

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH, N.C.

PROPOSAL

DATE AND TIME OF BID OPENING: **JUNE 19, 2007 AT 2:00 PM**

CONTRACT ID C201793

WBS 41454.3.GV1

FEDERAL-AID NO. IMS-040-1(176)27

COUNTY HAYWOOD

T.I.P. NO. I-5004

MILES 9.700

ROUTE NO. I 40

LOCATION I-40 FROM US-74 (MP-27) TO BUNCOMBE COUNTY LINE.

TYPE OF WORK MILLING, RESURFACING, SIGNING & GUARDRAIL.

NOTICE:

ALL BIDDERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA WHICH REQUIRES THE BIDDER TO BE LICENSED BY THE N.C. LICENSING BOARD FOR CONTRACTORS WHEN BIDDING ON ANY NON-FEDERAL AID PROJECT WHERE THE BID IS \$30,000 OR MORE EXCEPT FOR CERTAIN SPECIALITY WORK AS DETERMINED BY THE LICENSING BOARD. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. NOT WITHSTANDING THESE LIMITATIONS ON BIDDING, THE BIDDER WHO IS AWARDED ANY PROJECT SHALL COMPLY WITH CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA FOR LICENSING REQUIREMENTS WITHIN 60 CALENDAR DAYS OF BID OPENING, REGARDLESS OF FUNDING SOURCES.

BIDS WILL BE RECEIVED AS SHOWN BELOW:

THIS IS A ROADWAY PROPOSAL

5% BID BOND OR BID DEPOSIT REQUIRED

PROPOSAL FOR THE CONSTRUCTION OF
CONTRACT No. C201793
IN HAYWOOD COUNTY NORTH CAROLINA

Date _____ 20____

DEPARTMENT OF TRANSPORTATION,
RALEIGH, NORTH CAROLINA

The Bidder has carefully examined the location of the proposed work to be known as Contract No. **C201793** has carefully examined the plans and specifications, which are acknowledged to be part of the proposal, the special provisions, the proposal, the form of contract, and the forms of contract payment bond and contract performance bond; and thoroughly understands the stipulations, requirements and provisions. The undersigned bidder agrees to bound upon his execution of the bid and subsequent award to him by the Board of Transportation in accordance with this proposal to provide the necessary contract payment bond and contract performance bond within fourteen days after the written notice of award is received by him. The undersigned Bidder further agrees to provide all necessary machinery, tools, labor, and other means of construction; and to do all the work and to furnish all materials, except as otherwise noted, necessary to perform and complete the said contract in accordance with *the 2006 Standard Specifications for Roads and Structures* by the dates(s) specified in the Project Special Provisions and in accordance with the requirements of the Engineer, and at the unit or lump sum prices, as the case may be, for the various items given on the sheets contained herein.

The Bidder shall provide and furnish all the materials, machinery, implements, appliances and tools, and perform the work and required labor to construct and complete State Highway Contract No. **C201793** in **Haywood County**, for the unit or lump sum prices, as the case may be, bid by the Bidder in his bid and according to the proposal, plans, and specifications prepared by said Department, which proposal, plans, and specifications show the details covering this project, and hereby become a part of this contract.

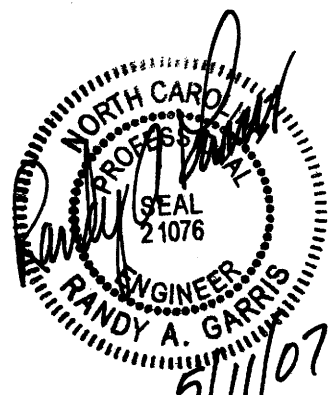
The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, July 2006* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the construction and work included in this contract is to be done in accordance with the specifications contained in said volume, and amendments and supplements thereto, under the direction of the Engineer.

If the proposal is accepted and the award is made, the contract is valid only when signed either by the Contract Officer or such other person as may be designated by the Secretary to sign for the Department of Transportation. The conditions and provisions herein cannot be changed except over the signature of the said Contract Officer.

The quantities shown in the itemized proposal for the project are considered to be approximate only and are given as the basis for comparison of bids. The Department of Transportation may increase or decrease the quantity of any item or portion of the work as may be deemed necessary or expedient.

An increase or decrease in the quantity of any item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for the contract.

Accompanying this bid is a bid bond secured by a corporate surety, or certified check payable to the order of the Department of Transportation, for five percent of the total bid price, which deposit is to be forfeited as liquidated damages in case this bid is accepted and the Bidder shall fail to provide the required payment and performance bonds with the Department of Transportation, under the condition of this proposal, within 14 calendar days after the written notice of award is received by him, as provided in the *Standard Specifications*; otherwise said deposit will be returned to the Bidder.



Randy A. Garris
NORTH CAROLINA
PROFESSIONAL
SEAL
21076
ENGINEER
RANDY A. GARRIS
5/11/07
State Contract Officer

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PROJECT SPECIAL PROVISIONS

GENERAL

CONTRACT TIME AND LIQUIDATED DAMAGES:

(7-1-95)(Rev. 12-19-06)

RG 06

The date of availability for this contract is **August 6, 2007**.

The completion date for this contract is **August 1, 2008**.

When observation periods are required by the contract, they are not a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. Should an observation period extend beyond the final completion date, the acceptable completion of the observation period shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are **Eight Hundred Dollars (\$800.00)** per calendar day.

INTERMEDIATE CONTRACT TIME NUMBER 1 AND LIQUIDATED DAMAGES:

Except for the work required for the placement of the Open Graded Asphalt Friction Course FC-1 Modified, Polyurea Pavement Marking Lines, Polyurea Pavement Marking Symbols, snowplowable pavement markers, and Sign Erection, the Contractor will be required to complete all work included in this contract and shall place and maintain traffic on same by **November 15, 2007**.

The date of availability for this intermediate contract time is **August 6, 2007**.

The liquidated damages for this intermediate contract time are **One Thousand Dollars (\$1,000.00)** per calendar day.

INTERMEDIATE CONTRACT TIME NUMBER 2 AND LIQUIDATED DAMAGES

(2-20-07)

RG 07 A

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to a **four-lane, two-way** traffic pattern. The Contractor shall not close or narrow a lane of traffic on **I-40 and Ramps** during the following time restrictions:

DAY AND TIME RESTRICTIONS

MONDAY THRU SUNDAY 6:00 A.M. TO 7:00 P.M.

In addition, the Contractor shall not close or narrow a lane of traffic on **I-40 and Ramps**, detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy, including the following schedules:

HOLIDAY AND HOLIDAY WEEKEND LANE CLOSURE RESTRICTIONS

1. For **unexpected occurrence** that creates unusually high traffic volumes, as directed by the Engineer.
2. For **Christmas/New Year's Day**, between the hours of **6:00 a.m.** the **Tuesday before the week of Christmas Day** and **7:00 p.m.** the following **Sunday after New Year's Day**.
3. For **Easter**, between the hours of **6:00 a.m.** Thursday and **7:00 p.m.** Monday.
4. For **Memorial Day**, between the hours of **6:00 a.m.** Friday and **7:00 p.m.** Tuesday.
5. For **Independence Day**, between the hours of **6:00 a.m.** the day before Independence Day and **7:00 p.m.** the day after Independence Day.

If **Independence Day** is on a Friday, Saturday, Sunday or Monday, then between the hours of **6:00 a.m.** the Thursday before Independence Day and **7:00 p.m.** the Tuesday after Independence Day.

6. For **Labor Day**, between the hours of **6:00 a.m.** Friday and **7:00 p.m.** Tuesday.
7. For **Thanksgiving Day**, between the hours of **6:00 a.m.** Tuesday and **7:00 p.m.** Monday.

Holidays and holiday weekends shall include New Year's, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. The Contractor shall schedule his work so that lane closures are not required during these periods, unless otherwise directed by the Engineer.

The time of availability for this intermediate contract work shall be the time the Contractor begins to install all traffic control devices for lane closures according to the time restrictions listed herein.

The completion time for this intermediate contract work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated above and place traffic in a **four-lane, two-way** pattern.

The liquidated damages are **One Thousand Dollars (\$1,000.00)** per hour.

MAJOR CONTRACT ITEMS:

(2-19-02)

RG 15

The following listed items are the major contract items for this contract (See Articles 101 and 104-5 of the *Standard Specifications*):

Line #	Description
9	Asphalt Concrete Intermediate Course, Type I19.0D
10	Asphalt Concrete Surface Course, Type S9.5B
11	Asphalt Concrete Surface Course, Type S9.5D

SPECIALTY ITEMS:

(7-1-95)

RG 18

Items listed below will be the specialty items for this contract (See Article 108-6 of the *Standard Specifications*).

Line #	Description
21 thru 25	Guardrail
28 thru 34	Signing
43 thru 49	Long-Life Pavement Markings
51	Permanent Pavement Markers

SCHEDULE OF ESTIMATED COMPLETION PROGRESS:

(7-20-04)

RG 33

The Contractor's attention is directed to the Standard Special Provision entitled *Availability Of Funds Termination Of Contracts* included elsewhere in this proposal. The Department of Transportation's schedule of estimated completion progress for this project as required by that Standard Special Provision is as follows:

	Fiscal Year	Progress (% of Dollar Value)
2008	(7/01/07 - 6/30/08)	96% of Total Amount Bid
2009	(7/01/08 - 6/30/09)	4% of Total Amount Bid

The Contractor shall also furnish his own progress schedule in accordance with Article 108-2 of the *Standard Specifications*. Any acceleration of the progress as shown by the Contractor's progress schedule over the progress as shown above shall be subject to the approval of the Engineer.

FUEL PRICE ADJUSTMENT:

(11-15-05) (Rev 11-21-06)

RG 043

Revise the *2006 Standard Specifications* as follows:

Page 1-93, Article 109-8 Fuel Price Adjustment is amended to add the following as the first paragraph:

Bidders will have the option to *opt-out* of receiving a fuel price adjustment on this contract. Bidders shall designate in their bid submission in the Miscellaneous Data Folder of Transport Expedite whether or not they wish to accept or decline receiving a fuel price adjustment on items designated in the contract. If no designation is shown in the bid, the bidder will be subject to the fuel price adjustment. The bidder will not be permitted to change the option after the Department accepts the bid. If the bidder indicates that they want to participate in the fuel price adjustment, it shall be paid as follows:

Page 1-93 Subarticle 109-8, add the following:

The base index price for DIESEL #2 FUEL is **\$1.9825** per gallon.

Where any of the following are included in the contract, they will be eligible for fuel price adjustment.

The item(s) of work and the fuel factor used in calculating adjustments to be made are as follows:

Description	Units	Fuel Usage Factor Diesel
Unclassified Excavation	Gal/CY	0.29
Borrow Excavation	Gal/CY	0.29
Aggregate Base Course	Gal/Ton	0.55
Asphalt Concrete Base Course, Type _____	Gal/Ton	2.90
Asphalt Concrete Intermediate Course, Type _____	Gal/Ton	2.90
Asphalt Concrete Surface Course, Type _____	Gal/Ton	2.90
Open-Graded Asphalt Friction Course	Gal/Ton	2.90
Sand Asphalt Surface Course, Type _____	Gal/Ton	2.90
Aggregate for Cement Treated Base Course	Gal/Ton	0.55
Portland Cement for Cement Treated Base Course	Gal/Ton	0.55
____ In. Portland Cement Concrete Pavement	Gal/SY	0.245
Concrete Shoulders Adjacent to _____ In. Pavement	Gal/SY	0.245

DISADVANTAGED BUSINESS ENTERPRISE:

4-17-07

RG 61

Policy

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the opportunity to participate in the performance of contracts financed in whole or in part by Federal Funds in order to create a level playing field on which DBEs can compete fairly.

Obligation

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

Definitions

Commitment - The DBE participation submitted by the prime contractor during the bidding process. Once the Department accepts the commitment, the commitment becomes the contract requirement.

Committed DBE - Any DBE listed on the DBE commitment list at the time of bid submission or any DBE utilized as a replacement for a DBE firm listed on the commitment list.

Department - North Carolina Department of Transportation

Disadvantaged Business Enterprise (DBE) – A firm certified through the North Carolina Unified Certification Program in accordance with *49 CFR Part 26*.

Goal - The DBE participation specified herein.

Manufacturer - a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

North Carolina Unified Certification Program - A program that provides one-stop shopping to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state.

USDOT - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Goal

The following goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **6 %**

The Contractor shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in at least the percent of the contract as set forth above as the goal.

Listing of DBE Subcontractors

(A) (1) Electronic Bids

Bidders shall submit a listing of DBE participation in the appropriate section of Expedite, the bidding software of Bid Express®. Only those DBE firms with current certification are considered acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

- (a) The names and addresses of DBE firms committed to participate in the contract. In the event the Bidder uses the updated listing of DBE firms shown in Expedite, the Bidder may use the dropdown menu to access the name and address of the DBE firm.
- (b) The contract line numbers of work to be performed by each DBE firm;
When no figures or firms are entered, the bidder will be considered to have no DBE participation.

(2) Paper Bids

Bidders, at the time the bid proposal is submitted, shall also submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in this proposal in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract. In the event the bidder has no DBE participation, he shall indicate this on the forms by entering the word or number zero. Blank forms will not be deemed to represent zero participation. Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. The Department will not consider these bids for award and they will be returned to the bidder. Bidders have the option of submitting the DBE participation in an abbreviated format. In the event the bidder elects to submit DBE participation in accordance with (a) and is determined to be the apparent lowest responsive bidder, that bidder shall deliver to the Department no

later than 12:00 noon of the sixth day following the opening of bids, a detailed DBE submittal as required by Paragraph (b) below:

(a) Abbreviated Format

The Contractor shall indicate on the form for listing of DBE subcontractors contained elsewhere in this proposal the following required information:

The names and addresses of DBE firms committed to participate in the contract

The contract line numbers of work to be performed by each DBE firm

The Contract Item Numbers of work to be performed by each DBE firm; and

The total dollar amount to be paid to each DBE based on agreed upon unit prices.

Failure to indicate the required information on the specified form will cause the bid to be considered nonresponsive and it may be rejected.

(b) Required Documentation

In lieu of submitting the information required by (a) above, the bidder may submit the detailed information that required below along with the bid proposal.

The names and addresses of DBE firms committed to participate in the contract

The Contract Item Numbers and Contract Item Descriptions and agreed upon unit prices of work to be performed by each DBE firm; and

The total dollar amount to be paid to each DBE based on agreed upon unit prices.

Failure to indicate the required information on the specified form will cause the bid to be considered nonresponsive and it may be rejected.

The bidder shall submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract.

- (B) If the DBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the DBE contract goal, the apparent lowest responsive bidder shall submit to the Department documentation of its good faith efforts made to reach the contract goal. One complete set and 9 copies of this information shall be received in the office of the State Contractor Utilization Engineer no later than 12:00 noon of the sixth day following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a representative letter along with a

distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Department considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors are used to determine if the bidder has made adequate good faith effort:

- (1) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform DBEs of subcontracting opportunities.
- (2) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 days prior to bid opening. Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the DBE Directory) that the bidder will be subletting.
- (3) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the targeted Divisions that specialize in the subcontracted areas, as well as call the Contract Compliance Manager in the Office of Civil Rights to give notification of the bidder's inability to get DBE quotes.
- (4) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Bidder might otherwise perform these work items with its own forces.
- (5) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (6) Whether the bidder negotiated in good faith with interested DBEs not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.
- (7) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision

shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy contract goals.

- (8) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (9) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (10) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goal.

In the event a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort the Department will consider allowing the bidder to combine the DBE participation as long as the overall goal value of the combined projects is achieved.

- (C) The bidder will be required to submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract. This documentation will be submitted on the Department's form titled "Letter of Intent to Perform as a Subcontractor" and shall be received in the office of the State Contractor Utilization Engineer no later than 12:00 noon of the sixth day following opening of bids.

If the bidder fails to submit written confirmation from each committed DBE, listed in the proposal, indicating their participation in the contract, the bidder shall submit information to satisfy the Department that sufficient good faith efforts have been made to meet the contract goals. The following factors are used to determine if the bidder has made adequate good faith effort to obtain written confirmation from committed DBEs indicating their participation in the contract:

- (1) Whether the apparent lowest responsive bidder, within 30 hours following bid opening, provided each DBE listed in the proposal written notification that it is participating in the contract and attaching the required forms for execution,
- (2) Whether the bidder, within 48 hours following bid opening, followed up initial notification by contacting each DBE to confirm receipt of the written documentation and to confirm the firm's intent to execute and return the forms,
- (3) Whether the bidder provided each DBE with adequate and timely information about the forms,

- (4) Copies of written quotations received from each DBE listed in the proposal for which written confirmation from DBE indicating their participation in the contract is not provided and
 - (5) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to obtain written confirmation from DBEs indicating their participation in the contract.
 - (6) If the participation supported by Letters of Intent to Perform as a Subcontractor does not meet or exceed the contract goal the bidder shall submit the information documenting good faith in accordance with item (B) of this section.
- (D) Where the bidder fails to provide the required information in the required timeframe, the Department may impose one or more of the following sanctions:
- (1) disqualify the Contractor and any affiliated companies from further bidding for a period of time of no more than 90 days from the date of disqualification as established in notification by certified mail,
 - (2) disqualify the Contractor and any affiliated companies from award of all contracts for which bids have been received and opened,
 - (3) disqualify the Contractor from the contract in question.
- (E) When the apparent lowest responsive bidder fails to submit sufficient participation by DBE firms to meet the contract goal and upon a determination by the Goal Compliance Committee based upon the information submitted that the apparent lowest responsive bidder failed to make sufficient reasonable efforts to meet the contract goal, the bidder will be offered the opportunity to meet in person for administrative reconsideration. A committee appointed by the Department will hear administrative reconsideration. Members of this committee will be officials that did not take part in the original determination by the Goal Compliance Committee. The bidder will have the opportunity to present written documentation or argument concerning the issue of whether it met the goal or made an adequate good faith effort. The bidder will receive a written decision on the reconsideration, including the basis for finding. The result of the reconsideration process will not be administratively appealable to the USDOT.

In the event that the Department does not award the contract to the apparent lowest responsive bidder, the Department reserves the right to award the contract to the next lowest responsive bidder that submits participation to meet the contract goal or documents that adequate good faith efforts have been made to meet the goal.

Directory of Transportation Firms

Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage

or by entering <http://apps.dot.state.nc.us/vendor/directory> in the address bar of your web browser.

The Directory allows the display to be customized and the firms listed to be filtered by attributes, including work types, certification type and desired work area. The list can be printed or downloaded as a Microsoft Excel file. Firms identified as DBE certified in the Directory can be utilized to meet the contract goals.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Replacement of DBE

The Contractor shall not terminate a committed DBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. If the Contractor fails to demonstrate reasonable efforts to replace a committed DBE firm that does not perform as intended or completes the work with its own forces without the Engineer's approval, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of committed DBE.

(A) Performance Related

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work as the DBE that was terminated. The Contractor is encouraged to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps he has taken to replace any DBE subcontractor who is unable to perform successfully with another DBE subcontractor. Such documentation shall include but not be limited to the following:

- (1) Copies of written notification to DBEs that their interest is solicited in subcontracting the work defaulted by the previous DBE subcontractor or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
 - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) For each DBE contacted but rejected as unqualified, the reasons for the Contractor's conclusion.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification

- (1) When a committed DBE is decertified by the Department after a Request for Subcontract has been received by the Department, the Department will not require the Prime Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract commitment.
- (2) When a committed DBE is decertified prior to the Department receiving a Request for Subcontract for the named DBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.

Changes in the Work

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed DBE; the Contractor shall seek participation by DBEs unless otherwise approved by the Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Counting DBE Participation Toward Meeting the DBE Goal

- (A) If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract commitment. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- (B) When a DBE performs as a participant in a joint venture, the Contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
- (C) (1) The Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work

involved. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm 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.

- (2) Consistent with normal industry practices, a DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal. If a DBE Contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department for commercially useful functions. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.
- (3) The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.
 - (a) The DBE shall 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 shall 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 using drivers it employs.
 - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who 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 firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - (f) For purposes of this paragraph, a lease shall 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. Leased trucks shall display the name and identification number of the DBE.

- (D) A contractor may count toward its DBE goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.
- (E) A contractor may count toward its DBE goal the following expenditures to DBE firms that are not manufacturers or regular dealers:
 - (1) The fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
 - (2) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Reports

All requests for subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This information shall be supplied on the Department Form RS-1-D unless otherwise approved by the Engineer. In any event, the Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

Within 30 days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by a Request for Subcontract as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

All certifications will be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.

Reporting Disadvantaged Business Enterprise Participation

The Contractor shall provide the Engineer with an accounting of payments made to Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial pay estimate; or (2) removal of an approved contractor from the prequalified bidders list or the removal of other entities from the approved subcontractors list.

The Contractor shall report the accounting of payments through the Department's DBE Payment Tracking System, which is a web based application. The system can be accessed through the following web link: <https://apps.dot.state.nc.us/Vendor/PaymentTracking/>. The Contractor shall also provide the Engineer an affidavit attesting the accuracy of the information submitted in the Payment Tracking System. This too shall be submitted for any given month by the end of the following month.

Contractors reporting transportation services provided by non-DBE lessees in accordance with item (C)(3)(e) above shall evaluate the value of services provided during the month of the reporting period only.

Prior to payment of the final estimate, the Contractor shall furnish an accounting of total payment to each DBE. A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractors responsibility to report all monthly and final payment information in the Tracking System.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from working on any DOT project until the required information is submitted.

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE:

(11-22-94)

RG 66

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free *hotline* Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the *hotline* to report such activities.

The *hotline* is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

CERTIFICATION FOR FEDERAL-AID CONTRACTS:

(3-21-90)

RG 69

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of

any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

SUBMISSION OF RECORDS - FEDERAL-AID PROJECTS:

(12-15-98)

RG 75

The Contractor's attention is directed to the Standard Special Provisions entitled *Required Contract Provisions - Federal-Aid Construction Contracts* contained elsewhere in this proposal.

This project is located on the National Highway System. If the final construction cost of this project equals or exceeds **One Million Dollars**, the Contractor shall submit federal form FHWA-47.

OUTSOURCING OUTSIDE THE USA:

(9-21-04)

RG 95

All work on consultant contracts, services contracts, and construction contracts shall be performed in the United States of America. No work shall be outsourced outside of the United States of America.

Outsourcing for the purpose of this provision is defined as the practice of subcontracting labor, work, services, staffing, or personnel to entities located outside of the United States.

The North Carolina Secretary of Transportation shall approve exceptions to this provision in writing.

ACT OF GOD
(12-19-06)

RG 151

Revise the 2006 Standard Specifications as follows:

Page 1-69, 107-18 Contractor's Responsibility for Work, in the first paragraph, last sentence, replace the word *legally* with the word ***contractually***.