

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

PROPOSAL

DATE AND TIME OF BID OPENING: **APRIL 16, 2013 AT 2:00 PM**

CONTRACT ID C203146  
WBS 50000.3.STR04T4E

FEDERAL-AID NO. FRA-FR-HSR-0006-10-01-

COUNTY CABARRUS

T.I.P. NO. P-5208D

MILES 0.472

ROUTE NO. SR 1304

LOCATION SR-1304 EXT (ROBERTA RD) GRADE SEPARATION OVER NORFOLK SOUTHERN/NCRR RAILROAD FROM SR-1161 TO NC-49 IN HARRISBURG.

TYPE OF WORK GRADING, DRAINAGE, PAVING, C&G, SIGNALS, AND 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. NOTWITHSTANDING 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. C203146 IN CABARRUS 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. **C203146**; 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 2012 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. **C203146** in Cabarrus 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.

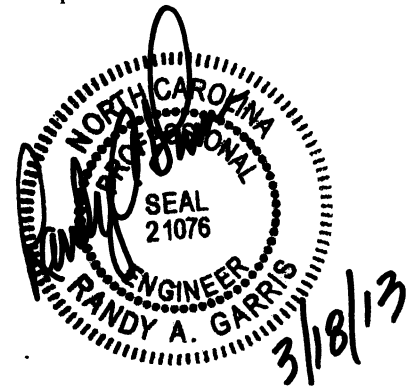
The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, January 2012* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the 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 an 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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**PROJECT SPECIAL PROVISIONS****GENERAL****CONTRACT TIME AND LIQUIDATED DAMAGES:**

(8-15-00) (Rev. 12-18-07)

108

SP1 G07 A

The date of availability for this contract is **May 27, 2013**, 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 **November 11, 2015**.

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 **Two Hundred Dollars (\$200.00)** per calendar day. These liquidated damages will not be cumulative with any liquidated damages which may become chargeable under Intermediate Contract Time Number 1.

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

(7-1-95) (Rev. 2-21-12)

108

SP1 G13 A

Except for that work required under the Project Special Provisions entitled *Planting, Reforestation* and/or *Permanent Vegetation Establishment*, included elsewhere in this proposal, the Contractor will be required to complete all work included in this contract and shall place and maintain traffic on same.

The date of availability for this intermediate contract time is **May 27, 2013**.

The completion date for this intermediate contract time is **May 15, 2015**.

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

Upon apparent completion of all the work required to be completed by this intermediate date, a final inspection will be held in accordance with Article 105-17 and upon acceptance, the Department will assume responsibility for the maintenance of all work except *Planting, Reforestation* and/or *Permanent Vegetation Establishment*. The Contractor will be responsible for and shall make corrections of all damages to the completed roadway caused by his planting operations, whether occurring prior to or after placing traffic through the project.

C203146 (P-5208D)

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Revised 3-26-13  
Cabarrus County**INTERMEDIATE CONTRACT TIME NUMBER 2 AND LIQUIDATED DAMAGES:**

The Contractor shall complete all required work shown in the "NCR/NS Mainline Railroad Roadbed" plans, that is not in conflict with the existing track, including installation and maintenance of erosion control, seeding and mulching, clearing and grubbing, undercutting, installation of ditches and pipe necessary for positive drainage, grading and compaction of rail bed, placement and compaction of rail bed, placement and compaction of sub ballast in accordance with plans and details. The station limits for this intermediate contract time are: **10409+00 -M1- to 10444+00 -M1-**.

The date of availability for this intermediate contract time is the date the Contractor elects to begin this work.

The completion date for this intermediate contract time is **October 14, 2013**.

Liquidated damages are **One Thousand Five Hundred Dollars (\$1,500.00) per calendar day**.

**INTERMEDIATE CONTRACT TIME NUMBER 3 AND LIQUIDATED DAMAGES:**

The Contractor shall complete all required work of installation and maintenance of erosion control, seeding and mulching, clearing and grubbing, installation of ditches and pipe necessary for positive drainage, and grading in accordance with plans and details. The station limits for the intermediate contract time are: **10409+00 -M1- to 10444+00 -M1-**.

The date of availability for this intermediate contract time will be **the day after the Engineer informs the Contractor that Norfolk Southern Railway (NSR) has completed removal of the track, ties and miscellaneous track items from the existing roadbed**.

The completion date for this intermediate contract time will be the date which is **twenty (21) consecutive calendar days after NSR has removed the track not inclusive of the last date of track removal**.

Liquidated damages are **One Thousand Five Hundred Dollars (\$1,500.00) per calendar day**.

**INTERMEDIATE CONTRACT TIME NUMBER 4 AND LIQUIDATED DAMAGES:**

(2-20-07)

108

SPI 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 the existing traffic pattern. The Contractor shall not close or narrow a lane of traffic on **NC 49** during the following time restrictions:

**DAY AND TIME RESTRICTIONS**

**Monday thru Friday, 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.**

In addition, the Contractor shall not close or narrow a lane of traffic on **NC 49**, 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 a.m.** December 31st and **7:00 p.m.** January 2nd. If New Year's Day is on a Friday, Saturday, Sunday or Monday, then until **7:00 p.m.** the following Tuesday.
3. For **Easter**, between the hours of **7:00 a.m.** Thursday and **7:00 p.m.** Monday.
4. For **Memorial Day**, between the hours of **7:00 a.m.** Friday and **7:00 p.m.** Tuesday.
5. For **Independence Day**, between the hours of **7:00 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 **7:00 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 **7:00 a.m.** Friday and **7:00 p.m.** Tuesday.
7. For **Thanksgiving Day**, between the hours of **7:00 a.m.** Tuesday and **7:00 p.m.** Monday.
8. For **Christmas**, between the hours of **7:00 a.m.** the Friday before the week of Christmas Day and **7:00 p.m.** the following Tuesday after the week of Christmas Day.
9. For **NASCAR event, at the Lowes Motor Speedway**, between the hours of **7:00 a.m.** the **Thursday before** the weekend of the **event** and **7:00 p.m.** the following **Monday** after the **event**.

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 the existing traffic pattern.

The liquidated damages are **Five Hundred Dollars (\$500.00)** per **fifteen (15) minutes**.

**INTERMEDIATE CONTRACT TIME NUMBER 5 AND LIQUIDATED DAMAGES:**

(2-20-07)

108

SPI G14 C

The Contractor shall complete the required work of installing, maintaining and removing the traffic control devices for lane closures and restoring traffic to the existing traffic pattern. The Contractor shall not close or narrow a lane of traffic on **Stallings Road, Hickory Ridge Road and/or School Circle** during the following time restrictions:

**DAY AND TIME RESTRICTIONS**

**Monday through Friday from 7:00 a.m. to 9:00 a.m.  
2:00 p.m. to 6:00 p.m. (School Days) and  
4:00 p.m. to 6:00 p.m. (Non-School Days)**

The time of availability for this intermediate contract time will be the time the Contractor begins to install traffic control devices required for the lane closures 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 the lane closures according to the time restrictions stated herein and restore traffic to the existing traffic pattern.

The liquidated damages are **One Hundred Fifty Dollars (\$150.00)** per **fifteen (15) minutes**.

**INTERMEDIATE CONTRACT TIME NUMBER 6 AND LIQUIDATED DAMAGES:**

(2-20-07)

108

SPI G14 H

The Contractor shall complete the work required of **Phase I, Step 4A thru Step 4C** as **described** on Sheet **TMP-3** and shall place and maintain traffic on same.

The date of availability for this intermediate contract time is the date the Contractor elects to begin the work.

The completion date for this intermediate contract time is the date which is **One Hundred Twenty (120)** consecutive calendar days after and including the date the Contractor begins this work.

The liquidated damages are **Five Hundred Dollars (\$500.00)** per calendar day.

C203146 (P-5208D)

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Revised 3-26-13  
Cabarrus County**INTERMEDIATE CONTRACT TIME NUMBER 7 AND LIQUIDATED DAMAGES:**

(2-20-07)

108

SPI G14 H

The Contractor shall complete the work required of **Phase II, Step 1A thru Step 1C** as **described** on Sheet **TMP-3** and shall place and maintain traffic on same.

The date of availability for this intermediate contract time is the date the Contractor elects to begin the work.

The completion date for this intermediate contract time is the date which is **thirty (30)** consecutive calendar days after and including the date the Contractor begins this work.

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

**PERMANENT VEGETATION ESTABLISHMENT:**

(2-16-12)

104

SPI G16

Establish a permanent stand of the vegetation mixture shown in the contract. During the period between initial vegetation planting and final project acceptance, perform all work necessary to establish 80% coverage of permanent vegetation within the project limits, as well as, in borrow and waste pits. This work shall include erosion control device maintenance and installation, repair seeding and mulching, supplemental seeding and mulching, mowing, and fertilizer topdressing, as directed. All work shall be performed in accordance with the applicable section of the *2012 Standard Specifications*.

Once the Engineer has determined that 80% coverage of permanent vegetation has been established, the Contractor will be notified to remove the remaining erosion control devices that are no longer needed. The Contractor will be responsible for, and shall correct any areas disturbed by operations performed in permanent vegetation establishment and the removal of temporary erosion control measures, whether occurring prior to or after placing traffic on the project.

Payment for *Response for Erosion Control, Seeding and Mulching, Repair Seeding, Supplemental Seeding, Mowing, Fertilizer Topdressing, Silt Excavation, and Stone for Erosion Control* will be made at contract unit prices for the affected items. Work required that is not represented by contract line items will be paid in accordance with Articles 104-7 or 104-3 of the *2012 Standard Specifications*. No additional compensation will be made for maintenance and removal of temporary erosion control items.

**RAILROAD COORDINATION:**

The Contractor's attention is direct to the "NCRR/NS Mainline Railroad Roadbed" plans and the Intermediate Contractor Times (ICT) Special Provisions. Norfolk Southern Railway (NSR) requires an initial advance notice **four (4) weeks** before the Contractor anticipates any work is required by NSR.

An advance notice is required by NSR **twelve (12) weeks** ahead of the Contractor's anticipated completion of ICT #2 which includes the railroad roadbed grading required for NSR to complete construction of -M1- main track and shift train operations onto the proposed main track.

C203146 (P-5208D)

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*Revised 3-26-13*  
Cabarrus County

From the completion of ICT #2, it is anticipated NSR will require a minimum **ten (10) weeks** and a maximum of **twenty-one (21) weeks** to construct the new track, move train operations to the new track, and remove the existing track as well as all track accessories to allow the contractor to begin grading of the old track roadbed. **Duration of this work is dependent on how accurate the advance notice of completion of ICT#2 is and how much roadbed has been completed, accepted and provided to NSR for track construction prior to the completion of ICT #2. Removal of the existing track roadbed and completion of roadbed grading is in ICT#3.**

NSR will give advance notice through the Engineer no less than **twenty-eight (28) calendar days** ahead of the anticipated final date of removal of track and accessories. In addition, NSR will provide notice through the Engineer when train operations have been moved to the proposed track and clearances over and around the existing track no longer need to be maintained by the Contractor.

All notices to the railroad shall be given to the Engineer.

**MANDATORY PRE-BID CONFERENCE (Prequalifying To Bid):**

(7-18-06)

SPI 1-14

Because of the unusual nature of work involved, and in order for all prospective bidders to have an extensive knowledge of the project, all prospective bidders shall attend a mandatory pre-bid conference on **Thursday, March 28, 2013 at 10:00 A.M.** at:

TMC Building  
2327 Tipton Drive  
Charlotte, N.C. 28206  
(704) 983-4400

The pre-bid conference will include a thorough discussion of the plans, contract pay items, special provisions, etc.

Only bidders who have attended and properly registered at the above scheduled pre-bid conference and who have met all other prequalification requirements will be considered prequalified to bid on this project. A bid received from a bidder who has not attended and properly registered at the above scheduled pre-bid conference will not be considered for award.

Attendance at the pre-bid conference will not meet the requirements of proper registration unless the individual attending has registered at the pre-bid conference in accordance with the following:

- (A) The individual has signed his name on the official roster no later than thirty (30) minutes after the beginning of the conference.
- (B) The individual has written in the name and address of the company he or she represents.
- (C) Only one company has been shown as being represented by the individual attending.
- (D) The individual attending is an officer or permanent employee of the company they are representing.

Attendance at any prior pre-bid conference will not meet the requirement of this provision.

**DELAY IN RIGHT OF ENTRY:**

(7-1-95)

108

SP1 G22 A

The Contractor will not be allowed right of entry to the parcels listed below **until May 17, 2013** unless otherwise permitted by the Engineer.

<b><u>Parcel No.</u></b>	<b><u>Property Owner</u></b>
001D	Harry R. Higgins, Jr.
002D	THL Properties, LLC
003D	Elizabeth D. Williams & Robert E. Davis, Jr.
005D	Michael P. Hayes
007D	The Mason Wallace Company
008D	AW 1 Limited Partnership
014D	Ira Lee Taylor, Jr.
016D	Kurt D. & Kelly R. Newton
017D	Ira Lee Taylor, Sr.
018D	Emmett C. Sapp, Jr.
021D	Cameron Herrera
022D	Cynthia H. Behling
025D	William N. & Jenelle K. Bryans
027D	William D. Price
028D	Will Linker
029D	William Johnstone
030D	Martha Melvin
031D	James H. Houston
033D	Johnson Le
034D	James W. Taylor
035D	Richard Morrison, Jr.
036D	Yates Miller, Jr.

**PROGRESS SCHEDULE (RAIL):**

(2-19-13)

SP1 G25

The Contractor shall prepare and submit for review and approval a Progress Schedule as set forth in Section 108 of the *Standard Specification*, the Railroad Coordination Special Provision, and as amended herein.

The schedule shall include activity descriptions with beginning and ending dates, partial completion (in percentage or time format). Railroad roadbed activities should include beginning and ending stations of roadbed section. The schedule shall include activities or milestones indicating when NSR flagmen and construction forces should be mobilized to the site.

In addition to those requirements listed above and in Section 108 of the *Standard Specifications*, the Contractor shall include the following activities or milestones in the schedules, where applicable:

- (A) Beginning and ending dates for each phase or section of railroad roadbed work.
- (B) Expected beginning and ending dates for each phase of track work required to be performed by NSR, based on the durations indicated in the Railroad Coordination Special Provision or as coordinated with the Engineer and Railroad Engineer.

- (C) Dates when flagging for railroad protection is required and expected type of flagging required, as coordinated with the Engineer and Railroad Engineer.
- (D) Dates (and durations, if temporary) for closures of at-grade crossings.
- (E) Completion dates for highway projects and railroad roadbed projects if separate completion dates are anticipated/required.
- (F) Anticipated dates for removal of erosion control devices.

The Contractor shall continue to submit to the Engineer a schedule on a monthly basis until the work is substantially complete. If no changes are required to the schedule dates, the Contractor shall resubmit the previous month's schedule with a revised submittal date and updated percent partial completion.

**MAJOR CONTRACT ITEMS:**

(2-19-02)

104

SP1 G28

The following listed items are the major contract items for this contract (see Article 104-5 of the *2012 Standard Specifications*):

<b>Line #</b>	<b>Description</b>
7	Borrow Excavation
217	Reinforced Concrete Deck Slab
219	Class AA Concrete (Bridge)
223	54" Prestressed Concrete Girders

**SPECIALTY ITEMS:**

(7-1-95)(Rev. 1-17-12)

108-6

SP1 G37

Items listed below will be the specialty items for this contract (see Article 108-6 of the *2012 Standard Specifications*).

<b>Line #</b>	<b>Description</b>
68 thru 72	Guardrail
227	Fencing
78 thru 84	Signing
98 thru 105, 107	Long-Life Pavement Markings
106 and 108	Removable Tape
118	Permanent Pavement Markers
119 thru 146	Utility Construction
147 thru 175	Erosion Control
176 thru 211	Signals/ITS System
213 thru 215	Drilled Piers



**FUEL PRICE ADJUSTMENT:**

(11-15-05) (Rev. 1-17-12)

109-8

SPI G43(REV.)

Revise the 2012 *Standard Specifications* as follows:

**Page 1-83, Article 109-8, Fuel Price Adjustments**, add the following:

The base index price for DIESEL #2 FUEL is \$ **3.1631** per gallon. Where any of the following are included as pay items in the contract, they will be eligible for fuel price adjustment.

The pay items and the fuel factor used in calculating adjustments to be made will be as follows:

<b>Description</b>	<b>Units</b>	<b>Fuel Usage Factor Diesel</b>
Unclassified Excavation	Gal/CY	0.29
Borrow Excavation	Gal/CY	0.29
Class IV Subgrade Stabilization	Gal/Ton	0.55
Aggregate Base Course	Gal/Ton	0.55
Sub-Ballast	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
" Portland Cement Concrete Pavement	Gal/SY	0.245
Concrete Shoulders Adjacent to _____ " Pavement	Gal/SY	0.245

**SCHEDULE OF ESTIMATED COMPLETION PROGRESS:**

(7-15-08) (Rev. 6-19-12)

108-2

SPI 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>Fiscal Year</b>	<b>Progress (% of Dollar Value)</b>
2013 (7/01/12 - 6/30/13)	5% of Total Amount Bid
2014 (7/01/13 - 6/30/14)	60% of Total Amount Bid
2015 (7/01/14 - 6/30/15)	35% of Total Amount Bid

The Contractor shall also furnish his own progress schedule in accordance with Article 108-2 of the 2012 *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.

**DISADVANTAGED BUSINESS ENTERPRISE FOR RAILROAD PIEDMONT  
IMPROVEMENT PLAN (PIP):**

(12-18-12)

102-15(J)

SPI G64

**Description**

The purpose of this Special Provision is to promote the solicitation and use of disadvantaged minority and woman-owned businesses in the rail PIP projects let by the Department of Transportation.

**Definitions**

*Aspirational Goal* - The portion of the total contract, expressed as a percentage, that is foreseeable to be performed by DBE subcontractors.

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

*Pledged DBE Subcontractor* - Any DBE submitted at the time of bid that is being used to meet the DBE aspirational goal.

*Pledged DBE Goal* - The DBE participation at time of award, as determined by the amount of pledged DBE participation submitted.

*Confirmation Letter* - Written documentation from the Department to the bidder confirming the Contractor's approved, pledged DBE participation along with the listing of the DBE firms.

*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 brought, 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 and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

*North Carolina Unified Certification Program (NCUCP)* - A program that provides comprehensive services and information to applicants for DBE 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.

**Forms and Websites Referenced in this Provision**

*Affidavit A - Listing of Good Faith Efforts* - Form signed by bidder listing good faith efforts performed. This form is required if the lowest responsive and responsible bidder fails to meet or exceed the aspirational goal.

[http://files.www.piedmontrail.biz/primary-navigation/prequalification-requirements/PIP\\_DBEP\\_provision.pdf](http://files.www.piedmontrail.biz/primary-navigation/prequalification-requirements/PIP_DBEP_provision.pdf)

*DBE Payment Tracking System* - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project.  
<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

*DBE-IS Subcontractor Payment Information* - Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only.  
<http://www.ncdot.org/doh/forms/files/DBE-IS.xls>

*RF-1 DBE Replacement Request Form* - Form for replacing a committed DBE.  
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Request%20Form.pdf>

*SAF Subcontract Approval Form* - Form required for approval to sublet the contract.  
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/Subcontractor%20Approval%20Form.zip>

*JC-1 Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.  
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

*Letter of Intent* - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed at the time of bid.  
<https://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

*Listing of DBE Subcontractors Form* - Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.  
<http://www.ncdot.gov/doh/preconstruct/ps/word/MISC2.doc>

### **Aspirational DBE Goal**

In line with the federal aspirational goal, the following DBE aspirational goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **10.0%**

Even though the goal is aspirational, the expectation is that the Contractor shall exercise all reasonable steps to achieve the goal. Such steps include, but are not limited to:

- (A) Clearly defining and disseminating information to DBEs on portions of the work that is available on the project so DBEs are provided an equitable opportunity to participate on the PIP contracts let by the Department.
- (B) Solicit through reasonable and available means to try and achieve the aspirational goal.
- (C) Providing adequate information and arranging a location for the review of plans, specifications and requirements of the contract.

- (D) Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, lines of credit, insurance, materials, equipment or related assistance or services.

### **Directory of Transportation Firms (Directory)**

Real-time information is available about firms doing business with the Department and firms that are DBE certified through the NC UCP in the NCDOT Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the aspirational DBE goal of the project. The Directory can be found at the following link:  
<https://partner.ncdot.gov/VendorDirectory/default.html>

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

### **Listing of DBE Subcontractors**

At the time of bid, bidders shall submit all the DBE participation that they anticipate to use during the life of the contract. Since the Rail DBE program is race and gender-neutral, all participation up to and over the 10% aspirational goal will be used toward the Department's race and gender-neutral goal for rail projects. Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of DBE participation. The bidder shall indicate the following required information:

#### **(A) Electronic Bids**

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

- (1) Submit the names and addresses of DBE firms identified to participate in the contract. If 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.
- (2) Submit 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.
- (3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the aspirational DBE goal.

**(B) Paper Bids**

- (1) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on the Listing of DBE Subcontractors form.
- (2) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the aspirational DBE goal.

**DBE Prime Contractor**

When a certified DBE firm bids on a rail PIP contract that contains an aspirational DBE goal, the DBE firm by virtue of the work it performs on the contract with its own forces, will meet the DBE aspirational goal. The DBE bidder shall list itself along with any other DBE subcontractors on the Listing of DBE Subcontractor form and the amount of work by each.

**Written Documentation – Letter of Intent**

The bidder shall submit written documentation for each DBE that will be used on the project to meet the aspirational goal of the contract, indicating the bidder's intent to use the DBE in the contract. This documentation shall be submitted on the Department's form titled *Letter of Intent*. The purpose of this documentation is to make the DBE aware that their quote is being used on the project. The documentation is not intended to take the place of a formal contract between the Contractor and the DBE subcontractor.

A hard or electronic copy of the Letter(s) of Intent shall be received in the office of the State Contractor Utilization Engineer or at [DBE@ncdot.gov](mailto:DBE@ncdot.gov) no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

**Submission of Good Faith Effort**

While the lowest responsible and responsive bidder will not be denied award of the contracted based on failing to meet the advertised aspirational goal, the Department expects that the bidder will put forth a good faith effort to meet it. If the bidder fails to meet or exceed the aspirational DBE goal, the apparent lowest responsive bidder shall submit Affidavit A - Listing of Good Faith Efforts. A hard or electronic copy of the Affidavit shall be received in the office of the State Contractor Utilization Engineer or at [DBE@ncdot.gov](mailto:DBE@ncdot.gov) no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

**Counting DBE Participation Toward Meeting the DBE Aspirational Goal****(A) Participation**

The total dollar value of the participation by a submitted DBE will be counted toward the aspirational goal of the contract. The total dollar value of the participation by a DBE will be based upon the value of work actually performed by the DBE and the actual payments to the DBE firms by the Contractor.

**(B) Joint Checks**

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of the Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

**(C) Subcontracts (Non-Trucking)**

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the aspirational goal. Work that a DBE subcontracts to a non-DBE firm does not count toward the aspirational goal of the contract.

**(D) Joint Venture**

When a DBE performs as a participant in a joint venture, the Contractor may count toward its aspirational 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 own forces.

**(E) Suppliers**

A contractor may count toward its aspirational DBE goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

**(F) Other**

A contractor may count toward its aspirational 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) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or 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 determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

### **Commercially Useful Function**

Even though the goal on the rail PIP project is aspirational, there is still a requirement that the DBEs performing on the project will perform a commercially useful function in the work of a contract. The Contractor may only count/report towards the aspirational goal only expenditures to DBEs that perform a commercially useful function.

- (A) A DBE 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 DBE 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 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 any other relevant factors.
- (B) **DBE Utilization in Trucking**

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

- (1) 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 shall not be a contrived arrangement for the purpose of meeting the aspirational DBE goal.
- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) 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.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to

another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.

- (5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE credit for the project.
- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement 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. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

### **Changes in the Work and Replacement of Pledged DBEs**

Throughout the contract there may be changes made by the Engineer or Contractor that result in the reduction or elimination of work that was proposed to be performed by a DBE. Since the goals are aspirational, the Contractor will not be required to seek additional participation elsewhere on the project, but there is an expectation that there will be a continued effort to get DBEs on the job.

If the Engineer or Contractor makes changes that result in additional work to be performed by a DBE based on the Contractor's pledged DBE submittal, the Department has an expectation that the DBE shall participated in the additional work to the same extent as the DBE participated in the original work unless there is a viable reason.

If a DBE cannot perform the work for any reason, there is not a requirement to replace the DBE with another, but there is an expectation by the Department that the Contractor will continue to seek additional DBE participation opportunities on the project. The Department also requires the use of the *DBE Replacement Request Form* (RF-1) for tracking purposes.



**Reporting Disadvantaged Business Enterprise Participation**

The Contractor shall provide the Engineer with an accounting of payments made to all DBE firms, including material suppliers and 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:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, 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 being approved for work on future DOT projects until the required information is submitted.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Engineer can request written verification of subcontractor payments.

**(A) Electronic Bids Reporting**

The Contractor shall report the accounting of payments through the Department's DBE Payment Tracking System.

**(B) Paper Bids Reporting**

The Contractor shall report the accounting of payments on the Department's DBE-IS (*Subcontractor Payment Information*) with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

**Reports of Fraud or Waste**

Contractors must report to the Inspector General any suspected incidence of waste, fraud and abuse related to ARRA funds, and should notify FRA regional offices of any problems encountered as they occur. Notification can be made by phone at (919) 733-1433, or

electronically at <http://www.ncrecovery.gov/reportFraud/reportFraud.aspx>. Additional information can be found on the NC Recovery website ([www.ncrecovery.gov](http://www.ncrecovery.gov)) by clicking “Reporting of Waste and Fraud”.

### **False Claims Act**

Contractors and subcontractors awarded funds made available under the Recovery Act shall promptly report to the Inspector General any credible evidence that a principal, employee, agency, Contractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

### **Whistleblower Provisions**

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 95-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Contractors or Agencies cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

- (A) gross mismanagement of an agency contract or grant relating to covered funds;
- (B) a gross waste of covered funds;
- (C) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (D) an abuse of authority related to the implementation or use of covered funds; or
- (E) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.\*

\* covered funds: “any contract, grant, or other payment received by any non-federal employer if a) the Federal Government provides any portion of the money or property that is provided, requested or demanded; and b) at least some of the funds are appropriated or otherwise made available by this Act” 1553 (g)(2).

Contractor agrees to post notice of the rights and remedies as required by the ARRA.

**Emblems**

The Contractor agrees to use signs and materials at all fixed project locations at the most publicly accessible location announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act as directed by NCDOT. This provision is to be included in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project.

**Contractor Responsibilities and Reporting Requirements under ARRA**

Contractors are required to complete projects or activities which are funded under the ARRA and to report on use of the funds provided through this award as directed. Information from these reports will be made available to the public. The reporting responsibility should be passed down from the Contractor to the subcontractor in order to ensure that the necessary information is provided within the specified deadline.

Contractors are not responsible for reporting ARRA requirements directly to FRA. The Contractor shall report the required data by way of NCDOT-supplied forms (either Microsoft Excel forms and in the approved version of Excel or editable pdf forms, as provided by NCDOT). The responsibilities for reporting are as follows:

**(A) General**

- (1) Obtaining a Data Universal Numbering System (D-U-N-S) number or the Contractor may use their name and zip code of their Headquarters. For more information, visit <http://fedgov.dnb.com/webform> (for US and International locations) or call 866-705-5711. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual's name and title, line of business, # of employees and legal structure (i.e.: corporation, non-profit, etc.) and socio economic data (veteran owned, women owned, etc.). If they use the web-form, there is a mailing address area, SIC code and annual revenue data lines but these are optional.
- (2) Expenditure amount (amount of payment).
- (3) Expenditure description (what was exchanged for the payment).
- (4) A brief description of the types of jobs created and jobs retained. "Jobs or positions created" means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of Recovery Act funding. "Jobs or positions retained" means those previously existing filled positions that are retained as a result of Recovery Act funding. A job cannot be reported as both created and retained. Note that contractors will describe jobs created and retained, but will not need to determine which were created versus which were retained.

(5) An estimate of the number of jobs created and jobs retained. At a minimum, this estimate shall include any new positions created and any existing filled positions that were retained to support or carry out Recovery Act projects. The number shall be expressed as “full-time equivalent” (FTE), reported monthly as all hours worked divided by the total number of hours in a full-time schedule.

(6) Percent complete and DBE payment data shall be submitted on a monthly basis, and is due to the NCDOT-Rail Division within 5 days of the end of each month.

(B) ARRA Section 1512

Contractor shall complete Form FHWA-1589 for each month and submit it to the NCDOT-Rail Division within 7 days after the end of the month. This data will be required until the contract is complete.

(1) Contractors will need to report the number of direct on-site job hours associated with the ARRA funds awarded as of the end of the reporting period.

(a) Contractors will not be expected to estimate indirect employment data (such as the employment needed to make “off the shelf” parts that the Contractor purchases).

(b) The Contractor shall report direct labor (for example, construction workers building a maintenance facility, or transit agency workers doing preventive maintenance) for the prime as well as all subcontractors.

(c) The Contractor shall report direct labor for suppliers when the quantity or value of purchases passes a threshold where there is likely an identifiable employment impact for the vendor. NCDOT will provide detailed guidance and assistance in this calculation.

(d) USDOT economists will compute the number of indirect jobs and induced jobs (for example, jobs at suppliers or in unrelated industries as a result of the money flowing through the economy.)

(2) Contractors and consultants shall provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their ARRA funded project(s) for the reporting month.

(3) The requirement for monthly reporting of employment data is included in all ARRA funded contracts to ensure transparency throughout the delivery of the project. As such, specific requirements have been developed for reporting this monthly data. All Contractors awarded projects shall attend a training session in Raleigh, North Carolina to discuss reporting requirements and procedures.

The Contractor hereby agrees to comply with the Contract Provisions and Reporting Requirements as indicated in the American Recovery and Reinvestment Act of 2009 and any amendments thereto. The Contractor also agrees to comply with any additional reporting requirements that may be requested by NCDOT, FRA, USDOT, the Inspector General (IG), the Government Accountability Office (GAO), or other entities, for example Congressional committees or individual members of Congress. The Contractor hereby agrees to inspections or audits that may occur at any time from the any of the above referenced federal or state agencies. Contractors are requested to provide a copy of any such reports to NCDOT on any responses to such requests for information or as a result of an inspection or audit.

**ARRA AND OERI CONTRACT PROVISIONS AND REPORTING REQUIREMENT  
CERTIFICATION:**

(11-20-12) (Rev. 4-16-13)

SP1 G70

By submission of a proposal or bid, the Contractor agrees to comply with the following provisions. Failure to comply with any or all of the provisions herein may be cause for the contracting agency to issue a cancellation notice to a Contractor.

The Contractor is hereby notified that this project will be financed with American Recovery and Reinvestment Act of 2009 (ARRA) Funds. The Contractor shall assure that all subcontractors and other contracts for services for ARRA funded projects shall have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the Department will require that the Contractor provide reports and other employment information as evidence to document the number of jobs created and retained by this contract from the Contractor's own workforce and any subcontractors. Additionally, the North Carolina Office of Economic Recovery & Investment (hereinafter, "OERI") has mandated certain procedural and reporting directives that will be followed. Additional provisions have been added to address OERI directives. No direct payment will be made for providing said reports as the cost for same is included in the various items in the contract.

The Contractor agrees that all data submitted to NCDOT and FRA in compliance with the Recovery Act requirements shall be accurate, objective, and of the highest integrity.

**Posting with the Local Employment Security Commission**

In addition to any other job postings the Contractor normally uses, OERI requires that the Contractor post with the local Employment Security Commission Office, all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semi-skilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum of five days before the hiring decision. The selected Contractor and any subcontractors shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI. The NC ESC website can be found at [www.ncesc.com](http://www.ncesc.com).

**Required Contract Provision to Implement ARRA Section 902**

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) Examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives will have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with recovery funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

**Authority of the Inspector General**

Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The Contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Inspector General.

**Office of State Budget and Management Access to Records**

OERI requires that the Contractor and subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.

**Buy America Provision**

49 U.S.C. Section 24405(a)(1) requires that iron, steel and manufactured goods used in public buildings or public works projects must be manufactured in the United States. The Contractor agrees to abide by this provision and shall maintain records of such purchases for inspection by authorized agents of the State of North Carolina and federal agencies. The Contractor shall provide the Certificate of Compliance with Buy America to the Engineer. Copies of this certificate are available on the Piedmont Improvement Program website at <http://www.piedmontrail.biz/primary-navigation/links-and-resources>.

**Wage Rate Provision** (applies to all construction, alteration or repair projects)

Section 1606 of the ARRA requires that all laborers and mechanics employed by Contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The Contractor agrees that by the submission of a proposal/bid in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act. This applies to all construction contracts that exceed \$2,000.

**Labor Provisions**

As provided by 49 U.S.C. 24405(b), persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through the ARRA agreement shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(5), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railway Labor Act (43 45 U.S. C. 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

**Availability and Use of Funds**

Contractors understand and acknowledge that any and all payment of funds, or the continuation thereof, is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of ARRA, Contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act. Also, funds are not to be used for travel beyond the service area. Further, Contractor understands that ARRA funding is considered "one-time" funding.

**Outsourcing outside the USA without Specific Prior Approval Provision**

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

**Federal, State and Local Tax Obligations**

By submission of a proposal, Contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

**Anti-Discrimination and Equal Opportunity**

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

**Reports of Fraud or Waste**

Contractors must report to the Inspector General any suspected incidence of waste, fraud and abuse related to ARRA funds, and should notify FRA regional offices of any problems encountered as they occur. Notification can be made by phone at (919) 733-1433, or electronically at <http://www.ncrecovery.gov/reportFraud/reportFraud.aspx>. Additional information can be found on the NC Recovery website ([www.ncrecovery.gov](http://www.ncrecovery.gov)) by clicking "Reporting of Waste and Fraud".

**False Claims Act**

Contractors and subcontractors awarded funds made available under the Recovery Act shall promptly report to the Inspector General any credible evidence that a principal, employee, agency, Contractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

**Whistleblower Provisions**

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Contractors or Agencies cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

- (A) gross mismanagement of an agency contract or grant relating to covered funds;
- (B) a gross waste of covered funds;
- (C) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (D) an abuse of authority related to the implementation or use of covered funds; or
- (E) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.\*

\* covered funds: "any contract, grant, or other payment received by any non-federal employer if a) the Federal Government provides any portion of the money or property that is



provided, requested or demanded; and b) at least some of the funds are appropriated or otherwise made available by this Act” 1553 (g)(2).

Contractor agrees to post notice of the rights and remedies as required by the ARRA.

### **Emblems**

The Contractor agrees to use signs and materials at all fixed project locations at the most publicly accessible location announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration, with funds provided through the American Recovery and Reinvestment Act as directed by NCDOT. This provision is to be included in any subagreements, leases, third party contracts, or other similar documents used in connection with its Recovery Act Project.

### **Contractor Responsibilities and Reporting Requirements under ARRA**

Contractors are required to complete projects or activities which are funded under the ARRA and to report on use of the funds provided through this award as directed. Information from these reports will be made available to the public. The reporting responsibility should be passed down from the Contractor to the subcontractor in order to ensure that the necessary information is provided within the specified deadline.

Contractors are not responsible for reporting ARRA requirements directly to FRA. The Contractor shall report the required data by way of NCDOT-supplied forms (either Microsoft Excel forms and in the approved version of Excel or editable pdf forms, as provided by NCDOT). The responsibilities for reporting are as follows:

#### **(A) General**

- (1) Obtaining a Data Universal Numbering System (D-U-N-S) number or the Contractor may use their name and zip code of their Headquarters. For more information, visit <http://fedgov.dnb.com/webform> (for US and International locations) or call 866-705-5711. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual's name and title, line of business, # of employees and legal structure (i.e.: corporation, non-profit, etc.) and socio economic data (veteran owned, women owned, etc.). If they use the web-form, there is a mailing address area, SIC code and annual revenue data lines but these are optional.
- (2) Expenditure amount (amount of payment).
- (3) Expenditure description (what was exchanged for the payment).
- (4) A brief description of the types of jobs created and jobs retained. “Jobs or positions created” means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of Recovery Act funding. “Jobs or positions retained” means those previously existing filled positions that are retained as a result of Recovery Act funding. A job cannot be reported as both created and retained. Note that contractors will describe jobs created and retained, but will not need to determine which were created versus which were retained.

(5) An estimate of the number of jobs created and jobs retained. At a minimum, this estimate shall include any new positions created and any existing filled positions that were retained to support or carry out Recovery Act projects. The number shall be expressed as “full-time equivalent” (FTE), reported monthly as all hours worked divided by the total number of hours in a full-time schedule.

(6) Percent complete and DBE payment data shall be submitted on a monthly basis, and is due to the NCDOT-Rail Division within 5 days of the end of each month.

**(B) ARRA Section 1512**

Contractor shall complete Form FHWA-1589 for each month and submit it to the NCDOT-Rail Division within 7 days after the end of the month. This data will be required until the contract is complete.

(1) Contractors will need to report the number of direct on-site job hours associated with the ARRA funds awarded as of the end of the reporting period.

(a) Contractors will not be expected to estimate indirect employment data (such as the employment needed to make “off the shelf” parts that the Contractor purchases).

(b) The Contractor shall report direct labor (for example, construction workers building a maintenance facility, or transit agency workers doing preventive maintenance) for the prime as well as all subcontractors.

(c) The Contractor shall report direct labor for suppliers when the quantity or value of purchases passes a threshold where there is likely an identifiable employment impact for the vendor. NCDOT will provide detailed guidance and assistance in this calculation.

(d) USDOT economists will compute the number of indirect jobs and induced jobs (for example, jobs at suppliers or in unrelated industries as a result of the money flowing through the economy.)

(2) Contractors and consultants shall provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their ARRA funded project(s) for the reporting month.

(3) The requirement for monthly reporting of employment data is included in all ARRA funded contracts to ensure transparency throughout the delivery of the project. As such, specific requirements have been developed for reporting this monthly data. All Contractors awarded projects shall attend a training session in Raleigh, North Carolina to discuss reporting requirements and procedures.

The Contractor hereby agrees to comply with the Contract Provisions and Reporting Requirements as indicated in the American Recovery and Reinvestment Act of 2009 and any amendments thereto. The Contractor also agrees to comply with any additional reporting requirements that may be requested by NCDOT, FRA, USDOT, the Inspector General (IG), the

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Government Accountability Office (GAO), or other entities, for example Congressional committees or individual members of Congress. The Contractor hereby agrees to inspections or audits that may occur at any time from the any of the above referenced federal or state agencies. Contractors are requested to provide a copy of any such reports to NCDOT on any responses to such requests for information or as a result of an inspection or audit.

**SPECIAL NOTICE TO BIDDERS:**

(2-19-13)

SP1 G71

This project involves constructing new railroad roadbed on existing Railroad Right of Ways. The North Carolina Department of Transportation will be administering the project and the work will be constructed in accordance with the *January 2012 NCDOT Standard Specification for Roads and Structures*. The *Standard Specifications for Roads and Structures, January 2012 of the North Carolina Department of Transportation*, hereinafter referred to as the *Standard Specifications*, shall apply to the articles of the Project Special Provisions. Portions of the work will be done in accordance with Norfolk Southern, Standard Specifications for Materials and Construction, February 2013 and North Carolina Railroad Company's, FORM NCR 103, SPECIFICATIONS FOR PIPELINE OCCUPANCY OF NORTH CAROLINA RAILROAD COMPANY, Revised January 2009 and FORM NCR 102, SPECIFIC REQUIREMENTS OF NORTH CAROLINA RAILROAD COMPANY FOR WORK ON ITS RIGHT OF WAY, September 1, 2003. These Project Special Provisions sections of the proposal have been written to be in accordance with these documents.

The construction will be taking place in existing Railroad Right of Way owned by North Carolina Railroad Company adjacent to existing tracks that are operated and maintained by Norfolk Southern Corporation. Safety in the Right of Way will be top priority and Norfolk Southern's safety and security policies shall be followed for all employees working within the Right of Way. The safety and security policies and guidelines are further defined in the special provisions.

All work adjacent to the live tracks shall be coordinated with the Norfolk Southern Railway (NSR) Roadway Worker In Charge, as defined later in this document. As a result of safety requirements for passing trains, there will be intermittent delays requiring all equipment within 25' of the operating tracks to stop work until authorized to proceed by the Railroad. This will result in intermittent delays to the contractor's operations. The contractor needs to account for this in preparing his bid. The contractor shall have no claims whatsoever against the Railroad or the Department for any delays or additional cost incurred for the delays or any changes to the information above after the date of receipt.

**PREQUALIFICATION OF RAIL ROAD GRADING CONTRACTORS (PIP):**

(2-19-13)

SP1 G72

Contractors desiring to perform work on this project shall be prequalified in accordance with Article 102-2 of the *2012 Standard Specifications*. Due to this job being on NCRR right of way and working within close proximity of active rail tracks for both freight and passenger trains, all prime contractors must be prequalified to do work covered by **work code 5090**. All bidders shall be prequalified for work code 5090 within 10 calendar days of bid opening, in order to be awarded the contract.

The following criteria may be used to help prequalify contractors for this project:

- (A) Within the last 5 years, the applicant must have been a prime contractor on at least two (2) Interstate or US Route Improvement Projects (i.e. widening, resurfacing), or a prime contractor on two (2) railroad roadbed projects parallel and adjacent to active main track on a Class I Railroad. NCDOT may also consider comparable experience on heavily travelled state routes and airport runway projects.
- (B) The above projects must have been at least \$4 million in project cost.
- (C) Within the last 5 years the applicant must have had at least one project (does not have to be one of the 2 above) that was within or over railroad right of way and involved a rail flagger.

### **PROTECTION OF RAILROAD INTEREST:**

(2-19-13)

SP1 G73

### **KEY STAKEHOLDERS AND ROLES FOR THE JOB**

The following defines the roles of key stakeholders and persons with authority on the job

<b>TERMS</b>	<b>DEFINITIONS</b>
Owner, Company	North Carolina Railroad Company (NCR). They own the right of way, facilities, tracks, structures, etc., that Norfolk Southern Railway and others operate on.
Owner's Engineer/Representative	North Carolina Railroad Company's engineer or their authorized representative for the project.
Operating Railroad, Railroad, Railway, Railway Company	Norfolk Southern Railway (NSR) operates and Railroad Company maintains the track facilities and signals.
Railroad Engineer	NSR Engineers or their authorized representatives.
RWIC/flagman	<u>R</u> oadway <u>W</u> orker <u>I</u> n <u>C</u> harge. This is NSR's onsite representative responsible for obtaining track time for work activities adjacent to the tracks and safety within the Railroad right of way. He/She may be in charge of multiple Railroad flagmen assigned to a project if more than one is required or he may be the flagman for the project.
NCDOT, Department, Department of Transportation,	The North Carolina Department of Transportation is administering the contracts and performing the inspection on the projects for compliance. Also, referred to as the Department or NCDOT.
Engineer, Department's Engineer	NCDOT's Division Engineer, Division Construction Engineer (DCE), Resident Engineer (RE), Assistant Resident Engineer, the authorized representative for NCDOT.
Inspector, Department's Inspector	The authorized inspector for NCDOT.
Standard Specifications, Specifications	NCDOT Standard Specifications for Road and Structures, January 2012.

<b>TERMS</b>	<b>DEFINITIONS</b>
NCDOT Rail, Rail Division	The North Carolina Department of Transportation, Rail Division. They are a branch of the Department of Transportation responsible for schedule review, reviewing change orders; assisting in answering requests for information (RFI), and working with the owners, operating rail and the Department, and the FRA for compliance and project closeout.
NSR Specifications 2012	Norfolk Southern Standard Specifications for Materials and Construction - January 2012.
NCRR Specifications	This includes the following documents: North Carolina Railroad - NCR101 – Specifications for Wire, Conduit and Cable Occupations of North Carolina Railroad Company, NCR102 – Specifications for Pipeline Occupancy of North Carolina Railroad Company, NCR103 – Specific Requirements of North Carolina Railroad Company for Work on its Right of Way.

#### **AUTHORITY OF RAILROAD ENGINEER AND DEPARTMENT ENGINEER**

The authorized representative of the Operating Railroad Company, hereinafter referred to as Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of Railroad traffic of the Operating Railroad Company including the adequacy of the foundations and structures supporting the Railroad tracks.

The authorized representative of the North Carolina Department of Transportation, hereinafter referred to as the Engineer, shall have authority over all other matters as prescribed herein including Project Specifications, Special Provisions, and the plans.

#### **SAFETY GUIDELINES FOR PERSONNEL WORKING ON COMPANY CORRIDOR**

All contractor and subcontractor personnel working on NCRR right of way and on or adjacent to NSR operated tracks shall attend and pass a Roadway Worker Training course for NSR prior to beginning work on the Railroad right of way and shall attend the class annually. Contractor and subcontractor personnel shall adhere to the following Norfolk Southern Railway safety guidelines:

- (A) The Contractor and all personnel must follow all applicable railroad and governmental rules, with particular attention paid to railroad operating rules, Railroad rules for the conduct of contractors, Railroad rules for the operation of moving vehicles, and Federal Railway Administration roadway worker rules.
- (B) No one shall be allowed within 25' of the centerline of the nearest track without the specific authorization of the RWIC/flagman.

- (C) The Contractor shall require that its employees or employees of any subcontractors wear the following while on or about the Railroad right of way:
- (1) Appropriate head protection.
  - (2) Appropriate eye protection.
  - (3) Appropriate hearing protection.
  - (4) Appropriate respiratory protection.
  - (5) Appropriate high visibility reflective safety vests are required for work inside active intermodal facilities, public rights of way, or other locations as required by the Railroad and the MUTCD.
  - (6) Suitable protective clothing and footwear. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard sole, lace up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Safety steel toe boots are required.
  - (7) All protective equipment must be in good condition and properly fitted.
- (D) The Contractor shall observe the safety provisions of applicable laws and building and construction codes shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the most recent edition of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are consistent with applicable law or regulation.
- (E) The Contractor shall permit only qualified personnel to perform welding. Proper clothing, gloves and shields must be worn for body and eye protection. All welding equipment must be properly tested and in good working order. All welding equipment and cutting torches being used within 25 feet of the track must be shut off and work stopped when train is passing.
- (F) Anyone working on Railroad Right-of-Way found to be under the influence of alcohol or other intoxicant, narcotic or hallucinogenic drug, or in possession of such intoxicant or drug, shall be dismissed from the property by the Contractor and not allowed to return.
- (G) When anyone working on Railroad right of way is injured, the Contractor shall arrange for emergency medical assistance, if needed, and the Contractor shall notify Railroad Engineer and the Department's Engineer of such incident by the quickest method of communication available.
- (H) The Contractor shall not permit the use of defective or improvised tools and equipment for the work.
- (I) At the direction of the Railroad Engineer and the Department's Engineer, the Contractor shall work with local emergency response personnel to develop action plans to respond to emergency situations.

- (J) The Contractor is responsible for maintaining emergency site access(es) for local emergency response personnel.
- (K) The Contractor must promptly notify Railroad Engineer and the Department's Engineer of any safety incident or injury involving any person(s) on the project site.
- (L) The Contractor shall hold daily safety briefings involving all personnel working on site per railroad safety rules. Personnel arriving onsite after the safety briefing shall be briefed before proceeding with their work. The Contractor and all personnel shall hold additional safety briefings during the day as conditions or work changes.
- (M) The Contractor is responsible for obtaining eRailSafe certification for itself and its employees working on Railroad right of way upon award of Contract. The Contractor shall follow all eRailSafe requirements and escort all subcontractors or non-certified employees on site. Information about requirements and responsibilities to become eRailSafe can be found at: <http://www.e-railsafe.com/>
- (N) The Contractor and all personnel are responsible for obtaining FRA and NSR approved Roadway Worker Certification through an NSR-approved trainer.
- (O) All persons working near track while train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.
- (P) No one is allowed to cross tracks without specific authorization from the flagman.
- (Q) No steel tape or chain will be allowed to cross or touch rails without permission.

#### **GUIDELINES FOR EQUIPMENT WORKING ON COMPANY'S CORRIDOR**

The following applies to all equipment being operated within the Railroad right of way:

- (A) The Contractor's actions shall not interfere with normal train operations. The Contractor shall provide a weekly schedule of activities that may affect train operations or require flagging protection.
- (B) NSR will provide service outages only when absolutely required for construction activities as determined by the Railroad Engineer. No claim by the Contractor against NSR and the Department will be allowed for delays caused by NSR's operations.
- (C) When working on or near operating tracks to be kept in service, NSR may provide a schedule of allowable work periods. Allowable work periods may change due to the variances in train operations. If the Contractor fails to comply with the schedules and performs its work in a manner that causes delay to NSR train operations, it shall be liable for any delays and shall reimburse NSR upon receipt of bills therefore. If at any time the Contractor is required to work longer than a normal 8 hour day to prevent disruption to NSR's train operations, then the Contractor shall do so at no expense to the Railroad and the Department.

- (D) At locations where a flagman is deemed necessary by the Railroad Engineer for the safety of Railroad's property and operations, the Contractor will observe the directions given by the RWIC/flagman. The Contractor will assure that its officers, agents, suppliers, subcontractors and employees observe the directives given by the RWIC/flagman. It is distinctly understood, however, that no direction or failure to give direction by the RWIC/flagman will relieve the Contractor from any of its indemnification commitments in the contract.
- (E) No one shall be allowed within 25' of the centerline of the nearest track without the specific authorization of the RWIC/flagman.
- (F) No one shall be allowed to cross the tracks without specific authorization of the RWIC/flagman.
- (G) All persons working near the track while a train is passing are to look for dragging bands, chains and protruding or shifted cargo. If any of these are observed, they must notify the RWIC/flagman immediately.
- (H) No one shall be allowed to pass between, over or under rail cars.
- (I) No steel or metallic chain or measuring tape shall be allowed to cross or touch rails without permission of the RWIC/flagman.
- (J) No construction materials shall be placed on tracks without approval of the Railroad Engineer.
- (K) When working on tracks, switches shall be lined away from the work area and switch points spiked down or clamped or rail ends mismatched to prevent cars or engines from entering the work area.
- (L) No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from railroad official and flagman.
- (M) No crane or boom equipment will be allowed to foul track or lift a load over the track without flagman protection and track time.
- (N) All employees will stay with their machines when crane or boom equipment is pointed toward track.
- (O) All cranes and boom equipment under load will stop work while train is passing (including pile driving).
- (P) Swinging loads must be secured to prevent movement while train is passing no loads will be suspended above a moving train.



- (Q) No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
- (R) Trucks, tractors or any equipment will not touch ballast line without specific permission from flagman.
- (S) No equipment or load movement within 25' or above a standing train or railroad equipment without specific authorization of the flagman.
- (T) All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
- (U) All equipment, loads and cables are prohibited from touching the rails.
- (V) While clearing and grubbing, no vegetation will be removed from railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.
- (W) The Contractor is responsible for the ingress and egress of its plant, equipment, materials and labor to and from the construction site in accordance with the following:
  - (1) No movement that may endanger the safe normal Railroad operations shall be made without the approval of the RWIC/flagman as to route and time of use.
  - (2) No movement of the Contractor's plant equipment, materials and labor to and from the site shall be made without the approval of the RWIC/flagman.
- (X) Railroad regulations concerning the movement of vehicles on Railroad property shall be followed by the Contractor, its subcontractors and all of the respective personnel, including, without limitation, weight restrictions for roadways.
- (Y) Use of access routes shall not cause the fouling of turnouts, flangeways, equipment, and drainage facilities with gravel, mud, waste materials, or timbers used for crossing tracks. Such routes shall be planned in such a way to minimize the risk of damage to Railroad facilities and must be approved by the Railroad Engineer.
- (Z) No equipment or materials will be parked or stored on Company's corridor unless specific authorization is granted from the Railroad Engineer.
- (AA) All unattended equipment that is left parked on Company's corridor shall be effectively immobilized so that it cannot be moved by unauthorized persons.
- (BB) All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.

**FAILURE TO COMPLY WITH SAFETY REQUIREMENTS**

Failure to comply with any safety requirements within the railroad right of way may result in the removal of the individual or individuals responsible for violation of policies. Depending upon the severity of the violation as determined by the Railroad Engineer, RWIC/flagman or the Department's Engineer, the individual or individuals implicated must leave the RR right of way within 1 hour of notification of the violation. Depending on the severity of the violation, the individual or individuals who were involved in the incident may be able to return to the job the following day. That determination will be made by the RWIC and the Department's representative on site. The individual or individuals will be notified if they are allowed to return the following day by the close of business the day of the occurrence. If they are not allowed to return the next day, the contractor may file an appeal to the Department's Engineer requesting the individual or individuals accused of the violation be allowed to return to the job. The Resident Engineer will then notify the Railroad of the appeal and a meeting will be held to determine if the individual or individuals will or will not be allowed to return to the job. The individual or individuals alleged to have committed the violation will not be allowed on the project until after the Railroad Engineer and Department Engineer have reviewed the appeal and made a determination if the individual or individuals may return. If a person is allowed return to the site after the appeal process and a second violation of policies occurs, that will be grounds for permanent removal of the individual from the worksite. This does not only apply to individuals, but may apply to entire crews as well depending on the circumstances and severity of the violation of policy. The contractor shall have no claims whatsoever against the Railroad or the Department for any delays or additional cost incurred as a result of safety violations and removal of the individual or individuals from the job.

**FEDERAL RAILROAD ADMINISTRATION (FRA) SAFETY REQUIREMENTS**

In addition to NSR safety guidelines above, the Contractor will be required to adhere to the safety requirements of the Federal Railroad Administration and comply with Title 49, Volume 4, Chapter 2, Part 213 and 214 of the Code of Federal Regulations. This information can be found at the following link:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=ef344d8e404793fcb6650641e75f7e43&rgn=div5&view=text&node=49:4.1.1.1.8&idno=49>

The FRA may conduct inspections on this project and fines can be levied against both the individual cited and the contractor for violations of these policies. The contractor shall have no claims whatsoever against the Railroad or the Department for any delays or additional cost incurred as a result of violations and fines for noncompliance with the above FRA guidelines.

**RAILROAD INSURANCE: SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTEREST**

State Project: P-5208D

County: Cabarrus

(A) In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Prime Contractor will be required to provide coverage conforming to the requirements of the Federal-Aid Policy Guide outlined under 23 CFR 646A for all work to be performed on Company's corridor by carrying insurance of the following kinds and amounts:

(1) **CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE:**

The Contractor shall furnish an original and one copy of the certificate of insurance and one certified copy of the policy to the Department as evidence that, with respect to the operations he performs on railroad right of way, he carries regular Commercial General Liability Insurance having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name Company and Railroad specified in item A.2.c. below as an additional insured, and shall include a severability of interests provision.

(2) **RAILROAD PROTECTIVE LIABILITY INSURANCE:**

The Contractor shall furnish to the Department an original and one duplicate of the Railroad Protective Liability Insurance having a combined single limit of not less than \$2,000,000 each occurrence and \$6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- (a) The insurer must be rated A- or better by A.M. Best Company, Inc.
- (b) The policy must be written using one of the following combinations of Insurance Services Office ("ISO") Railroad Protective Liability Insurance Form Numbers:
  - (1) CG 00 35 01 96 and CG 28 31 10 93; or
  - (2) CG 00 35 07 98 and CG 28 31 07 98; or
  - (3) CG 00 35 10 01; or
  - (4) CG 00 35 12 04

- (c) The named insured on each policy as required to be issued to each Company and to Railroad shall read: (NOTE: The below insured is to be treated separately as an insured on each railroad protective policy for a total of (2) two separate policies being issued.)

North Carolina Railroad Company  
2809 Highwoods Blvd, Suite 100  
Raleigh, NC 27604-1000  
Attn: Property Department;

and

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Attn: Risk Management

- (d) The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Department project and contract identification numbers.

The Description and Designation shall read:

*Construction of new railroad roadbed; and construction of a new overhead bridge on Roberta Road (SR 1304) over the tracks owned by North Carolina Railroad Company and operated by Norfolk Southern Railway Company in Cabarrus County, North Carolina, identified as State TIP P-5208D and Federal Project FRA-FR-HSR-0006-10-01-00.*

- (e) The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number.
- (f) The name and address of the prime contractor must appear on the Declarations.
- (g) The name and address of the Department must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."
- (h) Other endorsements/forms that will be accepted are:
- (1) Broad Form Nuclear Exclusion – Form IL 00 21
  - (2) 30-day Advance Notice of Non-renewal or cancellation
  - (3) 60-day written notice be given the Department prior to cancellation or change
  - (4) Quick Reference or Index Form CL/IL 240
- (i) Endorsements/forms that are NOT acceptable are:
- (1) Any Pollution Exclusion Endorsement except CG 28 31
  - (2) Any Punitive or Exemplary Damages Exclusion
  - (3) Known injury or Damage Exclusion form CG 00 59
  - (4) Any Common Policy Conditions form
  - (5) Any other endorsement/form not specifically authorized in item no. 2.h above.
- (B) If any part of the work is sublet, similar insurance, and evidence thereof as specified in A.1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad's right of way. As an alternative, the Prime Contractor may provide insurance for the subcontractor by means of separate and individual policies.

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- (C) Prior to entry on Company's corridor, the original and one duplicate copy of the Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Department at the address below for its review and transmittal to the Company and Railroad. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Department, Company and Railroad at the addresses below, and one certified copy of the Prime Contractor and any Subcontractor's policy is to be forwarded to the Department for its review and transmittal to the Company and Railroad. All policies and certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to the Department, Company and Railroad. The Railroad will not permit any work on Company's corridor until the Company and Railroad has reviewed and approved the evidence of insurance required herein.

DEPARTMENT:

NCDOT Rail Division  
Engineering & Safety Branch  
C/O State Railroad Agent  
1556 Mail Service Center  
Raleigh, NC 27699-1556

RAILROAD:

Risk Management  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, Virginia 23510-2191

COMPANY:

North Carolina Railroad Company  
2809 Highwoods Blvd.  
Suite 100  
Raleigh, NC 27604

- (D) The insurance required herein shall not limit the obligations of Department or its Contractors under the terms of this agreement.
- (E) The insurance amounts specified are minimum amounts and that the Contractor may carry insurance in larger amounts if he so desires. As to "aggregate limits", if the insurer establishes loss reserves equal to or in excess of the aggregate limit specified in any of the required insurance policies, the Contractor shall immediately notify the Department and shall cease all operations until the aggregate limit is reinstated. If the insurer establishes loss reserves equal to or in excess of one/half of the aggregate limit, the Contractor shall arrange to restore the aggregate limit to at least the minimum amount stated in these requirements. Any insurance policies and certificates taken out and furnished due to these requirements shall be approved by the Department, Company and Railroad as to form and amount prior to beginning work on Company's corridor.
- (F) All insurance herein before specified shall be carried until the final inspection and acceptance of the project by the Department, Company and Railroad, or acceptance of that portion of the project within Company's corridor. At this point, no work or any other activities by the Contractor shall take place in Company's corridor without written permission from the Department, Company and Railroad.

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**FAILURE TO COMPLY**

In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

- (1) The Railroad Engineer may require that the Contractor vacate Company's corridor.
- (2) The Engineer may withhold all monies due the Contractor on monthly statements.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

**PAYMENT FOR COST OF COMPLIANCE**

No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such cost shall be included in prices bid for other items of the work as specified in the payment items.

**RAILROAD SITE DATA**

The following information is provided as a convenience to the Contractor. This information is subject to change and the Contractor should contact the Railroad to verify the accuracy. Since this information is shown as a convenience to the Contractor but is subject to change, the Contractor shall have no claims whatsoever against either the Railroad or the Department of Transportation for any delays or additional costs incurred based on changes in this information.

Number of tracks	-	1 Main Track
Number of trains per day	-	46
Type of Trains per day	-	8 Passenger and 38 Freight
Maximum speed of trains	-	79 mph(Passenger),60 mph (Freight)

**NOTICE OF STARTING WORK**

The contractor shall not commence any work on Company's corridor until the contractor has complied with the following conditions:

- (A) Give the Company and Railroad written notice, with copy to the Engineer who has been designated to be in charge of the work, at least ten days in advance of the date the contractor proposes to begin work on Company's corridor/NCRR right of way. Notice to be given to:

Mr. Rick Meredith, PE  
 Norfolk Southern Corporation  
 1200 Peachtree Street NE  
 Building Box 142  
 Atlanta, Georgia 30309

Mr. Jim Kessler, PE  
 North Carolina Railroad Company  
 2809 Highwoods Blvd  
 Suite 100  
 Raleigh, NC 27604

- (B) Obtained written authorization from both Norfolk Sothern Railway and North Carolina Railroad Company to begin work on Railroad right-of-way, such authorization to include an outline of specific conditions with which the contractor must comply.
- (C) Obtained written approval from the Railroad of Railroad Protective Insurance Liability coverage as required by the provisions for Railroad Insurance above. The Railroad does not accept notation of Railroad protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. The policy will be reviewed for compliance prior to written approval. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for Railroad to review.
- (D) Furnish a schedule for all work within the Railroad right-of-way as required. Obtain written authorization from the Railroad to begin work on Company's right of way, such authorization to include an outline of specific conditions with which he must comply.
- (E) Obtain Railroad's Flagging Services as required.
- (F) The contractor must execute and deliver to NCRR and NSR a standard construction right of entry agreement approved by NCRR and NSR together.

The Railroad's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.

#### **INTERFERENCE WITH RAILROAD OPERATIONS**

The Contractor shall so arrange and conduct his work that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Company or Railroad or to poles, wires, and other facilities of tenants on the right of way of the Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service (watchman) shall be deferred by the Contractor until the flagging protection or inspection service required by the Railroad is available at the job site.

Whenever work within Company's corridor is of such a nature that impediment to Railroad operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.

Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Company and Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Railroad's Division Engineer, such provision is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Department, Company, or Railroad.

**TRACK CLEARANCES**

- (A) Before undertaking any work within railroad right-of-way, or before placing any obstruction over any track, the Contractor shall:
- (1) Notify the RWIC/Track Supervisor at least 72 hours in advance of the work.
  - (2) Receive assurance from the Railroad Engineer that arrangements have been made for flagging service as may be necessary.
  - (3) Receive permission from the RWIC/Track Supervisor to proceed with the work.
  - (4) Ascertain that the Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.
- (B) The minimum track clearances to be maintained by the Contractor during construction are as follows:
- (1) Horizontal clearance measured from centerline of track to falsework:
    - 13'-0" on tangent track
    - 14'-0" on curved track
  - (2) Vertical clearance from top of rail to falsework: 22'-0"

**CONSTRUCTION PROCEDURES****(A) General**

Construction work and operations by the Contractor on Company's property shall be:

- (1) Subject to the inspection and approval of the NSR and NCDOT.
- (2) In accordance with all of the Railroad's written specific conditions.
- (3) In accordance with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
- (4) In accordance with these Special Provisions.

**(B) Excavation**

The subgrade of an operated track shall be maintained with edge of berm at least 7'-0" from centerline of track and not more than 45" below top of rail. Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.

**(C) Excavation for Structures**

The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting, for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. All plans and calculations for shoring shall be prepared and signed by a North Carolina Registered Professional Engineer. The Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions. The procedure for doing such work, including need of and plans for shoring, shall first be reviewed by the Department



Engineer then reviewed and approved by the Railroad Engineer, but such approval shall not relieve the Contractor from liability.

Additionally, a walkway with handrail protection may be required as noted in the section for Trainman's walkways herein.

(D) Demolition, Erection, Hoisting

- (1) Railroad tracks and other Company corridor or railroad property must be protected from damage during the procedure.
- (2) The Contractor is required to submit a plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown. The location of all tracks and other railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.
- (3) Crane rating sheets showing cranes to be adequate for 150 percent of the actual weight of the pick. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted.
- (4) Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing and/or proposed structure showing complete and sufficient details with supporting data for the demolition or erection of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the North Carolina Registered Professional Engineer submitting the procedure and calculations.
- (5) A data sheet must be submitted listing the types, size, and arrangements of all rigging and connection equipment.
- (6) A complete procedure is to be submitted, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
- (7) All erection or demolition plans, procedures, data sheets, etc. submitted must be prepared, signed and sealed by a North Carolina Registered Professional Engineer.
- (8) The Railroad's engineer must be present at the site during the entire demolition and erection procedure period.
- (9) All procedures, plans and calculations shall first be approved by the Engineer and the Railroad Engineer, but such approval does not relieve the Contractor from liability.

(E) Blasting

The Contractor shall obtain advance approval of the Railroad Engineer and the Engineer for use of explosives on or adjacent to Company corridor. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:

- (1) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.
- (2) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.

- (3) No blasting shall be done without the presence of an authorized representative of the Railroad. At least 72 hours advance notice to the person designated in the Railroad's notice of authorization to proceed will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.
- (4) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his expense any track misalignment or other damage to Company corridor resulting from the blasting as directed by the Railway's authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.

The Railroad representative/engineer will:

- (1) Determine the approximate location of trains and advise the Contractor the approximate amount of time available for the blasting operation and clean-up.
- (2) Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accordance with these special provisions.

(F) Maintenance of Railroad Facilities

The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions that may result from construction operations and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas within Company's corridor and repair any other damage to the property of the Company or its tenants.

All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

(G) Storage of Materials and Equipment

Materials and equipment shall not be stored where they will interfere with railroad operations, nor on the corridor of the Company without first having obtained permission from the Railroad Engineer. Such permission will be with the understanding that neither the Company nor Railroad will be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the Contractor's expense, such material and equipment.

All grading or construction machinery that is left idle or parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The contractor shall protect, defend, indemnify and save Company and Railroad, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss or damage to property or the loss of life or personal injury, arising out of or incident to the contractor's failure to immobilize grading or construction machinery.

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**(H) Cleanup**

During construction of the project, the contractor shall furnish garbage disposal containers and dispose of all trash appropriately. The contractor shall clean the construction site periodically as requested by the Department's Engineer or the Railroad Engineer of all waste, rubbish and unused construction material. The removal of waste and debris shall be the responsibility of the Contractor. Unused construction materials shall be stockpiled in an orderly fashion at a location that will not interfere with train operations and the construction progress. If the contractor does not clean the construction site after receiving notification, other forces may be used to clean the site of waste and rubbish. If other forces are used, monies will be deducted from the contractor for the cost of the cleanup.

Upon completion of the work, the Contractor shall remove from within the limits of the Company's right of way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said right of way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative and satisfactory to the Company's authorized representative. Cleanup also includes removal, replacement or cleaning of soiled or contaminated ballast in the construction area.

**DAMAGES**

The contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by railroad traffic.

Any cost incurred by the Company of Railroad for repairing damages to its corridor or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Company or Railroad by the Contractor.

**CONTRACTOR FURNISHED TWO WAY RADIOS**

The Contractor shall furnish a minimum of 3 push to talk, two way radios that operate on a frequency unique to the project and separate from NSR frequencies. The operational frequency should not be the same as the frequency on adjacent jobs unless directed by the Railroad Engineer. The radios will be used for communication between the RWIC/flagman or the Railroad's designated contact and the Contractor's Superintendent or designated contact on the job for safety. The Contractor will need to maintain at least 3 working radios at all time during the project. Project conditions and the contractors work may require the need for more than 3 radios on the project. It shall be the Contractors responsibility to furnish the number of radios required by NSR and NCDOT to maintain safety on the project. Failure on the part of the contractor to have working radios on site, can result in suspension of the work until the requirements of provision is met. There will be no direct payment for the cost of furnishing the radios. The cost will be included in other items of work in the contract.

The Contractor will need to submit information about the radios prior to use for approval by the Railroad.

The contractor shall have no claims whatsoever against the Railroad or the Department for any delays or additional cost incurred as a result of failure to have the required number of working radios on site each day.

### **FLAGGING SERVICES**

All work to be performed by the Contractor within the Railroad Right of Way shall require a flagman be present. Any work to be performed by the contractor requiring flagging service shall be deferred by the contractor until the flagging protection required by the railroad is available at the job site. It will take approximately 30 days from the date the railroad receives notification of award from the NCDOT to provide flagging protection for this project.

#### **(A) When Required**

Under the terms of the agreement between the Department and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's personnel or equipment are or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. The Railroad Engineer will determine how many flagmen are required for the job. However, if the Contractor works within distances that violates instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed. Any additional cost for additional flagging as a result of the Contractor violating the instruction of the RWIC/flagman will be the contractor's responsibility and shall be deducted from the contractor's monies.

#### **(B) Scheduling and Notification**

- (1) The Contractor's work requiring railroad flagging services shall be scheduled in advance and updated weekly to insure flagman coverage for the work to be performed. Flagging services will be provided by the Railroad for work required by the contract to complete the project. The contractor's work schedule shall be during normal daylight hours for safety concerns. Nighttime operations are not permitted without prior written approval from the Railroad Engineer and the Department's Engineer and shall be only be considered on a case by case basis.
- (2) Not later than the time that approval is initially requested to begin work on Company corridor, the Contractor shall furnish to the Company, Railroad and the Department a schedule for all work required to complete the portion of the project

within Company corridor and arrange for a job site meeting between the Contractor, the Department, and the Railroad's authorized representative. Flagman or Flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.

- (3) The Contractor, through the Engineer, will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Company corridor in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor, through the Engineer, will be required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right of way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to the Engineer.
- (4) If flagging is required, no work shall be undertaken until the flagman, or flagmen are present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to Railroad labor agreements, it is necessary to give 5 working days' notice before flagging service may be discontinued and responsibility for payment stopped.
- (5) If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right of way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Company, Department or Railroad.

(C) Payment

The Department will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction.

Any additional cost for additional flagging as a result of work that is determined to be for the benefit of the Contractor will be the contractor's responsibility and shall be deducted from the Contractor's monies.

- (1) The estimated cost of flagging service is the current rate per day based on a 10-hour work day. This cost includes the base pay for each flagman, overhead, and a per diem charge for travel expenses, meals and lodging. The charge by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required.
- (2) Work by a flagman in excess of 8 hours per day or 40 hours per week, but not more than 12 hours a day will result in overtime pay at 1½ times the appropriate

rate. Work by a flagman in excess of 12 hours per day will result in overtime pay at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2½ times the normal rate.

- (3) Railroad work involved in preparing and handling bills will also be charged to the Department. Charges to the Department by the Railroad shall be in accordance with applicable provisions of the Federal-Aid Policy Guide, Title 23 Subchapter B, Part 140I and Subchapter G, Part 646B issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change. The above estimates of flagging costs are provided for information only and are not binding in any way.

(D) Verification

The Railroad flagman assigned to the project will be responsible for notifying the Department Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Department Engineer will document such notification and general flagging times for verification purposes in the project records. When requested, the Department Engineer will also sign the flagman's diary showing daily time spent and activity at the project site. Also if requested, the flagman will cooperate with the Department by submitting daily timesheets or signing the Department Engineer's diary showing daily time spent at the project site.

Railroad's flagman will electronically enter flagging time via Railroad's electronic billing system. Any complaints concerning flagman or flagmen must be resolved in a timely manner. If need for flagman or flagmen is questioned, please contact Railroad's System Engineer of Public Improvements at (404) 529-1641. All verbal complaints must be confirmed in writing by the Contractor within 5 working days with copy to the Department Engineer. Address all written correspondence to:

Office of Chief Engineer-Bridges & Structures  
 Attn: System Engineer of Public Improvements  
 Norfolk Southern Corporation  
 1200 Peachtree St. NE  
 Internal Box 142  
 Atlanta, GA 30309

## **HAUL ACROSS RAILROAD**

Where the plans show or imply that materials of any nature must be hauled across the Railroad, unless the plans clearly show that the Department has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Contractor will be required to bear all costs incidental to such crossings whether services are performed by the contractor's own forces or by Railroad personnel.

If the Contractor desires to haul across the Railroad for his convenience, the contractor shall make all of the necessary arrangements with the Railroad and the Company for a temporary crossing and shall bear all cost associated with construction and removal of the temporary crossing. The crossing shall only be used at times approved by the Engineer. The project will not be considered complete until all temporary crossing have been removed by the Contractor, unless directed by the Railroad or Company to leave the crossing installed. The Contractor shall be required to execute the Railroad and Company's standard private grade crossing agreement for each crossing installed. The Contractor shall have no claims whatsoever against the Railroad or the Department for denying any temporary crossing for the convenience of the Contractor.

No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, all at the expense of the Contractor, is first obtained from the Railroad Engineer. The approval process for a temporary private crossing agreement executed between the Contractor and Railroad normally takes 90 days.

### **WORK FOR THE BENEFIT OF THE CONTRACTOR**

All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Department, Company and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the Department, Company and/or the Railroad.

Should the Contractor desire any changes in addition to the above, then the Contractor shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense. The Contractor shall notify the Department of agreements between the Railroad the and the Contractor for any work for the benefit of the Contractor.

### **COOPERATION AND DELAYS**

It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction of work to be done by Railroad crews. In arranging the schedule the contractor shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefore. The Contractor shall cooperate with others in the construction of the project to the end that all work may be accomplished to the best advantage.

The Contractor shall insure that all work required to be completed by his forces prior to Railroad's crews schedule move in date is completed. Delays by the Contractor in meeting the schedule can result in delays in rescheduling Railroad crews and result in delays to the project. The Contractor shall have no claims whatsoever against the Railroad or the Department for delays as a result of rescheduling Railroad crews due the Contractor failing to meet his schedule.

No charge or claim of the Contractor against either the Department, Company or the Railroad will be allowed for hindrance or delay on account of railway traffic; any work done by the

Railroad or other delays incident to or necessary for safe maintenance of railway traffic or for any delays due to compliance with these special provisions.

The Contractor's attention is called to the fact that neither the Department, Company nor Railroad assumes any responsibility for any work performed by others in connection with the construction of the project, and the Contractor shall have no claim whatsoever against the Department, Company or Railroad for any inconvenience, delay, or additional cost incurred by him on account of such operations by others.

### **TRAINMAN'S WALKWAYS**

In areas along any existing tracks, on the side opposite of the track from where the work will be done; existing trainman walkways will be maintained at a distance not less than 10' from the centerline for the existing track. If the trainman's walkway does not exist, it will not be built or maintained unless shown on the plans. In areas of new construction along turnouts/switches, signals and derails, trainman walkways will be constructed and maintained not less than 10' from the centerline of the track. The trainman's walkway will extend from the point of switch through the derail. The trainman's walkway is an unobstructed continuous space suitable for the trainman to walk along the side of trains. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while the Railway's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10'-0" minimum clearance from centerline of track, shall be placed.

### **CERTIFICATION FOR FEDERAL-AID CONTRACTS:**

(3-21-90)

SP1 G85

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

- (A) 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.
- (B) 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.

**CONTRACTOR'S LICENSE REQUIREMENTS:**

(7-1-95)

102-14

SP1 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).

**U.S. DEPARTMENT OF TRANSPORTATION HOTLINE:**

(11-22-94)

108-5

SP1 G100

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.

**SUBSURFACE INFORMATION:**

(7-1-95)

450

SP1 G112 D

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

**LOCATING EXISTING UNDERGROUND UTILITIES:**

(3-20-12)

105

SP1 G115

Revise the *2012 Standard Specifications* as follows:

**Page 1-43, Article 105-8, line 28, after the first sentence, add the following:**

Identify excavation locations by means of pre-marking with white paint, flags, or stakes or provide a specific written description of the location in the locate request.

**DOMESTIC STEEL:**

(4-16-13)

106

SP1 G120

Revise the *2012 Standard Specifications* as follows:

**Page 1-49, Subarticle 106-1(B) Domestic Steel, lines 2-7,** replace the first paragraph with the following:

All steel and iron products that are permanently incorporated into this project shall be produced in the United States except minimal amounts of foreign steel and iron products may be used provided the combined material cost of the items involved does not exceed 0.1% of the total amount bid for the entire project or \$2,500, whichever is greater. If invoices showing the cost of the material are not provided, the amount of the bid item involving the foreign material will be used for calculations. This minimal amount of foreign produced steel and iron products permitted for use is not applicable to high strength fasteners. Domestically produced high strength fasteners are required.

**REMOVABLE PAVEMENT MARKINGS - (Partial Payments for Materials):**

(7-1-95) (Rev. 8-16-11)

1205-10

SP1 G124

When so authorized by the Engineer, partial materials payments will be made up to 95 percent of the delivered cost of pavement marking tape, provided that these materials have been delivered on or in the vicinity of the project, stored in an acceptable manner, not to exceed the shelf life recommended by the manufacturer, and further provided the documents listed in Subarticle 109-5(C) of the *2012 Standard Specifications* have been furnished to the Engineer.

The Contractor shall be responsible for the material and the satisfactory performance of the material when used in the work.

The provisions of Article 109-6 of the *2012 Standard Specifications* will not apply to removable pavement marking materials.

**MAINTENANCE OF THE PROJECT:**

(11-20-07) (Rev. 1-17-12)

104-10

SP1 G125

Revise the *2012 Standard Specifications* as follows:

**Page 1-35, Article 104-10 Maintenance of the Project, line 25,** add the following after the first sentence of the first paragraph:

All guardrail/guiderail within the project limits shall be included in this maintenance.

**Page 1-35, Article 104-10 Maintenance of the Project, line 30,** 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 1-35, Article 104-10 Maintenance of the Project, lines 42-44,** replace the last sentence of the last 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.

**TWELVE MONTH GUARANTEE:**

(7-15-03)

108

SP1 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.

**GIFTS FROM VENDORS AND CONTRACTORS:**

(12-15-09)

107-1

SP1 G152

By Executive Order 24, issued by Governor Perdue, and *N.C.G.S. § 133-32*, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (A) Have a contract with a governmental agency; or
- (B) Have performed under such a contract within the past year; or
- (C) Anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and *N.C.G.S. § 133-32*.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

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

(1-16-07) (Rev 9-18-12)

105-16, 225-2, 16

SP1 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 Pollution 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 and Sediment Control/Stormwater Supervisor to manage the Contractor and subcontractor operations, insure compliance with Federal, State and Local ordinances and regulations, and 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 and Sediment Control/Stormwater Supervisor* - The Certified Supervisor shall be Level II and responsible for ensuring the erosion and sediment control/stormwater plan is adequately implemented and maintained on the project and for conducting the quality control program. The Certified Supervisor shall be on the project within 24 hours notice from initial exposure of an erodible surface to the project's final acceptance. Perform the following duties:
  - (1) *Manage Operations* - Coordinate and schedule the work of subcontractors so that erosion and sediment control/stormwater 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 control/stormwater preventive measures are conformed to at each stage of the work.
    - (b) Prepare the required National Pollutant Discharge Elimination System (NPDES) Inspection Record 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 control/stormwater site plans requested.
    - (e) Provide any needed erosion and sediment control/stormwater practices 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 control/stormwater work in a timely and workmanlike manner.
    - (h) Fully perform and install erosion and sediment control/stormwater work prior to any suspension of the work.
    - (i) Coordinate with Department, Federal, State and Local Regulatory agencies on resolution of erosion and sediment control/stormwater issues due to the Contractor's operations.
    - (j) Ensure that proper cleanup occurs from vehicle tracking on paved surfaces or any location where sediment leaves the Right-of-Way.

- (k) Have available a set of erosion and sediment control/stormwater plans that are initialed and include the installation date of Best Management Practices. These practices shall include temporary and permanent groundcover and be 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 Stormwater permit (NCS000250) 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 Erosion and Sediment Control Program for construction activities disturbing one or more acres of land. The Department further incorporates these requirements on all contracted bridge and culvert work at jurisdictional waters, regardless of size. 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. from equipment operation/maintenance, construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste.
  - (b) Inspect erosion and sediment control/stormwater devices and stormwater discharge outfalls at least once every 7 calendar days, twice weekly for construction related *Federal Clean Water Act, Section 303(d)* impaired streams with turbidity violations, and within 24 hours after a significant rainfall event of 0.5 inch that occurs within a 24 hour period.
  - (c) Maintain an onsite rain gauge or use the Department's Multi-Sensor Precipitation Estimate website to maintain a daily record of rainfall amounts and dates.
  - (d) Maintain erosion and sediment control/stormwater inspection records for review by Department and Regulatory personnel upon request.
  - (e) Implement approved reclamation plans on all borrow pits, waste sites and staging areas.
  - (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 erosion and sediment control/stormwater awareness, the Department's NPDES Stormwater Permit NCS000250 requirements, and the applicable requirements of the *General Permit, NCG010000*.
  - (i) Report violations of the NPDES permit to the Engineer immediately who will notify the Division of Water Quality Regional Office within 24 hours of becoming aware of the violation.

- (3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions/conditions 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 subcontractors on site have the proper erosion and sediment control/stormwater certification.
  - (c) Notify the Engineer when the required certified erosion and sediment control/stormwater 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) Use flocculants approved by state regulatory authorities where appropriate and where required for turbidity and sedimentation reduction.
  - (h) Ensure proper installation and maintenance of temporary erosion and sediment control devices.
  - (i) Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.
  - (j) 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 and sediment control/stormwater 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 Level I *Certified Installer* is not onsite, the Contractor may substitute a Level II Foreman for a Level I Installer, 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 and 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 to the certification entity, certification for *Supervisor*, *Certified Foremen*, *Certified Installers* and *Certified Designer* may be revoked or suspended with the issuance of an *Immediate Corrective Action (ICA)*, *Notice of Violation (NOV)*, or *Cease and Desist Order* for erosion and sediment control/stormwater related issues.



The Chief Engineer may recommend suspension or permanent revocation of certification due to the following:

- (A) Failure to adequately perform the duties as defined within this certification provision.
- (B) Issuance of an 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 by another entity.

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

A certificant 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  
1536 Mail Service Center  
Raleigh, NC 27699-1536

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 certificant 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 certificant.

If a certification is temporarily suspended, the certificant 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 and 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) (Rev. 3-20-13)

105-16, 230, 801

SP1 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 *2012 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 superseding 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.gov/doh/operations/dp\\_chief\\_eng/roadside/fieldops/downloads/Files/TurbidityReductionOptionSheet.pdf](http://www.ncdot.gov/doh/operations/dp_chief_eng/roadside/fieldops/downloads/Files/TurbidityReductionOptionSheet.pdf) 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 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.

**SUPPLEMENTAL CONTRACTOR EROSION CONTROL RESPONSIBILITIES:**

(2-19-13)

SP1 G182

The Contractor shall be required to install and maintain erosion control devices and provide temporary and eventual permanent stabilization to disturbed areas until the final completion of the project contract as directed. In addition, the Contractor shall adhere to the requirements of the Erosion and Sediment Control/Stormwater Certification provided elsewhere in this contract until completion of the project. After the Contractor has completed the grading work and while Norfolk Southern's crews are installing the new track, the Contractor shall maintain erosion control responsibilities and work will continue to be required and not limited to, monitoring erosion control devices on a weekly basis and after each rainfall that equals or exceeds 0.5 inches, NPDES documentation, installation and maintenance of additional erosion control devices, providing temporary groundcover, and establishment of permanent vegetation on disturbed slopes.

Payment for installation and maintenance of temporary erosion control measures and providing temporary and permanent stabilization will be paid for at the appropriate contract unit price for the work. Mobilization payment for this work shall be paid as described in "Supplemental Response for Erosion Control." No additional payment shall be made for these supplemental responsibilities and work.

**SUPPLEMENTAL RESPONSE FOR EROSION CONTROL:**

(2-19-13)

SP1 G183

**Description**

Furnish the labor, materials, tools and equipment necessary to move personnel, equipment, and supplies to the project necessary for the pursuit of any or all of the erosion control responsibilities of the Contractor. This provision will only be applicable after the Contractor has completed all of his work, with the exception of maintenance and removal of erosion control, and has demobilized his work force while waiting for NSR to complete track construction. Payment will only be made for occurrences where the contractor mobilizes men and equipment to perform necessary erosion control measures as required by the Department's Engineer.

**Construction Methods**

Contractor shall perform an erosion control action as described in, but not limited to, the NPDES Inspection Form SPPP30. Each erosion control action may include one or more of the work items on the form, or a separate action that is the primary responsibility of the Contractor.

**Measurement and Payment**

*Supplemental Response for Erosion Control* will be measured and paid for by counting the actual number of times the Contractor moves onto the project, including borrow and waste sites, and satisfactorily completes an erosion control action described in Form 1675. The provisions of Article 104-5 of the *Standard Specifications* will not apply to this item of work.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Supplemental Response for Erosion Control	Each

**EMPLOYMENT:**

(11-15-11) (Rev. 1-17-12)

108, 102

SP1 G184

Revise the *2012 Standard Specifications* as follows:

**Page 1-20, Subarticle 102-15(O)**, delete and replace with the following:

**(O)** Failure to restrict a former Department employee as prohibited by Article 108-5.

**Page 1-65, Article 108-5 Character of Workmen, Methods, and Equipment, line 32**, delete all of line 32, the first sentence of the second paragraph and the first word of the second sentence of the second paragraph.

**STATE HIGHWAY ADMINISTRATOR TITLE CHANGE:**

(9-18-12)

SP1 G185

Revise the *2012 Standard Specifications* as follows:

Replace all references to "State Highway Administrator" with "Chief Engineer".