payments (SFN 53664 - 09-2006)* to the **CIVIL RIGHTS DIVISION**, on a semiannual basis, to document actual payments to DBE firms for work performed.
 - (d) A completed *DBE Participation Certification (SFN 14268 - Rev. 10-2008)* to the **CONSTRUCTION SERVICES DIVISION**, with a copy to the district, city, county, or consultant project manager-engineer, upon completion of the contract to verify DBE participation.
- (4) Both DBE special provisions contain other requirements for compliance with NDDOT's DBE program.

B. Selection Criteria

1. The Civil Rights Division conducts between ten and twelve in-depth contract compliance reviews annually. Selection criteria include project size, type, location, whether OJT or DBE requirements are a part of the contract, and when the contractor was last reviewed.
2. All reviews **MUST** be conducted prior to or at peak employment. In addition, enough work **MUST** have been completed to generate three or more payrolls. Contracts and subcontracts **MUST** also be large enough to produce meaningful employment figures.
3. Reviews are scheduled at least three weeks in advance in order to give the contractor enough time to gather and submit their review materials one week prior to the review date.
4. All reviews **MUST** be completed prior to September 15 each year in order to be counted toward NDDOT's annual goal.

5. The assistant district engineer will be contacted for a preliminary construction schedule when a project is earmarked for review. The assistant district engineer **MUST** keep the Civil Rights Division informed of the contractor's progress on the project. This is **VERY** important because of the state's short construction season.
6. The Civil Rights Division conducts desk audits of contractors instead of on-site reviews when the following criteria have been met:
 - a) The contractor has participated in one or more on-site contract compliance reviews conducted by the Civil Rights Division during the previous three years;
 - b) Previous compliance review reports **DO NOT** contain serious deficiencies;
 - c) No possible noncompliance issues have been raised; and
 - d) All of the required information is received timely and, after review, there are only a few basic questions.
7. A conference call to the contractor's home office; the district office; and the city, county, or consultant project manager's-engineer's office, when appropriate, will be held at the scheduled date and time instead of an on-site visit. A decision will be made and conveyed to the contractor and other participants approximately forty-eight hours in advance of the scheduled review.
8. **PRIOR** to the scheduled review, the assistant district engineer is responsible for ensuring that the district, city, county, or consultant project manager-engineer has done the following and for reporting his or her findings during the conference call or on-site visit:
 - a) Conducted labor compliance and EEO contract compliance job-site interviews;
 - b) Reviewed the job-site bulletin board to ensure that all required notices and posters are displayed and are legible; and
 - c) Inspected the project site to ensure that working conditions and employee facilities **DO NOT** indicate discriminatory treatment of project site personnel and that nonsegregated facilities are maintained.

C. Labor Compliance and EEO Contract Compliance Job-site Interviews

1. Labor compliance and EEO contract compliance job-site interviews **MUST** be conducted on those projects scheduled for in-depth contract compliance reviews. Assistant district engineers and district, city, county, and consultant project managers-engineers will receive prior notification of scheduled contract compliance reviews and are required to attend the reviews.
2. The interviews **MUST** be conducted and copies of the completed forms provided to the reviewing officer **PRIOR** to the conference call or on-site visit. The originals of the

completed forms **MUST** be placed in the project file that is sent to the Construction Services Division when the contract is finalized.

3. Interviews should be conducted with a cross-section of the contractor's project employees. Selection criteria should include race, sex, job classification, and age. One minority, one nonminority, and one female in each trade, classification, or occupation should be interviewed. A minimum of five interviews should be conducted if at all possible.
4. **NO** interviews should be conducted with bona fide owner-operators of trucks or with haulers and suppliers of petroleum products.
5. The *Labor Compliance and EEO Contract Compliance Job-site Interview (SFN 9426 - Rev. 01-2008)* form **MUST** be used to conduct the interviews. All of the instructions and the report form **MUST** be read **THOROUGHLY** before the interviews are conducted.
6. Part C of the form contains questions to ascertain an employee's knowledge of the company's EEO-related policies, practices, and procedures. It is **EXTREMELY IMPORTANT** that Part C be completed. The information in Part C is shared with the contractor at the time of the review.
7. All statements and questions on the form **MUST** be answered fully and detailed information and/or explanations provided where necessary. **ALL STATEMENTS MADE BY AN EMPLOYEE, WHETHER ORALLY OR IN WRITING, MUST BE TREATED AS CONFIDENTIAL SO AS TO AVOID DISCLOSURE OF THE EMPLOYEE'S IDENTITY TO THE CONTRACTOR WITHOUT THE EMPLOYEE'S CONSENT.**
8. All follow-up data normally can and **MUST** be obtained on the same day the employee interview data is gathered. The only exception would be verification of the payroll for the week of the interviews.

D. Bulletin Boards

1. An inspection of the contractor's bulletin board **MUST** be made to ensure that all required notices and posters are displayed. Posted on the bulletin board **MUST** be:
 - a) *Poster Board (DOT 3350 - Rev. 03-2003)*, or its equivalent, provided by NDDOT;
 - b) Davis-Bacon wage rate decision found in the contract; and
 - c) Contractor's discrimination complaint procedure (a sample is attached to the pre-job conference form).
2. The bulletin board **MUST** be located in an area readily accessible to employees, and the items on the bulletin board **MUST** be legible.

3. Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster board and Davis-Bacon wage rate decision.
4. Three-ring binders may be used in place of bulletin boards **ONLY** if the contractor is on the project for less than one week (seven calendar days); or if the contractor is extremely mobile on the project, for example: paint strippers, guardrail installers, fencers, etc. However, project employees **MUST** feel comfortable in accessing the information in the three-ring binder.
5. Another allowable method for complying with bulletin board requirements is for the contractor to provide individual copies of their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure to all employees at the beginning of **EACH** construction season and to all new employees hired throughout the remainder of the year. However, the contractor **MUST** keep written documentation, including signatures of employees, and be able to produce the documentation upon request. The other posters and notices **MUST** then be discussed at periodic EEO meetings held throughout the year. Again, documentation **MUST** be kept to verify that this information is being brought to the attention of the employees.

E. Nonsegregated Facilities

The project site **MUST** be inspected to ensure that working conditions and employee facilities **DO NOT** indicate discriminatory treatment of project personnel and that the contractor **DOES NOT** maintain segregated facilities or allow their employees to work at any location under their control where segregated facilities are maintained. Segregated facilities include waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, and transportation and housing facilities. The **ONLY** exceptions would be for the disabled when the demands for accessibility override (disabled parking) and where separate or single-user toilet and necessary changing facilities are provided to assure privacy between the sexes.

The following may be obtained from the Civil Rights Division, phone: 328-2605, fax: 328-1965, or Web site: www.dot.nd.gov/forms/formsbycategory.htm:

- *Labor Compliance and EEO Contract Compliance Job-site Interview (SFN 9426 - Rev. 01-2008)*
www.dot.nd.gov/forms/sfn09426.pdf
- **Poster Board (DOT 3350 - Rev. 03-2003)*

***NOT** available on the Web site.

EXHIBIT IV-A: LABOR COMPLIANCE AND EEO CONTRACT COMPLIANCE JOB-SITE INTERVIEW

North Dakota Department of Transportation, Civil Rights Division

SFN 9426 (Rev. 01-2008)

To access SFN 9426, click on the following:

www.dot.nd.gov/forms/sfn09426.pdf

EXHIBIT IV-B: TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

EXHIBIT IV-B: TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

No. 373

401:1

TEXT OF FEDERAL LAWS, ORDERS, AND REGULATIONS

Civil Rights Act of 1964

Following are those parts of the Civil Rights Act of 1964 that have relevance to equal employment opportunity. Title VI prohibits discrimination in federally assisted programs. Title VII, the most frequently cited statute in EEO law, prohibits discrimination in employment. Title IX deals with intervention by the Attorney General in civil rights cases. Title XI includes a provision involving right to trial by jury, prohibition of double jeopardy, and other miscellaneous provisions.

Title VI—Nondiscrimination in Federally Assisted Programs

Following is the text of Title VI of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. (As issued July 2, 1964, P.L. 88-352, 78 Stat. 252, 42 U.S.C. 2000d)

Sec. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this sec-

tion may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department of agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such

action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with a requirement imposed pursuant to section 602 any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Proce-

dure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

V. LABOR COMPLIANCE

The Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act requirements are contained in 29 Code of Federal Regulations Parts 1, 3, 5, 6, and 7. NDDOT has the primary responsibility for the enforcement of the labor standards provisions included in all federally-aided highway construction contracts. Overall monitoring of contractors for labor compliance is the responsibility of the assistant district engineer. District, city, county, and consultant project managers-engineers have the responsibility for day-to-day monitoring at the project site.

The *1979 Labor Compliance Manual (Fourth Edition)* has been replaced by the *U.S. Department of Labor Field Operations Handbook - Chapter 15 (6-29-90)*. It covers the federal rules and regulations that govern labor compliance. Assistant district engineers and district, city, county, and consultant project managers-engineers **MUST** familiarize themselves with this handbook ([Exhibit V-E](#)).

A. Davis-Bacon and Related Acts Coverage

1. Special Provisions

- a) Under the Davis-Bacon and Related Acts (DBRA), all persons employed on or working upon the **site of the work** of a federally funded highway construction contract **MUST** be paid the wage rates and fringe benefits determined by the Secretary, U.S. Department of Labor (USDOL), to be prevailing in the area of the project. In addition, DBRA requires that certain labor standards provisions be specified in the contract awarded to the successful bidder and that the applicable Davis-Bacon wage rate decision also be included in the contract documents. Consequently, all federally-aided highway construction contracts contain the following special provisions:
 - 1) *Required Contract Provisions, Federal-aid Construction Contracts (U. S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)*. This special provision outlines contractor requirements relating to wages, payrolls, and compliance statements.
 - 2) *Labor Rates from U.S. Department of Labor*. This special provision specifies basic hourly rates and applicable fringe benefit payments for job classifications related to highway construction.
- b) Prime contractors are required to include these special provisions in all subcontracts and to further require their inclusion in any lower-tier subcontracts that may, in turn, be made. The prime contractor is responsible for compliance by any subcontractor or lower-tier subcontractor.
- c) Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, the entire contract is considered federally funded and is subject to DBRA. Therefore, Davis-Bacon wage rates **MUST** be paid and weekly payrolls **MUST** be generated and submitted for all portions or segments of the contract.

2. Site of the Work Definition

- a) The definition for the **site of the work** has undergone many changes due to challenges to the USDOL's interpretation of DBRA. The courts have significantly narrowed the definition previously used. In January 2001, the USDOL released the following new definition modifying 29 CFR 5.2(j)(1):

“The site of the work definition includes material or supply sources, tool yards, job headquarters, etc., in the site of the work only where they are **dedicated** to the covered construction project **and** are **adjacent or virtually adjacent** to the location where the building or work is being constructed.”

- b) The new definition applies to all federal-aid projects **let to contract (NOT awarded)** after **January 19, 2001**.

- c) Also changed is:

“The regulatory definition of construction to provide that the off-site transportation of materials, supplies, tools, etc., is **not** covered unless such transportation occurs between the construction work site and a **dedicated** facility located **adjacent or virtually adjacent** to the construction site.”

- d) The key is **dedicated** to the job site **AND adjacent or virtually adjacent** to the location where the work is being constructed. NDDOT has defined **adjacent or virtually adjacent** as a pit or batch plant (concrete or asphalt) whose boundary is located **within one-half mile** of the closest right of way boundary to the project. The distance is measured as one-half mile from the boundary to the pit or batch plant site (concrete or asphalt) to the closest project boundary, **as the crow flies, NOT** to the middle of the project.

- e) The federal regulations further define the **site of the work** as:

(1) “1(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established **specifically for the performance of the contract or project**.”

(2) “1(2) Except as provided in paragraph 1(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work provided they are **dedicated exclusively, or nearly so**, to performance of the contract or project, **and** provided they are **adjacent or virtually adjacent** to the site of the work as defined in paragraph 1(1) of this section.”

(3) “1(3) **Not included** in the site of the work are **permanent** home offices, branch plant establishments, fabrication plants, tool yards, etc., of a

contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are **established** by a supplier of materials for the project **before opening of bids and not on the site of work** as stated in paragraph I(1) of this section, are **not** included in the **site of the work**. Such permanent, previously established facilities are **not** part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of the contract.”

3. Supplying and Hauling Material

- a) If the boundary to a pit or batch plant site (concrete or asphalt) is located **more than one-half mile** from the closest right of way boundary to the project, DBRA **DOES NOT** apply. It **DOES NOT** matter when the project was **let to contract (NOT awarded)** because the pit or batch plant site (concrete or asphalt) is **more than one-half mile** away.
- b) If the boundary to a pit or batch plant site (concrete or asphalt) is located **one-half mile or less** from the closest right of way boundary to the project,
 - (1) DBRA **DOES NOT** apply if the pit or batch plant site (concrete or asphalt) **HAS BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract (NOT awarded)**.
 - (2) DBRA **DOES** apply if the pit or batch plant site (concrete or asphalt) **HAS NOT BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract (NOT awarded)**.
- c) The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mix concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are activities **NOT** covered by DBRA. This would be so even though the materials are delivered directly into a contractor’s mixing facilities at the work site. Such bona fide material suppliers are **NOT** considered contractors under DBRA. Thus, their employees are **NOT** due Davis-Bacon wages and payrolls are **NOT** required. What constitutes a sufficient quantity of sales to the general public depends on the circumstances in each case, but **MUST** be **more than mere token sales**.
- d) The supplier **MUST** be able to demonstrate that he or she has **routinely been selling to the general public from the aggregate source** and that the pit was opened for that use, **NOT** for the federal-aid project in question. In other words, if they are normally considered a supplier but they opened the pit just for the federal-aid project, **AND** the pit is located **one-half mile or less** from the

closest right of way boundary to the project, they would be considered a subcontractor and **NOT** a supplier. Consequently, Davis-Bacon wages would be due and payrolls would be required.

- e) If DBRA **DOES** apply to a pit or batch plant site (concrete or asphalt), the employees who perform tasks directly related to producing the product are covered, including the truck drivers who haul the materials from the pit or batch plant site (concrete or asphalt) to the project, regardless of whose payroll they appear on.
- f) It **DOES NOT** matter who owns the pit, who is crushing, or who is producing the product. What matters is whether the site is **dedicated** to the covered construction project **AND** is **adjacent or virtually adjacent** to the project
- g) In addition, it **DOES NOT** matter if the pit is a state-optioned pit. If the pit is located **more than one-half mile** from the closest right of way boundary to the project, DBRA **DOES NOT** apply.
- h) If rubble or other material is hauled from a project to a location designated in the plans and specifications for the project, DBRA **DOES** apply. If no location is designated in the plans and specifications, and the truck drivers are hauling the rubble or material from the project to a location determined to **NOT** be a **site of the work**, DBRA **DOES NOT** apply.
- i) Whenever any state, county, or city funded project is combined with or tied to a federally funded project as one contract, Davis-Bacon wage rates **MUST** be paid and payrolls **MUST** be generated and submitted for all portions or segments of the contract. Consequently, the principles described above apply to pits and batch plants (concrete or asphalt) used for the contract or project. For example:
 - (1) A contract has three portions or segments, of which two are federally funded and one is strictly state funded.
 - (2) There is a two and one-half mile gap between the state funded portion or segment and the next closest federally funded portion or segment.
 - (3) Material is being hauled from a pit site located **less than one-half mile** from the closest right of way boundary to the state funded portion or segment.
 - (a) Because two of the portions or segments are federally funded, the entire project is viewed as federally funded.
 - (b) Since the pit site is located **less than one-half mile** from the closest right of way boundary to the state funded portion or segment,

- (i) DBRA **DOES NOT** apply if the pit site **HAS BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract** (**NOT** awarded).
 - (ii) DBRA **DOES** apply if the pit site **HAS NOT BEEN** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract** (**NOT** awarded).
- (4) DBRA applies to anyone working **adjacent** (within one-half mile) to the boundaries of the project site, generally at a pit or batch plant site (concrete or asphalt).
- (5) If material is hauled from that same pit site to any one of the other two portions or segments, which are **NOT adjacent** to the pit site, DBRA still applies because the portions or segments are looked at as a whole.
- j) There are times when, at the end of a project, NDDOT adds another mile or two to the project through the issuance of a change order. If it was previously determined that the boundary to a pit or batch plant site (concrete or asphalt) was located **more than one-half mile** from the closest right of way boundary to the project; but the added segment brings the boundary to the pit or batch plant site (concrete or asphalt) **within one-half mile** of the project boundary:
 - (1) Those employees working on the additional segment under the change order would be due Davis-Bacon wages, and payrolls would be required.
 - (2) Those employees hauling from and working at the pit or batch plant site (concrete or asphalt) under the change order would be due Davis-Bacon wages, and payrolls would be required **ONLY** if the pit or batch plant site (concrete or asphalt) **WAS NOT** open and making sales to the general public within the previous twelve months of the **day** the project was **let to contract** (**NOT** awarded).
- k) The district, city, county, or consultant project manager-engineer **MUST** use his or her best judgment to determine whether a location in question is considered a **site of the work**. If the district, city, county, or consultant project manager-engineer has questions or is unsure whether a pit or batch plant site (concrete or asphalt) is covered, he or she **MUST** consult the **CIVIL RIGHTS DIVISION**.

B. Payment of Predetermined Minimum Wage

1. All employees working on the **site of the work** of a federally funded highway construction contract **MUST** be paid unconditionally and **NOT** less often than **once a week**.

2. Therefore, the contractor **MUST** establish a fixed workweek (Sunday through Saturday for example) and a weekly payday (such as Friday, or the preceding day should such payday fall on a holiday). Any deviation from this schedule may indicate the contractor is attempting to circumvent the overtime requirements. See paragraph B, 12 of this section ([page V-9](#)) for information concerning the payment of overtime hours.
3. Employees **MUST** be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. See paragraph B, 13 of this section ([page V-9](#)) for information concerning fringe benefit payments.
4. Only payroll deductions authorized by law, or permitted under the regulations issued by the Secretary, USDOL, may be made from an employee's weekly paycheck. See paragraph B, 14 of this section ([page V-12](#)) for information concerning payroll deductions.
5. The payment **MUST** be computed at wage rates **NOT** less than those contained in the Davis-Bacon wage rate decision incorporated into the contract, regardless of any contractual relationship that may be alleged to exist between the contractor, its subcontractors, and their employees.
6. Employees **MUST** be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill, except those employees enrolled in approved apprenticeship and on-the-job training programs.
7. Apprentices and trainees **MUST** be paid at **NOT** less than the rate specified in the registered or approved program for the apprentice's or trainee's level of progress, expressed as a percentage of the journeyworker-level hourly rate specified in the applicable Davis-Bacon wage rate decision. Apprentices and trainees **MUST** also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. See paragraph B, 13 of this section page ([page V-9](#)) for information concerning fringe benefit payments.
8. If an employee performs work in more than one job classification during a single pay period and the classifications require different wage rates, the employee **MUST** be paid the highest rate for all hours worked unless the contractor's payroll records, or other affirmative proof, indicate which of the hours were included in the periods spent in each classification of work. The contractor may then pay **NOT** less than the rate specified in the Davis-Bacon wage rate decision incorporated into the contract for the job classification that describes each type of work performed. Contractors **MUST** keep accurate records of such periods of work and ensure the employee is paid at the correct rate for periods of work performed in each job classification.
9. If an employee's job classification is doubtful, contact the **CIVIL RIGHTS DIVISION** for a ruling.
10. If the job classification is known but is **NOT** included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including

any fringe benefit amounts, **MUST** be conformed **after the contract has been awarded** as described in paragraph O of this section (page V-28).

11. Counting and Reporting Time

- a) An employee's time starts for the day whenever he or she does any of the following in any sequence:
 - (1) Checks in to get instructions for the day;
 - (2) Loads, services, or does preventive maintenance on equipment;
 - (3) Cleans any part of the equipment; and
 - (4) Drives or rides in a company vehicle or drives a piece of equipment to the project site. This includes truck drivers who transport equipment to and from the project site or the **site of the work** and to and from the home office site.

- b) An employee's time ends for the day after any of these same duties are performed at the end of the day.

- c) For the time spent performing the above duties, employees **MUST** be paid at least the federal minimum wage (currently \$5.85 per hour). Davis-Bacon wages are due when the employee reaches the project site or the **site of the work**. For example:
 - (1) An employee spends 1 hour each morning getting ready to go to and/or driving **to the site of the work** and 1 hour each day returning **from the site of the work**. While **at the site of the work**, he or she works 8 hours each day, Monday through Friday (10 hours each day for a total of 50 hours). The salary paid while **off the site of the work** is \$10.00 per hour while the salary paid **at the site of the work** is \$20 per hour. Overtime is paid at a rate of one and one-half times the applicable rate for all hours worked in excess of 40 hours per week.
 - (2) The above employee would have worked 40 hours at the applicable regular rate of pay from Monday through Thursday. The employee is entitled to 8 hours at \$10.00 per hour (2 hours each day times 4 days) and 32 hours at \$20.00 per hour (8 hours each day times 4 days).
 - (3) For Friday, the employee would be entitled to 2 hours at \$15.00 per hour (\$10.00 x 1.5) and 8 hours at \$30.00 per hour (\$20.00 x 1.5).

- d) Truck drivers who have reached the project site or the **site of the work** but are waiting to be loaded **MUST** also be paid Davis-Bacon wages for their waiting time.

e) Truck drivers are **NOT** due Davis-Bacon wages when transporting equipment to and from the home office site, or a project site **NOT** covered under DBRA, to and from a project site that is covered under DBRA. Truck drivers are due Davis-Bacon wages **ONLY** when transporting equipment from one project to another **when both projects are covered under DBRA.**

f) Rounding Time

(1) Rounding time is permitted under DBRA. For example:

(a) Seven minutes or less is dropped; 8 minutes through 22 minutes is 15 minutes; 23 minutes through 37 minutes is half an hour; etc. To be allowed, rounding **MUST** be fair for both the employer and the employee.

(b) Under the system outlined above, an employee may gain a few minutes one day and lose a few minutes another day.

(2) Rounding is allowed, but is **NOT** required. Actual minutes may be used rather than rounding.

(3) Rounding to a number greater than the nearest 15 minutes is **NOT** allowed. In other words, rounding to the nearest half hour is **NOT** permitted.

(4) Contractors should keep in mind that rounding to the nearest 15 minutes causes the break between 7 and 8 minutes. Under this concept, some contractors **DO NOT** allow employees to record the 15 minutes until the full 15 minutes have been worked. This is a **VIOLATION.**

g) Breaks

(1) There is no federal law covering breaks.

(2) There is a state law which reads, "On shifts exceeding five (5) hours and which consist of two (2) or more employees, there shall be a thirty (30) minute, uninterrupted **break made available to employees who desire such a break.** Collective bargained provisions will prevail over provisions of the Wage Order."

(3) If employees want a break, state law says they **MUST** be given one. Also, employees **MUST** generally be paid for meal periods unless the following conditions exist:

(a) The period is at least 30 minutes long;

(b) The employee is completely relieved of duties; and

- (c) The employee can leave his or her work post, although he or she can be required to remain on the company premises.
- (4) Rest periods and coffee breaks of 20 minutes or less are generally required to be counted as hours worked. Payment for break periods over 20 minutes depends on whether or not the employee is free to pursue his or her own activities.
- (5) NDDOT **DOES NOT** enforce the state law on breaks. Any problems or questions should be addressed to the State Department of Labor (328-2660; or in-state, toll-free: 1-800-582-8032; or email: labor@nd.gov).

h) Timecards

- (1) There is no mandatorily prescribed format or procedures for employees to report their daily and weekly hours worked. Generally, it is the employee's responsibility to complete a daily or weekly timecard and to submit it to their project supervisor on a timely basis.
- (2) Federal regulations only require that contractors keep accurate records of periods of work and ensure that employees are paid at the correct wage rate for the periods of work performed in each job classification.
- (3) When an employee's timecard contains an error, NDDOT **STRONGLY** recommends any changes made to the timecard be initialed and dated by both the supervisor, or other company official, and the employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.

12. Overtime Hours

Overtime **MUST** be paid for all hours worked in excess of 40 hours per workweek. Overtime is paid at one and one-half times the basic hourly rate for the job classification as shown in the Davis-Bacon wage rate decision incorporated into the contract. See paragraph B, 13 of this section (below) for instructions on how to compute overtime when fringe benefits are required.

13. Fringe Benefit Payments

- a) When hourly fringe benefits are listed on the Davis-Bacon wage rate decision, they may be paid in the following manner:
 - (1) Making payments in the amount of the required fringe benefits to an established program, funded or unfunded. Funded programs are those programs in which the payments are irrevocably made to a trustee or a third person, i.e., the program is established separately from the contractor's own organization, such as Blue Cross/Blue Shield.

Unfunded programs are those in which the fringe benefit payments are made directly to a program provided from the general assets of the contractor's organization, such as vacation programs.

- (2) Making payments to the employee in the amount of the required fringe benefits.
- (3) A combination of the above methods.

b) For example, assume the Davis-Bacon wage rate decision provides that an employee is entitled to a basic hourly wage of \$15.00 per hour plus \$2.50 per hour for health and welfare and \$2.50 per hour for a pension or retirement program. The employer may do any one of the following:

- (1) Pay **NOT** less than \$15.00 per hour to the employee, plus make payments to established health and welfare and pension programs in amounts which total **NOT** less than \$5.00 per hour for either health or welfare, or for pension, or for both.
- (2) If the payments made by the employer to health and welfare, or pension programs, or to both programs, is greater than the combined total of \$5.00 per hour, the excess may be applied toward the \$15.00 basic hourly wage rate, i.e., the employer could satisfy the obligations by paying an hourly wage rate of \$14.00, plus \$6.00 per hour in fringe benefits. However, an employee's basic hourly wage can **NEVER** fall below the lowest established laborer rate contained in the Davis-Bacon wage rate decision. In addition, overtime compensation **MUST** be computed on the \$15.00 basic hourly wage rate contained in the Davis-Bacon wage rate decision regardless of any collective bargaining agreement, for example:

Hours 1 - 40

$\$14.00 + \$6.00 \times \text{hours}$

Hours over 40

$\$14.00 + \$7.50 (\$15.00 \div 2) + \$6.00 \times \text{hours}$

- (3) Pay **NOT** less than \$15.00 per hour to the employee, plus pay an additional \$5.00 per hour to the employee for fringe benefits (the employee would receive a straight-time rate of \$20.00 per hour).
- (4) Pay **NOT** less than \$15.00 per hour to the employee, plus an additional payment of \$2.50 per hour to the employee, plus a contribution of \$2.50 per hour to either health and welfare or pension programs. In this example, the employer is combining the methods discussed above. This method could be used in those cases where an employer provides some but **NOT** all of the fringe benefits set forth in the Davis-Bacon wage rate decision.

- c) The cost of transportation and board and lodging is considered as payment of travel expenses **properly reimbursable by the employer and incurred for its benefit**. Such payments are **NOT considered bona fide fringe benefits** within the meaning of DBRA, are **NOT part of the employee's wages**, and **DO NOT constitute board, lodging, or other facilities customarily furnished, which are deductible from the predetermined wage pursuant to Regs 3.5(j)**.

NOTE: 3.5 (j) is in reference to Section 3(m) of the Fair Labor Standards Act. According to USDOL, **board, lodging, or other facilities customarily furnished, which are deductible from the predetermined wage** are rare and **DO NOT** apply to the highway construction industry.

- d) It is the ***contractor's choice*** whether the fringe benefits are paid into an approved plan, directly to the employee, or a combination of partial payment directly to the employee and partial payment to a plan.

- e) To convert the annual cost of a particular fringe benefit to an hourly cash equivalent, the following formula may be used:

Divide the annual cost of the fringe benefit by the total number of working hours to which the cost is attributable (52 weeks per year times 40 hours per week equals 2,080 hours). For example, if the annual cost to the employer for a pension program is \$5,000 per employee, divide 5,000 by 2,080. This equals a cash equivalent of \$2.40 per hour.

- f) Fringe benefits are required to be paid on all regular and overtime hours worked. However, the required fringe benefit amount, as listed in the Davis-Bacon wage rate decision, is **NOT** calculated at time and one-half when figuring the overtime rate. For example, if an employee's basic hourly rate is \$15.00 per hour plus \$5.00 per hour in fringe benefits, and the employee works 50 hours in one week, the employee would be entitled to 50 hours at \$20.00 per hour (basic hourly rate plus fringe benefit amount) and 10 hours at \$7.50 per hour (one-half of the basic hourly rate of \$15.00).

- g) Fringe benefits for electricians and line construction workers are different from power equipment operators and truck drivers. For example, as of April 13, 2007, the prevailing rate for a lineman is \$27.59 plus \$4.75 and 28% or \$40.06 per hour ($\$27.59 \times .28 = \$7.22 + \$27.59 + \$4.75 = \40.06). See paragraphs C, 3, b and c of this section (page V-15) and paragraph H of this section (page V-19) for additional information concerning electrician and line construction classifications.

- h) Apprentices and trainees **MUST** also be paid fringe benefits in accordance with the provisions of the apprenticeship or training program. If the apprenticeship or training program **DOES NOT** specify or mention fringe benefits, apprentices and trainees **MUST** be paid the full amount of fringe benefits listed in the wage rate decision for the applicable classification. If the Administrator for the Wage

and Hour Division determines that a different practice prevails for the applicable apprenticeship classification, fringes **MUST** be paid in accordance with that determination. If that is the case, trainees **MUST** receive the same fringe benefits as apprentices.

- i) NDDOT's OJT program package specifies that, where applicable, on-the-job trainees be paid full fringe benefits.

14. Payroll Deductions

- a) Only deductions authorized by law may be made from an employee's weekly paycheck. Authorized payroll deductions include:
 - (1) Federal and state withholding income taxes, federal social security taxes, and worker's compensation.
 - (2) Sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest and in such a manner as to give the employee complete freedom of disposition of the advanced funds. NDDOT **STRONGLY** recommends that any advanced payment of wages be documented, signed, and dated by the employer and employee. Failure to do so may cause NDDOT to side with the employee should a wage dispute ensue.
 - (3) Amounts required by court process to be paid to another, unless the deduction is in favor of the employer, or any affiliated person, or when collusion or collaboration exists.
 - (4) Contributions made on behalf of the employee to funds established by the employer, or representatives of its employees, or both, for the purpose of providing, either from principle or income, or both, medical or hospital care; pensions or annuities on retirement; death benefits; compensation for injuries, illnesses, accidents, sickness, or disability, or for insurance to provide any of the foregoing; or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the employees, their families, and dependents providing, however, that the following standards are met:
 - (a) The deduction is **NOT** otherwise prohibited by law.
 - (b) The deduction is either voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is **NOT**:
 - (i) A condition either for the obtaining of or for the continuation of employment; or

- (ii) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.
 - (c) No profit or other benefit is otherwise obtained, directly or indirectly, by the employer, or any affiliated person, in the form of commission, dividend, or otherwise.
 - (d) The deduction shall serve the convenience and interest of the employee.
- (5) Contributions made on behalf of the employee toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
 - (6) Deductions requested by the employee to enable him or her to repay loans to, or to purchase shares in, credit unions organized and operated in accordance with federal and state credit union statutes.
 - (7) Deductions voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
 - (8) Deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
 - (9) Deductions to pay regular union initiation fees and membership dues, **NOT** including fines or special assessments; provided, however, a collective bargaining agreement between the employer and representatives of its employees provides for such deductions and the deductions are **NOT** otherwise prohibited by law.
 - (10) Deductions **NOT** more than for the *reasonable cost* of board, lodging, or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and 29 Code of Federal Regulations Part 531. When such deductions are made, the additional records required under 29 Code of Federal Regulations Part 516.25(a) **MUST** be kept. (USDOL has indicated these instances are rare and **DO NOT** apply to the highway construction industry.)
 - (11) Deductions for the cost of safety equipment of nominal value purchased by the employee as his or her own property and personal protection in his or her work, such as safety shoes, safety glasses, safety gloves, and hard hats:
 - (a) If such equipment is **NOT** required by law to be furnished by the employer;

- (b) If such deduction is **NOT** violative of the Fair Labor Standards Act or prohibited by other law;
 - (c) If the cost on which the deduction is based **DOES NOT** exceed the actual cost to the employer where the equipment is purchased from him or her and **DOES NOT** include any direct or indirect monetary return to the employer where the equipment is purchased from a third person; and
 - (d) If the deduction is either:
 - (i) Voluntarily consented to by the employee, in writing, and in advance of the period in which the work is to be done and such consent is **NOT** a condition either for the obtaining of employment or its continuance; or
 - (ii) Provided for in a bona fide collective bargaining agreement between the employer and representatives of its employees.
- (12) Deductions for which the employer has applied and received permission to make from the Secretary, USDOL, Washington, D.C.
- b) Deductions ***specifically prohibited*** include:
- (1) Deductions from an employee's wages to pay for damage caused by the employee to company equipment, such as trucks, or for the theft of company property.
 - (2) Deductions for the cost of lost or destroyed clothing and other items issued to the employees for use in performing their jobs.
 - (3) Deductions for purchasing, renting, and laundering protective clothing, coveralls, etc., where the use of such clothing is required either by the employer or the nature of the job.
- c) In addition, the practice of ***docking*** an employee a stated period of time or money (other than for the actual time lost) for being late for work, failing to punch a time clock, or other violation of an employment rule is considered a ***kickback, rebate, or unlawful deduction***.

C. Payroll Requirements

1. Weekly payrolls and basic records relating thereto **MUST** be maintained by the prime contractor and each subcontractor during the course of the work of a federally funded highway construction contract for all employees working at the ***site of the work***.

2. Payrolls are **NOT** required for employees working on state funded only contracts or for employees working at locations considered **NOT** to be a *site of the work* of a federally funded contract.
3. There is no mandatorily prescribed format for contractor payrolls. However, all contractors **MUST** uniformly complete payrolls using the job classifications found in the Davis-Bacon wage rate decision incorporated into the contract. For example:
 - a) Laborers **MUST** be listed as *Laborer* and either **Group 1, 2, 3, or 4**. Unacceptable terms are *Laborer, General Laborer, Unskilled Laborer, Semi-skilled Laborer,* and *Skilled Laborer*.
 - b) When electrical work is performed on or within a commercial building **ONLY**, such as a rest area, the job classification *Electrician* **MUST** be used. **ANY OTHER ELECTRICAL WORK ON A FEDERAL-AID HIGHWAY CONSTRUCTION PROJECT IS COVERED BY LINE CONSTRUCTION.** Electrician rates are listed in the Davis-Bacon wage rate decision by county. Consequently, the county in which the project is located **MUST** also be included after the job classification *Electrician*.
 - c) Line construction workers **MUST** be listed as either *Lineman, Cable Splicer, Line Equipment Operator,* or *Groundman*. Use of the term *journeyworker* standing alone is unacceptable. See paragraph B, 13, g of this section (page V-9) and paragraph H of this section (page V-19) for additional information concerning electrician and line construction classifications.
 - d) Power equipment operators **MUST** be listed as *Power Equipment Operator* and either **Group 1, 2, 3, 4, 5, or 6**. Listing the type of equipment operated after the group number is optional but **NOT** required.
 - e) Truck drivers **MUST** be listed as either *Single-axel Truck, Tandem- and Tri-axle Truck, Tandem- and Tri-axle Semi, Lowboy, Off Road Heavy Duty End Dump,* or *Euclid*. See paragraph K of this section (page V-21) for additional information concerning truck driver classifications.
4. In addition, all payrolls **MUST** contain:
 - a) The employee's full name, address, and social security number;
 - b) The employee's correct job classification or classifications;
 - c) The employee's hourly wage rate or rates (regular and overtime) and, where applicable, fringe benefits;
 - d) The daily and weekly hours worked in each job classification, including actual overtime hours worked;
 - e) Total earnings;

- f) Itemized deductions made; and
 - g) Actual or net wages paid.
5. The contractor **MUST** ensure that all employees are included on the weekly payroll and that the employees are properly classified and properly paid.
6. Each payroll submitted **MUST** be accompanied by a completed *Statement of Compliance* (formerly U.S. Department of Labor Form WH-348) signed by the contractor, or his or her agent who pays or supervises the payment of the persons employed under the contract. The *Statement of Compliance* certifies that:
- a) The payroll contains the information required to be maintained and that such information is correct and complete;
 - b) The persons employed on the contract during the payroll period have been paid the full weekly wages earned without rebate, either directly or indirectly, and that no deductions have been made, either directly or indirectly, from the full wages earned other than the permissible deductions set forth in the regulations; and
 - c) Each employee has been paid **NOT** less than the applicable wage rate and fringe benefits, or cash equivalent, for the classification of work performed as specified in the applicable Davis-Bacon wage rate decision incorporated into the contract.
7. For the convenience of contractors, USDOL has made available a payroll form which includes the *Statement of Compliance* on the reverse side. *Payroll Form (WH-347)* may be purchased directly from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402. [See Exhibit V-D](#) for examples of *Payroll Form (WH-347)*, the *Statement of Compliance* (formerly WH-348), and instructions for completing both forms.
8. An electronic version of *Payroll Form (WH-347)* is also available at: www.dol.gov/esa/forms/whd/wh347instr.htm
- a) The instructions will appear first. Left-click on **WH-347** (PDF) directly under ***Instructions for Completing Payroll Form, WH-347*** to get the payroll form.
 - b) To get the *Statement of Compliance* on the reverse side of the payroll form, left-click on the right arrow (Next Page) at the bottom of the screen.
 - c) Adobe® Acrobat® Reader® version 5 or later is needed to view, fill out, and print PDF forms. This may be downloaded for free at: www.adobe.com/products/acrobat/readstep2.html

- d) To save the completed forms on a workstation, use the “Save...As” method to save the file. For example, move the mouse cursor over the PDF link described in paragraph 8, a of this section (page V-16) and right-click. This will cause a menu to be displayed, from which the proper save option may be selected—depending on which browser is being used:
- For Microsoft IE users, select **Save Target As**.
 - For Netscape Navigator users, select **Save Link As**.
- e) Once the proper save option has been selected for the browser being used, and the file has been saved to a location specified, go to the program menu and start the Adobe® Acrobat® Reader®. Once open, locate the PDF file that was saved and open it (right click) directly in Acrobat®.
9. NDDOT requires that **ALL** contractors working on federal-aid highway construction contracts in North Dakota use the *Statement of Compliance* (formerly WH-348) included in Exhibit V-D or the electronic version available through the link described in paragraph 8 of this section (page V-16). (Some states have modified the form to include other requirements under their state law, which **DO NOT** pertain to North Dakota.)
10. The contractor **MUST** furnish, to the district, city, county, or consultant project manager-engineer, at least one copy of the payroll for each week in which any contract work is performed. This copy of the payroll **MUST** be placed in the project file that is sent to the Construction Services Division when the contract is finalized. Except as noted in paragraph C, 13 of this section (below), whether additional copies are retained by the district will be at the district management’s discretion.
11. Payrolls and compliance statements are due within **SEVEN** calendar days after the regular payment date of the payroll period.
12. Prime contractors are responsible for the submission of payrolls by all subcontractors. This includes ensuring timely submittal and reviewing the payrolls for completeness and accuracy **BEFORE** furnishing a copy to the district, city, county, or consultant project manager-engineer. When there are problems, the prime contractor should be working with the subcontractor to resolve the issues. This is **NOT** the responsibility of the district, city, county, or consultant project manager-engineer.
13. On a cyclical basis, USDOL conducts a wage survey to determine the prevailing wages being paid in the state on federally funded highway construction projects. For this reason, district, city, county, and consultant project managers-engineers will be asked to request and retain an additional copy of all weekly payrolls issued for such projects. At the end of the season, the payrolls are forwarded to the **CIVIL RIGHTS DIVISION** for submission to USDOL in Dallas, Texas. Assistant district engineers will receive prior notification when an additional copy of the payrolls is required.
14. All payroll records **MUST** be maintained and preserved by the contractor for a period of three (3) years following the completion and final acceptance of the project. In

addition, the payroll records **MUST** be made available, at the request of the Federal Highway Administration (FHWA); the Secretary, USDOL; and NDDOT, at any time during that period.

D. Concrete Saw Operator Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes a **Concrete Saw (power operated)** under the Power Equipment Operator Group 5 and a **Concrete Saw Operator** under the Laborer Group 2. An employee who walks behind a concrete saw is considered a **Group 2 Laborer**, and an employee who rides a concrete saw is considered a **Group 5 Power Equipment Operator**. It **DOES NOT** matter what size the engine is or whether it is self-propelled.

E. Core Sampling Classifications

1. Some federal-aid concrete projects, mainly on the interstate and major expressways, now contain a separate bid item for cored samples (specification 950, code 9700). An employee who cuts the core samples is considered a laborer and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage for **Group 1 Laborers** (similar to the drill runner tender). For example:

To cut the cores, the contractor employee stands alongside a trailer on which the coring machine is mounted. The coring machine is powered by a generator and has a metal bit. The employee spins a wheel to drill up and down. The employee **DOES NOT** ride the machine. The core sample is taken out and laid along the roadway for an NDDOT employee to pick up. NDDOT personnel perform the actual testing.

2. The employee driving the truck that is pulling the trailer would receive the wages of a truck driver for the type of truck being driven as described in paragraph K of this section (page V-21).

F. Dowel Basket and Dowel Bar Placement Classifications

Contractor employees placing dowel baskets and dowel bars on federal-aid concrete pavement projects are considered laborers and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage for **Group 4 Laborers (Reinforcing Steel Setters/Tiers)**.

G. Joint Sealing Classifications

1. Contractor employees performing joint sealant work on federal-aid projects are considered laborers and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage for **Group 4 Laborers** (similar to powderman, gunite and sandblast, and nozzleman). For example:

The employees operate an air compressor and tar kettle (hot pour sealant) mounted in the box of a pickup. The pickup also pulls a trailer on which an air compressor and

silicone drums with a pump are mounted. The employees use a sandblasting nozzle to clean the joints before the sealant is applied. Either a hot pour or a silicone sealant is applied with a nozzle. Before the silicone sealant is applied, backer rod is placed into the cracks.

2. The employee driving the pickup would receive the wages of a **Group 1 Laborer (Light Truck and Pickup Driver)** as described in paragraph K of this section (page V-21).

H. Line Construction and Electrician Classifications

1. When electrical work is performed on or within a commercial building **ONLY**, such as a rest area, the job classification **Electrician** **MUST** be used. **ANY OTHER ELECTRICAL WORK ON A FEDERAL-AID PROJECT IS COVERED BY LINE CONSTRUCTION.** The following types of electrical construction are considered line construction:
 - a) Pole line construction (whether built of wood, metal, or other material); digging and backfilling of holes for poles or anchors (by hand or mechanical equipment); and the handling, assembling, or erecting of all materials, including the guying, stringing of conductors, or other work necessary, on through to the ultimate completion of such pole line work.
 - b) Highway lighting systems and motor vehicle traffic controls (traffic signals, flashing beacons, etc.). Handled in the same manner as pole line construction.
 - c) Electrical underground construction, including the placing of fish wires, the pulling of cables or wires through such raceways, and the splicing of such conductors.
 - d) Underground construction, including excavation, trenching, and installation of raceways or ducts; construction of manholes, transformer vaults, and hand holes; backfilling; installation of fish wire; and pulling, splicing, and laying of wire or cables installed in raceways, ducts, or direct burial.
 - e) Underground construction, including apparatus and fixtures on public property such as street lighting, highway lighting, lines, or equipment.
2. This includes **NOT ONLY** new installation work but also the repair, maintenance, or dismantling of all above structures, lines, or equipment.
3. The job classifications and duties performed in line construction are:
 - a) **Lineman**—Responsible for all aerial work performed, whether from a bucket or by the use of belts and climbers. May perform any underground work, including but not limited to: installing duct work, raceway, pulling cables or wires, installing direct burial cable or wires, junction boxes, terminating cable or wire, setting poles, and assembling lights or signals.

- b) **Cable Splicer**—In addition to the same duties as lineman, may be required to splice and terminate high voltage cable and multi-conducted cable when special procedures or kits are required to accomplish the task.
 - c) **Line Equipment Operator**—Operates any equipment needed to complete the project, including but not limited to: backhoe, front-end loader, trencher, and hole auger.
 - d) **Groundman**—Performs basic laborer work such as hand excavation; assists in pouring cement, site cleanup, etc.; and assists other crafts while they are performing aerial work.
4. See paragraph B, 13, g of this section (page V-11) and paragraphs C, 3, b and c of this section (page V-15) for additional information concerning electrician and line construction classifications.

I. Mechanic, Greaser, Oiler Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes mechanics, greasers, and oilers under the following Power Equipment Operator groups:

1. **Group 2: Master Mechanic**

The employee supervises five or more mechanics employed on the same project.

2. **Group 3: Mechanic or Welder, Heavy Duty**

The employee operates a service truck used in the repair and maintenance of equipment, using mechanic's tools, welding equipment, and hoists.

3. **Group 4: Truck Mechanic**

The employee operates a smaller service truck used in the repair and maintenance of equipment, without the use of welding equipment and hoists.

4. **Group 4: Greaser**

The employee operates a self-contained service truck used in greasing equipment and adding fluids such as gas and oil.

5. **Group 5: Oiler**

The employee assists the operating engineer of a track or truck crane by greasing and oiling the crane while the operating engineer runs it.

J. Pipelayer Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes pipelayers under the following Laborer groups:

1. **Group 1: Pipe Handler**

The employee loads and unloads pipe from a truck, boxcar, etc. When unloading, the employee stockpiles the pipe only.

2. **Group 2: Multiplate Pipelayer, Culvert Pipelayer**

The employee places galvanized pipe and some PVC (plastic pipe) into trenches and assembles. The employee may also work with 6- and 8-inch PVC sanitary sewer pipe.

3. **Group 3: Bottom Man (Sanitary Sewer, Storm Sewer, Water, and Gas Lines)**

The employee is lowered into a tunnel, well, or caisson (elongated box that is put into a sewer—no water runs through) with a bucket and cleans out the bottom of the hole making it wider or ready for concrete pouring. The employee cleans out loose dirt.

4. **Group 4: Pipelayer (Sanitary Sewer, Storm Sewer, Water, and Gas Lines)**

The employee places special, low pressure type pipe into trenches and assembles. The employee may also work with some 18- to 48-inch reinforced concrete pipe and some 24- to 60-inch reinforced concrete storm sewer pipe.

K. Truck Driver Classifications

1. An employee driving a pickup around a federal-aid project or the *site of the work* to load, deliver, or transport materials is considered a **Group 1 Laborer (Light Truck and Pickup Driver)** and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage.

2. An employee driving a pickup that has an air compressor or a generator mounted in its box, or that is pulling a trailer mounted with an air compressor or a generator, would receive the wages of a **Group 1 Laborer (Light Truck and Pickup Driver)**.

3. An employee driving any other type of truck on a federal-aid project or the *site of the work* that has equipment mounted in its box, or on a trailer or a wagon being pulled by the truck, is considered a truck driver and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including fringe benefits, for the type of truck being driven. For example:

a) An employee driving a tandem-axle truck with a water tank mounted on the back of the truck would receive the wages of a **Tandem- and Tri-axle Truck Driver**.

- b) An employee driving a semi that is pulling a water tank mounted on a trailer or a wagon would receive the wages of a ***Tandem- and Tri-axle Semi Driver***.
- 4. An employee operating a tractor or a modified scraper on a federal-aid project or the ***site of the work*** that is pulling a water tank mounted on a trailer or a wagon is considered an equipment operator and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including fringe benefits, for the Power Equipment Operator group under which the tractor or scraper falls.
- 5. An employee driving a pickup carrying a signal or message board behind or ahead of other equipment on a federal-aid project or the ***site of the work*** is considered a ***Pilot Car Driver*** and **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage.
- 6. Subcontractors
 - a) If the prime contractor is using subcontractors for hauling, whether on a federal-aid project or **NOT**, approved *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* forms and subcontract agreements between the prime contractor and the subcontractors are required **PRIOR** to performing any hauling. When the contract is federally funded, the *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)* **MUST** also be included in the subcontract agreements because it contains more than just the labor standards provisions. This applies to all tiers of subcontracts.
 - b) If the prime contractor is using subcontractors for hauling on a federal-aid project or the ***site of the work***, the labor standards provisions and the applicable Davis-Bacon wage rate decision **MUST** be incorporated into the subcontract agreements. The subcontractors **MUST** pay their employees the proper Davis-Bacon wage rates, including applicable fringe benefits, and provide weekly payrolls. This applies to all tiers of subcontracts.
 - c) This **DOES NOT** apply to the transportation of materials and manufactured component products that the contractor purchases from off-site commercial producers.
- 7. Truck Owner-Operators
 - a) Bona fide owner-operators of trucks **ONLY** are **NOT** covered under DBRA. However, if the prime contractor or a subcontractor is using owner-operators for hauling on a federal-aid project or the ***site of the work***, they **MUST** appear on either the prime contractor's or the subcontractor's payrolls as:
 - (1) Owner-operator's name, address, and social security number with the notation ***owner-operator*** after the name.
 - (2) Vehicle identification number or license plate number of the vehicle being driven.

- (3) Truck number being used on scale tickets and haul sheets.
 - (4) Neither the hours worked nor the wages paid need be shown.
- b) The actual owner-operator **MUST drive the truck at all times**. If, for any reason, he or she **DOES NOT** drive the truck, even for a short period of time, the replacement driver **MUST** be paid Davis-Bacon wages, including fringe benefits, and **MUST** appear on project payrolls showing the hours worked and the wages paid.
- c) The **PRIME CONTRACTOR** is responsible for ensuring compliance with the labor standards provisions of the contract. This includes obtaining subcontracts and payrolls as required and monitoring and verifying the status of all truck owner-operators working on a federal-aid project or the **site of the work** either directly for the prime contractor or for its subcontractors. To determine bona fide owner-operator status, the prime contractor **MUST** request and verify the following:
- (1) Owner-operator's name.
 - (2) Valid commercial drivers license.
 - (3) Vehicle registration in the owner-operator's name.
 - (4) Current vehicle license number.
 - (5) Truck number that will or is being used on scale tickets and haul sheets.
 - (6) Copies of any signed lease or rental agreements for owner-operator trucks. The lease **MUST** be between the driver and a reputable dealership (i.e., Nelson International, Inc., Peterbilt of Fargo, Inc., W. W. Wallwork, etc.); **NOT** the driver and the prime contractor or the driver and a subcontractor on the project.

8. Equipment Owner-Operators

- a) Owner-operators of other types of equipment are considered employees under DBRA. Consequently, they **MUST** be paid the correct Davis-Bacon wage, including fringe benefits, and be included on payrolls showing the hours worked and the wages paid.
- b) When a contractor pays an equipment owner-operator a lump sum amount, it may be difficult to determine whether the owner-operator was paid the correct hourly wage. If a wage dispute ensues, USDOL suggests:
- (1) Researching the open market for the rate required to rent the same piece of equipment by the hour;

- (2) Multiplying that figure by the total number of hours the owner-operator worked;
 - (3) Figuring the wages the owner-operator should have been paid based on the total number of hours worked and the required rate of pay (straight time, overtime, and fringe benefits);
 - (4) Adding the two figures together; and
 - (5) Comparing the total to the lump sum amount.
- c) If the total is substantially greater than the lump sum amount, the owner-operator would be due the difference.

L. Water Spraying Equipment Classifications

The Davis-Bacon wage rate decision for highway construction in North Dakota includes **Water Spraying Equipment, Self-propelled** under the Power Equipment Operator Group 5. This is a piece of equipment that is **NOT** being pulled by another piece of equipment or a truck. If an employee:

1. Is driving a tandem-axle truck with a water tank mounted on the back of the truck, the employee would receive the wages of a **Tandem- and Tri-axle Truck Driver**.
2. Is driving a semi that is pulling a water tank mounted on a trailer or a wagon, the employee would receive the wages of a **Tandem- and Tri-axle Semi Driver**.
3. Is operating a tractor or a modified scraper that is pulling a water tank mounted on a trailer or a wagon, the employee would receive the wages of the Power Equipment Operator group under which the tractor or scraper falls.

M. Welder Classification

1. The Davis-Bacon wage rate decision for highway construction in North Dakota states: "Welders receive rate prescribed for craft performing operation to which welding is incidental." In the case of welders employed on structural projects during pile driving operations, NDDOT has determined:
 - a) The carpenter rate will apply when an **ACTUAL** carpenter is working with the welder (**NOT** a person classified as a foreman who has carpentry skills).
 - b) The crane operator rate will apply when it is the **ONLY** other skilled craft present during the welding.
2. Whatever rate is chosen **MUST** be used for the life of the project. For example, if the crane operator rate is used and all the piling is in place and the crane has left, those

individuals who later weld ice nose angle or rebar on the piling should continue to receive the crane operator rate. This would be so even though an **ACTUAL** carpenter is also present on the project.

N. Exemptions from DBRA Coverage

1. The *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)*, which is included in every federal-aid highway construction contract and is further required to be included in all subsequent subcontract agreements, states in part:

“All **mechanics and laborers** employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR Part 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such **laborers or mechanics**.”

2. In addition, Title 29 Code of Federal Regulations Part 5.2(m) states:

“The term **laborer or mechanic** includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term **laborer or mechanic** includes apprentices, trainees, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity, as defined in Title 29 Part 541, are not deemed to be **laborers or mechanics**. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are **laborers and mechanics** for the time so spent.”

3. Title 29 Part 541 includes the following definitions for Executive Employees:

- a) “Business Owners

The term **employee employed in a bona fide executive capacity** in Section 13, (a), (1) of the Act also includes any employee who owns at least a bona fide 20 percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

b) Management

Generally, **management** includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandize to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandize and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures."

4. In consideration of the foregoing, NDDOT requires:

a) Company Owners

Those individuals who own at least 20 percent of the company (prime contractor or subcontractor) and who perform the work of a **laborer or mechanic** are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on project payrolls.

b) Supervisory Personnel

- (1) As a general rule, those employees who work in a supervisory capacity are **NOT** covered under DBRA. However, the mere fact that an employee is called a **working supervisor DOES NOT** necessarily mean the worker is **NOT** a **laborer or mechanic** as defined under DBRA (one who performs manual labor) and is, therefore, subject to the provisions of DBRA.
- (2) If a person employed in a supervisory capacity performs the work of a **laborer or mechanic MORE THAN 20 PERCENT OF THE TIME** in any given workweek, he or she is subject to the provisions of DBRA during the periods while so employed as a **laborer or mechanic**. Consequently, he or she **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage rate, including applicable fringe benefits, for the job classification of work performed.
- (3) In either case, the supervisor **MUST** be listed on the payroll. When the supervisor performs nonmanual labor, only the notation **salaried** need be shown. When the supervisor performs manual labor more than 20 percent of the time, the proper job classification, hours, and wage rate information **MUST** be included.

- c) Surveyors, Gravel Testers, Technicians, Scale Operators
- (1) Contractor employees working in the capacity of surveyors, gravel testers, quality control technicians (testing and/or laboratory technicians), and scale operators (operating a scale and a computer) are **NOT laborers or mechanics** within the definition of DBRA (one who performs manual labor) and are, therefore, **NOT** covered. They are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on project payrolls.
 - (2) The above includes bituminous mix testers, bituminous pavement inspectors, bituminous mix controllers, and aggregate testers as defined in the NDDOT Transportation Technician Qualification Program (TTQP).
- d) Field Office Employees
- Contractor employees whose duties are primarily administrative, executive, or clerical in nature are **NOT** considered ***laborers or mechanics*** within the definition of DBRA (one who performs manual labor). Those duties include but are not limited to: Bookkeeping; recordkeeping; inspecting; operating computers; receiving, reviewing, and otherwise handling material invoices; collecting scale tickets and haul sheets; collecting oil samples from transport tankers; transferring oil from transport tankers to storage tanks and from storage tanks to haul trucks and distributors; flushing hoses, pumps, and distributor spray bars; etc. These employees are **NOT** due Davis-Bacon wages and **DO NOT** have to appear on project payrolls.
- e) Traffic Control Signing
- A sign supplier who delivers and installs the construction signs on a project is considered a material supplier if, after the initial installation, the prime contractor or subcontractor maintains the signs on the project and assumes the responsibility of relocating the signs on a day-to-day basis. Bona fide material suppliers are **NOT** covered under DBRA. Thus, their employees are **NOT** due Davis-Bacon wages and payrolls are **NOT** required.
- f) Owner-operators
- (1) Owner-operators of trucks **ONLY** are **NOT** covered under DBRA. However, if the prime contractor or subcontractor is using truck owner-operators for hauling on a federal-aid project or the ***site of the work***, they **MUST** appear on either the prime contractor's or the subcontractor's payrolls as:
 - (a) Owner-operator's name, address, and social security number with the notation ***owner-operator*** after the name;
 - (b) Vehicle identification number or license plate number of the vehicle being driven;

- (c) Truck number being used on scale tickets and haul sheets;
 - (d) Neither the hours worked nor the wages paid need be shown.
- (2) Owner-operators of other types of equipment are considered employees under DBRA. They **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage, including applicable fringe benefits, and **MUST** be included on the prime contractor's or subcontractor's payrolls showing the hours worked and the wages paid.

g) Utility Relocations, Adjustments, and Accommodation

Whenever federal-aid funds are included in utility work, DBRA applies to **ONLY** that work which is included as part of an NDDOT-let contract. DBRA is **NOT** applicable to utility-let contracts, including continuing contracts.

h) Relatives

There are **NO** exemptions from coverage under DBRA on the basis of family relationships, or for relatives who are performing the work of **laborers or mechanics**. They **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage for the job classification of work performed and **MUST** be included on the payroll.

O. Conformance Process

1. When a job classification is **NOT** included in the Davis-Bacon wage rate decision incorporated into the contract, the job classification and wage rate, including any fringe benefit amounts, **MUST** be conformed **after the contract has been awarded**. This means the contractor **MUST** submit a proposed job classification and base hourly rate, plus any fringe benefits, to the **CIVIL RIGHTS DIVISION** for approval. Included with the contractor's request **MUST** be the following supporting documentation:
 - a) Copies of payrolls issued for the project or other projects located in the area showing the current rate of pay and fringe benefits, where appropriate, for the job classification in question; or
 - b) If the contractor belongs to a union, a copy of the current collective bargaining agreement showing the required rate of pay and any appropriate fringe benefit amounts for the job classification in question and the project area; and
 - c) Statements by the employees involved concerning whether they agree or disagree with the proposed job classification and wage rate, including fringe benefits where appropriate; or
 - d) If the employees are unknown, a statement to that effect.

2. An instructional package is available through the Civil Rights Division to aid contractors in making a request ([Exhibit V-C](#)). A letter explaining the process and including the following attachments is sent to the contractor:
 - a) A sample letter to NDDOT requesting a job classification and wage rate determination;
 - b) The federal requirements; and
 - c) The *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08-2006)* form developed by NDDOT for providing the employee statements.

P. Child Labor Laws

1. There are federal and state child labor laws:

- a) Prohibited Employment - State Law

State child labor provisions establish a minimum age of 14 to be employed and regulate the employment of teens ages 14 and 15. Generally, persons age 14 and 15 are required to file an **Employment and Age Certificate** (work permit) with the State Department of Labor, are limited in the hours they can work, and are prohibited from performing certain types of work. Prohibited work includes construction work other than cleaning, errand-running, moving, stacking, and loading or unloading materials by hand.

- b) Prohibited Employment - Federal Law

Federal child labor laws further limit the types of work that can be performed by teens 14 and 15 years of age and prohibit teens ages 16 and 17 from working in certain occupations the USDOL deems to be hazardous. Hazardous work includes:

Manufacturing and storing of explosives; driving a motor vehicle and being an outside helper on a motor vehicle; coal mining; logging and sawmilling; power-driven woodworking machines; exposure to radioactive substances; power-driven hoisting apparatus; power-driven metal-forming, punching, and shearing machines; mining, other than coal mining; meat packaging or processing (including the use of power-driven meat slicing machines); power-driven bakery machines; power-driven paper-product machines; manufacturing brick, tile, and related products; power-driven circular saws, band saws, and guillotine shears; wrecking, demolition, and shipbreaking operations; roofing operations; and excavation operations.

2. When state and federal child labor provisions differ, the more stringent standard prevails and **MUST** be followed. For example, if federal law prohibits a type of employment that is allowed under state law, the federal law would apply and the work would be prohibited.
3. In consideration of the foregoing, NDDOT has determined the following will apply to highway construction:
 - a) Individuals age 14 and 15 may **NOT** work in any construction or repair jobs.
 - b) Individuals age 16 and 17 may perform **ONLY** non-hazardous work (laborer or grunt work).
 - c) Individuals age 18 and older may perform any job, whether hazardous or not.
4. If it is found that an under-aged individual was employed on a federal-aid project, or the **site of the work**, he or she **MUST** be paid Davis-Bacon wages and be shown on the payrolls for the time worked.

Q. Unclaimed Paychecks

If, for any reason, a contractor is unable to deliver a paycheck to a current or former employee, the money **MUST** be turned over to the Unclaimed Properties Division of the North Dakota State Land Department. The Unclaimed Properties Division makes every effort to reunite the money with its rightful owner or with the rightful owner's heirs. The procedure for turning over unclaimed property to the State Land Department can be found on their Web site at: www.land.state.nd.us. Contact Linda Fisher at: lfisher@nd.gov or 328-2800 for needed assistance.

R. Employees Hired Through Temporary Employment Agencies

1. Employees, such as **Flaggers**, who are hired through temporary employment agencies **MUST** be paid **NOT** less than the appropriate Davis-Bacon wage and **MUST** appear on either the contractor's payroll or the temporary employment agency's payroll when employed on a federal-aid project, or the **site of the work**. Since the temporary employment agency is the employer, it is treated as a subcontractor in the same way a company providing traffic control services would be treated.
2. The contractor **MUST** acknowledge joint employment and either put the employee on its payroll or require the employment agency to generate a certified payroll. If the employee has a wage grievance, the employee would file against the employment agency.
3. According to USDOL, **NO** subcontract agreement between the contractor and the temporary employment agency is required. Therefore, **NO** *Prime Contractor's Request to Sublet (SFN 5682 - Rev. 09-2008)* is required. However, NDDOT cautions prime contractors and subcontractors that any agreement they have with a temporary

employment agency should clearly indicate that the employees **MUST** be paid full Davis-Bacon wages, including fringe benefits where applicable. Any additional charges or fees to be paid to the temporary employment agency **MUST** be above and beyond the required Davis-Bacon wages. If an employee has a wage grievance, the prime contractor will be held ultimately responsible for compliance with DBRA. This means if the wages cannot be recouped from the temporary employment agency, the prime contractor will be held responsible for paying the wages.

S. On-site Monitoring by Project Manager-Engineer

1. District, city, county, and consultant project managers-engineers are responsible for monitoring prime contractor and subcontractor compliance with the labor standards provisions through the use of proper inspection procedures. A distinction **MUST** be drawn between investigations, which are concerned with a specific allegation or allegations of wrongdoing, and inspections, which are checks on procedures and practices regarding labor matters without any allegations of improper actions.
2. Early and complete labor compliance inspections are essential to the development of a sound compliance pattern on all projects. Projects where the contract is of short duration (six months or less) **MUST** be inspected at least once while the work is in progress. In the case of contracts extending over a longer period, the inspections **MUST** be made with such frequency as may be necessary to assure compliance.
3. Inspections **MUST** include:
 - a) A check to determine whether the proper Davis-Bacon wage rate decision and other required wage posters and notices are properly displayed on job-site bulletin boards;
 - b) Interviews with employees with reference to payroll data and classification information; and
 - c) Examinations of the payrolls themselves.
4. Bulletin Boards
 - a) The following **MUST** be displayed in a prominent place at the project site or the **site of the work** where they are easily accessible to all employees and other interested parties:
 - (1) *Poster Board (DOT 3350 - Rev. 03-2003)* which contains the minimum wage poster, provided by NDDOT, or its equivalent; and
 - (2) Davis-Bacon wage rate decision incorporated into the contract.
 - b) In addition, equal employment opportunity (EEO) posters and notices are required to be displayed at the project site or the **site of the work**. These

posters and notices are also contained on the poster board provided by NDDOT. EEO requirements are included with the labor standards provisions incorporated into the contract as *Required Contract Provisions, Federal-aid Construction Contracts (U.S. Department of Transportation Form FHWA 1273 - Rev. 3-10-94)*.

- c) Instead of providing their own bulletin board, subcontractors may opt to post their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure on the prime contractor's bulletin board and to share the prime contractor's poster board and Davis-Bacon wage rate decision.
- d) Three-ring binders may be used in place of bulletin boards **ONLY** if the contractor is on the project for less than one week (seven calendar days); or if the contractor is extremely mobile on the project, for example: paint strippers, guardrail installers, fencers, etc. However, contractor employees **MUST** feel comfortable in accessing the information in the three-ring binder.
- e) Another allowable method for complying with bulletin board requirements is for the contractor to provide individual copies of their company EEO policy, letters appointing their EEO and DBE officers, and their discrimination complaint procedure to all employees at the beginning of **EACH** construction season and to all new employees hired throughout the remainder of the year. However, the contractor **MUST** keep written documentation, including signatures of employees, and be able to produce the documentation upon request. The other posters and notices **MUST** then be discussed at periodic EEO meetings held throughout the year. Again, documentation **MUST** be kept to verify that this information is being brought to the attention of the employees.

5. Labor Compliance Job-site Interviews

- a) Systematic spot interviews with the contractor's project employees **MUST** be conducted by the district, city, county, or consultant project manager-engineer, or a representative of NDDOT. The interviews are used to determine whether the Davis-Bacon wage rate decision and other labor standards provisions of the contract are being fully complied with, and that there is no misclassification of employees.
- b) Each prime contractor with a project in a district's jurisdiction **MUST** have *labor compliance job-site interviews conducted on a portion of their project workforce at least once annually. For those prime contractors with more than one project in a district, daily monitoring will be required but it will **NOT** be necessary to conduct job-site interviews. **ONLY** one project per contractor need be selected for interviews.

***NOT** required for contracts and subcontracts under \$10,000 where work on the project is sporadic and of short duration (three weeks or less).

- c) If a contractor has a history of labor compliance problems, however, the assistant district engineer will be so informed and instructed to conduct interviews on all of the contractor's projects located within the district.
- d) Every subcontractor, regardless of the number of subcontracts they hold in the district, **MUST** have job-site interviews conducted on at least one project annually.
- e) **NO** interviews should be conducted with bona fide owner-operators of trucks or with haulers and suppliers of petroleum products.
- f) Generally, projects **MUST** be selected and interviews scheduled for the time when the contractor is at peak construction activity for the project.
- g) The *Labor Compliance and EEO Contract Compliance Job-site Interview (SFN 9426 - Rev. 01-2008)* form **MUST** be used to conduct the interviews. All of the instructions and the report form **MUST** be read **THOROUGHLY** before the interviews are conducted.
- h) Part C of the form need **ONLY** be completed for those projects on which in-depth contract compliance reviews have been scheduled. Assistant district engineers and district, city, county, and consultant project managers-engineers will receive prior notification of scheduled contract compliance reviews.
- i) All statements and questions on the form **MUST** be answered fully, and detailed information and/or explanations provided where necessary. **ALL STATEMENTS MADE BY AN EMPLOYEE, WHETHER ORALLY OR IN WRITING, MUST BE TREATED AS CONFIDENTIAL SO AS TO AVOID DISCLOSURE OF THE EMPLOYEE'S IDENTITY TO THE CONTRACTOR WITHOUT THE EMPLOYEE'S CONSENT.**
- j) Particular attention **MUST** be paid to determine whether there are any subcontractors **NOT** submitting payrolls. Interviews with operators of equipment **NOT** clearly identified as belonging to the prime contractor, or an approved subcontractor, will disclose this problem. In such interviews, the names of the subcontractors **MUST** always be requested and recorded.
- k) All follow-up data normally can and **MUST** be obtained on the same day the employee interview data is gathered. The only exception would be verification of the payroll for the week of the interviews.
- l) When conducting the interviews, a good cross-section of the contractor's project employees should be selected. Selection criteria should include race, sex, job classification, and age. One minority, one nonminority, and one female in each trade, job classification, or occupation should be interviewed. **A MINIMUM OF FIVE INTERVIEWS SHOULD BE CONDUCTED IF AT ALL POSSIBLE.** Contractors **MUST** allow their employees to be interviewed.

- m) The assistant district engineer should accompany the district, city, county, or consultant project manager-engineer any time a deficiency is discussed with the contractor's supervisory personnel. It is important to remember that all of the employee's responses **MUST** be treated as confidential. The employee's identity **MUST NOT** be revealed to the contractor unless the employee has given his or her written permission.
- n) One copy of each of the completed interview forms **MUST** be forwarded to the **CIVIL RIGHTS DIVISION** within **FOURTEEN** calendar days of the date the interviews were conducted, or after the payroll information has been verified. The copy of the completed forms should **NOT** be held until the end of the season or the end of the job. The originals of the completed forms **MUST** be placed in the project file that is sent to the Construction Services Division when the contract is finalized.

6. Weekly Payrolls

- a) The district, city, county, or consultant project manager-engineer **MUST** inspect the prime contractor's and all subcontractors' payrolls to determine:
 - (1) Whether the wages being paid, including applicable fringe benefits, are at rates **NOT** less than the Davis-Bacon wage rate decision contained in the contract;
 - (2) Whether the work being performed by the employees, including apprentices and trainees, conforms to the job classifications included in the Davis-Bacon wage rate decision contained in the contract;
 - (3) Whether the job classifications are correct;
 - (4) *Whether there is evidence of any disproportionate employment of laborers and apprentices or trainees to journeyworkers so as to indicate avoidance of the Davis-Bacon wage rate decision and other labor standards provisions of the contract; and
 - (5) Whether there are any individuals employed whose job classifications are **NOT** listed on the Davis-Bacon wage rate decision contained in the contract. If so, it will be necessary for the contractor to submit a request for job classification and wage rate determination for the project as described in paragraph O of this section (page V-28).

*Several laborers and only one journeyworker electrician on a payroll submitted by an electrical contractor would normally indicate that laborers are performing journeyworker electrician's work. The allowable ratio of apprentices and trainees to journeyworkers is generally considered to be one apprentice or trainee to every three to five journeyworkers.

- b) District, city, county, and consultant project managers-engineers are encouraged to attempt settlements of minor payroll discrepancies or routine errors (improper job classifications, basic hourly rates, overtime rates, fringe benefits, etc.) at the project level. If it is **NOT** possible to effect a settlement within a reasonable length of time (thirty calendar days), the matter **MUST** be referred to the assistant district engineer.
 - c) When there is reason to believe violations exist that are **NOT** readily adjustable, are of a serious nature, or may be willful or criminal in nature, the district, city, county, or consultant project manager-engineer **MUST** report such findings, including sufficient data concerning the nature and extent of the violations, to the assistant district engineer. The assistant district engineer **MUST** notify the Civil Rights Division **IMMEDIATELY**. The Civil Rights Division will determine who should investigate and resolve the matter.
 - d) Additional information concerning payroll monitoring requirements is included in the *Construction Records Manual* issued by the Construction Services Division. This manual is available at:
www.dot.nd.gov/manuals/construction/constr-records/constructionmanual.htm
7. The inspections for compliance by the district, city, county, and consultant project managers-engineers are a continuing responsibility for the life of the contract. The district, city, county, or consultant project manager-engineer **MUST** become fully familiar with each contractor's practices in the employment and payment of persons working on the project site or the *site of the work*. The district, city, county, or consultant project manager-engineer **MUST** be able, through observation and by asking questions in conjunction with carrying out other inspection duties, to determine whether a full-scale investigation is necessary. Ordinarily, it will **NOT** be necessary to make a detailed audit of the payrolls or to conduct extensive interviews. General familiarity with the payroll, timesheets, progress reports, training programs, the Davis-Bacon wage rate decision, and similar data, together with oral inquiries of employees and the contractor, should be sufficient to develop information as to whether there is general compliance with the labor standards provisions.

T. Reporting the Need for Investigations

- 1. As a result of regular project inspections, an employee's or other interested person's complaint, or a routine check of payrolls, indicators or *red flags* may surface that signal the presence of violations that are of a serious nature, or ones that are **NOT** readily adjustable. The district, city, county, or consultant project manager-engineer **MUST** bring to the attention of the assistant district engineer the need for investigative assistance or a complete investigation whenever:
 - a) Complaints alleging intentional violations are received that the district, city, county, or consultant project manager-engineer feels may have some validity. Some of the sources of such complaints will be employees, their representatives (unions), competing contractors, or other interested persons. **COMPLAINTS MUST BE TREATED CONFIDENTIALLY.**

- b) There are habitual and persistent violations of other requirements of the contract so as to indicate a general carelessness on the part of the contractor with respect to his or her contractual responsibilities.
 - c) There is a delay by a contractor in furnishing the required payroll statements and a satisfactory explanation is **NOT** forthcoming, or other suspicious circumstances exist.
 - d) Discrepancies, other than routine errors, are discovered. The discovery of falsifications in the time and payroll records, or reasonable cause to believe such a situation exists, calls for especially prompt and vigorous action.
- 2. In all such cases, the assistant district engineer **MUST** notify the Civil Rights Division **IMMEDIATELY**. The Civil Rights Division will determine a possible course of action.
 - 3. When anyone on the project observes a violation, they should **NOT** wait for a complaint to be filed. The assistant district engineer or the district, city, county, or consultant project manager-engineer **MUST** be alerted to the situation **IMMEDIATELY** so they can work with the contractor and the Civil Rights Division to get the matter resolved before it becomes a major problem. The situation will be much easier to settle while it is still fresh in everyone's mind rather than months later. In addition, the uncovering of a violation in the early stages will save time on the part of NDDOT and will avoid large backpay obligations on the part of the contractor.

U. Investigating Complaints and Violations

- 1. Problems can arise on projects during actual construction concerning improper job classifications, basic hourly wage rates, overtime rates, fringe benefit payments, payroll requirements, etc. For example, a contractor **DOES NOT** pay an employee the proper wage rate for the work the employee is doing. The employee may file a wage claim against the project. Other possible labor standards violations are sometimes discovered during routine project inspections or as a result of another interested person's complaint.
- 2. Whenever a wage claim or a complaint has been filed, or there is reason to believe violations exist that are **NOT** readily adjustable, are of a serious nature, or may be willful or criminal in character, an investigation **MUST** be conducted. The assistant district engineer **MUST** notify the Civil Rights Division **IMMEDIATELY**. The Civil Rights Division will determine who should investigate and resolve the matter. If a full-scale investigation is warranted, the Civil Rights Division will conduct the investigation.
- 3. Upon notification that a wage claim has been received, the Civil Rights Division will instruct the assistant district engineer or the district, city, county, or consultant project manager-engineer to withhold a portion (an amount sufficient to cover the claim) or all of the prime contractor's progress payments until the claim has been resolved.

4. When any situation involves a subcontractor, all actions concerning the matter **MUST** go through the prime contractor.
5. The assistant district engineer may be asked to investigate and resolve the wage claim or complaint. If this is the case, the assistant district engineer **MUST** keep the Civil Rights Division informed of the progress being made in resolving the matter. If it is **NOT** possible to effect a settlement within a reasonable length of time (thirty calendar days), the matter **MUST** be referred to the Civil Rights Division for advice, guidance, and/or resolution.
6. Investigations are much more thorough than inspections in that they are designed to either dispel allegations of wrongdoing or to assemble concrete evidence upon which administrative or even criminal action can be taken. Because of the seriousness of investigations, much more attention **MUST** be paid to details; and evidence **MUST** be obtained to substantiate all of the investigator's findings.
7. A case file **MUST** be established at the start of the investigation. All documentary material pertaining to the investigation, such as wage claims or complaints, if any; employee statements; employment and payroll records; and all other papers relevant to the investigation **MUST** be placed in the case file.
8. To file a wage claim, the employee or complainant **MUST** establish, in writing:
 - a) The nature of the complaint (improper job classification or wage rate, computation and payment of overtime hours, fringe benefit payments, etc.);
 - b) Actual wages paid;
 - c) Dates and times involved;
 - d) Number of hours worked, including overtime;
 - e) Type of work involved, including equipment operated, tools used, etc.;
 - f) Project number and location;
 - g) Name of prime contractor and subcontractor, if appropriate;
 - h) Names of other individuals involved; and
 - i) Any other pertinent information.
9. The employee or complainant **MUST** provide documentation wherever possible (timecards, check stubs, etc.). In some instances, the claim or complaint will be in sufficient detail so that a personal interview with the employee or complainant won't be necessary. If this is the case, an explanation to that effect **MUST** be included in the file. If a personal interview is warranted, it **MUST** be conducted in such a manner so as **NOT**

to compromise the employee's or complainant's identity. In some cases, it may be desirable to conduct the interview by phone.

10. Depending on the nature or extent of the claim or complaint, any or all of the following investigatory steps may or **MUST** be taken:
 - a) An examination of the contract **MUST** be made to determine whether the Davis-Bacon wage rate decision and the required labor standards provisions were inserted into the prime contract and all subcontracts. In addition, the following information **MUST** be noted for the case file:
 - (1) Contract number;
 - (2) Date of award;
 - (3) Description of work of the prime contractor and each subcontractor;
 - (4) Applicable Davis-Bacon wage rate decision; and
 - (5) The name and address of the prime contractor and each subcontractor.
 - b) A visit to the project site **MUST** be made to ensure the applicable Davis-Bacon wage rate decision is properly posted on the bulletin board.
 - c) An examination of the payrolls of the prime contractor and each subcontractor **MUST** be made for completeness and accuracy as to:
 - (1) The names and addresses of employees;
 - (2) Job classifications;
 - (3) Wages (basic hourly and overtime rates) and applicable fringe benefit amounts;
 - (4) Hours worked, including overtime;
 - (5) Gross earnings;
 - (6) Itemized deductions; and
 - (7) Net weekly wages paid.
 - d) The wage rate for each job classification **MUST** be compared with the corresponding wage rates set forth in the applicable Davis-Bacon wage rate decision.
 - e) The number of employees in each job classification **MUST** be checked to determine if there exists a disproportionate number of laborers and apprentices

or trainees to journeyworkers. For example, existence of any of the following circumstances may indicate a disproportionate ratio, depending on the status and type of project:

- (1) Several laborers and only one journeyworker electrician on a payroll submitted by an electrical contractor would normally indicate that laborers are performing journeyworker electrician's work.
- (2) A greater number of apprentices or trainees than journeyworkers generally indicates that the ratio* of apprentices or trainees to journeyworkers is being disregarded, apprentices or trainees are performing the work of journeyworkers, all of the apprentices or trainees are **NOT** properly registered in approved programs, or the contractor is **NOT** conforming to approved apprenticeship or on-the-job training standards.

*Generally considered to be one apprentice or trainee to every three to five journeyworkers.

- f) A careful review of project logs, diaries, progress reports, project files, etc., **MUST** be made. They may provide valuable information that can be used in comparing the kinds of work performed during a certain period with the job classifications listed on the payrolls for the corresponding period. For instance, if pile driving work was being done during a particular month and payrolls for that month fail to show any pile drivers, it may be that the contractor is in violation of the labor standards provisions.
- g) The contractor **MUST** be required to present the canceled checks (front and back) of a randomly selected payroll for verification of actual payment made to the employees.
- h) A sufficient number of checks of timecards, books, sheets, or other work or personnel records of a representative number of employees in each job classification **MUST** be made against the payroll records in order to disclose any possible discrepancies, or to give reasonable assurance that none exist. Pertinent excerpts or copies of such records **MUST** be included in the case file.
- i) The records of individual employees **MUST** also be included in the check whenever there appears to be any doubt or question concerning an individual as a result of the payroll examinations, employee interviews, or for other pertinent reason.
- j) Conducting employee interviews is essential to carrying out a successful investigation. A sufficient number of employees **MUST** be interviewed to serve as a check against the contractor's records and the substance of the violations alleged. Oral interviews **MUST** be conducted with a number of employees in various job classifications on the project, and where appropriate, **MUST** include former employees.

- k) If possible, former employees **MUST** be interviewed in person. If this proves to be inconvenient, a carefully prepared questionnaire, to which short answers may be given, **MUST** be mailed. However, every attempt **MUST** be made to conduct personal interviews, with the mail method being used only as a last resort.
- l) Information obtained from individuals involved in a labor compliance investigation is exempt from disclosure under the Freedom of Information Act, Subsection (b), (7), (D). Such information may also be protected under the Privacy Act of 1974, Subsections (k), (2); (k), (5); and (k), (7) [5 USC 552a].
EMPLOYEES MUST BE INFORMED THAT THE INFORMATION GIVEN IS CONFIDENTIAL AND WILL NOT BE DISCLOSED TO THE CONTRACTOR WITHOUT THE WRITTEN CONSENT OF THE INDIVIDUAL EMPLOYEE INVOLVED IN EACH INSTANCE.
- m) Interviews conducted at the job site or the *site of the work* **MUST** be arranged so as to cause the least inconvenience to both the contractor and the employee and to provide for a necessary degree of privacy. Employees **MUST NOT** be interviewed in the presence of any other persons. If the elements of fear and intimidation are present, the interview **MUST** be conducted at the employee's residence or some other mutually agreeable place. Interviews conducted elsewhere **MUST** be scheduled during the employee's non-work hours and at his or her convenience. Care **MUST** be taken in scheduling the interviews to allow for adequate time, and the schedule **MUST** be rigidly adhered to.
- n) An early step in most investigations will be an interview with the complainant. The interview **MUST** be conducted in such a manner so as **NOT** to compromise the complainant's identity. To avoid such compromise, it may be necessary to conduct the interview at a place other than the job site or by phone. In some cases, the complaint will be in sufficient detail so that a personal interview with the complainant won't be necessary. If this is the case, an explanation to that effect **MUST** be included in the case file.
- o) Employee statements that merely confirm information in the contractor's records and **DO NOT** indicate a violation where none has been otherwise alleged need **NOT** be recorded. However, notes of the interviews with names, dates, places where they were held, and comments such as *no additional information obtained* **MUST** be made for the case file.
- p) To preserve confidentiality, any statements recorded **MUST** be put on a separate sheet or sheets of paper. Repetitive statements by various employees concerning the same facts may be recorded once; however, a comment listing the names of the additional employees **MUST** be included for the case file. Signed statements **MUST** be obtained from employees when the information given is needed to prove a violation. For example, signed statements **MUST** always be taken when:

- (1) Information concerning conditions of employment when such information is missing from, or possibly falsified in, the contractor's records;
 - (2) Intimidation, or other ***kickback*** activity involving employees being forced to relinquish part of their compensation, is involved;
 - (3) Pertinent information concerning an actual or potential controversy with the contractor involved, as to the occurrence of a given violation, is disclosed; and
 - (4) Information concerning possible violations **NOT** previously known to the investigator, or other information which may become material to the overall investigation, is obtained.
- q) Written employee statements **MUST** be prepared by the investigator and **MUST** contain:
- (1) The contractor's name and address;
 - (2) The project number and location;
 - (3) The employee's name and address;
 - (4) His or her status as a present or former employee;
 - (5) The place and date of the interview;
 - (6) The employee's job classification and a brief description of the exact duties performed, including equipment operated, tools used and the frequency of their use, and the place where the work is performed;
 - (7) The period of employment, starting and quitting times, daily and weekly hours worked, and the manner in which the working time is recorded and by whom;
 - (8) The rate of pay and wages received;
 - (9) Any information the employee is able to furnish concerning the matters involved in the allegation or allegations and any intimidation involved with ***kickback*** activity; and
 - (10) Any further essential information concerning the accuracy or adequacy of the contractor's records.
- r) The information given by the employee for the statement **MUST** be paraphrased in a concise and clear manner while clearly reflecting the intent of the employee. It **MUST** be written in the first person form as though the

employee prepared the statement. A final line **MUST** be added stating that the employee has read the foregoing statement and that it accurately reflects his or her intent. The statement **MUST** be signed by the employee and witnessed by the investigator. Any changes made to the statement **MUST** be initialed by the employee. If the statement is longer than one page, each and every page **MUST** be signed or initialed by the employee.

- s) The investigator **MUST** always keep in mind that it is his or her function to ascertain and report the facts concerning a given investigation, **NOT** to take sides with either the contractor or the employee involved. The investigator **MUST NOT** give to the employees, or allow them access to, the contractor's records that are made available to the investigator. For example, employees **MUST NOT** be shown copies of the hours worked and wages paid with regard to them, but rather **MUST** be questioned regarding the wages paid and hours worked. The answers can then be compared with the contractor's records. The investigator may inform employees as to how the wages and overtime are computed but **MUST NOT** express an opinion as to whether wages are due, or encourage lawsuits by an employee or group of employees with regard to the subject matter of the investigation.

11. At the conclusion of the investigation, a final report **MUST** be prepared and recommendations for corrective action made to the Civil Rights Division. The report **MUST** consist of a narrative summary of the facts disclosed by the investigation. Answers to the following questions **MUST** appear in the report: who? what? where? when? why? and how? In addition, the following specific items **MUST** be noted in the report:

- a) The contract number and location.
- b) The name and address of the prime contractor and, where appropriate, subcontractor(s) involved.
- c) A brief statement concerning the circumstances that brought about the investigation.
- d) A statement concerning the extent of the investigation. For example: Who the investigator talked with, what records were examined, and any other action taken by the investigator.
- e) A statement of facts concerning what the investigation disclosed. For example: Were the allegations proven? If so, how? Were they dispelled? If so, how?
- f) Conclusions of the investigator as to willfulness, negligence, or other factors involved in the matter.
- g) Recommendations of the investigator as to further action required, with reasons for the recommendations and facts supporting them; or if the matter was resolved, how was such resolution accomplished?

12. Upon concurrence from the Civil Rights Division, the contractor **MUST** be notified, in writing, of the problem and subsequent findings. Any corrective action, together with timeframes, **MUST** be transmitted to the contractor at this time. In addition, the employee or complainant **MUST** be informed, in writing, of the final determination.
13. If the employee or complainant is found to be entitled back pay under DBRA, a supplementary payroll **MUST** be issued. The contractor **MUST** submit a copy of the supplementary payroll and canceled check (front and back) to NDDOT as proof that restitution was made.
14. When the wage claim or complaint has been resolved and all of the necessary follow-up documentation has been received, the *Labor Compliance Report (SFN 13082 - Rev. 08-2006)* **MUST** be completed and forwarded to the Civil Rights Division. The report lists the nature of the complaint or problem (improper job classification, overtime, incorrect wages or fringe benefits, kickback, etc.); the outcome; and the amount of wages found due, if applicable. A copy of the supplementary payroll and canceled check (front and back) **MUST** be attached to the report when applicable. This information is used to complete and file a semiannual labor compliance report required by USDOL.
15. The Civil Rights Division will instruct the assistant district engineer or the district, city, county, or consultant project manager-engineer to release any progress payments being withheld from the prime contractor.

The following may be obtained from the Civil Rights Division, phone: 328-2605, fax: 328-1965, or Web site: www.dot.nd.gov/forms/formsbycategory.htm

- *Classification & Wage Rate Request – Employee Information (SFN 50043 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn50043.pdf
- *Labor Compliance and EEO Contract Compliance Job-site Interview (SFN 9426 - Rev. 01-2008)*
www.dot.nd.gov/forms/sfn09426.pdf
- *Labor Compliance Report (SFN 13082 - Rev. 08-2006)*
www.dot.nd.gov/forms/sfn13082.pdf
- **Poster Board (DOT 3350 - Rev. 03-2003)*

***NOT** available on the Web site.

EXHIBIT V-A: LABOR COMPLIANCE AND EEO CONTRACT COMPLIANCE JOB-SITE INTERVIEW

North Dakota Department of Transportation, Civil Rights Division
SFN 9426 (Rev. 01-2008)

To access SFN 9426, click on the following:

www.dot.nd.gov/forms/sfn09426.pdf

EXHIBIT V-B: LABOR COMPLIANCE REPORT

North Dakota Department of Transportation, Civil Rights Division

SFN 13082 (Rev. 08-2006)

To access SFN 13082, click on the following:

www.dot.nd.gov/forms/sfn13082.pdf

EXHIBIT V-C: ADDITIONAL JOB CLASSIFICATION AND WAGE RATE DETERMINATION REQUEST PROCEDURES

Letter to the contractor explaining the process and including the following attachments:

Sample letter to NDDOT requesting a job classification and wage rate determination;

Federal requirements; and

Classification & Wage Rate Request - Employee Information (SFN 50043 - Rev. 08-2006)

Date

Name

Address

City, State, Zip Code

Dear _____:

Enclosed, for your consideration, is a sample letter requesting a wage rate determination for a job classification not covered under the federal Davis-Bacon wage rates established for [your project/Project (number).]

The required supporting documentation must include:

Copies of payrolls issued for the project or other projects located in the area showing the required rate of pay, including fringe benefits where appropriate, for the job classification concerned; or

If a union contractor, a copy of the current collective bargaining agreement showing the required rate of pay, including fringe benefits where appropriate, for the job classification concerned and the project area; and

A statement from each person employed in the job classification concerned indicating whether he or she agrees or disagrees with the proposed job classification and wage rate, including fringe benefits where appropriate; or

If employees are unknown, a statement to that effect.

Also enclosed are the federal requirements and copies of the form developed by this office for providing the employee statements.

If you have any questions or require assistance in this matter, contact Jackie Lipp at 701-328-2605 or email at jlipp@nd.gov .

Sincerely,

Deborah J. Igoe, Director

Civil Rights Division

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Enclosures

Copy _____, Assistant District Engineer

_____, Project Manager-Engineer (district, city, county, or consultant)

SAMPLE

_____(Date)_____

Ms. Deborah J. Igoe, Director

Civil Rights Division

North Dakota Department of Transportation

608 East Boulevard Avenue

Bismarck, ND 58505-0700

Dear Ms. Igoe:

Subject: Job Classification and Wage Determination For

Project _____ (number) _____

_____ County

I am hereby requesting a wage determination for _____ (classification) _____ on the above referenced project. I am proposing a base rate of \$ _____ per hour _____ (with no/plus \$ _____ in) _____ fringe benefits. Enclosed is documentation supporting this request.

If you have any questions, contact me at _____ (telephone number) _____.

Sincerely,

_____ (Name) _____

_____ (Title) _____

ri

Enclosures

REQUESTS FOR ADDITIONAL CLASSIFICATIONS AND WAGE RATES

Criteria for the approval of additional classifications and wage rates are set forth in the Code of Federal Regulations, Title 29, Part 5, Subpart A, Section 5.5 (a) (1) (ii). Section 5.5 (a) (1) (ii) (A) states:

The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

The work to be performed by the classification requested is not performed by a classification in the wage determination; and

The classification is utilized in the area by the construction industry; and

The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

Section 5.5 (a) (1) (ii) (B) further states:

If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and will so advise the contracting officer, or will notify the contracting officer within the 30-day period that additional time is necessary.

The U.S. Department of Labor's policy in conforming a job classification and wage rate is:

If the proposed classification is a skilled craft, the proposed rate cannot be less than the lowest rate already established for a skilled job classification in the wage determination.

Exceptions to the skilled job classifications are the Power Equipment Operator and Truck Driver groups.

If the established rate for a skilled job classification varies between counties, the proposed rate cannot be less than the established rate for the county in which the project is located.

If the established rate for a skilled job classification includes a fringe benefit amount, the proposed rate does not have to specify an amount for fringe benefits. The fringe benefit amount could be added to the hourly wage. In other words, the proposed rate must be equal to or higher than the total of the established hourly rate plus the amount designated for fringe benefits.

NOTE: Requests for Additional Classifications and Wage Rates must be made prior to commencement of work on the contract. For necessary forms and procedures, contact:

Deborah J. Igoe, Director

Civil Rights Division

North Dakota Department of Transportation

608 East Boulevard Avenue

Bismarck, ND 58505-0700

Telephone: 701-328-2576

Fax: 701-328-1965

Email: digoe@nd.gov

CLASSIFICATION AND WAGE RATE REQUEST – EMPLOYEE INFORMATION

North Dakota Department of Transportation, Civil Rights Division

SFN 50043 (Rev. 08-2006)

To access SFN 50043, click on the following:

www.dot.nd.gov/forms/sfn50043.pdf

EXHIBIT V-D: INSTRUCTIONS AND LINKS TO PAYROLL FORMS

U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

INSTRUCTIONS FOR COMPLETING PAYROLL FORM WH-347

General: The use of the WH-347 payroll form is not mandatory. This form has been made available for the convenience of contractors and subcontractors required by their federal or federally aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and Related Acts.

This form meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefit provisions. Under this amended law, the contractor is required to pay not less than the fringe benefits as predetermined by the Department of Labor, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

This payroll provides for the contractor's showing on the face of the payroll all monies paid to the employees, whether as basic rates or as cash in lieu of fringes, and provides for the contractor's representation in the statement of compliance (formerly WH-348) on the rear of the payroll that he or she is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1 - Name, Address, and Social Security Number of Employees: The employee's full name and social security number must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless the address changes.

Column 2 - Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Parts 3 and 5.

Column 3 - Work Classifications: List the classification(s) descriptive of the work actually performed by employees. Consult the classification and minimum wage schedule set forth in the contract specifications. If additional classifications are deemed necessary, see the contracting officer or agency representative. Employees may be shown as having worked in more than one classification, provided an accurate breakdown of the hours so worked is maintained and shown on the payroll by the use of separate line entries.

Column 4 - Hours Worked: On all contracts subject to the Contract Work Hours Standard Act, enter as overtime all hours worked in excess of 8 hours per day and 40 hours per week.

Column 5 - Total: Self-explanatory.

Column 6 - Rate of Pay, Including Fringe Benefits: In the straight time box, list the actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See ***Fringe Benefits*** below. In the overtime box, show the overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See ***Fringe Benefits*** below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962. In addition to paying not less than the predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs, or shall pay as cash in lieu of fringes, amounts predetermined as fringe benefits in the wage decision made part of the contract. See ***Fringe Benefits*** below.

FRINGE BENEFITS - Contractors Who Pay All Required Fringe Benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of the payroll the basic cash hourly rate and overtime rate paid to his or her employees just as he or she has always done. Such a contractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he or she is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in paragraph 4(c).

Contractors Who Pay No Fringe Benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and one-half on cash paid in lieu of fringes, the overtime rate shall not be less than the sum of the basic predetermined rate plus the half time premium of the basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he or she is paying fringe benefits in cash directly to his or her employees. Any exceptions shall be noted in paragraph 4(c).

Use of Paragraph 4(c), Exceptions: Any contractor who is making payment to approved plans, funds, or programs in amounts less than what the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to paragraphs 4(a) and 4(b), whichever the contractor may check, shall be entered in paragraph 4(c). Enter in the ***Exception*** column the craft, and enter in the ***Explanation*** column the hourly amount paid the employees as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he or she is paying, to each such employee for all hours (unless otherwise provided by applicable determination) worked on the federal or federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in paragraph 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in **column 6** on the payroll. See paragraph on ***Contractors Who Pay No Fringe Benefits*** for computation of overtime rate.

Column 7 - Gross Amount Earned: Enter the gross amount earned on this project. If part of the employees' weekly wage was earned on projects other than the project described on this payroll, enter in **column 7** first the amount earned on the federal or federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/\$120.00.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deductions should be involved, use the first four columns; show the balance of deductions under the ***Other*** column; show the actual total under the ***Total Deductions*** column; and in the attachment to the payroll, describe all deductions contained in the ***Other*** column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR Part 3. If the employee worked on other jobs in addition to this project, show the actual deductions from his or her weekly gross wage, but indicate that deductions are based on his or her gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals: Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USC 1001, namely, possible imprisonment of 5 years or \$10,000.00 fine, or both. Accordingly, the party signing this required statement should have knowledge of the facts represented as true.

Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the **Deductions** column above, state **“See Deductions column in this payroll.”** See paragraph entitled **Fringe Benefits** above for instructions concerning filling out paragraph 4 of the statement.

PAYROLL FORM (WH-347) and **STATEMENT OF COMPLIANCE** (formerly WH-348)

To access the **PAYROLL FORM (WH-347)** and the **STATEMENT OF COMPLIANCE** (formerly WH-348), click on the following:

www.dol.gov/esa/forms/whd/wh347instr.htm

The instructions will appear first. Left-click on **WH-347** (PDF) directly under **Instructions for Completing Payroll Form, WH-347** to get the payroll form.

To get the **Statement of Compliance** on the reverse side of the payroll form, left-click on the right arrow (Next Page) at the bottom of the screen.

NOTE: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at:

www.adobe.com/products/acrobat/readstep2.html

To save the completed forms on your workstation, you need to use the “Save... As” method to save the file. For example, move your mouse cursor over the PDF link described in paragraph 1 above and click on your “RIGHT” mouse button. This will cause a menu to be displayed, from which you will select the proper save option—depending on which browser you are using:

For Microsoft IE users, select **Save Target As**

For Netscape Navigator users, select **Save Link As**

Once you’ve selected the proper save option for your browser, and have saved the file to a location you specified, go to your program menu and start the Adobe® Acrobat® Reader®. Once open, locate the PDF file you saved and open it (right-click) directly in Acrobat®.

**EXHIBIT V-E: U.S. DEPARTMENT OF LABOR FIELD OPERATIONS HANDBOOK -
CHAPTER 15**

To access the *Field Operations Handbook, Chapter 15*, click on the following and select **Chapter 15 (PDF 3.8 MB)**:

www.dol.gov/esa/whd/FOH/index.htm

VI. CONTRACT SPECIAL PROVISIONS

***REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS
(U.S. DEPARTMENT OF TRANSPORTATION FORM FHWA 1273)***

www.fhwa.dot.gov/programadmin/contracts/1273.cfm

LABOR RATES FROM U.S. DEPARTMENT OF LABOR

www.dot.nd.gov/divisions/civilrights/laborcompliance.htm

SPECIAL PROVISION EEO AFFIRMATIVE ACTION REQUIREMENTS

www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf

SPECIAL PROVISION ON-THE-JOB TRAINING PROGRAM

www.dot.nd.gov/divisions/civilrights/docs/ojtspecialprovision.pdf

SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

(RACE-CONSCIOUS)

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm

SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (RACE-NEUTRAL)

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm

SPECIAL PROVISION PROMPT PAYMENT AND RETAINAGE

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm

EXHIBIT VI-A: REQUIRED CONTRACT PROVISIONS, FEDERAL-AID CONSTRUCTION CONTRACTS (U.S. DEPARTMENT OF TRANSPORTATION FORM FHWA 1273)

To access, click on the following:

www.fhwa.dot.gov/programadmin/contracts/1273.cfm

EXHIBIT VI-B: LABOR RATES FROM U.S. DEPARTMENT OF LABOR

To access, click on the following and select a published date from the drop-down box:

www.dot.nd.gov/divisions/civilrights/laborcompliance.htm

EXHIBIT VI-C: *SPECIAL PROVISION EEO AFFIRMATIVE ACTION REQUIREMENTS*

To access, click on the following:

www.dot.nd.gov/divisions/civilrights/docs/affirmativeactionrequirements.pdf

EXHIBIT VI-D: *SPECIAL PROVISION ON-THE-JOB TRAINING PROGRAM*

To access, click on the following:

www.dot.nd.gov/divisions/civilrights/docs/ojtspecialprovision.pdf

EXHIBIT VI-E: *SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (RACE-CONSCIOUS)*

To access, click on the following and select a published date from the drop-down box in the left column:

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm

**EXHIBIT VI-F: *SPECIAL PROVISION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
(RACE-NEUTRAL)***

To access, click on the following and select a published date from the drop-down box in the left column:

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm

EXHIBIT VI-G: *SPECIAL PROVISION PROMPT PAYMENT AND RETAINAGE*

To access, click on the following and select a published date from the drop-down box in the left column:

www.dot.nd.gov/divisions/civilrights/dbeprogram.htm