

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

PROPOSAL

DATE AND TIME OF BID OPENING: **DECEMBER 19, 2006 AT 2:00 PM**

CONTRACT ID C200840
WBS 34512.3.1, 35018.3.1

FEDERAL-AID NO. STP-54(5), STATE FUNDED

COUNTY DURHAM, WAKE

T.I.P. NO. R-2904, U-4026

MILES 6.363

ROUTE NO. NC 54

LOCATION NC-54 FROM SR-1999 IN DURHAM CO TO SR-1959 IN DURHAM CO &
SR-1999 FROM SR-3014 IN WAKE CO TO NC-54 IN DURHAM CO.

TYPE OF WORK WIDENING, GRADING, DRAINAGE, PAVING, SIGNALS & CULVERTS.

NOTICE:

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

BIDS WILL BE RECEIVED AS SHOWN BELOW:

THIS IS A ROADWAY & CULVERT PROPOSAL

5% BID BOND OR BID DEPOSIT REQUIRED

PROPOSAL FOR THE CONSTRUCTION OF

CONTRACT No. C200840

IN DURHAM & WAKE COUNTIES 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. **C200840** has carefully examined the plans and specifications, which are acknowledged to be part of the proposal, the special provisions, the proposal, the form of contract, and the forms of contract payment bond and contract performance bond; and thoroughly understands the stipulations, requirements and provisions. The undersigned bidder agrees to bound upon his execution of the bid and subsequent award to him by the Board of Transportation in accordance with this proposal to provide the necessary contract payment bond and contract performance bond within fourteen days after the written notice of award is received by him. The undersigned Bidder further agrees to provide all necessary machinery, tools, labor, and other means of construction; and to do all the work and to furnish all materials, except as otherwise noted, necessary to perform and complete the said contract in accordance with *the 2006 Standard Specifications for Roads and Structures* by the dates(s) specified in the Project Special Provisions and in accordance with the requirements of the Engineer, and at the unit or lump sum prices, as the case may be, for the various items given on the sheets contained herein.

The Bidder shall provide and furnish all the materials, machinery, implements, appliances and tools, and perform the work and required labor to construct and complete State Highway Contract No. **C200840** in **Durham & Wake Counties**, for the unit or lump sum prices, as the case may be, bid by the Bidder in his bid and according to the proposal, plans, and specifications prepared by said Department, which proposal, plans, and specifications show the details covering this project, and hereby become a part of this contract.

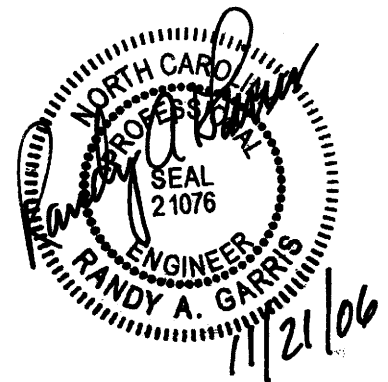
The published volume entitled *North Carolina Department of Transportation, Raleigh, Standard Specifications for Roads and Structures, July 2006* with all amendments and supplements thereto, is by reference incorporated into and made a part of this contract; that, except as herein modified, all the construction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

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

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

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

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



State Contract Officer

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PROJECT SPECIAL PROVISIONS

GENERAL

CONTRACT TIME AND LIQUIDATED DAMAGES:

(7-20-99) (Rev.7-18-06)

SP1 G04

The date of availability for this contract is February 5, 2007, 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 1, 2009.

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

The liquidated damages for this contract are Five Thousand Dollars (\$5,000.00) per calendar day.

INTERMEDIATE CONTRACT TIME NUMBER 1 AND LIQUIDATED DAMAGES

(9-19-06)

SP1 G14 A

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to a two-lane, two-way traffic pattern. The Contractor shall not close or narrow a lane of traffic on **NC 54** during the following time restrictions:

DAY AND TIME RESTRICTIONS
Monday – Friday 7:00 a.m. to 7:00 p.m.

In addition, the Contractor shall not close or narrow a lane of traffic on **NC 54**, 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 **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 Saturday or Sunday, then until 7:00 p.m. the following Tuesday.
2. For **Easter**, between the hours of 7:00 a.m. Thursday and 7:00 p.m. Monday.
3. For **Memorial Day**, between the hours of 7:00 a.m. Friday and 7:00 p.m. Tuesday.

4. 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 Saturday or Sunday, then between the hours of 7:00 a.m. the Thursday before Independence Day and 7:00 p.m. the Tuesday after Independence Day.
5. For **Labor Day**, between the hours of 7:00 a.m. Friday and 7:00 p.m. Tuesday.
6. For **Thanksgiving Day**, between the hours of 7:00 a.m. Tuesday and 7:00 p.m. Monday.
7. 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 Monday **after the week of Christmas Day.**

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

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

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

The liquidated damages are Five Hundred Dollars (\$500.00) per hour.

INTERMEDIATE CONTRACT TIME NUMBER 2 AND LIQUIDATED DAMAGES

(9-19-06)

SP1 G14 A

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

DAY AND TIME RESTRICTIONS
 6:00 a.m. thru 9:00 a.m. (Monday thru Friday)
 3:00 p.m. thru 6:00 p.m. (Monday thru Friday)

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

2. For **Easter**, between the hours of 6:00 a.m. Thursday and 6:00 p.m. Monday.
3. For **Memorial Day**, between the hours of 6:00 a.m. Friday and 6:00 p.m. Tuesday.
4. For **Independence Day**, between the hours of 6:00 a.m. the day before Independence Day and 6:00 p.m. the day after Independence Day. If Independence Day is on a Saturday or Sunday, then between the hours of 6:00 a.m. the Thursday before Independence Day and 6:00 p.m. the Tuesday after Independence Day.
5. For **Labor Day**, between the hours of 6:00 a.m. Friday and 6:00 p.m. Tuesday.
6. For **Thanksgiving Day**, between the hours of 6:00 a.m. Tuesday and 6:00 p.m. Monday.
7. For Christmas, between the hours of 6:00 a.m. the Friday **before the week of Christmas Day** and 6:00 p.m. the following Monday **after the week of Christmas Day**.

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

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

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

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

INTERMEDIATE CONTRACT TIME NUMBER 3 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE I, STEP 5 on weekend(s) as shown on Sheet TCP-4 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the Friday at 6:00 PM that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following Monday at 6:00 AM after the Friday the Contractor begins work.

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

INTERMEDIATE CONTRACT TIME NUMBER 4 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE I, STEP 8 on weekend(s) as shown on Sheet TCP-4 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the Friday at 6:00 PM that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following Monday at 6:00 AM after the Friday the Contractor begins work.

The liquidated damages are Five Hundred Dollars (\$500.00) per hour.

INTERMEDIATE CONTRACT TIME NUMBER 5 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE II, STEP 3 as shown on Sheet TCP-4 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the Friday at 6:00 PM that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following Monday at 6:00 AM after the Friday the Contractor begins work.

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

INTERMEDIATE CONTRACT TIME NUMBER 6 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE II, STEP 5 as shown on Sheet TCP-24 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the **Saturday at 7:00 A.M.** that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following **Sunday at 7:00 A.M.** after the **Saturday** the Contractor begins work.

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

INTERMEDIATE CONTRACT TIME NUMBER 7 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE III, STEP 1 as shown on Sheet TCP-36 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the Friday at 6:00 PM that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following Sunday at 7:00 AM after the Friday the Contractor begins work.

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

INTERMEDIATE CONTRACT TIME NUMBER 8 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE IV, STEP 1 as shown on Sheet TCP-53 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the Friday at 6:00 PM that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following Sunday at 7:00 AM after the Friday the Contractor begins work.

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

INTERMEDIATE CONTRACT TIME NUMBER 9 AND LIQUIDATED DAMAGES:

The Contractor shall complete the work required of PHASE IV, STEP 3 as shown on Sheet TCP-53 and shall place and maintain traffic on same.

The time of availability for this intermediate contract time will be the **Saturday at 7:00 A.M.** that the Contractor elects to begin the work.

The completion time for this intermediate contract time will be the following **Sunday at 7:00 A.M.** after the **Saturday** the Contractor begins work.

The liquidated damages are Five Hundred Dollars (\$500.00) per hour.

MAJOR CONTRACT ITEMS:

(2-19-02)

SP1 G28

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

Line #	Description
7	Unclassified Excavation
62	Asphalt Concrete Base Course, Type B25.0B
64	Asphalt Concrete Intermediate Course, Type I19.0B
66	Asphalt Concrete Surface Course, Type S9.5B

SPECIALTY ITEMS:

(7-1-95)

SP1 G37

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

Line #	Description
111 thru 118	Guardrail
125 thru 137	Signing
156 thru 165	Long-Life Pavement Markings
175 thru 176	Permanent Pavement Markers
180 thru 200	Utility Construction
201 thru 231	Erosion Control
232	Reforestation
233 thru 289	Signals

FUEL PRICE ADJUSTMENT:

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

SP1 G43

Revise the 2006 *Standard Specifications* as follows:

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

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

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

The base index price for DIESEL #2 FUEL is \$1.7078 per gallon.

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

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

Description	Units	Fuel Usage Factor Diesel
Unclassified Excavation	Gal/CY	0.29
Borrow Excavation	Gal/CY	0.29
Aggregate Base Course	Gal/Ton	0.55
Asphalt Concrete Base Course, Type _____	Gal/Ton	2.90

Asphalt Concrete Intermediate Course, Type ____	Gal/Ton	2.90
Asphalt Concrete Surface Course, Type ____	Gal/Ton	2.90
Open-Graded Asphalt Friction Course	Gal/Ton	2.90
Sand Asphalt Surface Course, Type ____	Gal/Ton	2.90
Aggregate for Cement Treated Base Course	Gal/Ton	0.55
Portland Cement for Cement Treated Base Course	Gal/Ton	0.55
____ In. Portland Cement Concrete Pavement	Gal/SY	0.245
Concrete Shoulders Adjacent to ____ In. Pavement	Gal/SY	0.245

SCHEDULE OF ESTIMATED COMPLETION PROGRESS:

(7-20-04)

SP1 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:

	<u>Fiscal Year</u>	<u>Progress (% of Dollar Value)</u>
2007	(7/01/06 - 6/30/07)	22 % of Total Amount Bid
2008	(7/01/07 - 6/30/08)	43 % of Total Amount Bid
2009	(7/01/08 - 6/30/09)	22 % of Total Amount Bid
2010	(7/01/09 - 6/30/10)	13 % of Total Amount Bid

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

DISADVANTAGED BUSINESS ENTERPRISE:

(7-17-01)

SP1 G61

Policy

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises shall have the opportunity to participate in the performance of contracts financed in whole or in part by Federal Funds in order to create a level playing field.

The Contractor is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements.

Obligation

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

Goals

The following goal for participation by Disadvantaged Business Enterprise (DBE) is established for this contract:

Disadvantaged Business Enterprises 11%

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

Listing Of DBE Subcontractors

All bidders, at the time the bid proposal is submitted, must also submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in this proposal in order for the bid to be considered responsive. Bidders must indicate the total dollar value of DBE participation for the contract. In the event the bidder has no DBE participation, he is still required to indicate this on the forms by entering the word or number zero. Blank forms will not be deemed to represent zero participation. BIDS SUBMITTED WHICH DO NOT HAVE DBE PARTICIPATION INDICATED ON THE APPROPRIATE FORM WILL NOT BE READ PUBLICLY DURING THE OPENING OF BIDS. The Department will not consider these bids for award and they will be returned to the bidder. Bidders have the option of submitting their DBE participation in an abbreviated format as required in Paragraph A below, or the bidder may submit their DBE participation in the additional detail required by Paragraph B below. In the event the bidder elects to submit DBE participation in accordance with Paragraph A and is determined to be the apparent lowest responsive bidder, that bidder must deliver to the Department no later than 12:00 noon of the sixth day following the opening of bids, a detailed DBE submittal as required by Paragraph B below.

Only those DBE firms with current certification by the Department will be considered acceptable for listing in the bidder submittal of DBE participation.

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

Required Information

- (1) The names and addresses of DBE firms committed to participate in the contract
- (2) The Contract Item Numbers of work to be performed by each DBE firm; and
- (3) The total dollar amount to be paid to each DBE based on agreed upon unit prices.

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

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

Required Information

- (1) The names and addresses of DBE firms committed to participate in the contract
- (2) The Contract Item Numbers and Contract Item Descriptions and agreed upon unit prices of work to be performed by each DBE firm; and
- (3) The total dollar amount to be paid to each DBE based on agreed upon unit prices.

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

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

The Department will not allow any substitutions, deletions, or other alterations to the listing of firms committed for DBE participation and/or the respective listed contract item numbers after opening of bids. The Department will not allow adjustments to total dollar amount of DBE participation after the opening of bids that would result in the DBE participation being less than the contract goal. The only exceptions to the requirements of this paragraph will be: (1) to allow for replacement of a DBE firm that had been decertified after opening of bids, and (2) to allow alteration of the listed contract item numbers subject to the Bidder submitting sufficient documentation to verify an obvious error in the initial submittal.

- C. If the DBE participation submitted in the bid by the apparent lowest responsive bidder in response to Paragraph A/B does not meet or exceed the DBE contract goal, the apparent lowest responsive bidder must submit information to satisfy the North Carolina Department of Transportation that sufficient Good Faith efforts have been made to meet the contract goals. One complete set and nine (9) copies of this information must be received in the office of the State Contractual Services Engineer no later than 12:00 noon of the sixth day following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a sample representative letter along with a distribution list of the firms being solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Department considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Where the bidder fails to provide this information by the deadline, the Department may impose one or more of the following sanctions: (1) disqualify the contractor and any affiliated companies from further bidding for a period of time of no more than 90 days from the date of disqualification as established in notification by certified mail, (2) disqualify the Contractor and any affiliated companies for award of all contracts for which bids have been received and opened, (3) disqualify the Contractor from the contract in question.

The following factors are what the Department will consider in judging whether or not the bidder has made adequate good faith effort:

- (1) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform DBEs of subcontracting opportunities.
- (2) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 days prior to bid opening. Whether the bidder provided written notice to all DBEs listed in the NCDOT DBE directory, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the DBE Directory) that the bidder will be subcontracting.
- (3) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder must notify DBEs outside of the targeted Divisions that specialize in the subcontracted areas, as well as call the project Compliance Officer in the Office of Civil Rights to give notification of the bidder inability to get DBE quotes.
- (4) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise perform these work items with its own forces.
- (5) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract
- (6) Whether the bidder negotiated in good faith with interested DBEs not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

- (7) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy contract goals.
- (8) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (9) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (10) Any other evidence that the bidder submits which show that the bidder has made reasonable Good Faith efforts to include DBE participation.

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

Where the apparent lowest responsive bidder fails to submit sufficient participation by DBE firms to meet the contract goal and upon a determination by the Goal Compliance Committee based upon the information submitted that the apparent lowest responsive bidder failed to make sufficient reasonable efforts to meet the contract goal, the bidder will be offered the opportunity to meet in person for administrative reconsideration. A committee appointed by the Department will hear administrative reconsideration. Members of this committee will be officials who did not take part in the original determination by the Goal Compliance Committee. The bidder will have the opportunity to present written documentation or argument concerning the issue of whether it met the goal or made an adequate good faith effort. The bidder will receive a written decision on the reconsideration. Explaining the basis for finding that the bidder did or did not meet the goal or made adequate Good Faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department.

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

DBE Directory

Included with this Proposal is a list of Disadvantaged Business Enterprises (DBE) which have been certified as such by the North Carolina Department of Transportation. Only those DBE firms with current certification may be listed in the proposal.

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

Replacement of DBEs**(A) Performance Related**

If any DBE Subcontractor submitted on the form for listing of DBE Subcontractors, contained elsewhere in this proposal, is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE Subcontractor with another DBE Subcontractor to perform at least the same amount of work of the contract as the DBE that was terminated.

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

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

The contractor will not terminate a DBE subcontractor listed in the proposal for convenience or perform the work with its own forces or those of an affiliate without the written approval of the Engineer. If the Contractor fails to demonstrate reasonable efforts to replace a DBE firm that does not perform as intended or completes the work with its own forces without the Engineer's

approval, the Contractor will be disqualified from further bidding for a period of up to 6 months after notification by certified mail.

(B) Decertification

1. If a Prime Contractor has listed a DBE firm in his low bid submitted and that DBE Subcontractor is subsequently decertified by the Department after a Request for Subcontract has been approved, then the Department will not require the Prime Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal but may not be counted toward the overall program goal.
2. If a Prime Contractor has listed a DBE firm in his low bid submittal and the DBE firm is decertified prior to the Department approving a Request for Subcontract for the named DBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a Good Faith effort to do so.

Definitions

For purposes of this provision the following definitions will apply:

- (1) Socially and economically disadvantaged individuals means a person who has a net worth of \$750,000.00 or less and is a citizen or lawful permanent resident of the United States and who is:
 - (a) A Black American
 - (b) A Hispanic American
 - (c) A Subcontinent Asian American
 - (d) A Native American
 - (e) An Asian-Pacific American
 - (f) A Woman
 - (g) Members of other groups, or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)).
 - (h) Members of other groups, or other individuals found to be economically and socially disadvantaged by the N. C. *Department of Transportation*

under the Criteria for Disadvantaged Business Enterprises as published by the Department.

- (2) Disadvantaged Business Enterprise (DBE) means a for-profit small business concern.
 - (a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and
 - (b) Whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Counting DBE Participation Toward Meeting The DBE Goal

- (1) If a firm is determined to be an eligible DBE firm and certified by the Department, the total dollar value of the participation by the DBE will be counted toward the goal. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the contractor.
- (2) When a DBE performs as a participant in a joint venture, the contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
- (3)
 - (a) The Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (b) Consistent with normal industry practices, a DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal. If a DBE Contractor or Subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The Departments decision on the

rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

- (c) The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.
 - (1) The DBE firm must be responsible for the management and supervision of entire trucking operation
 - (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck
 - (3) The DBE will receive full credit for all trucks it owns, insures, operates, and employs drivers
 - (4) The DBE will receive full credit for all trucks leased from a certified DBE firm
 - (5) The DBE will only receive credit for the fees or commission for trucks leased from a non-DBE firm
 - (6) Others may use trucks during the term of the lease so long as the lease gives priority to the DBE for the use of the truck(s).

The DBE may present evidence to rebut this presumption to the Department for commercially useful functions.

- (4) A Contractor may count toward its DBE goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.
 - (a) For purposes of this provision, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
 - (b) For purposes of this provision, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.
- (5) A contractor may count toward its DBE goal the following expenditures to DBE firms that are not manufacturers or regular dealers:
 - (a) 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, toward DBE goal, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

- (b) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), toward DBE goals, provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Reports

All requests for subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This document shall be on the Department's Form RS-1-D, or in lieu of using the Department's Form, copies of the actual executed agreement between the Prime Contractor and the DBE subcontractor may be submitted. In any event, the Department reserves the right to require copies of actual subcontract agreements involving DBE Subcontractors.

The RS-1-D certification forms may be obtained from the Department's Resident Engineer.

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

Reporting Disadvantaged Business Enterprise Participation

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

- DOT Project Number
- Payee Contractor Name
- Receiving Contractor or Material Supplier
- DBE Certification Basis, e.g., Woman Owned, Native American, African American, etc.
- Amount of Payment
- Date of Payment

A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the Engineer.

MENTOR-PROTÉGÉ PROGRAM:

(9-21-04)

SP1 G75

Description

This work shall consist of the Contractor and DBE/MBE/WBE participating in the Department's Mentor-Protégé Program in accordance with the guidelines available from the State Contractual Services Engineer.

It is not mandatory to participate in this program in order to bid on this project.

The following definitions shall apply to this provision.

Mentor – A contractor who teaches a DBE/MBE/WBE how to fully perform items of work and advises them on their professional growth over a period of time by means of the Department's Mentor-Protégé Program.

Protégé - A DBE/MBE/WBE who receives help, guidance, training, and support from a contractor who has expertise in DBE/MBE/WBE's chosen areas of construction. One who is trained or whose professional growth is guided by a contractor in the Department's Mentor-Protégé Program.

Bidding

If the Contractor desires to be a mentor, he shall check *yes* and add a verifiable cost in the appropriate blank under the *Miscellaneous Folder* in the *Expedite Software*. This value will not be considered as part of the bid for purposes of award. If accepted by the Department, the Contractor will be compensated for participation in the Program by execution of a supplemental agreement.

If the Contractor wishes to participate in the mentor-protégé program after this project has been awarded, he shall contact the Engineer to begin the process. All other conditions in this provision shall apply.

Prequalification of the Mentor and Protégé

All contractors that want to participate in this program shall be prequalified with the Department. All DBE/MBE/WBEs that want to participate in this program shall be certified with the Department. To be considered for the program, both the Mentor and the Protégé(s) shall have an approved Mentor-Protégé application on file with the State Contractual Services Engineer.

Program Implementation

The Contractor shall submit a Mentor-Protégé Business Plan for review and approval by the Department after the project is awarded. No work shall commence by the Protégé(s) under this program until the Department approves the Business Plan. The Business Plan submitted by the Contractor shall state:

- Commitments of the parties involved
- Mentor’s role in the Program
- Resources and manpower that the Mentor will commit;
- Such manpower shall include personnel capable of teaching and directing the Protégé(s) work and mentoring administrative employees. The Mentor may supplement the Protégé(s) work crew with their own employees if the Mentor-Protégé team determines that it is the most effective way to accomplish the necessary training.
- Timelines and milestones for the Protégé’s work.
- Protégé’s role in the Program
- Items of work that the Protégé(s) will perform.
- Educational expectations, supervision, resources and manpower that the Protégé(s) shall provide to the Program.

The Department will determine whether to execute Mentor-Protégé Program based on the review and approval of the following items:

The proposed Mentor-Protégé Business Plan
The certified cost information and making a determination that the cost for the work is within reasonable limits.

The Contractor shall execute the Mentor-Protégé Program upon written approval by the Department, and after Mentor-Protégé Business Plan has been signed by the Department, Mentor and Protégé.

After execution of the Mentor-Protégé Business Plan, the Contractor shall send monthly reports to the Resident Engineer. The Contractor shall submit three copies of the monthly report to the Resident Engineer. The Resident Engineer will forward one copy to the Director of the Office of Civil Rights and Business Development and one copy to the State Contractual Services Engineer.

Contract Goals and Banking Credit

If the Contractor meets the contract goals, or a portion thereof with a good faith effort finding from the Department, the Department will bank the portion of the work that the Protégé(s) is performing on the project that is beyond the original advertised contract goals.

The banking will be based on actual dollars paid to the Protégé(s). Materials purchased by the Protégé(s) that are directly related to the work that will be performed by the Protégé are eligible

for the banking incentive. However, materials that pass through the Protégé(s) and are not used by the Protégé(s) in their own work items, will not be eligible for banking credit.

On federally funded projects, the banking credit portion of this specification will not be used.

Measurement and Payment

Protégé payments

Payments to the protégé will be measured and paid for the items of work performed by the protégé at the contract unit price as shown in the contract.

Contractor payments – Supplemental Agreement

A Mentor-Protégé Business Plan shall be completed as part of a fully executed supplemental agreement before payment will be considered. *Mentor-Protégé Program* payments will include verifiable direct and indirect costs including, but not limited to, any office support and reasonable additives for supervision, training, additional administrative and overhead costs of the Protégé. The price will include the difference between the Contractor's cost to perform the work and the bid prices submitted to the Contractor by the Protégé(s).

The Department will not pay more than 100% of the Mentor-Protégé supplemental agreement lump sum amount if the Protégé's identified work items overrun. If the Protégé's work items underrun on the project, the balance up to 100% of the supplemental lump sum amount will be paid at the project's completion.

Bonus/Incentive Payments

In addition to the *Mentor-Protégé Program* lump sum payment, a Bonus/Incentive payment *may* be made to the Mentor-Protégé Team. Upon the determination by the Engineer of successful completion of all work items identified for the Protégé(s) in the Mentor-Protégé Business Plan; and the determination that the Protégé has become proficient enough to perform this work on another project as a subcontractor, without the mentor-protégé relationship, the bonus/incentive will be considered.

The Bonus/Incentive payment will be 1 percent of the Protégé(s) pay items, not to exceed \$50,000. Bonus/incentive payment, if determined warranted, will be paid within 45 calendar days after completion and acceptance of the work. No bonus/incentive payment will be made if the contract is terminated under the provisions of Article 108-13. No claim for additional time or compensation will be allowed for Mentor-Protégé disputes between the Department, the Mentor or the Protégé.

The Mentor and the Protégé(s) will receive equal portions of this Bonus/Incentive payment.

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:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

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

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

CONTRACTOR'S LICENSE REQUIREMENTS:

(7-1-95)

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)

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.

SUBMISSION OF RECORDS - FEDERAL-AID PROJECTS:

(7-1-95)

SP1 G109

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

This project is **not** located on the National Highway System, therefore, federal form FHWA-47 is not required.

SUBSURFACE INFORMATION:

(7-1-95)

SP1 G115

Subsurface information is available on the roadway portion of this project only.

PORTABLE CONCRETE BARRIER - (Partial Payments for Materials):

(7-1-95)

SP1 G121

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

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

COOPERATION BETWEEN CONTRACTORS:

(7-1-95)

SP1 G133

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

There is a project (R-2000AB) currently under construction within the limits of this project. The estimated completion date for R-2000AB is August 1, 2007.

There may be a project let to contract crossing this project between -Y-10 and -Y-12 before this project is complete.

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

TRAINING REQUIREMENTS:

(7-1-95)

SP1 G136

The Contractor's attention is directed to the Standard Special Provision *Training Special Provision* included elsewhere in this proposal.

The number of trainees to be trained on this project shall be 4.

BID DOCUMENTATION:

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

SP1 G142

General

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

Bid Documentation

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

Submittal of Bid Documentation

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

Affidavit

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

Verification

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

Duration and Use

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

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

Failure to Provide Bid Documentation

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

Escrow Agreement

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

Confidentiality of Bid Documentation

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

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

Cost and Escrow Instructions

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

Payment

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

TWELVE MONTH GUARANTEE:

(7-15-03)

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.

OUTSOURCING OUTSIDE THE USA:

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

SP1 G150

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

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

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

ACT OF GOD

(12-19-06)

SP 1 G151

Revise the 2006 Standard Specifications as follows:

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

EROSION & SEDIMENT CONTROL/STORMWATER CERTIFICATION:

(1-17-05) (Rev. 11-21-06)

SP1 G180

General

The purpose of this certification program is to assure that all responsible parties involved in the construction of this project are properly trained and have the skills necessary to fulfill all environmental commitments required of this project. It is intended that the contractor/subcontractor representatives work jointly with the Department on the project to assure that all plan and contract requirements are met, that necessary adjustments are made and that all devices and features are installed in a timely manner. In the case of difference of opinion or interpretation of plan or contract requirements between the Contractor and the Engineer, the Engineer's determination and decision will be final.

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

Establish a chain of responsibility for operations and subcontractor's operations to ensure that the *Erosion and Sediment Control Stormwater (E&SC/SW) Pollution Prevention Plan* is implemented and maintained over the life of the contract.

- (A) *Certified Supervisor* –Provide a certified E&SC/SW Supervisor to manage the Contractor and subcontractor(s) operations, insure compliance with Federal, State and Local ordinances and regulations, and to manage the Quality Control Program.
- (B) *Certified Foreman* – Provide certified, trained foremen for each construction operation that increases the potential for soil erosion or the possible sedimentation and turbidity of surface waters.

Roles and Responsibilities

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

(1) **Manage Operations** - Coordinate and schedule the work of subcontractors so E&SC/SW measures are fully executed for each operation and in a timely manner over the duration of the contract.

Oversee the work of subcontractors so that appropriate E&SC/SW preventive measures are conformed to at each stage of the work.

Prepare the required weekly erosion control punchlist and present it to the Engineer.

Attend all weekly or monthly construction meetings to discuss the findings of the NPDES inspection log and other related issues.

Implement the E&SC/SW site plans requested.

Provide for E&SC/SW methods for 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.

Acquire applicable permits and comply with requirements for borrow pits, dewatering, and any temporary work conducted by the Contractor in jurisdictional areas.

Conduct all E&SC/SW work in a timely and workmanlike manner.

Fully install E&SC/SW work prior to suspension of the work.

Coordinate with the Department, Federal, State and Local Regulatory agencies on resolution of E&SC/SW issues due to the Contractor's operations.

Ensure that proper cleanup occurs from vehicle tracking on paved surfaces and/or any location where sediment leaves the Right-of-Way.

Have available a set of erosion control plans that has been properly updated to reflect necessary plan and field changes for use and review by Department personnel as well as regulatory agencies.

- (2) Requirements set forth under the NPDES Permit - The Department's NPDES permit outlines certain objectives and management measures pertaining to construction activities. The permit references *NCG010000, General Permit to Discharge Stormwater* under the NPDES, and states that the Department shall incorporate the applicable requirements into its delegated E&SC/SW Program. Some of the requirements are, but are not limited to:

Control project site waste to prevent contamination of surface or ground waters of the state (i.e. construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste).

Inspect E&SC/SW devices at least once every 7 calendar days, twice weekly for 303(d) impaired streams, and within 24 hours after a significant rainfall event of 0.5 inches within 24 hours.

Maintain an onsite rain gauge and a record of rainfall amounts and dates

Maintain E&SC/SW inspection records for review by Department and Regulatory personnel upon request.

Implement approved reclamation plans on all borrow pits and waste sites.

Maintain a log of turbidity test results as outlined in the Department's Procedure for Monitoring Borrow Pit Discharge.

Provide secondary containment for bulk storage of liquid materials.

Provide training for employees concerning general E&SC/SW awareness, the NPDES Permit requirements, and the requirements of the *General Permit, NCG010000*.

Report violations of the NPDES permit to the Engineer so that the DWQ Regional Office can be notified within 24 hours. The Supervisor will immediately notify the Engineer of any violations so that proper notification can be made to DWQ.

- (3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions of permits. The quality control program shall:

Follow permit requirements related to the Contractor and subcontractors' construction activities.

Ensure that all operators and/or subcontractor(s) on site have the proper E&SC/SW certification.

Notify the Engineer when the required certified E&SC/SW personnel are not available on the job site when needed.

Conduct the inspections required by the NPDES permit.

Take corrective actions in the proper timeframe as required by the NPDES permit for problem areas identified during the NPDES inspections.

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.

Maintain temporary E&SC/SW devices.

Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.

The Contractor's quality control and inspection procedures shall be subject to review by the Engineer. Maintain NPDES inspection records at the project site. Make NPDES inspection 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:

Foreman in charge of grading activities

Foreman in charge of bridge or culvert construction over jurisdictional areas

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 on site 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.

Preconstruction Meeting

Furnish the names of *the Certified E&SC/SW Supervisor, Certified Foremen*, 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 and Certified Foremen may be revoked or suspended with the issuance of a *Continuing Immediate Corrective Action (CICA), Notice of Violation, or Cease and Desist (C&D) Order* for E&SC/SW related issues.

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

Failure to adequately perform the duties as defined within the certification program

Issuance of a CICA, NOV, or C&D Order

Failure to fully perform environmental commitments as detailed within the permit conditions and specifications

Demonstration of erroneous documentation or reporting techniques

Cheating or copying another candidate's work on an examination

Intentional falsification of records

Directing a subordinate under direct or indirect supervision to perform any of the above actions

Dismissal from a company for any of the above reasons

Suspension or revocation of one's certification within another state

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

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

Chief Engineer
1520 Mail Service Center
Raleigh, NC 27699-1520

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

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

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

Measurement and Payment

Certified E&SC/SW Supervisor is incidental to the project for which no direct compensation will be made.

Certified Foremen are incidental to the project for which no direct compensation will be made.

NOTE TO CONTRACTOR:

Borrow material consisting of A-2-5 and A-5 soils with a plasticity index less than 8 shall not be used in the top one foot of embankments nor as backfill in undercut areas unless waived in writing by the Engineer.

POSSIBLE DELETION OF A PORTION OF THE WORK:

The Contractor's attention is directed to the fact that during construction of this project there may be a contract awarded for construction of the Triangle Parkway crossing this project on -L- and Y-12. Portions of the work on Y-12 between Station 10+00 to 24+70 and on -L- between Stations 225+00 to 240+00 may be deleted from this project so that the Triangle Parkway construction can be constructed to the proper alignment and configuration.

In the event deletion of the work at this location occurs, the Department will not consider this to be an alteration of the plans that materially changes the character of the work, and will not make any adjustments to the unit prices or contract times. The necessary adjustments to the traffic control phasing or additional work items for proper tie-ins will be made by supplemental agreement in accordance with Article 104-2 of the Specifications.

WORK ON RAILROAD RIGHT-OF-WAY (NC 54):

The Contractor shall not perform any work on the railroad right of way in the vicinity of -L- Station 52+75 (NC 54) until the railroad agreement has been secured. It is anticipated this agreement will be executed before May 15, 2007.

LOWERING POND AT STATION -L- 200+00:

At the proper stage of construction, the Contractor shall lower the water elevation of the pond at Station 200 -L- to a level no lower than necessary to construct the culvert extension on the east side of the project. The Contractor shall perform the work during the optimum weather conditions for constructing the culvert. The water elevation shall not be lowered for a period longer than 4 months.

No direct payment will be allowed for lowering the water level or for maintaining the lowered elevation, as the cost of this work will be considered incidental to the various pay items being used for payment of the culvert construction.