

PROPOSAL

DATE AND TIME OF BID OPENING: **JULY 15, 2008 AT 2:00 PM**

CONTRACT ID C202007

WBS 34445.4.2

FEDERAL-AID NO. STATE FUNDED

COUNTY YANCEY

T.I.P. NO. R-2518B

KILOMETERS 11.119

ROUTE NO. US 19

LOCATION US-19 FROM 0.8 KM EAST OF YANCEY COUNTY LINE TO SR-1336  
(JACK'S CREEK ROAD).

TYPE OF WORK GRADING, DRAINAGE, PAVING, SIGNALS & STRUCTURE.

**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 SPECIALTY 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 & STRUCTURE PROPOSAL**

**5% BID BOND OR BID DEPOSIT REQUIRED**

**PROPOSAL FOR THE CONSTRUCTION OF**

**CONTRACT No. C202007**

**IN YANCEY 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. **C202007** 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. **C202007** in **Yancey 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, Metric 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.



State Contract Officer

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**1**

**PROJECT SPECIAL PROVISIONS**

**GENERAL**

**NOTICE TO BIDDERS (2 projects):**

(7-1-95)

MI G03A

TIP R-2518A                      Madison-Yancey Counties  
Project Description: US 19 from I-26 to 0.8 km East of the Yancey County Line

TIP R-2518B                      Yancey County  
Project Description: US 19 from East of the Madison County Line to SR 1336

On the above projects, the following Proposals are available.

Proposal No. 1	TIP No. R-2518A
Proposal No. 2	TIP No. R-2518B
Combined Proposal No. 3	TIP No. R-2518A and R-2518B

Contractors may submit bids on Proposal No. 1, Proposal No. 2, the Combined Proposal No. 3, (which includes the 2 projects), or on any combination of Proposals No. 1, 2, or 3. The selection of the low bidder will be made as described below:

In determining the low bidder on these projects, the lowest bid received on Proposal No. 1 and Proposal No. 2, will be added together and the resulting total will be compared with the lowest bid received on the Combined Proposal No. 3. In the event the lowest bid on the Combined Proposal No. 3 is equal to or less than the total of the lowest bids on Proposal No. 1 and Proposal No. 2, the Contractor submitting the lowest bid on the Combined Proposal No. 3 will be considered the low bidder. In the event the lowest bid on the Combined Proposal No. 3 is higher than the total of the lowest bids on Proposal No. 1 and Proposal No. 2; or if no bid has been received on the Combined Proposal No. 3, the Contractors who have submitted the lowest bid on Proposal No. 1 and Proposal No. 2, will be considered the low bidders.

If a bid is received for the Combined Proposal No. 3 and acceptable bids are not received on each of Proposal No. 1 and Proposal No. 2, the evaluation of bids for determining the low bidder(s) will be made so as to result in the best advantage to the Department.

These procedures are for the determination of the low bidder only and should not be confused with the *award* of the contract that will be by the Board of Transportation as usual. Nothing in this provision shall be construed as invalidating any right reserved to the Board in Article 103-1 of the *2006 Metric Standard Specifications*.

**CONTRACT TIME AND LIQUIDATED DAMAGES:**

(7-20-99) (Rev 12-20-07)

MI G04

The date of availability for this contract is **September 2, 2008**, except that work in jurisdictional waters and wetlands shall not begin until a meeting between the DOT, Regulatory Agencies, and the Contractor is held as stipulated in the permits contained elsewhere in this proposal. This delay in availability has been considered in determining the contract time for this project.

The completion date for this contract is **October 15, 2012**.

Except where otherwise provided by the contract, observation periods required by the contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are **Three Thousand Dollars (\$3,000.00)** per calendar day.

**INTERMEDIATE CONTRACT TIME NUMBER 1 AND LIQUIDATED DAMAGES**

(2-20-07)

MI G14 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 **2-lane, 2-way** traffic pattern. The Contractor shall not close or narrow a lane of traffic on **-L- (US 19)** during the following time restrictions:

**DAY AND TIME RESTRICTIONS**

**Monday thru Friday from 6:00 A.M. to 9:00 A.M.**

**and**

**Monday thru Friday from 4:00 P.M. to 7:00 P.M.**

In addition, the Contractor shall not close or narrow a lane of traffic on **-L- (US 19)**, 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 **New Year's Day**, between the hours of **7:00 p.m.** December 31st and **6:00 a.m.** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **6:00 a.m.** the following Tuesday.

- 3. For **Easter**, between the hours of **7:00 p.m.** Thursday and **6:00 a.m.** Monday.
- 4. For **Memorial Day**, between the hours of **7:00 p.m.** Friday and **6:00 a.m.** Tuesday.
- 5. For **Independence Day**, between the hours of **7:00 p.m.** the day before Independence Day and **6:00 a.m.** the day after Independence Day.

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

- 6. For **Labor Day**, between the hours of **7:00 p.m.** Friday and **6:00 a.m.** Tuesday.
- 7. For **Thanksgiving Day**, between the hours of **7:00 p.m.** Tuesday and **6:00 a.m.** Monday.
- 8. For **Christmas**, between the hours of **7:00 p.m.** the Friday before the week of Christmas Day and **6:00 a.m.** the following Tuesday after the week of Christmas Day.

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 will not be 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 **2-lane, 2-way** pattern.

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

**INTERMEDIATE CONTRACT TIME NUMBER 2 AND LIQUIDATED DAMAGES**

(2-20-07)

M1 G14 E

**Stopping traffic will only be allowed for traffic shifts and blasting operations.** The Contractor shall complete the required work of installing, maintaining and removing the traffic control devices for **stopping traffic** and restoring traffic to a **2-lane, 2-way** traffic pattern. The Contractor shall not **stop traffic on -L- (US 19)** during the following time restrictions:

**DAY AND TIME RESTRICTIONS**

<b>Monday thru Friday</b>	<b>6:00A.M. to 9:00 A.M.</b>
<b>Monday thru Friday</b>	<b>4:00 P.M. to 7:00 P.M.</b>

The maximum allowable time for the **shifting of traffic or blasting operations** is **20** minutes for **-L- (US 19)**. The Contractor shall reopen the travel lanes to traffic until the existing traffic queue is depleted.

The time of availability for this intermediate contract time will be the time the Contractor begins to install traffic control devices required for **stopping traffic** according to the time restrictions stated herein.

The completion time for this intermediate contract time will be the time the Contractor is required to complete the removal of traffic control devices required for **stopping traffic** according to the time restrictions stated herein and restore traffic to a **2-lane, 2-way** traffic pattern.

The liquidated damages are **Five Hundred Dollars (\$500.00)** per **20** minute time period.

**CONSTRUCTION MORATORIUM:**

No in-stream work shall be allowed in the Cane River or its tributaries from **April 1 through June 30** of any year.

No in-stream work or land disturbances within the 25 ft. wide buffer zone shall be allowed from **January 1 through April 15** of any year for Bald Creek and Price Creek and their tributaries.

**MAJOR CONTRACT ITEMS:**

(2-19-02)

M1 G28

The following listed items are the major contract items for this contract (See Articles 101 and 104-5 of the *2006 Metric Standard Specifications*):

<b>Line #</b>	<b>Description</b>
70	Asphalt Concrete Intermediate Course, Type I19.0C
72	Asphalt Concrete Surface Course, Type S9.5C
237	Unclassified Excavation
238	Aggregate Base Course
	<b>OR</b>
70	Asphalt Concrete Intermediate Course, Type I19.0C
72	Asphalt Concrete Surface Course, Type S9.5C
242	Unclassified Excavation
245	Asphalt Concrete Base Course, Type B25.0C



**SPECIALTY ITEMS:**

(7-1-95)

M1 G37

Items listed below will be the specialty items for this contract (See Article 108-6 of the *2006 Metric Standard Specifications*).

Line #	Description
109 thru 119	Guardrail
120 thru 125	Fencing
133 thru 138	Signing
161 thru 163	Long-Life Pavement Markings
166	Permanent Pavement Markers
167 thru 204	Erosion Control
205 thru 206	Reforestation
207 thru 209	On-Site Mitigation
210 thru 226	Signals
258 thru 263	Drilled Piers

**FUEL PRICE ADJUSTMENT:**

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

M1 G43

Revise the *2006 Metric Standard Specifications* as follows:

**Page 1-78, 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 1-78 Subarticle 109-8**, add the following:

The base index price for DIESEL #2 FUEL is \$ **0.8961** per liter.

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

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

<b>Description</b>	<b>Units</b>	<b>Fuel Usage Factor Diesel</b>
Unclassified Excavation	L/CM	1.44
Borrow Excavation	L/CM	1.44
Aggregate Base Course	L/MTN	2.30
Asphalt Concrete Base Course, Type ____	L/MTN	12.10
Asphalt Concrete Intermediate Course, Type ____	L/MTN	12.10
Asphalt Concrete Surface Course, Type ____	L/MTN	12.10
Open-Graded Asphalt Friction Course	L/MTN	12.10
Sand Asphalt Surface Course, Type ____	L/MTN	12.10
Aggregate for Cement Treated Base Course	L/MTN	2.30
Portland Cement for Cement Treated Base Course	L/MTN	2.30
____ mm Portland Cement Concrete Pavement	L/SM	1.11
Concrete Shoulders Adjacent to ____ mm Pavement	L/SM	1.11

**SCHEDULE OF ESTIMATED COMPLETION PROGRESS:**

(7-20-04)

M1 G58

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:

	<b><u>Fiscal Year</u></b>	<b><u>Progress (% of Dollar Value)</u></b>
2009	(7/01/08 - 6/30/09)	29 % of Total Amount Bid
2010	(7/01/09 - 6/30/10)	29 % of Total Amount Bid
2011	(7/01/10 - 6/30/11)	23 % of Total Amount Bid
2012	(7/01/11 - 6/30/12)	15 % of Total Amount Bid
2013	(7/01/12 - 6/30/13)	4 % of Total Amount Bid

The Contractor shall also furnish his own progress schedule in accordance with Article 108-2 of the *2006 Metric 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.

**MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE:**

(10-16-07)

M1 G67

**Policy**

It is the policy of the North Carolina Department of Transportation that Minority Business Enterprises (MBEs) and Women Business Enterprise (WBEs) as defined in *GS 136-28.4* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by State Funds.

**Obligation**

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, creed, national origin, sex, handicapping condition or age in the performance of this contract. The Contractor shall comply with applicable requirements of *GS 136-28.4* in the award and administration of state funded contracts. Failure by the Contractor to comply with 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 approved MBE/WBE participation submitted by the prime contractor during the bidding process.

*Committed MBE/WBE* - Any MBE/WBE listed on the MBE/WBE commitment list approved by the Department at the time of bid submission or any MBE/WBE utilized as a replacement for a MBE/WBE firm listed on the commitment list.

*Department* - North Carolina Department of Transportation

*Minority Business Enterprise (MBE)* – A firm certified as a Disadvantaged Minority-Owned Business Enterprise through the North Carolina Unified Certification Program.

*Women Business Enterprise (WBE)* – A firm certified as a Disadvantaged Women-Owned Business Enterprise through the North Carolina Unified Certification Program.

*MBE/WBE* – This term is used for convenience only. Minority Business Enterprise and Women Business Enterprise are not interchangeable terms and the goals for either or both are not interchangeable.

*Goal* - The MBE/WBE participation specified herein

*Letter of Intent* – Written documentation of the bidder/offeror's commitment to use a MBE/WBE subcontractor and confirmation from the MBE/WBE that it is participating in the contract.

*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.

*Form RS-1-D* - Form for subcontracts involving MBE/WBE subcontractors attesting to the agreed upon unit prices and extensions for the affected contract items.

*North Carolina Unified Certification Program* - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for a MBE/WBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

### **Contract Goal**

The following goals for participation by Minority Business Enterprises and Women Business Enterprises are established for this contract:

**(A) Minority Business Enterprises 5 %**

- (1) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Minority Business Enterprises participate in at least the percent of the contract as set forth above as the goal.
- (2) *If the goal is zero*, the Contractor shall continue to recruit the MBEs and report the use of MBEs during the construction of the project. A good faith effort will not be required with a zero goal.

**(B) Women Business Enterprises 5 %**

- (1) If the goal is more than zero, the Contractor shall exercise all necessary and reasonable steps to ensure that Women Business Enterprises participate in at least the percent of the contract as set forth above as the goal.
- (2) *If the goal is zero*, the Contractor shall continue to recruit the WBEs and report the use of WBEs during the construction of the project. A good faith effort will not be required with a zero goal.

**Contract Requirement**

The approved MBE/WBE participation submitted by the Contractor shall be the **Contract Requirement**.

**Certified Transportation Firms Directory**

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. Only firms identified as MBE/WBE 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.

**Listing of MBE/WBE Subcontractors in Contract**

Only those MBE/WBE firms with current certification are acceptable for listing in the bidder's submittal of MBE/WBE participation. The Contractor shall indicate the following required information:

**(A) Electronic Bids**

Bidders shall submit a listing of MBE/WBE participation in the appropriate section of Expedite, the bidding software of Bid Express®.

- (1) The names and addresses of MBE/WBE firms committed to participate in the contract. If the bidder uses the updated listing of MBE/WBE firms shown in Expedite, the bidder may use the dropdown menu to access the name and address of the MBE/WBE firm.
- (2) The contract line numbers and agreed upon unit prices of work to be performed by each MBE/WBE firm. When no figures or firms are entered, the bidder will be considered to have no MBE/WBE participation.

**(B) Paper Bids**

- (1) *If the goal is more than zero* bidders, at the time the bid proposal is submitted, shall submit a listing of MBE/WBE participation on the appropriate form (or facsimile thereof) contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the MBE/WBE participation for the contract. If the bidder has no MBE/WBE participation, he shall indicate this on the form "Listing of MBE/WBE Subcontractors" by entering the word or number zero. This form shall be

completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have MBE/WBE 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 the proposal will be returned to the bidder.

- (2) *If the goal is zero*, bidders at the time the bid proposal is submitted, shall enter the word “zero” or number “0” or if there is participation, add the value on the “Listing of MBE/WBE Subcontractors” (or facsimile thereof) contained elsewhere in the contract documents.

### **Written Documentation – Letter of Intent**

The bidder shall submit written documentation of the bidder/offeror’s commitment to use MBE/WBE subcontractors whose participation it submits to meet a contract goal and written confirmation from each MBE/WBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department’s form titled “Letter of Intent to Perform as a Subcontractor”. This letter of intent form is available at <http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>. It shall be received in the office of the State Contractor Utilization Engineer no later than 12:00 noon of the sixth calendar day following opening of bids.

If the bidder fails to submit the letter of intent from each committed MBE/WBE listed in the proposal indicating their participation in the contract, the MBE/WBE participation will not count toward meeting the goal.

### **Counting MBE/WBE Participation Toward Meeting MBE/WBE Goal of Zero or More**

- (A) If a firm is determined to be an eligible MBE/WBE firm, the total dollar value of the participation by the MBE/WBE will be counted toward the contract requirement. The total dollar value of participation by a certified MBE/WBE will be based upon the value of work actually performed by the MBE/WBE and the actual payments to MBE/WBE firms by the Contractor.
- (B) When a MBE/WBE performs as a participant in a joint venture, the Contractor may count toward its MBE/WBE goal a portion of the total value of participation with the MBE/WBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the MBE/WBE performs with its forces.
- (C) (1) The Contractor may count toward its MBE/WBE goal only expenditures to MBE/WBEs that perform a commercially useful function in the work of a contract. A MBE/WBE performs a commercially useful function when it is responsible for 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 MBE/WBE shall 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. To determine whether a MBE/WBE 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 MBE/WBE credit claimed for its performance of the work, and other relevant factors.

- (2) A MBE/WBE may enter into subcontracts. Work that a MBE/WBE subcontracts to another MBE/WBE firm may be counted toward the contract goal. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward the contract goal. If a MBE/WBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, the MBE/WBE shall be presumed not to be performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the Department for commercially useful functions. The Department's decision on the rebuttal of this presumption will be final.
- (3) The following factors will be used to determine if a MBE/WBE trucking firm is performing a commercially useful function.
  - (a) The MBE/WBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting MBE/WBE goals.
  - (b) The MBE/WBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - (c) The MBE/WBE 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 MBE/WBE may lease trucks from another MBE/WBE firm, including an owner-operator who is certified as a MBE/WBE. The MBE/WBE who leases trucks from another MBE/WBE receives credit for the total value of the transportation services the lessee MBE/WBE provides on the contract.
  - (e) The MBE/WBE may also lease trucks from a non-MBE/WBE firm, including from an owner-operator. The MBE/WBE who leases trucks from a non-MBE/WBE is entitled to credit for the total value of transportation services provided by non-MBE/WBE lessees not to exceed the value of transportation services provided by MBE/WBE-owned trucks on the contract. Additional participation by non-MBE/WBE 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 MBE/WBE 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 MBE/WBE, so long as the lease gives the MBE/WBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the MBE/WBE.
- (D) A contractor may count toward its MBE/WBE goals 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from MBE/WBE regular dealer and 100 percent of such expenditures to a MBE/WBE manufacturer.
- (E) A contractor may count toward its MBE/WBE goals the following expenditures to MBE/WBE firms that are not manufacturers or regular dealers:
- (1) The fees or commissions charged by a MBE/WBE 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.

### **Good Faith Effort for Projects with Goals more than Zero**

If the MBE/WBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the MBE/WBE contract goals, the apparent lowest responsive bidder shall submit to the Department documentation of its good faith efforts made to reach each 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 calendar 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 MBE/WBE 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 will be used to determine if the bidder has made adequate good faith effort:

- (A)** Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform MBE/WBEs of subcontracting opportunities.
- (B)** Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the MBE/WBEs at least 10 calendar days prior to bid opening). Whether the bidder provided written notice to all MBE/WBEs 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 MBE/WBE Directory) that the bidder will be subletting.
- (C)** Whether the bidder followed up initial solicitations of interests by contacting MBE/WBEs to determine with certainty whether they were interested. If a reasonable amount of MBE/WBEs within the targeted Divisions do not provide an intent to quote or no MBE/WBEs specialize in the subcontracted areas, the bidder shall notify MBE/WBEs outside of the targeted Divisions that specialize in the subcontracted areas, and call the Business Development Manager in the NCDOT Office of Civil Rights to give notification of the bidder's inability to get MBE/WBE quotes.
- (D)** Whether the bidder selected portions of the work to be performed by MBE/WBEs 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 MBE/WBE participation, even when the bidder might otherwise perform these work items with its own forces.
- (E)** Whether the bidder provided interested MBE/WBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (F)** Whether the bidder negotiated in good faith with interested MBE/WBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.
- (G)** Whether quotations were received from interested MBE/WBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable.
- (H)** Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract MBE/WBE goals when the work to be sublet includes potential for MBE/WBE participation.
- (I)** Whether the bidder made any efforts and/or offered assistance to interested MBE/WBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.

- (J) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goals.

If 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 MBE participation as long as the overall MBE goal value of the combined projects is achieved.

If 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 WBE participation as long as the overall WBE goal value of the combined projects is achieved.

If 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 can satisfy the Department that the contract goal can be met or that adequate good faith efforts have been made to meet the goal.

#### **Banking MBE/WBE Credit**

If the bid of the lowest responsive bidder exceeds \$500,000 and if the MBE/WBE participation submitted exceeds the algebraic sum of the MBE/WBE goals by \$1000 or more, the excess will be placed on deposit by the Department for future use by the bidder. Separate accounts will be maintained for MBE and WBE participation and these may accumulate for a period not to exceed 24 months.

When the apparent lowest responsive bidder fails to submit sufficient participation by MBE firms to meet the contract goal, as part of the good faith effort, the Department will consider allowing the bidder to withdraw funds to meet the MBE goal so long as there are adequate funds available from the bidder's MBE bank account.

When the apparent lowest responsive bidder fails to submit sufficient participation by WBE firms to meet the contract goal, as part of the good faith effort, the Department will consider allowing the bidder to withdraw funds to meet the WBE goal so long as there are adequate funds available from the bidder's WBE bank account.

#### **MBE/WBE Replacement**

The Contractor shall not terminate a committed MBE/WBE 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 MBE/WBE firm that does not perform as intended with another committed MBE/WBE firm 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 MBE/WBE.

**(A) Performance Related Replacement**

When a MBE/WBE 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 MBE/WBE subcontractor with another MBE/WBE subcontractor to perform at least the same amount of work as the MBE/WBE that was terminated. The Contractor is encouraged to first attempt to find another MBE/WBE firm to do the same work as the MBE/WBE that was being terminated.

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

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

**(B) Decertification Replacement**

- (1) When a committed MBE/WBE 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 MBE/WBE 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 requirement.
- (2) When a committed MBE/WBE is decertified prior to the Department receiving a Request for Subcontract for the named MBE/WBE firm, the Prime Contractor

shall take all necessary and reasonable steps to replace the MBE/WBE subcontractor with another MBE/WBE 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 MBE/WBE, 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 MBE/WBE based upon the Contractor's commitment, the MBE/WBE shall participate in additional work to the same extent as the MBE/WBE 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 MBE/WBEs 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 MBE/WBE, the Contractor shall seek participation by MBE/WBEs 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 MBE/WBE, the Contractor shall seek additional participation by MBE/WBEs equal to the reduced MBE/WBE participation caused by the changes.

### **Reports**

All requests for subcontracts involving MBE/WBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the MBE/WBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This information shall be submitted on the Department Form RS-1-D, located at:

<http://www.ncdot.org/doh/forms/files/FORMRS-1-D.doc> unless otherwise approved by the Engineer. The Department reserves the right to require copies of actual subcontract agreements involving MBE/WBE subcontractors.

Within 30 calendar days of entering an agreement with a MBE/WBE 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 MBE/WBE credit.

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

**Reporting MBE/WBE Participation**

(A) The Contractor shall provide the Engineer with an accounting of payments made to MBE/WBE 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 the following action:

- (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.

(B) Electronic Bids Reporting:

The Contractor shall report the accounting of payments through the Department's Payment Tracking System, which is located at: <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.

(C) Paper Bids Reporting:

The Contractor shall report the accounting of payments on the Department's MBE/WBE Subcontractor Payment Information Form MBE/WBE-IS, which is available at <http://www.ncdot.org/doh/forms/files/MBE/WBE-IS.xls>.

(D) Contractors reporting transportation services provided by non-MBE/WBE lessees 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 MBE/WBE. 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 MBE/WBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

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.

### **Failure to Meet Contract Requirements**

Failure to meet contract requirements in accordance with Article 102-16(J) of the *2006 Metric Standard Specifications* may be cause to disqualify the Contractor.

### **PROGRESS SCHEDULE:**

(12-18-07)

M1 G70

Revise the *2006 Specifications* as follows:

**Page 1-60, Article 108-2 Progress Schedule, delete in its entirety and replace with the following:**

The Contractor shall prepare and submit for review and approval a schedule of proposed working progress. This schedule shall be submitted on forms supplied by the Engineer or in a format that is approved by the Engineer. A detailed Critical Path Method (CPM) schedule shall not be submitted to replace the progress schedule details required below.

The proposed progress schedule shall be submitted no later than 7 days prior to the date of the project preconstruction conference and shall be approved before any payments will be processed for the project.

When the Engineer has extended the completion date or if the project overrun is anticipated to exceed 5%, the Contractor may submit a revised progress schedule to the Engineer for review and approval. If plan revisions are anticipated to change the sequence of operations in such a manner as will effect the progress but not the completion date, then the Contractor may submit a revised progress schedule for review and approval but the completion date shall remain unchanged.

The proposed progress schedule shall contain the following items:

- (A) A time scale diagram with major work activities and milestone dates clearly labeled.
- (B) A cash curve corresponding to the milestones and work activities established above.
- (C) A written narrative that explains the sequence of work, the controlling operation(s), intermediate completion dates, milestones, project phasing, anticipated work schedule, and estimated resources. In addition, explain how permit requirements, submittal tracking, and coordination with subcontractors, utility companies and other entities will be performed.

Major work activities are defined as components comprising more than 5% of the total project cost or occupying more than 10% of total contract time and shall include, if applicable, the following:

- Clearing and grubbing
- Grading
- Drainage
- Soil stabilization
- Aggregate base course
- Pavement
- Culverts
- Bridges (including removal)
- Signals, ITS, and lighting
- Overhead signs

Major Milestones are derived from the project construction phasing and shall include, if applicable, the following:

- Start of construction
- Intermediate completion dates or times
- Seasonal limitation/observation periods/moratoriums
- Traffic shifts
- Beginning and end of each traffic control phase or work area
- Road openings
- Completion date

**CONTRACTOR'S LICENSE REQUIREMENTS:**

(7-1-95)

M1 G88

If the successful bidder does not hold the proper license to perform any plumbing, heating, air conditioning, or electrical work in this contract, he will be required to sublet such work to a contractor properly licensed in accordance with *Article 2 of Chapter 87 of the General Statutes* (licensing of heating, plumbing, and air conditioning contractors) and *Article 4 of Chapter 87 of the General Statutes* (licensing of electrical contractors).

**SUBMISSION OF BIDS - ALTERNATES:**

(9-18-07)

M1 G91

The *2006 Standard Metric Specifications* are revised as follows:

**Page 1-14, Article 102-8 Preparation and Submission of Bids**, at the end of the third paragraph add the following:

When Bidders submit prices on more than one alternate the lower cost of the correctly completed alternate is the accepted bid and will be used to determine the total amount bid.

**Page 1-21, Article 103-2(A)(4) Discrepancy in the Unit Bid Price and the Amount Bid**, add the following after the second paragraph:

When Bidders submit prices on more than one alternate the lower cost of the correctly completed alternate is the accepted bid and will be used to determine the total amount bid.

**SUBSURFACE INFORMATION:**

(7-1-95)

M1 G119

Subsurface information is available on the roadway and structure portions of this project.

**PORTABLE CONCRETE BARRIER - (Partial Payments for Materials):**

(7-1-95)

M1 G121

When so authorized by the Engineer, partial materials payments will be made up to 90 percent of the delivered cost of portable concrete barrier, provided that these materials have been delivered on the project and stored in an acceptable manner, and further provided the documents listed in Subarticle 109-5(C) of the *2006 Metric Standard Specifications* have been furnished to the Engineer.

The provisions of Subarticle 109-5(B) of the *2006 Metric Standard Specifications* will apply to the portable concrete barrier.

**MAINTENANCE OF THE PROJECT:**

(11-20-07)

M1 G125

Revise the *2006 Metric Standard Specifications* as follows:

**Page 1-34, Article 104-10 Maintenance of the Project** is amended as follows:

Add the following after the first sentence of the first paragraph.

All guardrail/guiderail within the project limits shall be included in this maintenance, except that where the work consists of resurfacing only, no guardrail maintenance will be required.

Add the following as the last sentence of the first paragraph:

The Contractor shall perform weekly inspections of guardrail and guiderail and shall report damages to the Engineer on the same day of the weekly inspection. Where damaged guardrail or guiderail is repaired or replaced as a result of maintaining the project in accordance with this Article, such repair or replacement shall be performed within 7 consecutive calendar days of such inspection report.



**Page 1-34, Article 104-10 Maintenance of the Project** is amended to replace the last sentence of the second paragraph with the following:

The Contractor will not be directly compensated for any maintenance operations necessary, except for maintenance of guardrail/guiderail, as this work will be considered incidental to the work covered by the various contract items. The provisions of Article 104-7, Extra Work, and Article 104-8, Compensation and Record Keeping will apply to authorized maintenance of guardrail/guiderail. Performance of weekly inspections of guardrail/guiderail, and the damage reports required as described above, will be considered to be an incidental part of the work being paid for by the various contract items.

**COOPERATION BETWEEN CONTRACTORS:**

(7-1-95)

M1 G133

The Contractor's attention is directed to Article 105-7 of the *2006 Metric Standard Specifications*.

R-2518A Madison / Yancey County on the East end of this project will be let to contract before the completion of this project.

The Contractor on this project shall cooperate with the Contractor working within or adjacent to the limits of this project to the extent that the work can be carried out to the best advantage of all concerned.

**BID DOCUMENTATION:**

(1-1-02) (Rev. 7-18-06)

M1 G142

**General**

The successful Bidder (Contractor) shall submit the original, unaltered bid documentation or a certified copy of the original, unaltered bid documentation used to prepare the bid for this contract to the Department. Such documentation shall be placed in escrow with a banking institution or other bonded document storage facility selected by the Department and preserved by that institution or facility as specified in the following sections of this provision.

**Bid Documentation**

The terms *bid documentation* as used in this provision means all written information, working papers, computer printouts, electronic media, charts, and all other data compilations which contain or reflect information, data, and calculations used by the Bidder in the preparation of the bid. The term *bid documentation* includes, but is not limited to, contractor equipment rates, contractor overhead rates, labor rates, efficiency or productivity factors, arithmetical calculations, and quotations from subcontractors and material suppliers to the extent that such rates and quotations were used by the Bidder in formulating and determining the bid. The term *bid documentation* also includes any manuals, which are standard to the industry used by the Bidder in determining the bid. Such manuals may be included in the bid documentation by

reference. Such reference shall include the name and date of the publication and the publisher. The term does not include bid documents provided by the Department for use by the Bidder in bidding on this project.

### **Submittal of Bid Documentation**

A representative of the Bidder shall deliver the original, unaltered bid documentation or a certified copy of the original, unaltered bid documentation to the Department, in a container suitable for sealing, within 10 days after the notice of award is received by him. Bid documentation will be considered a certified copy if the Bidder includes a letter to the Department from a chief officer of the company stating that the enclosed documentation is an *EXACT* copy of the original documentation. The letter shall be signed by a chief officer of the company, have the person's name and title typed below the signature, and the signature shall be notarized at the bottom of the letter. The Department will not execute the contract until the original, unaltered bid documentation or a certified copy of the original, unaltered bid documentation has been received by the Department. The container shall be clearly marked *Bid Documentation* and shall show on the face of the container the Bidder's name, Bidder's address, the date of submittal, the Project Number, and the County.

### **Affidavit**

In addition to the bid documentation, an affidavit signed under oath by an individual authorized by the Bidder to execute the bid shall be included. The affidavit shall list each bid document with sufficient specificity so a comparison may be made between the list and the bid documentation to ensure that all of the bid documentation listed in the affidavit has been enclosed. The affidavit shall attest that the affiant has personally examined the bid documentation, that the affidavit lists all of the documents used by the Bidder to determine the bid for this project, and that all such bid documentation has been included.

### **Verification**

Upon delivery of the bid documentation, the Department's Contract Officer and the Bidder's representative will verify the accuracy and completeness of the bid documentation compared to the affidavit. Should a discrepancy exist, the Bidder's representative shall immediately furnish the Department's Contract Officer with any other needed bid documentation. The Department's Contract Officer upon determining that the bid documentation is complete will, in the presence of the Bidder's representative, immediately place the complete bid documentation and affidavit in the container and seal it. Both parties will deliver the sealed container to a banking institution or other bonded document storage facility selected by the Department for placement in a safety deposit box, vault, or other secure accommodation.

### **Duration and Use**

The bid documentation and affidavit shall remain in escrow until 60 calendar days from the time the Contractor receives the final estimate; or until such time as the Contractor gives written notice of intent to file a claim, files a written claim, files a written and verified claim, or initiates

litigation against the Department related to the contract; or until authorized in writing by the Contractor. Upon the giving of written notice of intent to file a claim, filing a written claim, filing a written and verified claim, or the initiation of litigation by the Contractor against the Department, or receipt of a letter from the Contractor authorizing release, the Department may obtain the release and custody of the bid documentation. If the bid documentation remains in escrow 60 calendar days after the time the Contractor receives the final estimate and the Contractor has not filed a written claim, filed a written and verified claim, or has not initiated litigation against the Department related to the contract, the Department shall instruct the banking institution or other bonded document storage facility to release the sealed container to the Contractor.

The Bidder certifies and agrees that the sealed container placed in escrow contains all of the bid documentation used to determine the bid and that no other bid documentation shall be relevant or material in litigation over claims brought by the Contractor arising out of this contract.

#### **Failure to Provide Bid Documentation**

The Bidder's failure to provide the original, unaltered bid documentation or a certified copy of the original, unaltered bid documentation within 10 days after the notice of award is received by him may be just cause for rescinding the award of the contract and may result in the removal of the Bidder from the Department's list of qualified bidders for a period up to 180 days. Award may then be made to the next lowest responsible bidder or the work may be readvertised and constructed under the contract or otherwise, as the Board of Transportation may decide.

#### **Escrow Agreement**

The Bidder will be required to sign an Escrow Agreement within 10 days after he receives the notice of award. A copy of this Escrow Agreement document will be mailed to the Bidder with the notice of award for informational purposes. The Bidder and Department will sign the Escrow Agreement at the time that the bid documentation is delivered to a Banking Institution or other facility as outlined above. The Bidder's failure to sign the Escrow Agreement at the time the bid documentation is delivered may be just cause for rescinding the award of the contract and may result in the removal of the Bidder from the Department's list of qualified bidders for a period up to 180 days. Award may then be made to the next lowest responsible bidder or the work may be readvertised and constructed under the contract or otherwise, as the Board of Transportation may decide.

#### **Confidentiality of Bid Documentation**

The bid documentation and affidavit in escrow are, and will remain, the property of the Bidder. The Department has no interest in, or right to, the bid documentation and affidavit other than to verify the contents and legibility of the bid documentation unless the Contractor gives written notice of intent to file a claim, files a written claim, files a written and verified claim, or initiates litigation against the Department. In the event of such written notice of intent to file a claim, filing of a written claim, filing a written and verified claim, or initiation of litigation against the Department, or receipt of a letter from the Contractor authorizing release, the bid documentation

and affidavit may become the property of the Department for use in considering any claim or in litigation as the Department may deem appropriate.

Any portion or portions of the bid documentation designated by the Bidder as a *trade secret* at the time the bid documentation is delivered to the Department's Contract Officer shall be protected from disclosure as provided by *G.S. 132-1.2*.

### **Cost and Escrow Instructions**

The cost of the escrow will be borne by the Department. The Department will provide escrow instructions to the banking institution or other bonded document storage facility consistent with this provision.

### **Payment**

There will be no separate payment for all costs of compilation of the data, container, or verification of the bid documentation. Payment at the various contract unit or lump sum prices in the contract will be full compensation for all such costs.

### **TWELVE MONTH GUARANTEE:**

(7-15-03)

M1 G145

- (A) The Contractor shall guarantee materials and workmanship against latent and patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve months following the date of final acceptance of the work for maintenance and shall replace such defective materials and workmanship without cost to the Department. The Contractor will not be responsible for damage due to faulty design, normal wear and tear, for negligence on the part of the Department, and/or for use in excess of the design.
- (B) Where items of equipment or material carry a manufacturer's guarantee for any period in excess of twelve months, then the manufacturer's guarantee shall apply for that particular piece of equipment or material. The Department's first remedy shall be through the manufacturer although the Contractor is responsible for invoking the warranted repair work with the manufacturer. The Contractor's responsibility shall be limited to the term of the manufacturer's guarantee. NCDOT would be afforded the same warranty as provided by the Manufacturer.

This guarantee provision shall be invoked only for major components of work in which the Contractor would be wholly responsible for under the terms of the contract. Examples would include pavement structures, bridge components, and sign structures. This provision will not be used as a mechanism to force the Contractor to return to the project to make repairs or perform additional work that the Department would normally compensate the Contractor for. In addition, routine maintenance activities (i.e. mowing grass, debris removal, ruts in earth shoulders,) are not parts of this guarantee.

Appropriate provisions of the payment and/or performance bonds shall cover this guarantee for the project.

To ensure uniform application statewide the Division Engineer will forward details regarding the circumstances surrounding any proposed guarantee repairs to the Chief Engineer for review and approval prior to the work being performed.

**OUTSOURCING OUTSIDE THE USA:**

(9-21-04) (5-16-06)

M1 G150

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)

M1 G151

Revise the *2006 Metric Standard Specifications* as follows:

**Page 1-58, 107-18 Contractor's Responsibility for Work**, in the first paragraph, last sentence, replace the word *legally* with the word *contractually*.

**EROSION & SEDIMENT CONTROL/STORMWATER CERTIFICATION:**

1-16-07 (Rev 1-15-08)

M1 G180

**General**

Schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting sedimentation and turbidity of surface waters. Comply with the requirements herein regardless of whether or not a National Pollutant Discharge Elimination System (NPDES) permit for the work is required.

Establish a chain of responsibility for operations and subcontractors' operations to ensure that the *Erosion and Sediment Control/Stormwater Pollution Prevention Plan* is implemented and maintained over the life of the contract.

- (A) *Certified Supervisor* –Provide a certified Erosion & Sediment Control Stormwater Supervisor to manage the Contractor and subcontractor(s) operations, insure compliance with Federal, State and Local ordinances and regulations, and to manage the Quality Control Program.

- (B) *Certified Foreman* – Provide a certified, trained foreman for each construction operation that increases the potential for soil erosion or the possible sedimentation and turbidity of surface waters.
- (C) *Certified Installer* – Provide a certified installer to install or direct the installation for erosion or sediment/stormwater control practices.
- (D) *Certified Designer* – Provide a certified designer for the design of the erosion and sediment control stormwater component of reclamation plans and, if applicable, for the design of the project erosion and sediment control stormwater plan.

### **Roles and Responsibilities**

(A) *Certified Erosion & Sediment Control Stormwater Supervisor* - The Certified Supervisor shall be responsible for ensuring erosion and sediment/stormwater control is adequately implemented and maintained on the project and conducting the quality control program. The Certified Supervisor shall be on the project within 24 hours from initial exposure of an erodible surface to the project's final acceptance when questions or concerns arise with Erosion and Sedimentation Control/Stormwater issues. Perform the following duties:

- (1) **Manage Operations** - Coordinate and schedule the work of subcontractors so that erosion and sediment/stormwater control measures are fully executed for each operation and in a timely manner over the duration of the contract.
  - (a) Oversee the work of subcontractors so that appropriate erosion and sediment/stormwater control preventive measures are conformed to at each stage of the work.
  - (b) Prepare the required weekly erosion control punchlist and submit to the Engineer.
  - (c) Attend all weekly or monthly construction meetings to discuss the findings of the NPDES inspection and other related issues.
  - (d) Implement the erosion and sediment/stormwater control site plans requested.
  - (e) Provide for erosion and sediment/stormwater control methods for the Contractor's temporary work not shown on the plans, such as, but not limited to work platforms, temporary construction, pumping operations, plant and storage yards, and cofferdams.
  - (f) Acquire applicable permits and comply with requirements for borrow pits, dewatering, and any temporary work conducted by the Contractor in jurisdictional areas.
  - (g) Conduct all erosion and sediment/stormwater control work in a timely and workmanlike manner.
  - (h) Fully install erosion and sediment/stormwater control work prior to suspension of the work.

- (i) Coordinate with Department, Federal, State and Local Regulatory agencies on resolution of erosion and sediment/stormwater control issues due to the Contractor's operations.
  - (j) Ensure that proper cleanup occurs from vehicle tracking on paved surfaces and/or any location where sediment leaves the Right-of-Way.
  - (k) Have available a set of erosion control plans that has been properly updated to reflect necessary plan and field changes for use and review by Department personnel as well as regulatory agencies.
- (2) Requirements set forth under the NPDES Permit - The Department's NPDES permit outlines certain objectives and management measures pertaining to construction activities. The permit references *NCG010000, General Permit to Discharge Stormwater* under the NPDES, and states that the Department shall incorporate the applicable requirements into its delegated E&SC Program. Some of the requirements are, but are not limited to:
- (a) Control project site waste to prevent contamination of surface or ground waters of the state (i.e. construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste).
  - (b) Inspect E&SC/Stormwater devices at least once every 7 calendar days, twice weekly for 303(d) impaired streams, and within 24 hours after a significant rainfall event of 0.5 inches within 24 hours.
  - (c) Maintain an onsite rain gauge and a record of rainfall amounts and dates.
  - (d) Maintain E&SC/Stormwater inspection records for review by Department and Regulatory personnel upon request.
  - (e) Implement approved reclamation plans on all borrow pits and waste sites.
  - (f) Maintain a log of turbidity test results as outlined in the Department's Procedure for Monitoring Borrow Pit Discharge.
  - (g) Provide secondary containment for bulk storage of liquid materials.
  - (h) Provide training for employees concerning general E&SC/Stormwater awareness, the NPDES Permit requirements, and the requirements of the *General Permit, NCG010000*.
  - (i) Report violations of the NPDES permit to the Engineer who will notify the DWQ Regional Office within 24 hours.
- (3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions of permits. The quality control program shall:
- (a) Follow permit requirements related to the Contractor and subcontractors' construction activities.
  - (b) Ensure that all operators and/or subcontractor(s) on site have the proper erosion and sediment/stormwater control certification.

- (c) Notify the Engineer when the required certified erosion and sediment/stormwater control personnel are not available on the job site when needed.
- (d) Conduct the inspections required by the NPDES permit.
- (e) Take corrective actions in the proper timeframe as required by the NPDES permit for problem areas identified during the NPDES inspections.
- (f) Incorporate erosion control into the work in a timely manner and stabilize disturbed areas with mulch/seed or vegetative cover on a section-by-section basis.
- (g) Maintain temporary erosion and sediment control devices.
- (h) Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.
- (i) The Contractor's quality control and inspection procedures shall be subject to review by the Engineer. Maintain NPDES inspection records and make records available at all times for verification by the Engineer.

(B) *Certified Foreman* - At least one Certified Foreman shall be onsite for each type of work listed herein during the respective construction activities to control erosion, prevent sedimentation and follow permit provisions:

- (1) Foreman in charge of grading activities
- (2) Foreman in charge of bridge or culvert construction over jurisdictional areas
- (3) Foreman in charge of utility activities

The Contractor may request to use the same person as the Level II Supervisor and Level II Foreman. This person shall be onsite whenever construction activities as described above are taking place. This request shall be approved by the Engineer prior to work beginning.

The Contractor may request to name a single Level II Foreman to oversee multiple construction activities on small bridge or culvert replacement projects. This request shall be approved by the Engineer prior to work beginning.

(C) *Certified Installers* - Provide at least one onsite, Level I Certified Installer for each of the following erosion or sediment/stormwater control crew:

- (1) Seeding and Mulching
- (2) Temporary Seeding
- (3) Temporary Mulching
- (4) Sodding
- (5) Silt fence or other perimeter erosion/sediment control device installations
- (6) Erosion control blanket installation
- (7) Hydraulic tackifier installation
- (8) Turbidity curtain installation
- (9) Rock ditch check/sediment dam installation
- (10) Ditch liner/matting installation



- (11) Inlet protection
- (12) Riprap placement
- (13) Stormwater BMP installations (such as but not limited to level spreaders, retention/detention devices)
- (14) Pipe installations within jurisdictional areas

If a *Certified Installer* is not onsite, the Contractor may substitute a Level I Installer with a Level II Foreman, provided the Level II Foreman is not tasked to another crew requiring Level II Foreman oversight.

- (D) *Certified Designer* – Include the certification number of the Level III-B Certified Designer on the erosion and sediment control stormwater component of all reclamation plans and if applicable, the certification number of the Level III-A Certified Designer on the design of the project erosion and sediment control stormwater plan.

### **Preconstruction Meeting**

Furnish the names of the *Certified Erosion & Sediment Control Stormwater Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* and notify the Engineer of changes in certified personnel over the life of the contract within 2 days of change.

### **Ethical Responsibility**

Any company performing work for the North Carolina Department of Transportation has the ethical responsibility to fully disclose any reprimand or dismissal of an employee resulting from improper testing or falsification of records.

### **Revocation or Suspension of Certification**

Upon recommendation of the Chief Engineer - Operations to the certification entity, certification for *Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* may be revoked or suspended with the issuance of a *Continuing Immediate Corrective Action (Continuing ICA)*, *Notice of Violation*, or *Cease and Desist Order* for erosion and sediment control/stormwater related issues.

Should any of the following circumstances occur, the Chief Engineer may suspend or permanently revoke such certification.

- (A) Failure to adequately perform the duties as defined within the certification program
- (B) Issuance of a continuing ICA, NOV, or Cease and Desist Order
- (C) Failure to fully perform environmental commitments as detailed within the permit conditions and specifications
- (D) Demonstration of erroneous documentation or reporting techniques
- (E) Cheating or copying another candidate's work on an examination
- (F) Intentional falsification of records

- (G) Directing a subordinate under direct or indirect supervision to perform any of the above actions
- (H) Dismissal from a company for any of the above reasons
- (I) Suspension or revocation of one’s certification within another state

Suspension or revocation of a certification will be sent by certified mail to the registrant and the Corporate Head of the company that employs the registrant.

A registrant has the right to appeal any adverse action which results in suspension or permanent revocation of certification by responding, in writing, to the Chief Engineer within 10 calendar days after receiving notice of the proposed adverse action.

Chief Engineer - Operations  
1537 Mail Service Center  
Raleigh, NC 27699-1537

Failure to appeal within 10 calendar days will result in the proposed adverse action becoming effective on the date specified on the certified notice. Failure to appeal within the time specified will result in a waiver of all future appeal rights regarding the adverse action taken. The registrant will not be allowed to perform duties associated with the certification during the appeal process.

The Chief Engineer will hear the appeal and make a decision within 7 days of hearing the appeal. Decision of the Chief Engineer will be final and will be made in writing to the registrant.

If a certification is temporarily suspended, the registrant shall pass any applicable written examination and any proficiency examination, at the conclusion of the specified suspension period, prior to having the certification reinstated.

**Measurement and Payment**

*Certified Erosion & Sediment Control Stormwater Supervisor, Certified Foremen, Certified Installers and Certified Designer* will be incidental to the project for which no direct compensation will be made.

**PROCEDURE FOR MONITORING BORROW PIT DISCHARGE:**

2-20-07

M1 G181

Water discharge from borrow pit sites shall not cause surface waters to exceed 50 NTUs (nephelometric turbidity unit) in streams not designated as trout waters and 10 NTUs in streams, lakes or reservoirs designated as trout waters. For lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTUs. If the turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased.

If during any operating day, the downstream water quality exceeds the standard, the Contractor shall do all of the following:

- (A) Either cease discharge or modify the discharge volume or turbidity levels to bring the downstream turbidity levels into compliance, or
- (B) Evaluate the upstream conditions to determine if the exceedance of the standard is due to natural background conditions. If the background turbidity measurements exceed the standard, operation of the pit and discharge can continue as long as the stream turbidity levels are not increased due to the discharge.
- (C) Measure and record the turbidity test results (time, date and sampler) at all defined sampling locations 30 minutes after startup and at a minimum, one additional sampling of all sampling locations during that 24-hour period in which the borrow pit is discharging.
- (D) Notify DWQ within 24 hours of any stream turbidity standard exceedances that are not brought into compliance.

During the Environmental Assessment required by Article 230-4 of the *Standard Specifications*, the Contractor shall define the point at which the discharge enters into the State's surface waters and the appropriate sampling locations. Sampling locations shall include points upstream and downstream from the point at which the discharge enters these waters. Upstream sampling location shall be located so that it is not influenced by backwater conditions and represents natural background conditions. Downstream sampling location shall be located at the point where complete mixing of the discharge and receiving water has occurred.

The discharge shall be closely monitored when water from the dewatering activities is introduced into jurisdictional wetlands. Any time visible sedimentation (deposition of sediment) on the wetland surface is observed, the dewatering activity will be suspended until turbidity levels in the stilling basin can be reduced to a level where sediment deposition does not occur. Staining of wetland surfaces from suspended clay particles, occurring after evaporation or infiltration, does not constitute sedimentation. No activities shall occur in wetlands that adversely affect the functioning of a wetland. Visible sedimentation will be considered an indication of possible adverse impacts on wetland use.

The Engineer will perform independent turbidity tests on a random basis. These results will be maintained in a log within the project records. Records will include, at a minimum, turbidity test results, time, date and name of sampler. Should the Department's test results exceed those of the Contractor's test results, an immediate test shall be performed jointly with the results superceding the previous test results of both the Department and the Contractor.

The Contractor shall use the *NCDOT Turbidity Reduction Options for Borrow Pits Matrix*, available at <http://www.ncdot.org/doh/preconstruct/ps/contracts/letting.html> to plan, design, construct, and maintain BMPs to address water quality standards. Tier I Methods include stilling basins which are standard compensatory BMPs. Other Tier I methods are noncompensatory and shall be used when needed to meet the stream turbidity standards. Tier II Methods are also

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noncompensatory and are options that may be needed for protection of rare or unique resources or where special environmental conditions exist at the site which have led to additional requirements being placed in the DWQ's 401 Certifications and approval letters, Isolated Wetland Permits, Riparian Buffer Authorization or a DOT Reclamation Plan's Environmental Assessment for the specific site. Should the Contractor exhaust all Tier I Methods on a site exclusive of rare or unique resources or special environmental conditions, Tier II Methods may be required by regulators on a case by case basis per supplemental agreement.

The Contractor may use cation exchange capacity (CEC) values from proposed site borings to plan and develop the bid for the project. CEC values exceeding 15 milliequivalents per 100 grams of soil may indicate a high potential for turbidity and should be avoided when dewatering into surface water is proposed.

No additional compensation for monitoring borrow pit discharge will be paid.

**NOTE TO CONTRACTOR:**

The Contractor's attention is directed to the Special Provision entitled "Contractor Requirements for Stream Relocations, Restorations and Enhancements", located in the Erosion Control Project Special Provisions.

The documents listed below are available to the Contractor on the NCDOT web site at the following address: <http://dotw-xfer01.dot.state.nc.us/dsplan/2008%20Highway%20Letting/>

- The Biological Opinion dated March 14, 2008
- Stream Mitigation Plan R-2518B
- Stream Mitigation Guidelines