

MUSCOGEE (CREEK) NATION

**CONTRACTING DOCUMENTS AND
SPECIFICATIONS FOR:**

**Greenleaf Church Road
Project No. G07908 -1318
Okfuskee County, Oklahoma**

BID OPENING: October 24, 2024 10:00 A.M.

**MUSCOGEE (CREEK) NATION
TRIBAL COMPLEX
OKMULGEE, OK 74447**

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CONTRACT DOCUMENTS

GREENLEAF CHURCH ROAD

Project No. G07908-1318

MUSCOGEE (CREEK) NATION

OKMULGEE, OKLAHOMA

CONTRACT BETWEEN OWNER AND CONTRACTOR

This CONTRACT is made on _____

Between the Owner: Muscogee (Creek) Nation, Tribal Transportation Program
P.O. Box 580
Okmulgee, OK 74447
Represented by DOT Director

And the Contractor: _____

Project: **GREENLEAF CHURCH ROAD**

Price: _____

This Contract Document consists of this Contract signed by the Owner and Contractor, incorporates by reference the General Terms and Conditions, Contractor’s Submitted Bid, Plans and Specifications, and any other written document added by agreement of the parties. All terms of this Contract shall be executed and enforced by the Office of the Principal Chief through the TTP Manager. This Contract is deemed executed at the Muscogee (Creek) Nation Capitol and governed by the laws and courts of that jurisdiction.

Muscogee (Creek) Nation
Owner

Contractor

Principal Chief

Date

Date

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.

1.2 The Contract Documents consist of:

1. The Contract signed by the Owner and Contractor;
2. General Conditions of the Contract for Construction;
3. Plans and Specifications, if any; and,
4. Contractor's submitted bid.

1.3 THE PROJECT

The term "project" means the labor, materials, and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations. Contractor shall, in good and first class workmanlike manner furnish all labor, materials, tools and equipment required to perform and complete the project in strict accordance with the Contract Documents, all of which are made a part of this Contract as if the same were herein set out at length.

1.4 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the project by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

ARTICLE 2 OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

Except for permits and fees which are the responsibility of the Contractor under the contract documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

2.2 OWNER'S RIGHT TO STOP THE PROJECT

If the Contractor fails to correct project which is not in accordance with the contract documents, the Owner may direct the Contractor in writing to stop the project until the correction is made.

2.3 OWNER'S RIGHT TO CARRY OUT THE PROJECT

If the Contractor defaults or neglects to carry out the project in accordance with the contract documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, a change order shall be issued deducting the cost of correction from payments due the Contractor.

2.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

2.4.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's own forces, and to award separate contracts in connection with other portions of the project.

2.4.2 The Contractor shall coordinate and cooperate with separate contractors of the Owner.

2.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 3 CONTRACTOR

3.1 EXECUTION OF THE CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the project is to be performed and correlated personal observations with requirements of the Contract Documents.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the project, using the Contractor's best skill and attention. The Contractor shall be responsible for and have control over, subject to oversight by the Owner's Construction Engineer, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the project.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the contract documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation and other facilities and services necessary for proper execution and completion of the project.

3.4.2 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

3.5 WARRANTY

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the contract documents; (2) the project will be free from defects not inherent in the quality required or permitted; and (3) the project will conform to the requirements of the contract documents.

3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when due.

3.7 PERMITS, FEES AND NOTICES

The Contractor shall perform such functions necessary, including the payment of the permit and other fees, licenses and inspection, to secure those federal, state or local licenses and permits for the design, construction, equipping and opening of the project, which are either: (a) required by law or (b) deemed by the Owner to serve the best interests of the project even if not legally applicable to the project. The Contractor shall cause to be prepared all documents related to such licenses and permits, and shall provide such documents to the Owner for review and approval. Upon approval by the Owner, the Owner shall execute all such documents required to secure said permits and licenses; provided that such documents shall include a disclaimer stating that the Owner does not acknowledge the regulatory authority of the federal, state or local governments over the design construction, equipping and opening of the project and that the Owner is submitting said documents on a purely voluntary basis. If the Contractor performs project in a manner known to be contrary to laws, statutes, ordinances, building codes, including those codes deemed by the Owner to serve the best interest of the project, and rules and regulations, the Contractor shall assume appropriate responsibility for such project and shall bear the costs attributable to correction.

3.8 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents and the Owner.

3.9 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the project or to make its parts fit together properly.

3.10 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the project.

3.11 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performances of the project, provided that such

claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the project itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

ARTICLE 4 CHANGES IN THE PROJECT

4.1 After execution of the Contract, changes in the project may be accomplished by change order or by order for a minor change in the project. The Owner, without invalidating the Contract, may order changes in the project within the general scope of the Contract consisting of additions, deletions or other revisions, the price and contract time being adjusted accordingly; provided that a modification of price shall not occur unless additional funds are available through an approved budget or by appropriation by the National Council.

4.2 A change order shall be a written order to the Contractor signed by the Owner to change the project, price or contract time.

4.3 The Owner will have authority to order minor changes in the project not involving changes in the price or the contract time and not inconsistent with the intent of the contract documents. Such changes shall be written orders and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

4.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the contract documents or from those conditions ordinarily found to exist, the price and contract time shall be subject to equitable adjustment.

ARTICLE 5 TIME

5.1 The date of commencement and time to complete shall be the date specified in the Notice to Proceed issued by the Muscogee (Creek) Nation's Tribal Transportation Program Manager. Failure to complete all Work in full and in a timely manner shall be a breach of this Contract. The contract time for this project is 120 calendar days.

5.2 If the Contractor is delayed at any time in progress of the project by changes ordered in the project, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the contract time shall be extended by change order for such reasonable time as the Owner may determine.

5.3 Liquidated Damages

- 5.3.1 If the Contractor fails to complete the project within the time specified in the contract, or any extension, the Contractor shall pay to the Owner as liquidated damages, the sum of \$2,200 for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the project, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the Owner. The Contractor remains liable for damages caused other than by delay.

ARTICLE 6 PAYMENTS AND COMPLETION

6.1 PRICE

The price stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the project under the contract documents, subject only to written agreed change order.

6.2 APPLICATIONS FOR PAYMENT

- 6.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized application for payment for operations completed in accordance with the values stated in the agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require and reflecting retainage as provided in 6.4.

6.2.2 The Contractor warrants that title to all of the project covered by an application for payment will pass to the Owner no later than the time of payment.

The Contractor further warrants that upon submittal of an application for payment, all work for which certificates for payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

6.3 PROGRESS PAYMENTS

6.3.1 After the Contractor has issued a certificate for payment, the Owner shall make payment in the manner provided in the Contract Documents.

6.3.2. The Contractor shall promptly pay each Subcontractor and material supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such entities' portion of the project.

6.3.3. The Owner shall not have responsibility for the payment of money to a Subcontractor or material supplier.

6.3.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of project not in accordance with the requirements of the Contract Documents.

6.4 RETAINAGE

The Owner shall withhold retainage in the amount of ten percent (10%) of each invoice. Owner shall return the retainage to the Contractor two (2) months after substantial completion has been achieved and project has been accepted by the Owner.

6.5 SUBSTANTIAL COMPLETION

Substantial Completion is the state in the progress of the project when the work or designated portion thereof is sufficiently complete in accordance with the contract documents so the Owner can occupy or utilize the project for its intended use.

6.6 FINAL COMPLETION AND FINAL PAYMENT

6.6.1 Upon receipt of a final application for payment, the Owner will inspect the project. When the Owner finds the project acceptable and the Contract fully performed, the Owner will promptly issue a final payment.

6.6.2 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

ARTICLE 7 PROTECTION OF PERSONS AND PROPERTY

7.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating and maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

7.2 INSURANCE

7.2.1 Unless otherwise stated in the Contract, The Contractor shall maintain at least \$2,000,000 general liability insurance, \$1,000,000 per occurrence, \$1,000,000 Automobile liability insurance, and worker's compensation coverage.

7.2.2 Certificates of insurance shall be provided by Contractor showing coverage prior to commencement of the Work.

7.3 BONDING DOCUMENTS

- 7.3.1 For contracts in excess of \$50,000.00, the Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The required bonds include a Payment Bond, Performance Bond, and Maintenance Bond.
- 7.3.2 Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy be furnished.

ARTICLE 8 CORRECTION OF PROJECT

- 8.1 The Contractor shall promptly correct work rejected by the Owner that fails to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected work.
- 8.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct any work not conforming to the requirements of the Contract Documents.
- 8.3 If the Contractor fails to correct nonconforming work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of the correction.

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 **ASSIGNMENT OF CONTRACT**
Neither party to the Contract shall assign the Contract without written consent of the other.
- 9.2 **TESTS AND INSPECTIONS**
- 9.2.1 Tests, inspections and approvals of portions of the Project required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.
- 9.2.2 If the Owner requires additional testing, the Owner shall perform these tests.
- 9.3 **GOVERNING LAW**
The Contract shall be governed by the laws and courts of the Muscogee (Creek) Nation.

The Nation has adopted the International Building Codes.

ARTICLE 10 TERMINATION OF CONTRACT

10.1 TERMINATION BY CONTRACTOR

If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following ten days written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for project executed and for proven loss with respect to paid materials.

10.2 TERMINATION BY OWNER

10.2.1 The Owner may terminate the Contract if the Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. persistently does unsatisfactory work or uses sub-standard materials;
3. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
4. persistently disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction;
5. falls behind on schedule and cannot show ability to finish on schedule; or
6. is otherwise guilty of substantial breach of a provision of the Contracts Documents.

10.2.2. When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ten days written notice, terminate the Contract and may:

1. take possession of the site and all materials at the project site.
2. finish the project by whatever reasonable method the Owner may deem expedient.

10.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 10.2.1., the Contractor shall receive payment for all satisfactory work completed prior to the date

the termination letter is delivered. Once the termination letter is delivered to the contractor then the contractor shall receive no further payments for the project except for any retainage that has been withheld for work that was previously completed in a satisfactory manner prior to termination.

10.2.4 If the Owner terminates the original contract and must hire a new Contractor to complete the project, the Owner shall keep the retainage collected from the original Contractor until the project is complete. The retainage shall be used to pay any overruns in the project as a result of the Owner having to hire a new Contractor to complete the project. Any unused retainage funds collected from the original Contractor and not used to pay overruns shall be released to the original Contractor at the completion of the project.

NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN that the Muscogee (Creek) Nation intends to receive sealed Bids from all interested bidders for the following.

**GREENLEAF CHURCH ROAD
PROJECT No. G07908 – 1318
OKFUSKEE COUNTY, OKLAHOMA**

All Bids must be completed on forms furnished by the Muscogee (Creek) Nation. Additionally, Bids must be tendered in sealed envelopes (one bid per envelope) according to the requirements set forth in the Information for Bidders. The Muscogee (Creek) Nation reserves the right to waive technicalities, to reject any or all Bids, and to award the Contract to the Bidder determined, in the Nation's judgment, to best serve the interests of Muscogee (Creek) Nation.

Bidders must familiarize themselves with the terms/conditions contained in the Bid documents and must act in good faith with the understanding that full cooperation in carrying out the Bid terms/conditions is required.

Bid documents, including Plans, Specifications, forms, and the non-collusion affidavit, are available at the Muscogee (Creek) Nation Tribal Complex, located at the physical address listed below.

Muscogee (Creek) Nation Transportation Building
12805 East Gun Club Road
Okmulgee, Oklahoma 74447

Bids shall be legibly written, notarized, sealed, and delivered to the Muscogee (Creek) Nation's Finance Office in the Tribal Complex, SE corner of Highway 75 and Highway 56 Loop, Okmulgee, Oklahoma 74447.

Sealed bids will be received until the closing date/time listed below and publicly opened immediately thereafter in a meeting of the Muscogee (Creek) Nation at that time.

Closing Date: October 24, 2024
Closing Time: 10:00 A.M.

INVITATION TO BID

Muscogee (Creek) Nation intends to contract for the construction of the Greenleaf Church Road in Okfuskee County, OK. The Muscogee (Creek) Nation shall receive sealed Bids for constructing this project at the Muscogee (Creek) Nation Tribal Complex Finance Building in Okmulgee, Oklahoma until the closing date/time listed below.

Closing Date: October 24, 2024

Closing Time: 10:00 a.m.

Bids received after the scheduled closing time will not be considered and shall be returned unopened. Immediately following the closing time, the sealed Bids shall be publicly opened during a meeting of the Muscogee (Creek) Nation.

This project, which the Nation references according to the information below, includes but is not limited to the Construction of .77 Miles of Road; Asphalt, installing a 2-inch waterline, and removal and replacement of driveways (Detailed construction plans containing more specific information are available upon request.)

Project Name: Greenleaf Church Road

Project Number: G07908 -1318

The project is from Hwy 56 South on North 3740 Rd to the Greenleaf Church in Okemah, Oklahoma.

Prospective bidders may request bid documents, including construction plans, on or after October 7, 2024, from the Muscogee (Creek) Nation at the following address:

Muscogee (Creek) Nation Transportation Building
12805 East Gun Club Road
Okmulgee, Oklahoma 74447
918-549-2711

Additionally, copies of Construction Plans and Bid documents are available for public review/inspection at the aforementioned address.

A MANDATORY PRE-BID CONFERENCE is scheduled for October 10, 2024 at 10:00 a.m. at the Muscogee (Creek) Nation Housing Building 2951 N Wood Dr, Okmulgee, OK 74447. ALL PROSPECTIVE BIDDERS MUST ATTEND this conference, as there will be no other scheduled pre-bid conferences.

All Bids submitted for consideration must be accompanied by a Bid Guarantee (i.e. a Bid Bond or Cashier's Check), payable to Muscogee (Creek) Nation, in an amount equal to Five Percent (5%) of the total Bid price. Additionally, all Bids must include the

appropriate Bid/proposal forms included in the Bid documents. Otherwise, the Bid shall be deemed non-responsive and subsequently rejected.

Responsive, responsible Bidders may not withdraw their Bid for a period of Sixty (60) days following the aforementioned closing time.

The Muscogee (Creek) Nation reserves the right to reject any or all Bids.

The successful Bidder, following notice from the Muscogee (Creek) Nation, must timely submit those bonds identified in the Information for Bidders prior to an actual Contract Award.

NOTES: All Bidders must fulfill the requirements of and Bid in accordance with the laws of the Muscogee (Creek) Nation governing commercial contracts, the Oklahoma Department of Transportation Standard Specification for Highway Construction (2019 Standard Specifications), and the Bid documents.

Bidders are strongly encouraged to review and familiarize themselves with the employment requirements and minimum wage rates required under the proposed construction Contract prior to submitting a Bid.

TERMS AND CONDITIONS

1. Sealed bids will be opened at the time and date shown on the Invitation to Bid.
2. Late bids will not be considered.
3. Bids must be submitted in conformity with the Information for Bidders.
4. Bidders, by virtue of submitting a Bid, guarantee their unit prices to be an accurate reflection of their intended unit price associated with each pay item.
5. This Bid is submitted as a legal offer and shall constitute a valid, firm Contract when accepted by the Nation by virtue of an executed Contract Award.
6. Oklahoma laws require each Bidder submitting a Bid to execute the following sworn statement of non-collusion before a Notary Public and return the original document to the Nation with the bid.

AFFIDAVIT: I, the undersigned, of lawful age, being first duly sworn on oath say that he (she) is the agent authorized by the bidder to submit the above bid. Affiant further states that the Bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official or employee as to quantity; quality or price in the prospective Contract or any other terms of said prospective Contract; or in any discussions between Bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a Contract that the Bidder/Contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the Muscogee (Creek) Nation (or other entity) any money or other thing of value, either directly or indirectly in the procuring of the Award of a Contract pursuant to this Bid.

Subscribed and sworn before this ____ day of _____ 20____.

My commission expires: _____

NOTARY PUBLIC

(SEAL)

Firm: _____

Signed by: _____ Title: _____

Address: _____ Phone: _____

City: _____ State: _____ Zip: _____

INFORMATION FOR BIDDERS

Muscogee (Creek) Nation intends to receive Bids for this Project at the office of Muscogee (Creek) Nation Tribal Complex, located at the SE corner of HWY 75 and HWY 56 Loop, Okmulgee, Oklahoma, until **10:00 a.m., October 24, 2024**. Immediately thereafter, each Bid shall be publicly opened during a meeting of the Muscogee (Creek) Nation (and then will be publicly opened and read aloud at the Transportation Building).

Each BID must be submitted in a sealed envelope, labeled as follows:

Muscogee (Creek) Nation
Attention: Tribal Clerk
Bid for Greenleaf Church Road
Project Number: G07908-1318
Bid Opening: October 24, 2024 at 10:00 a.m.

Additionally, each sealed envelope should bear the **Bidder's name** and **mailing address**.

NOTE: If submitting a Bid via the United States Postal Service (Postal Service), the actual Bid must be sealed in a separate, internal envelope within the envelope to be delivered by the Postal Service. The external envelope for such submittals must be legibly addressed as follows:

Muscogee (Creek) Nation
Attention: Tribal Clerk
P.O. Box 580
Okmulgee, Oklahoma 74447

All Bids must be completed on the forms contained within the Bid documents. Only one (1) individual Bid may be submitted per envelope. The form(s) for Bid prices shall be completed in ink if handwritten. Alternatively, Bid prices may be typewritten. All blank spaces for Bid prices must contain an entry. Each individual Bid form must be fully completed and executed when submitted.

The Nation reserves the right to waive technicalities and to reject any or all Bids. Previously submitted Bids may be withdrawn prior to **10:00 a.m. on October 24, 2024**. In the event the Nation must postpone the time for opening Bids, previously submitted Bids may be withdrawn prior to the rescheduled opening date/time.

Bids received after **10:00 a.m. on October 24, 2024** will not be considered and shall be returned unopened.

Bidders may not withdraw their Bid for a period of Sixty (60) days following the opening of Bids.

Each Bidder is responsible for inspecting the site, thoroughly reading the Contract

documents, and familiarizing himself/herself with the Work and Contract requirements. Bidder's failure or omission in this regard shall in no way relieve any Bidder from any obligation in respect to his/her Bid. Additionally, Bidders must assure themselves of the accuracy of the estimated quantities in the Bid Schedule by examining the site and reviewing the Drawings and Specifications, including any Amendments. Following submittal of a Bid, the Bidder shall not assert he/she misunderstood the quantities or the nature of the Work.

The Contract documents contain information required for construction of the Project. Information obtained from an officer, agent, or employee of the Nation or any other person shall not affect the risks or obligations assumed by the Contractor or relieve the Contractor from fulfilling all requirements set forth in the Contract.

All Bids submitted for consideration must be accompanied by a Bid Guarantee (i.e., a Bid Bond or Cashier's Check), payable to Muscogee (Creek) Nation, in an amount equal to Five Percent (5%) of the total Bid. With the exception of those Bid Guarantees submitted by the responsive, responsible Bidders with the three (3) lowest Bids, the Muscogee (Creek) Nation will return all bonds or Cashier's Checks to the Bidders immediately after the Muscogee (Creek) Nation analyzes and compares the individual Bids. Once a Contract is fully executed between the Nation and the Contractor, the bonds of the two (2) remaining unsuccessful Bidders shall be returned.

As part of the Bid analyses, the Muscogee (Creek) Nation reserves the right to make such investigations, as are reasonably necessary, to determine the Bidder's ability to perform the Work. Additionally, each Bidder covenants to timely furnish the Muscogee (Creek) Nation with such information the Muscogee (Creek) Nation requests for this purpose. The Muscogee (Creek) Nation also reserves the right to reject any Bids from Bidders reasonable deemed in the Muscogee (Creek) Nation's judgment to be incapable or unqualified to carry out the obligations of the Contract and Work contemplated therein.

After analyzing and comparing the individual Bids, the Muscogee (Creek) Nation will provide the successful Bidder with a Notice of Award. The successful Bidder must execute the Contract and bonds within twenty (20) calendar days following receipt of the Notice of Award. If the successful Bidder fails to execute the Contract and/or tender the executed bonds within the stated period of time, the Nation reserves the right to declare the Bidder in default at which time the Bidder's Bid Guarantee becomes the property of the Muscogee (Creek) Nation.

The Muscogee (Creek) Nation shall execute the Contract and tender a copy to the Contractor along with a date for the pre-work conference. In the event a Contract cannot be executed by the Muscogee (Creek) Nation within aforementioned fourteen (14) days, the time may be extended by mutual agreement of the parties. If however the Muscogee (Creek) Nation fails to execute the Contract within the fourteen (14) day period **and** the parties fail to agree upon an extension, the successful Bidder may rescind his/her Bid without further liability on either party.

A conditional or qualified Bid will not be accepted.

Award shall be made to the responsive, responsible Bidder, who obtains the highest score in the bid evaluation.

All applicable rules, regulations, ordinances, and laws of those authorities with proper jurisdiction shall apply to the Contract.

Further, the Bidder agrees to abide by the requirements of NCA 18-199, Contracting and Employment Support Office.

The responsive, responsible bidder, who is awarded the project, shall supply the names and addresses of major material suppliers and Subcontractors upon request by the Muscogee (Creek) Nation.

"General Decision Number: OK20240019 01/05/2024

Superseded General Decision Number: OK20230019

State: Oklahoma

Construction Type: Highway

Counties: Adair, Cherokee, Craig, Delaware, Mayes, McIntosh, Muskogee, Nowata, Okfuskee, Ottawa and Washington Counties in Oklahoma.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

http://www.dol.gov/whd/govcontracts.

Modification Number Publication Date
 0 01/05/2024

SUOK2011-006 04/18/2011

	Rates	Fringes
CARPENTER (Excludes Form Work and Form Setting)		
Adair County.....	\$ 13.70 **	
Cherokee County.....	\$ 14.00 **	
Delaware County.....	\$ 13.69 **	
Muskogee County.....	\$ 13.48 **	
Remaining Counties.....	\$ 13.94 **	
CEMENT MASON/CONCRETE FINISHER		
Delaware County.....	\$ 13.27 **	
Muskogee County.....	\$ 14.24 **	
Ottawa County.....	\$ 14.72 **	1.35
Remaining Counties.....	\$ 13.70 **	
FORM WORKER/FORM SETTER (Including Curb Line Setting)....		
	\$ 12.30 **	
GUARDRAIL INSTALLER (Includes Guardrail/Post Driver Work).....		
	\$ 9.70 **	
IRONWORKER, REINFORCING.....		
	\$ 13.63 **	
LABORER		
Air/Power Tool Operator (Includes Handheld Concrete Saws and Chipping Guns).....		
	\$ 12.79 **	
Asphalt Raker and Shoveler..		
	\$ 12.41 **	
Common or General		
Adair County.....	\$ 11.96 **	
Cherokee County.....	\$ 11.12 **	
Delaware County.....	\$ 11.16 **	
Mayes County.....	\$ 10.07 **	
Muskogee County.....	\$ 10.68 **	
Okfuskee County.....	\$ 10.55 **	
Remaining Counties.....	\$ 10.64 **	
Pipelayer.....	\$ 11.13 **	
Traffic Control (Includes Flagger, Setting Up and Moving Cones/Barrels).....		
	\$ 10.28 **	
Vibrating Plate.....	\$ 12.70 **	
POWER EQUIPMENT OPERATOR:		
Asphalt Paver Screed.....	\$ 14.77 **	
Asphalt Paving Machine.....	\$ 14.84 **	
Asphalt Plant.....	\$ 14.70 **	
Backhoe/Trackhoe		
Muskogee County.....	\$ 14.99 **	
Remaining Counties.....	\$ 16.13 **	
Bobcat/Skid Loader.....	\$ 12.56 **	
Broom.....	\$ 11.02 **	
Bulldozer		
Muskogee County.....	\$ 14.33 **	
Remaining Counties.....	\$ 14.61 **	
Concrete Paving Machine.....	\$ 14.42 **	

Concrete Saw.....	\$ 14.65	**	
Crane.....	\$ 18.63		
Distributor Truck.....	\$ 13.34	**	
Excavator.....	\$ 14.75	**	
Grader/Blade.....	\$ 16.47	**	
Loader (Front End)			
Muskogee County.....	\$ 13.83	**	
Remaining Counties.....	\$ 13.66	**	
Mechanic			
Muskogee County.....	\$ 18.96		
Remaining Counties.....	\$ 18.77		
Milling Machine.....	\$ 14.87	**	
Mixer.....	\$ 14.56	**	
Oiler			
Muskogee County.....	\$ 13.38	**	
Remaining Counties.....	\$ 14.59	**	
Roller (Asphalt)			
Adair County.....	\$ 13.12	**	
Muskogee County.....	\$ 12.58	**	
Remaining Counties.....	\$ 13.48	**	
Roller (Dirt Compaction)...	\$ 12.44	**	
Rotomill.....	\$ 17.33		
Scraper.....	\$ 14.13	**	
Striping Machine.....	\$ 11.54	**	
Tractor/Box Blade.....	\$ 12.83	**	
Transfer Material Machine...	\$ 12.38	**	0.75
Trencher.....	\$ 14.66	**	

TRUCK DRIVER

Concrete Truck.....	\$ 14.22	**	
Dump Truck			
Muskogee County.....	\$ 13.93	**	
Remaining Counties.....	\$ 13.91	**	
Flatbed Truck.....	\$ 16.18	**	
Lowboy/Float.....	\$ 15.20	**	0.69
Off the Road Truck.....	\$ 13.64	**	
Single Axle Truck			
(Includes Pilot Car).....	\$ 13.15	**	
Straight Truck.....	\$ 15.92	**	
Tandem Axle/Semi Trailer			
Delaware County.....	\$ 15.15	**	
Mayes County.....	\$ 16.93	**	
Muskogee County.....	\$ 16.14	**	
Remaining Counties.....	\$ 15.75	**	
Water Truck.....	\$ 13.44	**	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this

contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which

these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

BID SCHEDULE

Greenleaf Road, Project No. G07908-1318 located in Okfuskee County, Oklahoma, in accordance with applicable Federal Acquisition Regulations and Approved Plans and Specifications.

GRAND TOTAL OF ALL ITEMS

\$

Note: Specification Number Refers to Oklahoma Department of Transportation Standard Specification Number.

Greenleaf Church Road

Item No.	Spec. No.	Description	Unit	Estimated Quantity	Unit Price	Extension
1	201 (A)	CLEARING AND GRUBBING	L.SUM	1	\$	\$
2	202 (H)	EARTHWORK	L.SUM	1	\$	\$
3	220	SWPP DOCUMENTATION & MANAGEMENT	L.SUM	1	\$	\$
4	221 (C)	TEMPORARY SILT FENCE	LF	4,836	\$	\$
5	221 (F)	TEMPORARY SILT DIKE	LF	160	\$	\$
6	230 (A)	SOLID SLAB SODDING	SY	1,210	\$	\$
7	303 (A)	AGGREGATE BASE (TYPE A)	CY	2,003	\$	\$
8	310 (B)	SUBGRADE METHOD "B"	SY	11,809	\$	\$
9	326 (B)	GEOGRID REINFORCEMENT	SY	11,689	\$	\$
10	402 (E)	T.B.S.C. TYPE E	TON	154	\$	\$
11	407 (B)	TACK COAT	GAL	540	\$	\$
12	411 (B)	SUPERPAVE TYPE S3 (PG 64-22 OK)	TON	1,815	\$	\$
13	411 (C)	SUPERPAVE TYPE S4 (PG 64-22 OK)	TON	1,262	\$	\$
14	509 (A)	CLASS AA CONCRETE	CY	1	\$	\$
15	509 (D)	CLASS C CONCRETE	CY	2	\$	\$
16	511 (A)	REINFORCING STEEL	LBS	85	\$	\$
17	601 (A)	TYPE I PLAIN RIPRAP	TON	14	\$	\$
18	601 (C)	TYPE I-A FILTER BLANKET	TON	3	\$	\$
19	609 (B)	2'-8" COMB. CURB & GUTTER (6" BARRIER)	LF	2,590	\$	\$
20	610 (B)	6" CONCRETE DRIVEWAY	SY	171	\$	\$
21	613 (A)	24" R.C. PIPE CLASS V	LF	46	\$	\$
22	613 (EE)	18" CORRUGATED POLYPROPYLENE PIPE	LF	287	\$	\$
23	613 (EE)	24" CORRUGATED POLYPROPYLENE PIPE	LF	108	\$	\$
24	613 (EE)	36" CORRUGATED POLYPROPYLENE PIPE	LF	30	\$	\$
25	613 (M)	TYPE A3 CULVERT END TREATMENT	EA	10	\$	\$
26	613 (M)	TYPE B3 CULVERT END TREATMENT	EA	5	\$	\$
27	613 (M)	TYPE C3 CULVERT END TREATMENT	EA	2	\$	\$
28	616	(PL) WATER SYSTEM IMPROVEMENTS	L.SUM	1	\$	\$

BID BOND	DATE BOND EXECUTED (<i>Must not be later than bid opening date</i>)	G07908- 1318
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Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRINCIPLE (<i>Legal name and business address</i>)	TYPE OF ORGANIZATION (" <i>X</i> " one)	
	<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> COROPORATION
STATE OF INCORPORTATION		

SURETY(IES) (*Name and Business Address*)

PENAL SUM OF BOND				BID IDENTIFICATION		
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR (<i>Construction, Supplies, or Services</i>)	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the Muscogee (Creek) Nation (hereinafter called the tribal entity) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the tribal entity of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten(10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the tribal entity for any cost of procuring the work which exceeds the amount of bid.

Each Surety executing this instrument agrees that is obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the tribal entity. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL					
SIGNATURE(S)	1.	2.	3.		<i>Corporate Seal</i>
	<i>(Seal)</i>	<i>(Seal)</i>	<i>(Seal)</i>		
NAME(S) & TITLE(S) (<i>Typed</i>)	1.	2.	3.		
INDIVIDUAL SURETY(IES)					
SIGNATURE(S)	1.	2.			<i>(Seal)</i>
		<i>(Seal)</i>			<i>(Seal)</i>
NAME(S) (<i>Typed</i>)	1.	2.			
CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (<i>Typed</i>)	1.	2.		
CORPORATE SURETY(IES)					

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required.
2. Insert the full legal name and business address of the Principal in the space designated "Principle" on the face of the form. An authorized person shall sign the bond. Any person signing in representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representatives is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not exceed _____ dollars).
4. (a) Corporations executing the bond as sureties must appear on the Department of Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designed "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual surety (Standard Form 28), for each individual surety, shall accompany the bond. The tribal entity may require the surety to furnish additional substantiating information concerning its financial capability.
5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

PERFORMANCE BOND	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	G07908-1318
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Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRINCIPLE <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION ("X" one)			
	<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> PARTNERSHIP		
	<input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> CORPORATION		
SURETY(IES) <i>(Name and business address(es))</i>	STATE OF INCORPORATION			
	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE		CONTRACT NO.	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the Muscogee (Creek) Nation (hereinafter called the tribal entity) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal entered into the contract identified above and acknowledges said contract is for the benefit of the Nation wherein the project is located, as well as the traveling public.

THEREFORE:

The above obligation is void if the Principal -

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the tribal entity, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) Performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays the full amount of the taxes imposed by local, state, and federal governmental entities, which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.


WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1.	2.	3.	Corporate Seal
		<i>(Seal)</i>	<i>(Seal)</i>	
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1.	2.		
		<i>(Seal)</i>	<i>(Seal)</i>	<i>(Seal)</i>
NAME(S) <i>(Typed)</i>	1.	2.		
CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

BOND PREMIUM		RATE PER THOUSAND (\$)	TOTAL (\$)
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INSTRUCTIONS

1. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
2. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
 (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The tribal entity may require the surety to furnish additional substantiating information concerning their financial capability.
3. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
4. Type the name and title of each person signing this bond in the space provided.

PAYMENT BOND	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	G07908-1318
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Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRINCIPLE <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION ("X" one)			
	<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> PARTNERSHIP		
	<input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> CORORPORATION		
	STATE OF INCORPORATION			
SURETY(IES) <i>(Name and business address(es))</i>	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
	CONTRACT DATE		CONTRACT NO.	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the Muscogee (Creek) Nation (hereinafter called the tribal entity) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1.	2.	3.	<i>Corporate Seal</i>
		<i>(Seal)</i>	<i>(Seal)</i>	
NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1.	2.		
		<i>(Seal)</i>	<i>(Seal)</i>	
NAME(S) <i>(Typed)</i>	1.	2.		
CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$
	SIGNATURE(S)	1.	2.	<i>Corporate Seal</i>
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.	

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	<i>Corporate Seal</i>
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the contract.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
 (b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The tribal entity may require the surety to furnish additional substantiating information concerning their financial capability.
4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.
5. Type the name and title of each person signing this bond in the space provided.

MAINTENANCE BOND

KNOW ALL ME BY THESE PRESENTS:

That between _____, as Principal,
and _____, a corporation
Surety, are held and firmly bound unto Muscogee (Creek) Nation in the penal sum of _____
_____ Dollars (Full Amount of Contract) (\$ _____),
In lawful money of the United States of America, for the payment of which, well and
truly to be made, we bind ourselves and each of us, our heirs, executors, administrators,
trustees, successors, and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20____ .

THE CONDITIONS OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, said Principal entered into a written Contract with Muscogee (Creek)
Nation, Oklahoma dated _____, 20____, for

CONSTRUCTION OF
GREENLEAF CHURCH ROAD
PROJECT No. G07908-1318
OKFUSKEE COUNTY, OKLAHOMA

All in compliance with the Drawings and Specifications therefore, made a part of said
Contract and on file at the office of the Muscogee (Creek) Nation Tribal Clerk.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to Muscogee
(Creek) Nation, all damages. Loss and expense which may result by reason of defective
materials and/or workmanship in connection with said work, occurring within a period of
one (1) year for all projects, from and after acceptance of said project by Muscogee
(Creek) Nation, and if Principal shall pay and cause to be paid all labor and materials,
including the prime contractor and all subcontractors; and if Principal shall save and hold
Muscogee (Creek) Nation, Bureau of Indian Affairs, and Agents harmless from all
damages, loss and expense occasioned by or resulting from any failure whatsoever of said
Principal, then this obligation shall be null and void, otherwise to be and remain in full
force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have effect of releasing the sureties, or any of them, from the obligation of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

Contractor (Principal)

BY:

ATTEST: (SEAL)

Date _____
Title: _____

Date _____
Title: _____

Date _____
Attorney-In-Fact

Date _____
Surety (Seal)

(Accompany this Bond with Power-of-Attorney)

Pre-Award: Suspension and Debarment

Suspension Definition

- Temporary withdrawal of federal support pending completion of an agency investigation and any judicial or administrative proceedings

Debarment Definition

- Action taken by a federal agency
- Prohibits participation in federal procurement contracts and non-procurement transactions (awards)



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Chapter Two: Suspension and Debarment |

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Suspension and Debarment: Excluded Parties

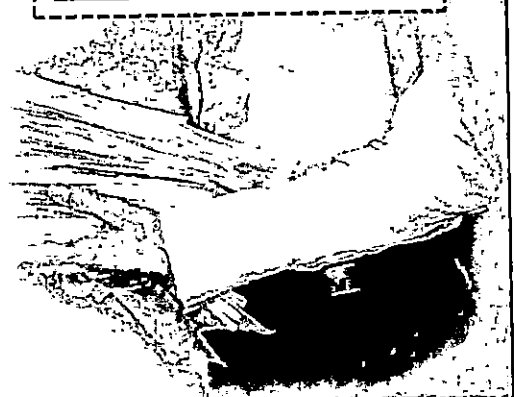
Search SAM.gov under "Exclusions"

- Look for FEIN, DUNS, SS# and...
- Unique Identifier (UI-See 2 CFR Part 25)

Document that you checked for "covered transactions" by saving .pdf file with:

- When you checked?
- Who you checked?
- Keep documentation where it can be found

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Chapter Two: Suspension and Debarment |

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Suspension and Debarment: 2 CFR Part 180

§200.213 Suspension and debarment.

- Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180.

§180.220 Are any procurement contracts included as covered transactions?

(c) A subcontract also is a covered transaction if,—

(2) The value of the subcontract is expected to equal or exceed \$25,000.

- Action can happen at organization, award or individual level

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Chapter Two: Suspension and Debarment |

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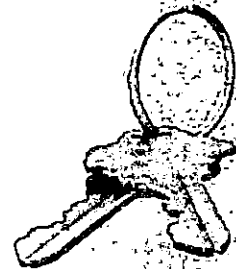
Key Concepts: Suspension and Debarment

Check on SAM.gov and document

✓ When you checked?

✓ Who you checked?

- Example: .pdf of search in SAM.gov with search criteria and date
- Keep documentation where it can be found and retrieved



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Chapter Two: Suspension and Debarment |

ANSWER: SAM.gov

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12. **DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:** Each Party certifies to the best of its knowledge and belief that it (and *Contractor's name*) certifies to the best of its knowledge and belief that its *Sub-Contractor* is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal, state, local, or tribal agency. Each Party also certifies to the best of its knowledge and belief that it has not, within a three-year-period preceding this Agreement, been convicted of or had a civil judgment rendered against it for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or subcontract; violation of federal or state antitrust statutes relating to submission of offers or commissions or embezzlement, theft, forgery, bribery, falsifications or destruction of records, and/or making false statements; and is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision. Each Party certifies it has not within a three-year period preceding this Agreement, had one or more contracts terminated for default by a federal, state, local, or tribal agency.

CONTRACT CLAUSES

1.2 1452.226 INDIAN PREFERENCE (APRIL 1984)

(A) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(B) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(C) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity".

(D) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(E) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(3) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(4) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as

defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(F) The Contractor agrees to include the provisions of the clause including this paragraph (F) in each subcontract awarded under this contract.

(G) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Nation.

1.3 1452.226 INDIAN PREFERENCE PROGRAM (APRIL 1984)

(A) In addition to the requirements of the clause of this contract entitled "Indian Preference -- Department of the Interior," the Contractor agrees to establish and conduct an Indian Preference Program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall:

- (1) Designate a liaison officer who will:
 - (i) maintain liaison with the Nation and Tribe(s) on Indian preference matters;
 - (ii) Supervise compliance with the provisions of this clause; and
 - (iii) Administer the Contractor's Indian preference program.
- (2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.
- (3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include:
 - (i) the approximate number and types of employees needed,
 - (ii) the approximate dates of employment;
 - (iii) the experience or special skills required for employment, if any;
 - (iv) training opportunities available; and
 - (v) all other pertinent information necessary to advise prospective employees of any other employment requirements.

The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment

needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including:

(i) a clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms;

(ii) a statement indicating the preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of Public Law 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b));

(iii) definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference -- Department of the Interior" clause of this contract;

(iv) a representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-owned economic enterprises, no responsible bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference -- Department of the Interior" clause of this contract. If one or more responsible bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference -- Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate:

(i) the names and addresses of all Indians seeking employment for each employment position available under this contract;

- (ii) the number and types of positions filled by (a) Indians and (b) non-Indians, and the name, address and position of each Indian employed under this contract;
 - (iii) for those positions, where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;
 - (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;
 - (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and
 - (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (a) contacted, and (b) receiving subcontract awards under this contract.
- (6) Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates:
- (i) the number and types of available positions filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.
- (7) Records maintained pursuant to this clause will be kept available for review by the Nation until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.
- (B) For purpose of this clause, the following definitions of terms shall apply:
- (1) The terms "Indian", "Indian Tribe", "Indian Organization", and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference".
 - (2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations on Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 et seq.).
 - (3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.
- (C) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Nation's right to award contracts and to administer their provisions.

(D) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(E) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Nation.

52.204-03 TAXPAYER IDENTIFICATION (OCTOBER 1998)

(a) Definitions

“Common parent”, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN)”, as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in the Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Nation to collect and report on any delinquent amounts arising out of the offeror's relationship with the Nation (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

TIN: _____ .

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____ .

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:

Name: _____
TIN: _____

52.211-10 PROSECUTION OF THE WORK

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 120 calendar days.

The notice to proceed will be given approximately around November 15, 2024

52.211-11 LIQUIDATED DAMAGES- SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT. (SEPTEMBER 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Nation liquidated damages of \$2,200 per calendar day of delay

(b) If the Nation terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Nation reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default- Fixed-Price Supply and Service clause in this contract.

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (JULY 2005)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Nation. The Contracting Officer will assess liquidated damages payable to the Nation. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Nation until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or

Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

52.222-6 DAVIS-BACON ACT (JULY 2005)

(a) Definition. “Site of the Work”

(1) Means—

(i) *The Primary Site of the Work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The Secondary Site of the Work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is-

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided-

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph(c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

- (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

52.222-7 WITHHOLDING OF FUNDS (FEBRUARY 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

52.222-8 PAYROLLS AND BASIC RECORDS (FEBRUARY 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional [Form WH-347](#) (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the-

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

52.222-9 APPRENTICES AND TRAINEES (JULY 2005)

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEBRUARY 1988)

The Contractor shall comply with the requirements of 29 CFR part 3, which are hereby incorporated by reference in this contract.

52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation-

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
 - (2) Painting and decorating;
 - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
 - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at [52.222-6](#), Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and
 - (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at [52.222-6](#), Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at [52.222-6](#), in the “site of the work” definition).
- (b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled-
- (1) Davis-Bacon Act;
 - (2) Contract Work Hours and Safety Standards Act- Overtime Compensation (if the clause is included in this contract);
 - (3) Apprentices and Trainees;
 - (4) Payrolls and Basic Records;
 - (5) Compliance with Copeland Act Requirements;
 - (6) Withholding of Funds;
 - (7) Subcontracts (Labor Standards);
 - (8) Contract Termination- Debarment;
 - (9) Disputes Concerning Labor Standards;
 - (10) Compliance with Davis-Bacon and Related Act Regulations; and
 - (11) Certification of Eligibility.
- (c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed [Standard Form \(SF\) 1413](#), Statement and Acknowledgment, for each subcontract for construction within the United States,

including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed [SF 1413](#) for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

52.222-12 CONTRACT TERMINATION- DEBARMENT (FEBRUARY 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance With Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEBRUARY 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

52.222-15 CERTIFICATION OF ELIGIBILITY (FEBRUARY 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Muscogee (Creek) Nation contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Muscogee (Creek) Nation contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEBRUARY 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade 50%	Goals for Female Participation for Each Trade 2%
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These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the-

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) The length and width of the “covered area” is shown in more detail on the approved plans.

52.222-26 EQUAL OPPORTUNITY (MARCH 2007)

(a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Nation to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Muscogee (Creek) Nation contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the Muscogee (Creek) Nation to enter into the litigation to protect the interests of the Muscogee (Creek) Nation.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.223-07 NOTICE OF RADIOACTIVE MATERIALS (JANUARY 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing 15 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

[] The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

- (1) Be submitted in writing;
- (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
- (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or

subassemblies are delivered to the Nation shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

52.228-01 BID GUARANTEE

- (a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.
- (b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g. bid bond supported by good and sufficient surety or sureties acceptable to the Nation postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds-
 - (1) to unsuccessful bidders as soon as practicable after the opening of bids; and
 - (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- (c) The amount of the bid guarantee shall be 5 percent of the bid price.
- (d) If the successful bidder, upon acceptance of its bid by the Nation within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.
- (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

52.236-04 PHYSICAL DATA

Data and information furnished or referred to below is for the Contractor's information. The Nation shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by Soil Borings (performed by others).
- (b) Weather conditions- Contact local offices of the National Weather Services, U.S. Department of Commerce.

52.236-27 SITE VISIT (CONSTRUCTION) (FEBRUARY 1995)

(a) The clause at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, Oklahoma 74447
Telephone: (918) 549-2711

CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Muscogee (Creek) Nation's designee will make their full text available.

CLAUSE	TITLE	DATE
1452.236-70	Prohibition Against Use of Lead-based Paint	July 1996
52.203-02	Certificate of Independent Price Determination	April 1985
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	April 1984
52.203-07	Anti-Kickback Procedures	July 1995
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	January 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	January 1997
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	September 2007
52.211-13	Time Extensions	September 2000
52.211-18	Variation in Estimated Quantity	April 1984
52.212-04	Contract Terms and Conditions- Commercial Items	February 2007
52.214-18	Preparations of Bids- Construction	April 1984
52.214-19	Contract Award- Sealed Bidding-Construction	August 1996
52.214-27	Price Reductions for Defective Cost or Pricing Data- Modifications- Sealed Bidding	October 1997
52.216-23	Execution and Commencement of Work	April 1984
52.219-08	Utilization of Small Business Concerns	May 2004
52.219-09	Small Business Subcontracting Plan	April 2008
52.219-16	Liquidated Damages- Subcontracting Plan	January 1999
52.222-01	Notice to the Government of Labor Disputes	February 1997
52.222-02	Payment for Overtime Premiums	July 1990
52.222-03	Convict Labor	June 2003
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	February 1988
52.222-17	Labor Standards for Construction Work- Facilities Contracts	February 1988
52.222-21	Prohibition of Segregated Facilities	February 1999
52.222-29	Notification of Visa Denial	June 2003
52.222-35	Equal Opportunity for Special Disabled Veteran, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.222-36	Affirmative Action for Workers with Disabilities	June 1998
52.223-03	Hazardous Material Identification and Material Safety Data	January 1997
52.223-06	Drug Free Workplace	May 2001
52.223-11	Ozone-Depleting Substances	May 2001

CLAUSE	TITLE	DATE
52.224-01	Privacy Act Notification	April 1984
52.224-02	Privacy Act	April 1984
52.227-01	Authorization and Consent	December 2007
52.227-03	Patent Indemnity	April 1984
52.228-02	Additional Bond Security	October 1997
52.228-07	Insurance- Liability to Third Persons	March 1996
52.228-11	Pledges of Assets	February 1992
52.228-12	Prospective Subcontractor Requests for Bonds	October 1995
52.228-15	Performance and Payment Bonds- Construction	November 2006
52.229-03	Federal, State, and Local Taxes	April 2003
52.232-16	Progress Payments	April 2003
52.232-27	Prompt Payment for Construction Contracts	September 2005
52.233-01	Disputes	July 2002
52.233-03	Protest After Award	August 1996
52.236-02	Differing Site Conditions	April 1984
52.236-03	Site Investigation and Conditions Affecting the Work	April 1984
52.236-05	Material and Workmanship	April 1984
52.236-06	Superintendence by the Contractor	April 1984
52.236-07	Permits and Responsibilities	November 1991
52.236-09	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	April 1984
52.236-10	Operations and Storage Areas	April 1984
52.236-11	Use and Possession Prior to Completion	April 1984
52.236-12	Cleaning Up	April 1984
52.236-13	Accident Prevention	November 1991
52.236-14	Availability and Use of Utility Services	April 1984
52.236-15	Schedules for Construction Contracts	April 1984
52.236-17	Layout of Work	April 1984
52.236-21	Specifications and Drawings for Construction	February 1997
52.236-26	Preconstruction Conference	February 1995
52.242-14	Suspension of Work	April 1984
52.242-15	Stop-Work Order	August 1989
52.243-01	Changes- Fixed Prices	August 1987
52.243-04	Changes	June 2007
52.243-05	Changes and Changed Conditions	April 1984
52.246-12	Inspection of Construction	August 1996
52.248-03	Value Engineering-Construction	September 2006
52.249-01	Termination for Convenience of the Government (Fixed-Price) (Short Form)	April 1984
52.249-10	Default (Fixed-Price Construction)	April 1984

Contracting and Employment Support Office (CESO)
0.5% Construction Fee on all Construction Projects.

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§ 9-105 Powers and Duties

(C.) To operate funding from federal, state and other sources to supplement National Council appropriations as delegated by the Administration.

The fees accessed are to be utilized to provide client services and training for Muscogee (Creek) citizens and other Natives, enrolled in a federally recognized tribe, living within the Muscogee (Creek) Nation jurisdictional boundaries.



Muscogee (Creek) Nation CESO

Contracting and Employment Support Office
P.O. Box 580 Okmulgee, OK 74447

Phone: 918-549-2966

CES@mcn-nsn.gov



Contracting and Employment Support Office Requirements

All work performed with the Muscogee (Creek) Nation is subject to CESO Law NCA 18-199.
To view law please follow the link below:

<http://www.mcn-nsn.gov/services/commerce/>

Per the law the following are requirements:

- **ALL CONTRACTORS** awarded a Muscogee (Creek) Nation project must utilize CESO CERTIFIED Native American businesses, if available, when selecting sub-contractors. A list of Certified Native American businesses is available online at the link below.

<http://www.mcn-nsn.gov/services/commerce/>

- **DEBARRED VENDORS:** Contractors must refer to the CESO Debarment List and not sub-contract any work to a debarred vendor. The CESO Debarment List is available online at the link below:

<http://www.mcn-nsn.gov/services/commerce/>

- **UTILIZATION PLAN:** CESO will send a utilization plan once a contract has been awarded. The utilization plan must be returned within 10 days of contract being awarded.
- **NATIVE AMERICAN PREFERENCE IN HIRING:** ALL CONTRACTORS and SUBCONTRACTORS must agree to Native American preference hiring for available positions identified in the utilization plan. CESO maintains a job bank and will provide qualified workers, when available, to interview for positions.



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CLASSIFICATION: #16. EXECUTIVE BRANCH

A LAW OF THE MUSCOGEE (CREEK) NATION REPEALING MCNCA TITLE 16, CHAPTER NINE ENTITLED "MUSCOGEE (CREEK) NATION CONTRACTING AND EMPLOYMENT SUPPORT ACT" AND CREATING A NEW TITLE 16, CHAPTER NINE ENTITLED "MUSCOGEE (CREEK) NATION CONTRACTING AND EMPLOYMENT SUPPORT ACT"

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. REPEALER. MCNCA Title 16, Chapter 9, Entitled "Muscogee (Creek) Nation Tribal Employment Rights Office Act" is hereby repealed.

SECTION TWO. NEW LAW. The following new law shall be codified in Title 16, Chapter 9 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

**TITLE 16. EXECUTIVE BRANCH
CHAPTER 9. MUSCOGEE (CREEK) NATION
CONTRACTING AND EMPLOYMENT SUPPORT ACT**

§ 9-101. Title

This Act shall be known and cited as the Muscogee (Creek) Nation Contracting and Employment Support Act.

§ 9-102. Purpose

The Purpose of this law is to eliminate barriers to employment faced by "Muscogee (Creek) Nation citizens (hereafter "MCN Citizens) and enrolled members of other federally recognized Tribes (hereinafter "Other Indians"). This includes enforcing the Native Preference hiring requirement to prevent discrimination against MCN Citizens

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and Other Indians in the employment practices of employers who are doing business with the Muscogee (Creek) Nation. The Certification of Native owned businesses is also established to encourage the growth and success of Native American owned businesses.

§ 9-103. Definitions

A. "Employer" shall mean the Nation, tribal government, all commercial and enterprise entities, all independent agencies (regardless of funding source) and any other person, company, contractor, sub-contractor or other entity engaged in business with or for the Muscogee (Creek) Nation or Muscogee (Creek) Nation Indian Country. The Muscogee (Creek) Nation government is an "employer" for the purpose of this Law and any of its business entities shall be an employer for the purpose of this Law.

B. "Administration" shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.

C. "Muscogee (Creek) Nation Indian Country" shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.

D. "Core Crew" shall mean owner of the firm, or an employee of a company who is a key position.

E. "Covered contract" means any contract between any department or office of the Nation, including all commercial enterprise and independent agencies and any employer for goods or services in the amount exceeding ten thousand dollars (\$10,000.00).

F. "Debarment List" shall be list of contractors or individuals who have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations or laws with any department or entity of the Nation.

G. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

H. An employer is "engaged in work" if, during any portion of a business

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enterprise or specific project, contract or subcontract, the employer performs work under contract with the Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on MCN Indian Country.

I. "MCN Citizen" shall mean a person who is an enrolled citizen of the Muscogee (Creek) Nation.

J. "Other Indian" shall mean any person who is a duly enrolled with another Federally Recognized Tribe, unless the context clearly indicates otherwise, residing within MCN Tribal jurisdiction.

K. "Non-Native Head of Household" shall mean a person supporting Minor Creek Citizens.

L. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.

M. "CESO" shall mean the Contracting and Employment Support Office.

N. "CESO Certified Vendor" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, certified through the CESO Certification Committee.

O. "Muscogee Owned Vendor" has been certified to be owned and operated at least fifty-one percent (51%) by a Muscogee (Creek) citizen.

P. "Indian Owned Vendor" has been certified to be owned and operated at least 51% by a Member of another Federally Recognized Tribe.

Q. "Indian Tribe" means an Indian Tribe, pueblo, band, Nation or other organized group or community, including any Alaska Native Claims settlement Act (85 Stat. 688, 43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

R. "MCN" shall mean the Muscogee (Creek) Nation.

S. "CESO Staff" shall mean employees hired by the Contracting and Employment Support Office to carry out the functions of this Act.

§ 9-104. Establishment and Name

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There is hereby created the Contracting and Employment Support Office (CESO). CESO, under the Secretary of the Nation and Commerce, shall administer this program of the Muscogee (Creek) Nation in accordance with this Law.

§ 9-105. Powers and Duties

CESO shall have the authority to carry out day-to-day operations and enforce this law. CESO shall have the following powers and duties:

A. To operate consistent with the provisions of this Law and to develop rules and regulations governing activities of CESO.

B. CESO may adopt EEOC guidelines or other requirements to eliminate employment barriers unique to MCN Citizens and Other Indians in Indian Country.

C. To operate funding from federal, state and other sources to supplement National Council appropriations as delegated by the Administration.

D. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and CESO activities, subject to National Council approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.

E. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as well as any and all MCN departments to accomplish the goals of this law.

F. To require an employer to establish or participate in job training program as CESO deems necessary to increase the pool of MCN Citizens and Other Indians eligible for employment.

G. To establish and administer a CESO job bank and require employers to use it.

H. To prohibit employers from using discriminatory job-qualifications criteria or personnel requirements that purposely bars MCN Citizens and Other Indians eligible from employment.

I. To engage in the process of certifying businesses as CESO Certified Vendor. Documented evidence proving fifty-one percent (51%) or more Native ownership and proof of Native control and management must be provided to qualify for CESO Certification.

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J. To determine and assess an application fee of not more than fifty dollars (\$50.00) to business seeking to become a CESO Certified Vendor. Also, to annually determine and assess a fifty dollars (\$50.00) re-certification fee to those enterprises.

K. To direct inspection of regulated sites and determine compliance with rules, regulations, and/or contract requirements.

L. To facilitate agreements with union to insure union compliance with this Law.

M. To require employers give preference to qualified CESO Certified Vendors in the award of contracts and subcontracts.

N. To refer applicants and participants to counseling and education programs to assist MCN Citizens in obtaining and retaining employment.

O. To require employers to submit reports to illustrate they have taken all action deemed necessary by CESO for the fair and vigorous implementation of this Law.

P. To increase awareness, participation and adhesion to this Law, CESO may review the procurement history and procedures of MCN programs and entities on a periodic basis.

Q. Findings of non-compliance by a MCN program or entity will be reported to the overseeing Cabinet member and the Principal Chief's office. Reports of continued non-compliance will be reported to the National Council.

R. To negotiate cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against MCN Citizens and Other Indians.

S. To take such actions as are necessary to achieve the purposes and objective of the MCN employment rights established in this Law.

T. To publish an electronic listing of CESO Certified Vendors.

U. To hold hearings in accordance with this chapter.

V. To register and keep file of complaints concerning individuals and companies doing business with the MCN.

W. To make available an electronic copy of this Law to every employer doing business with the Muscogee (Creek) Nation.

§ 9-106. Hiring Preference Requirement

MCN Citizens and Other Indians preference requirements contained in this Law shall be binding on all contractors and subcontractors of employers, regardless of tier, and shall be deemed a part of all contract and subcontract specifications. The employer shall be subject to penalties provided herein for violation if the contractor or subcontractor fails to comply.

§ 9-107. Preference in Promotions

Every employer shall, in accordance with CESO regulations, giving MCN Citizens and Other Indians preferential consideration for all promotion opportunities and shall encourage MCN Citizens and Other Indians to seek such opportunities.

§ 9-108. Preference in employment of students

Employers shall give MCN students and students who are Other Indians preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer, and vacation employment for MCN students and Other Indians.

§ 9-109. Establishment and review of numerical goals for employment generally

CESO may establish the minimum number of MCN Citizens and Other Indians each employer shall employ on its work force during any year that the employer or any of its employees are engaged in work with MCN. Numerical goals may be set for each craft, skill, job classification, etc. used by the employer and shall include, but not be limited to, administrative, supervisory and professional categories. The goals shall be expressed in terms of man-hours worked by the employer's work force in the job classification involved.

§ 9-110. Work Permits

Each employer shall be required to submit a core crew list to CESO. Once the Core Crew list is submitted, CESO will confirm essential employees listed.

A. Requirements

1. Each employer will submit a list of all non-core positions.
2. If CESO has identified qualified job bank applicants for non-core

positions it shall require the employer to place tribal citizens.

3. Any employer, as defined in this law shall be required to pay a work permit fee of twenty-five dollars (\$25.00) per employee per day for non-Indian employees hired for the project, that are in addition to the core crew, if the employer hires a non-Indian employee when otherwise there is a qualified Indian applicant available.
4. CESO is also authorized to administer other fees and penalties as provided in this law.

§ 9-111. Report submission

Each employer, when engaged in covered contracted work in Muscogee (Creek) Nation Indian Country shall submit a monthly report to CESO on a form provided by the CESO staff. Report shall include the number of MCN Citizens and Other Indians in the employer's work force, all persons hired or fired during the month, including job positions involved, and other information as required by CESO.

§ 9-112. On Site Inspections

CESO and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Law and the rules, regulations, and orders of CESO. CESO shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to work and conduct investigations on job sites.

§ 9-113. Participation in Training programs

Employers may be required by CESO to participate in training programs to assist MCN Citizens and Other Indians to become qualified in the various job classifications used by the Employer. The ratio of citizen trainees to fully qualified workers shall be set by CESO after consultation with the employer.

§ 9-114. Establishment by the CESO staff of counseling and other support programs; Cooperation by employers

CESO may establish counseling and other supported programs to assist MCN Citizens and Other Indians in obtaining and training employment. Every employer shall be required to cooperate with the CESO regarding such counseling and support programs.

§ 9-115. Use of job qualification criteria and personnel requirements by employers

Employers are prohibited from using job-qualification criteria or personnel requirements

which bar MCN Citizens and Other Indians employment unless such criteria or requirements are required by business necessity.

§ 9-116. Implementation of layoffs and reductions in force by employers

In all layoffs and reductions in force, employers shall maintain the required ratio of MCN Citizens and Other Indians employed.

§ 9-117. Funds

All funds from application, certification, recertification, and employer fees and other sources collected by CESO shall be properly accounted for and deposited at least monthly into accounts established for CESO with the Office of the Controller. All funds from such account shall be used for purposes for which CESO was established and carry out its powers and duties.

§ 9-118. Job Bank

CESO may establish and administer a Job Bank to assist employers in placing qualified MCN Citizens and Other Indians in job positions. Employers covered under this law shall be required to utilize the Job Bank and comply with the CESO Law and policies and procedures established by CESO.

A. In hiring preference shall be given to qualified:

1. MCN Citizens as first preference.
2. Other Indians as second preference.
3. CESO may provide for preference for a non-native who is the verified Head of Household supporting minor Muscogee (Creek) Nation citizens.

B. Employers covered under this Law do not have to hire or employ a job bank participant who is not qualified for the open position. This decision should be made in a good faith effort and the employer shall have valid reason with documentation for not hiring a job bank referral.

C. Employers covered under this Law shall notify CESO of all job openings and shall submit to CESO job description, application forms and other relevant information to comply with goals of this law. If an employer advertises the job position, the advertisement shall state that Native preference will be given.

§ 9-119. Employment Support

CESO may provide support to all MCN Citizens regardless of residence, whether in or out of MCN Boundaries. Support may be provided to Other Indians residing within MCN boundaries. This support is provided to assist with work related items to gain or maintain new employment.

§ 9-120. Duties of unions generally

Every union with collective bargaining agreement with an employer shall file a written agreement stating that the union will comply with this Law and rules, regulations and orders CESO. Until such agreement is filed with CESO, the employer may not commence work within MCN.

§ 9-121. Contents of union agreements

Every Union agreement with an employer or filed with CESO.

A. Indian preference. The union will give preference to MCN Citizen and Other Indians in job referrals regardless of which union referral list they are on.

B. The Union will cooperate with CESO in all respects and assist in the compliance with and enforcement of this Law and related regulations and agreements.

C. Training programs. The Union will establish a journeyman upgrade and advance apprenticeship program.

D. Temporary work permit. The union will grant temporary work permits to MCN citizens and Other Indians who do not wish to join the union.

§ 9-122. Model union agreement

CESO staff will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

§ 9-123. Unions and union activities

Nothing herein, nor any activities by CESO authorized hereby, shall constitute official MCN recognition of any union or endorsement of any union activities within the MCN. Nothing herein bars any employer, MCN or its entities, from recognizing any union. Neither CESO, including any employer or agent thereof, nor any MCN entity, including any employee or agent thereof, shall engage in any activity constituting opposition to or endorsement of any Union activities among employees of any Employer covered by this

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law. Nothing herein shall restrain any elected official of the MCN from endorsing or opposing such Union activities.

Any prohibition against endorsement of any Union activities in this Section shall not include the provision of any assistance to any MCN citizen to utilize any apprentice or job training program operated by any Union or Union affiliated entity.

§ 9-124. Certification of CESO Certified Vendors

CESO Certification Committee is the sole authority for making determinations regarding certifications of CESO Certified Vendors. In order to qualify for certification a company must verify they are fifty-one percent (51%) or more Native American owned and operated. CESO will maintain application and procedures to certify businesses.

§ 9-125. CESO Certification Committee

The CESO Certification Committee will meet to review and evaluate applications submitted to CESO for Certification. The committee shall consist of a representative from the Secretary of the Nation and Commerce, one National Council representative, a representative from Department of Housing, a representative from the Mvskoke Loan Fund and a representative from Tribal Construction. Minimum of three (3) members must be present to establish a quorum.

§ 9-126. Categories of CESO Certified Vendors

- A. Muscogee (Creek) owned businesses.
- B. Indian Owned.

§ 9-127. Prohibition on brokering and fronting services

No entity shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or sub-contract when in fact such management control is exercised by a non-Indian entity.

§ 9-128. Notification of Upcoming Projects

At the beginning of each fiscal year upon approval of the Comprehensive Annual Budget, all MCN departments (regardless of funding source) shall provide information to CESO of anticipated projects for that year including the name of the project, the location of the project, the project contact person, projected start date and other relevant information. This information is due no later than forty-five (45) days after budget approval. Throughout the fiscal year, the respective department(s) shall notify CESO of changes or additional projects.

§ 9-129. Bid requirements

When bids are utilized all procuring entities must notify CESO and supply with a bid package prior to advertising, including invitation to bid, bid deadlines, RFP, bid documents and specifications. CESO will forward bid packages to CESO Certified Vendors.

- A. Bids must include a copy of CESO requirements.
- B. If a Pre-bid conference is required, CESO shall be notified within 72 hours before the scheduled date, and a CESO representative must be present when possible.
- C. When possible, a CESO staff member will attend bid openings. In events where this is not possible the employer shall provide a copy of all bids and bid opening results via email, to the CESO Manager within 48 hours of opening.

§ 9-130. Notification of prospective and current employers of obligations imposed by Law and rules, regulations and orders of CESO

All bid announcements issued by a tribal, federal, state, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Law and all rules, regulations and orders of CESO.

§ 9-131. Preference requirements in Procurement

All employers are required to give preference to CESO Certified Vendors in all purchases, contracting and sub-contracting, and shall comply with this Law and the rules, regulation and order of CESO.

A. Requirements and Definitions

1. General contractors shall include a Native Preference Statement. This statement will include information relative to Preference Requirements in contracting. The General Contractor will be responsible for ensuring that all subcontractors meet CESO Preference Requirements.
2. MCN government is an "employer" for the purpose of this Law and any of its business entities (regardless of funding source) shall be an employer for the purpose of this Law.

§ 9-132. Purchase Requirements

CESO Certified Vendors must be utilized first in acquiring quotes or purchase of all goods and services.

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A. All MCN entities (regardless of funding source) must give a preference to CESO Certified Vendors when awarding procurement opportunities; contracts or subcontracts for supplies, services, labor, and materials unless one of the exceptions listed below applies.

1. No CESO Certified Vendor is available.
2. Procuring entity has a procurement policy that requires approval from the National Council or other governmental agency, then that procuring entity is to follow the guidelines established in that approved policy. CESO will review the approved policy for compliance with this Law.
3. When the purchase can be made from available federal procurement sources such as the General Services Administration or Veteran's Administration.

§ 9-133. Sole Source Purchasing

Purchases through sole sourcing should be rare. Sole source requests must meet the requirements listed below.

A. After research it is determined that the item or service is available from only one source (should not be due to brand loyalty and must be documented).

B. Public exigency or emergency will not permit delay associated with competitive bidding or quotation (should not be due to failure to plan).

C. Expertise, and/or standardization, quality, compatibility with existing equipment or specifications is the only source acceptable to meet a specific need.

D. Sole sourcing is authorized by funding source. (must be documented).

E. In an emergency situation as determined by the Principal Chief.

§ 9-134. Preference Scale

The following percentages must be allowed to CESO Certified Vendors when awarding quotes or bids. A company that is not certified by CESO cannot receive preference. The percentage is the allowable amount CESO Certified Vendors can be above non CESO Certified Vendors.

- A. Products/Goods and Services:
- \$0-\$4,999 = 5%
 - \$5,000-\$499,999 = 3%

\$500,000-\$999,999 = 2%
\$1,000,000 + = 1%

B. The procuring entity or department may develop its own scale for scoring bids in accordance with applicable procurement policies and the specific needs of the project, provided that at least ten percent (10%) of the total points awarded shall be reserved for CESO Certified Vendor preference.

§ 9-135. Procuring Entity of the Muscogee Nation Complaint Process

At any time during an employer's utilization by MCN, the procuring entity may file a complaint with CESO against employer.

A. Any complaints from a procuring entity must be presented in a written format and submitted to the CESO Manager to be considered a formal complaint.

B. Once a formal complaint has been filed, CESO will look at all submitted documents and meet with all parties involved and attempt to reach an informal agreement.

C. Complaints may range from but not limited to: poor products/goods, work, or services rendered or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

D. Any employer receiving complaints from MCN or any of the procuring entities under the MCN shall be placed under review by the Debarment Committee.

§ 9-136. Debarment

CESO shall maintain and publish a list of companies and individuals who have been officially debarred through procedures carried out by the Debarment Committee. All employers must agree to not utilize any company or individual on the debarment list. CESO will develop policies and procedures to carry out the debarment process. CESO shall make available an electronic copy of debarred vendors.

§ 9-137. Debarment Committee

The CESO Debarment Committee shall consist of two representatives from the National Council, the Secretary of the Nation and Commerce, the Secretary of Interior Affairs and the Secretary of Housing.

§ 9-138. Project Evaluation requirements

All Departments upon completion of a covered contract will complete a CESO Project Evaluation form and return to CESO.

§ 9-139. Filing of complaints by CESO on behalf of CESO Certified Vendors

If a CESO Certified Vendor has cause to believe that MCN has failed to comply with this Law the CESO Certified Vendor may file a complaint with CESO. Any complaint must be submitted to the CESO Manager in writing, detailing areas the CESO Certified Vendor feels they were aggrieved. The CESO Manager will investigate and attempt to achieve an informal settlement. Overseeing Cabinet member will also be notified of complaint against their department. Departments found to have failed to comply will receive training on the Law and procurements reviewed for six months.

§ 9-140. Filing of complaints by CESO and proceedings there on generally

If CESO staff has cause to believe that an employer, contactor, subcontractor, or union has failed to comply with this Law or any rules, regulations or orders of the Contracting and Employment Support Act, it may file a complaint with the CESO Manager and notify such party of alleged violations. The CESO Manager will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, CESO may impose penalties as provided in § 9-141 herein. Should any entity fail to comply with orders of CESO, CESO may pursue a civil legal action against the entity in the Muscogee (Creek) Nation District Court.

§ 9-141. Penalties for Violations of chapter and rules, regulations or orders

Any employer, contractor, subcontractor or union who violates this Law or rules, regulations or orders of the CESO shall be subject to penalties for the violation.

A. Penalties including, but not limited to:

1. Denial of the right to commence or continue business within the jurisdiction of the Muscogee (Creek) Nation.
2. Suspension of operations within the jurisdiction of the Muscogee (Creek) Nation.
3. Payment of back pay and damages to compensate any injured party.
4. An order to summarily remove employees hired in violation of this Law or rules, regulations or orders of CESO.
5. Imposition of monetary civil penalties.
6. Prohibition from engaging in future operations within the Muscogee (Creek) Nation boundaries.

7. An order requiring employment, promotion, and training of MCN citizens and citizens of other Federally Recognized tribes injured in the violation.
8. An order requiring changes in procedures and policies necessary to eliminate the violation.
9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.

B. The maximum monetary penalty which may be imposed is five thousand dollars (\$5,000.00) for each violation. The penalties will be graduated as follows:

1. The first violation will incur a fine of two hundred dollars (\$200.00).
2. The second violation will incur a fine of one thousand dollars (\$1,000.00).
3. The third violation will incur a fine of five thousand dollars (\$5,000.00).

C. Each day during which a violation exists shall constitute a separate violation.

D. Monetary penalties assessed by CESO may be doubled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.

E. Attorney Fees and Cost of pursuing or defending an action of CESO may be awarded to the prevailing party.

§ 9-142. Filing of complaints by MCN Citizens and Citizens of other Federally Recognized Tribes and proceeding thereon generally; Penalties for retaliatory actions by employers against employees filing complaints

If any MCN Citizen or Other Indian believes that an employer has failed to comply with this Law or rules, regulations or orders of CESO, or if they believe he or she has been adversely discriminated against by an employer because he or she is a Indian, they may file a complaint with CESO specifying the alleged violation. Upon receipt of the complaint, CESO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or CESO may take further action as provided for by law.

If any employer fires, layoffs or penalizes in any manner any MCN Citizen or Other Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided by Section 9-140 of this Law.

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Nothing in this Law shall prohibit the aggrieved MCN Citizen or Other Indian from pursuing from the employer other remedies available by law.

This Law does not provide any cause of action for employees of the Muscogee (Creek) Nation its entities or wholly owned corporations.

§ 9-143. Contracting and Employment Support Appeals Board

The CESO Appeals Board of the Muscogee (Creek) Nation shall consist of the Attorney General, a member of the National Council, the Secretary of the Nation and Commerce, the Secretary of Interior Affairs and the Secretary of Housing.

§ 9-144. Conduct of Hearings

If any employer or person feels aggrieved by a decision made by CESO, CESO Certification Committee or CESO Debarment Committee they may appeal that decision to the CESO Appeals Board. The CESO Appeals Board shall hold a hearing in accordance with this law and will either confirm or deny CESO's decision.

A. Hearings shall be governed by the following rules and procedure:

1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
2. The Appeals Board may have the advice and assistance at the hearing of counsel which shall be provided by the Nation.
3. The chairman of the Board or the vice-chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
4. The Hearing may be adjourned, postponed and continued at the discretion of the Board.
5. At the final close of the hearings, the board may take immediate action or take the matter under advisement.
6. The Board shall notify all parties forty-five (45) days after the last hearing or of its decisions in the matter.

§ 9-145. Notice of Hearings

The CESO Appeals Board shall have the power and duty to hear employer appeals of CESO's decisions denying certification of the employer as an Indian owned economic enterprise. The CESO appeals Board shall have the power to either affirm or reverse CESO's Certification decision, but will not have the power to award any other form of remedy in the cases brought to this Law.

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NCA 18-199

The CESO Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the CESO Appeals Board.

If a hearing is requested by the Board, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented.

The notice shall advise such parties of their right to be present at the hearing, to present the testimony of witnesses and other evidence and to be represented by counsel at their own expense.

§ 9-146. Appeals from decisions of Contracting and Employment Support- Appeals Board

There shall be no right of further appeal of any claim beyond the CESO Appeals Board.

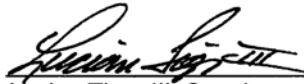
§ 9-147. Severability

The provisions of this Law are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this law.

SECTION THREE. EFFECTIVE DATE. This Act shall become effective upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 15th day of December, 2018.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Lucian Tiger III, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with Sixteen members attending this meeting on the 15th day of December, 2018 and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.

Alicia Stroble

Alicia Stroble, Acting Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 21st day of December, 2018 to the above Law, **NCA 18-199** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

James R. Floyd

James R. Floyd, Principal Chief
Muscogee (Creek) Nation



Evaluation Criterion / Scoring Sheet – GENERAL CONTRACTOR

Item No.	Description	Maximum Points
1	Muscogee (Creek) Nation Contracting and Employment Support Act (CESO certification)	10
2	Proof of being a Creek-owned enterprise. Copy of CDIB card or Tribal Membership required	5
3	Resume of individual firm (past jobs performed)	10
4	Experience and knowledge of similar projects of this type.	20
5	Professional references, including contact information (minimum 5)	20
6	Proposed cost; itemized description of all the anticipated fees and costs, including subcontractor information and timeline.	35
TOTAL POINTS		100

Project Name: _____

Company Name: _____

Criteria Item No.	Score
1	_____
2	_____
3	_____
4	_____
5	_____
6	_____

TOTAL: _____

Scored by: _____ <i>Name</i>	Date: _____
_____ <i>Department</i>	



**Muscogee (Creek) Nation
CESO**

Contracting and Employment Support Office

P.O. Box 580 Okmulgee, OK 74447

Phone: 918-549-2962

CES@muscogeenation.com

Thank you for submitting a bid for the upcoming project.

Project Name: Greenleaf Church Road

The Muscogee (Creek) Nation, CESO office requires the name and contact information of all sub-contractors you will be utilizing on the project. We recommend you utilize CESO vendors as your sub-contractors, when possible. We will also need justification as to why you will not be using a CESO vendor as a sub-contractor. Please provide proof of due diligence in locating a CESO vendor for justification purposes. We do this to ensure your company remains in compliance with our CESO Law. Please, feel free to contact our office if you have any questions or concerns. We at CESO look forward to working with you on the upcoming project.

Mvto,

Warren Harjo, Manager
Muscogee (Creek) Nation
Contracting and Employee Support Office (CESO)
918-549-2966
wharjo@muscogeenation.com

**DIVISION I
GENERAL and PROJECT
PROVISIONS**

**GREENLEAF CHURCH ROAD
PROJECT NO. G07908-1318
SPECIFICATIONS**

DIVISION I – GENERAL & PROJECT PROVISIONS

PROJECT OVERVIEW:

Greenleaf Church Road Project consists of the Construction of .77 Miles of Road; Asphalt, installing a 2-inch waterline, and removal and replacement of driveways (Detailed construction plans containing more specific information are available upon request.)

SPECIFICATIONS:

The Project generally incorporates by reference the Oklahoma Department of Transportation (ODOT) 2019 Standard Specifications for Highway Construction, as well as all subsequent supplemental specifications issued by ODOT. However, the following Sections (i.e., §§101 through 109 and §§151 through 155) supersede and/or control where conflicting provisions arise.

SPECIAL NOTICES:

This Contract shall be governed by the laws and the courts of the Muscogee (Creek) Nation. All disputes arising hereunder shall be governed by the laws of the Muscogee (Creek) Nation. Nothing herein shall be construed as a waiver of the Nation's sovereign immunity.

All Work under Division I, Section 153 *Contractor Quality Control* shall be included in the unit price for items associated with quality control. No separate pay item will be allowed for Contractor's quality control responsibilities.

All Work under Division I, Section 154 *Contractor Sampling and Testing* shall be included in the unit price for items associated with sampling/testing. No separate pay item will be allowed for Contractor's sampling and testing responsibilities.

All Work under Division I, Section 155 *Schedules for Construction Contracts* shall be included in the unit price for items under Division II, Section 641 *Mobilization*. The method of measurement for Work under the Division II, Section 641 *Mobilization* item, including construction schedules, shall remain lump sum.

Section 101. - TERMS, FORMAT, AND DEFINITIONS

101.01 Meaning of Terms. These specifications are generally written in the imperative mood. In sentences using the imperative mood, the subject, "*the Contractor,*" is implied. Also implied in this language are "*shall,*" "*shall be,*" or similar words and phrases. In material specifications, the subject may also be the supplier, fabricator, or manufacturer supplying material, products, or equipment for use on the project.

Wherever "*directed,*" "*required,*" "*prescribed,*" or other similar words are used, the "*direction,*" "*requirement,*" or "*order*" of the Contracting Officer is intended. Similarly, wherever "*approved,*" "*acceptable,*" "*suitable,*" "*satisfactory,*" or similar words are used, the words mean "*approved by,*" "*acceptable to,*" or "*satisfactory to*" the Contracting Officer.

The word "*will*" generally pertains to decisions or actions of the Contracting Officer.

101.02 Specifications Format. These specifications are divided into 10 Divisions.

Division I, §§101 through 109 consist of general contract requirements for which no direct payment is made.

Division I, §§153 through 155 consist of project contract requirements. This Work is paid for directly or indirectly according to Subsection 109.05 and the Section ordering the work. When there is no pay item in the bid schedule, no direct payment is made.

Division II, §§200 through 800 consist of construction contract requirements for specific items of work. Work under these Sections are paid for directly or indirectly according to Subsection 109.05 and the Section ordering the work. When there is no pay item in the bid schedule, no direct payment is made.

Section 700 contains the Work material requirements. No direct payment is made in Division 700. Payment for material is included as part of the work required in the Section Ordering Work.

The first three digits of the pay item number in the Bid Schedule identify the Section under which the work is performed.

101.03 Abbreviations. Whenever these abbreviations are used in the specifications, they represent the following:

(a) Acronyms.

AA	—	Aluminum Association
AAN	—	American Association of Nurserymen
AAR	—	Association of American Railroads
AASHTO	—	American Association of State Highway and Transportation Officials
ACI	—	American Concrete Institute

ACPA	—	American Concrete Pavement Association
ADA	—	Americans with Disabilities Act
AGC	—	Associated General Contractors of America
AI	—	Asphalt Institute
AIA	—	American Institute of Architects
AISC	—	American Institute of Steel Construction
AISI	—	American Iron and Steel Institute
AITC	—	American Institute of Timber Construction
ANSI	—	American National Standards Institute
APWA	—	American Public Works Association
ARA	—	American Railway Association
AREA	—	American Railway Engineering Association
ARTBA	—	American Road and Transportation Builders Association
ASCE	—	American Society of Civil Engineers
ASA	—	American Standards Association
ASCII	—	American Standard Code for Information Interchange
ASLA	—	American Society of Landscape Architects
ASTM	—	American Society for Testing and Materials
ATSSA	—	American Traffic Safety Services Association
AWPA	—	American Wood Preservers Association
AWS	—	American Welding Society
AWWA	—	American Water Works Association
CFR	—	Code of Federal Regulations
CO	—	Contracting Officer, Seneca-Cayuga Tribe
CRSI	—	Concrete Reinforcing Steel Institute
DEQ	—	Department of Environmental Quality
EPA	—	Environmental Protection Agency
FAR	—	Federal Acquisition Regulations (48 CFR Chapter 1)
FHWA	—	Federal Highway Administration
FICA	—	Federal Insurance Contributions Act
FLH	—	Federal Lands Highways
FSS	—	Federal Specifications and Standards

FTMS	—	Federal Test Method Standard
FUTA	—	Federal Unemployment Tax Act
GSA	—	General Services Administration
IEEE	—	Institute of Electrical and Electronic Engineers
ISO	—	International Organization for Standardization
ISSA	—	International Slurry Surfacing Association
ITE	—	Institute of Transportation Engineers
MIL	—	Military Specifications
MPI	—	Master Painters Institute
MUTCD	—	Manual on Uniform Traffic Control Devices (for Streets and Highways)
NCHRP	—	National Cooperative Highway Research Program
NEC	—	National Electrical Code
NEMA	—	National Electrical Manufacturer's Association
NFPA	—	National Forest Products Association
NIST	—	National Institute of Standards and Technology
OSHA	—	Occupational Safety and Health Administration
ODOT	—	Oklahoma Department of Transportation
PCA	—	Portland Cement Association
PCI	—	Prestressed Concrete Institute
PVC	—	Polyvinyl Chloride
PTI	—	Post-Tensioning Institute
SAE	—	Society of Automotive Engineers
SF	—	Standard Form
SI	—	International System of Units
SSPC	—	Steel Structures Painting Council
TAR	—	Transportation Acquisition Regulations (48 CFR Chapter 12)
UL	—	Underwriter's Laboratory
U.S.	—	United States of America
USC	—	United States Code
USCS	—	United States Geological Survey
USFWS	—	United States Fish and Wildlife Service

USPS — United States Postal Service

(b) SI Symbols.

A	—	ampere	electric current
cd	—	candela	luminous intensity
°C	—	degree Celsius	temperature
d	—	day	time
g	—	gram	mass
h	—	hour	time
H	—	Henry	inductance
ha	—	hectare	area
Hz	—	hertz (s ⁻¹)	frequency
J	—	joule (N•m)	energy
K	—	kelvin	temperature
L	—	liter	volume
lx	—	lux	illuminance
m	—	meter	length
m²	—	square meter	area
m³	—	cubic meter	volume
min	—	minute	time
N	—	newton (kg•m/s ²)	force
Pa	—	pascal (N/m ²)	pressure
s	—	second	time
t	—	metric ton	mass
V	—	volt (W/A)	electric potential
W	—	watt (J/s)	power
Ω	—	ohm V/A	electric resistance
°	—	degree	plane angle
′	—	minute	plane angle
″	—	second	plane angle

(c) SI Prefix Symbols.

E	—	exa	10 ¹⁸
P	—	peta	10 ¹⁵
T	—	tera	10 ¹²
G	—	giga	10 ⁹
M	—	mega	10 ⁶
k	—	kilo	10 ³
c	—	centi	10 ⁻²
m	—	milli	10 ⁻³
μ	—	micro	10 ⁻⁶
n	—	nano	10 ⁻⁹
p	—	pico	10 ⁻¹²
f	—	femto	10 ⁻¹⁵
a	—	atto	10 ⁻¹⁸

101.04 Definitions. The following definitions apply to this contract:

Award — The written acceptance of a bid by the CO.

Backfill — Material used to replace or the act of replacing material removed during construction. Material placed or the act of placing material adjacent to structures.

Base — The layer or layers of selected material of a designated thickness placed on a subbase or a subgrade to support a surface course.

Bid — A written offer by a bidder to perform work at a quoted price.

Bidder — Any individual or legal entity submitting a bid.

Bid Guarantee — A form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract and furnish required bonds.

Bid Schedule — The prepared schedule included with the bid forms, containing the estimated quantities of pay items for which unit bid prices are invited.

Bridge — A structure, including supports, erected over a depression or obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines or arches or extreme ends of openings for multiple boxes; may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(a) Bridge Length. The length of a bridge structure is the over-all length measured along the line of survey stationing back to the back of backwalls of abutments, if present, otherwise end to end of the bridge floor, but in no case less than the total clear opening of the structure.

(b) Bridge Roadway Width. The clear width of the structure measured at right angles to the center of the roadway between the bottom of curbs or, if curbs are not used, between the inner faces of parapet or railing.

Calendar Day — Any day shown on the calendar, beginning and ending at midnight.

Change in Work, Significant — When the character of the work, as altered, (1) differs materially in kind or nature from that involved or included in the original proposed construction, or (2) when a major item of work as defined in FAR Clause 52.211-18 is increased in excess of 115-percent or decreased below 85-percent of the original Contract quantity.

Change Order — A written order to the Contractor for extra work, increases or decreases in Contract quantities, and additions or alterations to the plans or specifications, within the scope of the Contract.

Clear Zone — The portion of the roadside, including the shoulder, available for the safe use by an errant vehicle in which the driver may regain control of the vehicle. Recommended distances for the clear zone are in the AASHTO Roadside Design Guide.

Commercial Certification — See Subsection 106.03.

Construction Limits — The limits on each side of the project that establish the area disturbed by construction operations and beyond which no disturbance is permitted. Typically the construction limits are the same as the clearing limits, except when additional clearing is required.

Contract — A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Nation to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards, and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

Contract Modification — Any written change in the terms of the contract. Contract modifications are of the following forms:

(a) **Administrative Change.** A unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

(b) **Change Order.** A written order, signed by the CO, directing the Contractor to make a change that FAR Clause 52.243-4 Changes authorizes the CO to order without the Contractor's consent.

(c) **Supplemental Agreement.** A contract modification that is accomplished by the mutual action of the parties.

Contract Pay Item — A specific item of work for which a unit and price is provided in the contract.

Contract Time — The numbers of work days or calendar days allowed for completion of the work required by the Contract, including authorized time extensions, or a date certain by which work must be completed.

(a) **Calendar Day.** Any day shown on the calendar beginning and ending at midnight.

(b) **Completion Day.** A date by which all work specified in the contract is to be completed.

(c) **Working Day.** Every day shown on the calendar, exclusive of Saturdays, Sundays, and holidays as set forth in 101.04, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for a minimum of six hours with normal working forces engaged in performing the controlling item or items of work. Saturdays, Sundays, and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered as working days.

Contracting Officer (CO) — An official of the Muscogee (Creek) Nation with the authority to enter into, administer, and terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

Contracting Officer's Representative (COR) — The COR is the duly authorized representative of the Contracting Officer, and he may act for the Contracting Officer in administering the contract. The COR's duties and responsibilities are delineated by letter from the Contracting Officer to the COR with a copy to the Contractor.

Contractor — The individual or legal entity contracting with the Nation for performance of prescribed work.

Crashworthy — A highway feature is crashworthy if it was successfully crash tested under the NCHRP Report 350, *Recommended Procedures for the Safety Performance Evaluation of Highway Features* or earlier comparable criteria or if it was accepted through analysis by FHWA, based on similarity to other crashworthy features. A list of crashworthy highway features is available on the FHWA Safety website.

Critical Path — The logical progression of construction tasks necessary to complete construction of a project with each dependent element properly sequenced to follow the work on which it is dependent.

Cross-Section — A vertical section of the ground or structure at right angles to the centerline or baseline of the roadway or other work.

Culvert — Any structure, not classified as a bridge, that provides an opening under the roadway.

Day — Each and every day shown on the calendar, beginning and ending at midnight.

Density — Mass per unit volume of material. Specific gravity multiplied by the unit mass of water.

Detour — A temporary rerouting of public traffic onto alternate existing roadways in order to avoid the work or part of the work.

Differing Site Conditions — Subsurface or latent physical conditions at the site that, (1) differ materially from those indicated in the Contract, or (2) differ materially from conditions normally encountered or those conditions generally recognized as inherent in the nature of the work required in the Contract, or (3) are unknown physical conditions of an unusual nature.

Diversion — A temporary rerouting of public traffic onto a temporary alignment within the project limits in order to bypass the work or a portion of the work.

Drawings — Design sheets or fabrication, erection, or construction details submitted to the Nation by the Contractor according to FAR Clause 52.236-21 Specifications and Drawings for Construction. Also refers to submissions and submittals.

Government— Muscogee (Creek) Nation

Highway, Street, or Road — A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

Inspector — The Contracting Officer's authorized representative assigned to make detailed inspections of Contract performance.

Layer — See "lift."

Lift — Defined as follows:

(a) When placing and compacting soils and aggregates, a lift is any single, continuous layer of material that receives the same compactive effort throughout during a single work operation.

(b) When installing culvert pipe less than or equal to 48 inches in diameter, the backfill material placed on both sides of the pipe is considered to be contained in the same lift when the material is placed to the same elevation on both sides of the culvert, the compactive effort applied to one side of the culvert is the same as that applied to the other, and the compactive effort is applied to both sides of the pipe in a continuous operation.

Material — Any substances specified or necessary to satisfactorily complete the contract work.

Maximum Particle Size — The smallest sieve opening through which all particles in the material will pass.

Measurement — The process of identifying the dimensions, quantity, or capacity of an item. See Section 109 for measurement methods, terms, and definitions.

Notice to Proceed — Written notice to the Contractor to begin the contract work.

Pavement Structure — The combination of subbase, base, paving geotextiles, and surface courses placed on a subgrade to support and distribute the traffic load to the roadbed.

Payment Bond — The security executed by the Contractor and surety or sureties and furnished to the Nation to ensure payments as required by law to all persons supplying labor or material according to the contract.

Performance Bond — A bond, issued by a Surety to the Nation in a sum not less than the total Contract price which shall ensure the proper and prompt completion of the work in accordance with the provisions of the Contract.

Plans — Approved Contract drawings showing the location, type, dimensions, and details of Contract work to be performed.

(a) **Standard Plans.** Detailed drawings approved for repetitive use.

(b) **Plan Notes.** Plan notes are insertions on standard plans primarily to facilitate design considerations. Whenever there appears to be conflict in plan notes, Contractor shall notify the Contracting Officer's Representative prior to commencement of affected work. The Contracting Officer's Representative will determine the applicability of the note(s) in question to the specific project.

(c) **Working Drawings.** Supplemental design sheets or similar data that the Contractor is required to submit to the Contracting Officer's Representative such as shop drawings, erection plans, false work plans, framework plans, cofferdam plans, and bending diagrams for reinforcing steel.

(d) **Work Plans.** Supplemental procedures or data developed by the Contractor as his/her methodology to construct the work required by the Plans for the project, the Standard Specifications and any applicable Special Provisions.

Production Certification — See Subsection 106.03.

Professional Engineer — Engineers who hold valid State licenses permitting them to offer engineering services directly to the public, who are experienced in the work for which they are responsible, who take legal responsibility for their engineering designs, and who are bound by a code of ethics to protect the public health.

Profile Grade — The trace of a vertical plane intersecting a particular surface of the proposed road construction located as shown on the plans, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of the trace according to the context.

Project — The specific section of the highway or other property on which construction is to be performed under the contract.

Right-of-Way — Real property necessary for the project, including roadway, buffer areas, access, and drainage areas.

Roadbed — The graded portion of a highway prepared as a foundation for the pavement structure and shoulders.

Roadside — All area within the right-of-way excluding the traveled way and shoulders.

Roadway — In general, the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways. In construction specifications, the portion of a highway within the construction limits.

Roadway Prism — The volume defined by the area between the original terrain cross-section and the final design cross-section multiplied by the horizontal distance along the centerline of the roadway.

Roller Pass — One trip of a roller in one direction over any one spot.

Shoulder — The portion of the roadway contiguous to the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of the pavement structure.

Shut Down Order — A written order issued by the Contracting Officer's Representative to the Contractor directing the Contractor to cease all or any specific part of the contract work. No work prohibited by the Shut Down Order may be resumed until a written authorization rescinding the Shut Sown Order is issued by the Contracting Officer.

Sidewalk — That portion of the Right-of-Way constructed for the use of pedestrians.

Sieve — See AASHTO M 92.

Solicitation — The complete assembly of documents (whether attached or incorporated by reference) furnished to prospective bidders.

Special Contract Requirements — Additions and revisions to the standard specifications applicable to an individual project.

Special Provisions — Revisions to the Standard and Supplemental Specifications applicable to an individual project.

Specifications — The written requirements for performing work.

Stabilization — Modification of soils or aggregates by incorporating materials that will increase load-bearing capacity, firmness, and resistance to weathering or displacement.

Standard Forms — Numbered forms issued by the General Services Administration for use as contract documents.

Standard Drawings — Drawings approved for repetitive use, showing details to be used where appropriate.

Standard Specifications — The Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects approved for general application and repetitive use.

Station — (1) A measure of distance used for highways and railroads. A station is equal to 100 feet. (2) A precise location along a survey line.

Structure — Bridge, culvert, catch basin, drop inlet, retaining wall, cribbing, manhole, endwall, headwall, building, sewer, service pipe, underdrain, foundation drain, and other constructed features which may be encountered in the work and not otherwise classified.

Subbase — Layers of specified material thickness placed on a subgrade to support a base course.

Subcontract — The written agreement between the Contractor and an individual or legal entity prescribing the performance of a specific portion of the work.

Subcontractor — An individual or legal entity with which the Contractor sublets part of the work. This includes all subcontractors in any tier.

Subgrade — The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.

Substantial Completion — The point at which the project is complete such that it can be safely and effectively used by the public without further delays, disruption, or other impediments. For conventional bridge and highway work, the point at which all bridge deck, parapet, pavement structure, shoulder, drainage, sidewalk, permanent signing and markings, traffic barrier, safety appurtenance, utility, and lighting work is complete.

Substructure — All of the bridge below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames including backwalls, wingwalls, and wing protection railings.

Suitable Material — Rock or earth material that will provide stable foundations, embankments, or roadbeds, and is reasonably free of organic matter, roots, muck, sod, or other detrimental material. Suitable material may require drying or adding water, root picking, and other methods of manipulation before use. Suitable material includes the classifications of materials for which the project was designed.

Superintendent — The Contractor's authorized representative in responsible charge of the work.

Superstructure — The entire bridge except the substructure.

Supplemental Agreement — A written agreement signed by the Tribe and the Contractor for the performance of work beyond the scope of the original Contract that the Nation elects to perform in conjunction with the existing Contract.

Supplemental Specifications — The book of approved additions and revisions to the Standard Specifications.

Surety — An individual or corporation legally liable for the debt, default, or failure of a Contractor to satisfy a contract obligation.

Surface Course — The top layer or layers of a pavement structure designed to accommodate the traffic load and resist skidding, traffic abrasion, and weathering.

Target Value (TV) — A number established as a center for operating a given process. Once established, adjustments should be made in the process as necessary to maintain a central tendency about the target value. Test results obtained from a well-controlled process should cluster closely around the established target value and the mean of the test results should be equal to or nearly equal to the established target value.

Traveled Way — The portion of the roadway designated for the movement of vehicles, including curve widening, exclusive of shoulders.

Unbalanced Bid, Materially — A bid that generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Nation – Muscogee (Creek) Nation.

Unbalanced Bid, Mathematically — A bid containing lump sum or unit bid items that do not reflect reasonable estimated costs plus a reasonable proportionate share of the bidder’s anticipated profit, overhead costs, and other indirect costs.

Unilateral Change Order — A change order issued by the Contracting Officer in accordance with his/her determination of an equitable price and time adjustment, but to which the Contractor does not agree and does not sign.

Unsuitable Material — Material not capable of creating stable foundations, embankments, or roadbeds. Unsuitable material includes muck, sod, or soils with high organic contents.

Work — The furnishing of all labor, materials, equipment, and other incidentals necessary to successfully complete the project according to the contract.

Section 102. — BID, AWARD, AND

EXECUTION OF CONTRACT

102.01 Acquisition Regulations. Bid, award, and execution of the contract are governed by the FAR and TAR.

102.02 Examination of Plans, Specifications, Special Provisions and Site of Work. The Nation will prepare plans and specifications giving directions to be carried out by the Contractor. This information may include geophysical data and interpretations (seismic or resistivity). Bidders are cautioned that interpretations of geophysical data are based on opinion and judgment. Bidders are advised to have these data and interpretations independently evaluated by someone qualified in this technical field before using them for bidding purposes. When subsurface boring or test hole data is shown on the plans or included in the specifications it is for bidders information only. While subsurface investigations will have been performed with reasonable care, there is no warranty or guaranty, either expressed or implied, that they will disclose the actual conditions which will be encountered during subsurface investigation record, the data shown in the individual log of each test boring apply only to that particular boring and are not intended to be conclusive as to the character of any material between or around test borings. Any interpretation of the Nation’s subsurface investigation record made by the bidder as to the types, characteristics, quantity and quality of any subsurface material or condition shall be at the sole risk of the bidder.

102.03 Preparation of Bids. Follow the requirements of FAR Clause 52.214-18 Preparation of Bids — Construction.

Execute and submit all required standard forms, bid schedules, and solicitation provisions contained in the solicitation as part of the bid.

Complete SF 1442, *Solicitation, Offer, and Award*, and sign as follows:

- (a) **Individuals.** Sign your individual signature. For individuals doing business as a firm, follow the individual signature with the individual's typed, stamped, or printed name and the words, "*an individual doing business as _____ (name of firm) .*"
- (b) **Partnerships.** Submit a list of all partners having authority to bind the partnership. One of the listed partners must sign on behalf of the partnership.
- (c) **Corporations.** Sign in the corporate name, followed by the word "*by*" and the signature and title of the person authorized to sign. Submit evidence from the corporation that the person signing has authority to bind the corporation.
- (d) **Joint Ventures.** Submit a copy of the Joint Venture agreement. Sign the SF 1442 according to the Joint Venture agreement.
- (e) **Limited Liability Company.** Sign in the company name, followed by the word "*by*" and the signature of the person authorized to sign. Submit evidence that the individual executing the document has authority to bind the company.
- (f) **Agents.** When an agent signs, other than as stated in (a) through (e) above, furnish satisfactory evidence that the agent has authority to bind the bidder.

Insert a unit bid price, in figures, for each pay item for which a quantity appears in the bid schedule. Multiply the unit bid price by the quantity for each pay item and show the amount bid. Should any mathematical check made by the Nation show a mistake in the amount bid, the corrected unit price extension shall govern.

When the words "*lump sum*" appear as a unit bid price, insert an amount bid for each lump sum pay item.

When the words "*contingent sum*" or a fixed rate appears as a unit bid price, include the Nation's inserted amount bid for the item in the total bid amount.

Total all of the amounts bid for each pay item and show the total bid amount.

The quantities shown in the bid schedule are approximate, unless designated as a contract quantity, and are used for the comparison of bids. Payment will be made for the actual quantities of work performed and accepted or material furnished according to the contract. The scheduled quantities may be increased, decreased, or deleted. Bid schedule quantities are considered the original contract quantities.

102.04 Bid Guarantee. Follow the requirements of FAR Clause 52.228-1 Bid Guarantee.

- (a) **General.** Submit a bid guarantee of 20 percent of the amount of the bid or \$3 million, whichever is less. Submit the bid guarantee on SF 24, *Bid Bond*. If the bid guarantee is other than a corporate or individual surety, sign the SF 24 as the principal

and make a statement on the form pledging the security. Make checks or money orders payable to the agency issuing the solicitation.

(b) Power of Attorney. A corporate surety shall submit a current power of attorney for the signing agent or attorney-in-fact with each SF 24.

(c) Evidence of Guarantee Assistance. A surety that has a guarantee of assistance from the Small Business Administration shall submit a copy of its “*Surety Bond Guarantee Agreement*” with each SF 24. In addition, submit a power of attorney for the surety representative identified in the agreement.

102.05 Individual Surety. Follow the requirements of FAR Clause 52.228-11 Pledges of Assets.

Complete and date the SF 28, *Affidavit of Individual Surety*, after the solicitation date. The individual surety shall personally sign the SF 28. Execution by power of attorney is not acceptable. Bidders cannot serve as their own surety. Assets named shall be committed to the project with a bank designated to serve as trustee.

After reviewing the SF 28, the surety may be requested to provide further documentation with respect to any of its assets, debts, or encumbrances. The information may be required to be furnished under oath. Failure of the surety to respond with the requested documentation within 7 days of receipt of the request is cause for rejection of the surety.

Any material misstatement by the surety, overstatement of assets (either as to ownership or value) or understatement of liabilities is cause for rejection of the surety. Substitution of individual sureties to support a bid bond after the bid opening will not be permitted.

102.06 Public Opening of Bids. Bids will be publicly opened at the time specified in the SF 1442. Their contents will be made public information. The Nation reserves the right to reject bids as set forth in the FAR, Part 14.404.

102.07 Performance and Payment Bonds. Follow the requirements of FAR Clause 52.228-15 Performance and Payment Bonds — Construction. Furnish a performance bond and a payment bond each in the penal amount of 100 percent of the original contract price.

Use SF 25, *Performance Bond*, and SF 25A, *Payment Bond*, for submitting the bonds.

The requirements contained in Subsections 102.03 and 102.04 relating to power of attorney, evidence of guarantee assistance, and individual sureties also apply to performance and payment bonds.

Section 103. — SCOPE OF WORK

103.01 Intent of Contract. The intent of the contract is to provide for the construction and completion of the work described. The precise details of performing the work are not stipulated except as considered essential for the successful completion of the work. Furnish all labor, material, equipment, tools, transportation, and supplies necessary to complete the work according to the contract.

103.02 Disputes. Follow the requirements of FAR Clause 52.233-1 Disputes.

When requesting a CO's decision on an interpretation of contract terms for the recovery of increased costs, quantify the amount and, if required by FAR Clause 52.233-1, certify the amount. Include an explanation of the interpretation of contract terms, the contract clause under which the claim is made, all supporting documentation, and adequate cost data to support the amount claimed.

103.03 Value Engineering. Follow the requirements of FAR Clause 52.248-3 Value Engineering –Construction.

Before undertaking significant expenditures, provide the CO with a written description of the value engineering change proposal (VECP) concept. Within 14 days, the CO will inform the Contractor as to whether the concept appears to be viable or if the concept is unacceptable. If the CO indicates that the concept appears to be viable, prepare and submit the formal VECP proposal.

103.04 Contractor Records. Upon request, provide records related to the contract to the Nation for up to 3 years after final payment and for longer periods as provided by law.

Include a provision in all subcontracts at all tiers giving the Nation the same rights as provided above with respect to the subcontractor's records.

103.05 Partnering. To facilitate this contract, the Nation offers to participate in a formal partnership with the Contractor. This partnership draws on the strengths of each organization to identify and achieve reciprocal goals. Partnering strives to resolve problems in a timely, professional, and non-adversarial manner. If problems result in disputes, partnering encourages, but does not require, alternative dispute resolution instead of the formal claim process. The objective is effective and efficient contract performance to achieve a quality project within budget and on schedule.

Acceptance of this partnering offer by the Contractor is optional, and the partnership is bilateral.

If the partnering offer is accepted, mutually agree with the Nation on the level of organizational involvement and the need for a professional to facilitate the partnering process. Engage the facilitator and other resources for key Contractor and Nation representatives to attend a partnership development and team-building workshop usually between the time of award and the notice to proceed. Hold additional progress meetings upon mutual agreement.

The direct cost of partnering facilities, professional facilitation, copying fees, and other miscellaneous costs directly related to partnering meetings will be shared by the Contractor and Nation. Secure and pay for facilities, professional fees, and miscellaneous requirements. Provide invoices to the Nation. The Nation will reimburse the Contractor for 50 percent of the agreed costs incurred for the partnering process. The Nation's share will not exceed \$5,000.

Each party is responsible for making and paying for its own travel, lodging, and meal

arrangements. The time allowed for completion of the project is not affected by partnering.

Section 104. — CONTROL OF WORK

104.01 Authority of the Contracting Officer (CO). The CO may delegate authority to representatives to decide on acceptability of work, progress of work, suspension of work, interpretation of the contract, and acceptable fulfillment of the contract. The term “CO” includes all authorized representatives of the CO, including inspectors, acting within the limits of their authority as delegated by the CO.

104.02 Authority of Inspectors. Inspectors are authorized to inspect all work including the preparation, fabrication, or manufacture of material for the project. The inspector is not authorized to alter or waive contract requirements, issue instruction contrary to the contract, act as foreman for the Contractor, or direct the Contractor’s operations. The inspector has authority to identify non-conforming work until the issue can be referred to and decided by the CO. The inspector may take necessary action to prevent imminent and substantial risk of death or injury including stopping work.

104.03 Specifications and Drawings. Follow the requirements of FAR Clause 52.236-2 1 Specifications and Drawings for Construction.

(a) General. Prepare drawings as necessary to construct the work. Drawings include, but are not limited to, layouts that show the relative position (vertical and horizontal as appropriate) of work to be performed, fabrication details for manufactured items and assemblies, installation and erection procedures, details of post-tensioning and other systems, detailed trench and excavation procedures that conform to OSHA requirements, traffic control implementation drawings, and methods for performing work near existing structures or other areas to be protected. Show all the drawing dimensions in United States customary units.

Limit drawings to a maximum size of 24 by 36 inches. Include on each drawing and calculation sheet, the project number, name, and other identification as shown in the contract.

Furnish 5 sets of drawings and supporting calculations for acceptance before performing work covered by the drawings. If drawings are returned for revision, correct and resubmit for acceptance. Allow 40 days per submission for railroad structures and 30 days per submission for all other structures. The review time as specified is applied separately to each drawing submitted. The CO may request additional specific drawings for unique situations in order to clarify layout, construction details, or methodology. If drawings must be resubmitted, the time for acceptance starts over. Obtain written approval before changing or deviating from the accepted drawings.

(b) Specific requirements for concrete and miscellaneous structures.

- (1)** Furnish drawings for the following:
- (a)* Site-specific layouts for all wall types and gabion installations;
 - (b)* Gabion and revet mattress details and installation procedures;
 - (c)* Forms and falsework for reinforced concrete box culverts less than or equal to 6 feet in height;
 - (d)* Fabrication drawings for bridge railings and parapets;
 - (e)* Fabrication drawings for prestressed members;
 - (f)* Fabrication and installation drawings for expansion joint assemblies;
 - (g)* Fabrication drawings for bearing assemblies;
 - (li)* Construction joint location and concrete deck placement sequences not shown on the plans;
 - (i)* Erection diagrams for Soil-Corrugated Metal Structure interaction systems (multi-plate structures);
 - (j)* Structural steel fabrication drawings;
 - (k)* Utility hangar details; and
 - (l)* Fabrication and installation drawings for precast items.
- (2)** Furnish drawings that bear the seal and signature of a professional engineer proficient in the pertinent design field for the following:
- (a)* Erection plans;
 - (b)* Reinforced soil slopes details;
 - (c)* MSE wall and crib wall details;
 - (d)* Details and installation procedures for proprietary wall systems;
 - (e)* Temporary bridge structures for public use;
 - (f)* All bridge forms except for railings, parapets, and components less than 6-feet in height;
 - (g)* Shoring systems and cofferdams greater than 6-feet in height;
 - (h)* All shoring systems that support traffic loadings;
 - (i)* Forms and falsework for all structures greater than 6-feet in height;
 - (j)* Post-tensioning systems;
 - (k)* Ground anchors, soil nail, and rock bolt assembly details, layout, and installation and testing procedures;
 - (l)* Tie back wall details; and
 - (m)* Alternate retaining wall details.

(3) Furnish drawings that bear the seal and signature of a professional engineer who is proficient in forms and falsework design and licensed in the state where the project will be constructed for the following:

- (a) Falsework for any structure with a span exceeding 16 feet;
- (b) Falsework for any structure with a height exceeding 14 feet; and
- (c) Falsework for structures where traffic, other than workers involved in constructing the structure, will travel under the structure.

104.04 Coordination of Contract Documents. The FAR, TAR, special contract requirements, plans, and standard specifications are contract documents. A requirement in one document is binding as though occurring in all the contract documents. The contract documents are intended to be complementary and to describe and provide for a complete contract. In case of discrepancy, calculated and shown dimensions govern over scaled dimensions. The contract documents govern in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract Clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The Specifications.

104.05 Load Restrictions. Follow the requirements of FAR Clause 52.236-10 Operations and Storage Areas, paragraph (c).

Comply with all legal load restrictions when hauling material and equipment on public roads to and from the project. A special permit does not relieve the Contractor of liability for damage resulting from the moving of material or equipment.

Unless otherwise permitted, do not operate equipment or vehicles that exceed the legal load limits over new or existing structures, or pavements within the project except those pavements intended to be removed.

104.06 Cooperation Between Contractors. The Nation reserves the right at any time to perform construction or operations related to the project with the Nation's own forces or to contract for and have performed other work within or near the Project limits covered by the Contract.

When separate Contracts are let within limits of any one Project, each Contractor shall conduct his/her work so as to minimize interference with the progress or completion of the work being performed by other Contractors. Contractors working on the same Project shall cooperate with each other and coordinate their operations in such a manner as to facilitate prompt and expeditious completion of their Contracts. Contractors failing to cooperate with other Contractors may be declared in default on their Contract.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as to minimize interference with the operations of the other Contractors within the limits of the same project. He/She shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the other Contractors.

At all grade separations and/or bridge structures where the Plans indicate fills at abutments are to be made by the Grading Contractor, the Grading Contractor shall begin grading operations at these locations immediately upon beginning work on the Project, unless otherwise provided for in the Contract, and shall complete the fills adjacent to abutments without undue delay. No rock over 2-inches in the largest dimension shall be placed in fills within 30 feet of abutment locations.

At all grade separation structures where the Plans indicate that roadway excavation through the structure location is to be made by the Grading Contractor, the Grading Contractor shall begin grading operations at these locations immediately upon beginning work on the Project and shall complete this work without undue delay. Excavation at these locations shall not extend beyond the width of excavation shown on the underpass Plans.

The Bridge Contractor shall complete the bridge boxes and the backfills around the bridge boxes to the top of the box or to the natural ground line, whichever is the lower, as soon as possible after the Contract is effective, so that the Grading Contractor may make the roadway fills over these bridge boxes.

If the Grading Contractor has complete his/her Project, except for fills at bridge boxes to be constructed by the Bridge Contractor prior to completion of these boxes, the Bridge Contractor shall make the roadway fills to the typical section and subgrade line as shown on the Plans.

Each Contractor shall be solely responsible for his/her actions for all work performed under the Contract and shall save and hold harmless the Nation, its officers, agents, and employees from

104.07 Removal and Disposal of Salvaged Materials, Structures and Obstructions.

Unless otherwise shown on the Plans or in the Proposal, all salvaged materials or materials not incorporated in the work shall become the property of the Contractor and disposed of by him/her. No materials shall be buried or otherwise disposed of within the Project limits or on any publicly owned property without written permission of the Contracting Officer.

104.08 Final Cleaning Up.

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the right-of-way all of his/her machinery, equipment, surplus and discarded materials, rubbish and temporary structures. The Contractor shall remove stumps or portions of trees, shall cut all brush and weeds within the limits of the right-of-way and shall leave the Project and his/her borrow pits in a neat workmanlike condition. Material cleared from the right-of-way and deposited on property adjacent to the right-of-way will not be considered as having been

disposed of satisfactorily.

The Contractor shall leave any areas or slopes, where he/she performs any work, in a neat and workmanlike condition. The Contractor shall repair at his/her own expense any areas, slopes or turf that have been damaged by his/her operations. The cost of final cleanup shall be incidental to other items and no separate payment will be made.

Section 105. — CONTROL OF MATERIAL

105.01 Source of Supply and Quality Requirements.

Follow the requirements of FAR Clause 52.236-5 Material and Workmanship.

Select sources and provide acceptable material. Notify the CO of all proposed sources before delivery to the project to expedite material inspection and testing. Do not incorporate material requiring submittal into the work until approved.

Material may be approved at the source of supply before delivery to the project. Approval does not constitute acceptance. If an approved source does not continue to supply acceptable material during the life of the project, further use of that source may be denied.

105.02 Material Sources.

(a) Tribal-Provided Sources. The Nation will acquire the permits and rights to remove material from provided sources identified in the contract and to use such property for a plant site and stockpiles. Test reports and available historical performance data verifying the presence of acceptable material are available upon request.

Do not perform work within a Tribally-provided source until a plan of operation for the development of the source is accepted. Perform all work necessary to produce acceptable material including site development, preparation, erosion control, and restoration.

The quality of material in provided sources is acceptable in general, but may contain layers or pockets of unacceptable material. It is not feasible to ascertain from samples the quality of material for an entire deposit, and variations may be expected. Determine the quantity and type of equipment and work necessary to select and produce acceptable material.

Strip and stockpile the overburden. After operations are complete, move all waste back into the source. Neatly trim and flatten the side slopes to the extent practicable. Spread the stockpiled overburden uniformly over the sides and bottom of the mined area. Shape the mined area to blend into the surrounding natural terrain.

(b) Contractor-Located Sources. The Contractor is responsible for located sources, including established commercial sources. Use sources that fulfill the contract quantity and quality requirements. Determine the quantity and types of

equipment and work necessary to select and produce acceptable material. Secure all permits and clearances for use of the source and provide copies of the documents.

Provide laboratory test reports and available historical performance data indicating that acceptable material is available from the source. Do not use material from a source that is unacceptable to the Nation. Dispose of unacceptable material and locate another source at no cost to the Nation.

105.03 Material Source Management. Notify the CO 14 days before starting pit operations. Develop and operate within a material source according to the accepted plan of operation or written agreement for developing the source.

Before developing a material source, measure the sediment content of bodies of water adjacent to the work area that will receive drainage from the work area. Control all erosion so the sediment levels in the bodies of water within the drainage area of the work area do not increase. Control erosion so that sediment does not leave the work area.

105.04 Storing and Handling Material. Store and handle material to preserve its quality, and fitness for the work. Bulk materials shall be transported in vehicles constructed to prevent loss or segregation after loading and measuring. Stored material approved before storage may again be inspected before use in the work. Locate stored material to facilitate prompt inspection.

Use only approved portions of the right-of-way for storing material and placing plants and equipment. Provide all additional space needed. Do not use private property for storage without written permission of the owner or lessee. Furnish copies of all agreements. Restore all Tribal-provided storage sites to their original condition.

The Contractor is responsible for the security of all stored material.

105.05 Delivering and Stockpiling Aggregates. All aggregates shall be handled in such a manner as to preserve their quality, gradation and fitness for the work. The provisions for transporting aggregates shall be such to assure a continuous and adequate supply of material to the work.

Aggregates stockpiles shall be built up in such a manner that acceptable materials will be delivered to the plant or the Project. Aggregates from different sources and different gradations shall not be stockpiled together.

The gradation requirements, for the individual stockpiles and proportioning from the stockpiles, shall be the responsibility of the Contractor. Aggregates that have become segregated, or mixed with earth or other foreign material, shall be considered unacceptable, and will not be utilized in the work until Contractor causes aggregate piles to be integrated, and all foreign materials to be removed.

105.06 Use of Material Found in the Work. Material, such as stone, gravel, or sand, found in the excavation may be used for another pay item when acceptable. When there is an applicable excavation item in the bid schedule, such material will be paid both as excavation and as the other pay item for which it is used. Replace material so used and

needed for embankment or backfill with acceptable material at no cost to the Nation. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

The right to use and process material found in the work does not include the use and processing of material for non-Tribal contract work except for the disposal of waste material. If the Contractor produces or processes material from Tribal lands in excess of the quantities required for the contract, the Nation may:

- (a) Take possession of the excess material and direct its use, paying the Contractor only for the cost of production, or
- (b) Require removal of the material and restoration of the land to a satisfactory condition at no cost to the Nation.

Section 106. — ACCEPTANCE OF WORK

106.01 Conformity with Contract Requirements. Follow the requirements of FAR Clause 52.246-12 Inspection of Construction.

References to standard test methods of AASHTO, ASTM, GSA, and other recognized standard authorities refer to the methods in effect on the date of solicitation for bids.

Perform work according to the contract requirements. Perform all work to the lines, grades, cross-sections, dimensions, and processes or material requirements shown on the plans or specified in the contract.

Incorporate manufactured materials into the work according to the manufacturer's recommendations or to these specifications, whichever is stricter.

Plan dimensions and contract specification values are the values to be strived for and complied with as the design values from which any deviations are allowed. Perform work and provide material that is uniform in character and reasonably close to the prescribed value or within the specified tolerance range. The purpose of a tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons.

The Nation may inspect, sample, or test all work at any time before final acceptance of the project. When the Nation tests work, copies of test reports are furnished to the Contractor upon request. The Nation's tests may or may not be performed at the work site. If Contractor testing and inspection is verified by the Nation, the Contractor's results may be used by the Nation to evaluate work for acceptance. Do not rely on the availability of the Nation's test results for process control.

Acceptable work conforming to the contract will be paid for at the contract unit bid price. Four methods of determining conformity and accepting work are described in Subsections 106.02 to 106.05 inclusive. The primary method of acceptance is specified in each Section of work. However, work may be rejected at any time it is found by any of the methods not to comply with the contract.

Remove and replace work that does not conform to the contract, or to prevailing industry standards where no specific contract requirements are noted, at no cost to the Nation.

As an alternative to removal and replacement, the Contractor may submit a written request to:

- (a) Have the work accepted at a reduced price; or
- (b) Be given permission to perform corrective measures to bring the work into conformity.

The request must contain supporting rationale and documentation. Include references or data justifying the proposal based on an evaluation of test results, effect on service life, value of material or work, quality, aesthetics, and other tangible engineering basis. The CO will determine disposition of the nonconforming work.

Additionally, if there are provisions in the Contract for the acceptance of material or work that is not in full compliance with the minimum requirements stated, the use of pay adjustment factors reflecting the payment to be made for the work or materials will be included in the applicable Subsection concerning method of measurement and payment or in a separate Subsection.

When standard manufactured items are specified (such as fence, wire, plates, rolled shapes, pipe conduits, etc., that are identified by gauge, unit mass, section dimensions, etc.), the identification will be considered to be nominal masses or dimensions. Unless specific contract tolerances are noted, established manufacturing tolerances will be accepted.

106.02 Visual Inspection. Acceptance is based on visual inspection of the work for compliance with the contract and prevailing industry standards.

106.03 Certification. For material manufactured off-site, use a manufacturer with an ISO 9000 certification or an effective testing and inspection system. Require the manufacturer to clearly mark the material or packaging with a unique product identification or specification standard to which it is produced.

Other than references in or to the FAR or Federal Law, when these Standard Specifications reference certifications; certificates; or certified documents, equipment, or individuals, these references are not certifications under Section 4301 of Public Law 104-106, National Defense Authorization Act for Fiscal Year 1996. These references refer to documentation of non-regulatory, peripheral contract requirements that are required to be validated by an individual or organization having unique knowledge or qualifications to perform such validation.

Material accepted by certification may be sampled and tested at any time. If found not in conformance with the contract, the material will be rejected whether in place or not.

One of the following certifications may be required:

- (a) **Production Certification.** Material requiring a production certification is

identified in the Acceptance Subsection of each Section. Require the manufacturer to furnish a production certification for each shipment of material. Include the following with each production certification:

- (1) Date and place of manufacture;
- (2) Lot number or other means of cross-referencing to the manufacturer's inspection and testing system; and
- (3) Substantiating evidence that the material conforms to the contract quality requirements as required by FAR 46.105(a)(4), including all of the following:
 - (a) Test results on material from the same lot and documentation of the inspection and testing system;
 - (b) A statement from the manufacturer that the material complies with all contract requirements; and
 - (c) Manufacturer's signature or other means of demonstrating accountability for the certification.

(b) Commercial Certification. When a certification is required, but not a production certification, furnish one commercial certification for all similar material from the same manufacturer.

A commercial certification is a manufacturer's or Contractor's representation that the material complies with all contract requirements. The representation may be labels, catalog data, stamped specification standards, or supplier's certifications indicating the material is produced to a commercial standard or specification.

106.04 Measured or Tested Conformance. Provide all necessary production and processing of the work and control performance of the work so that all of the work complies with the contract requirements.

Results from inspection or testing shall have values within the specified tolerances or specification limits. When no tolerance values are identified in the contract, the work will be accepted based on customary manufacturing and construction tolerances.

106.05 Inspection at the Plant. Work may be inspected at the point of production or fabrication. Manufacturing plants may be inspected for compliance with specified manufacturing methods. Material samples may be obtained for laboratory testing for compliance with quality requirements. Allow full entry at all times to the parts of the plant producing the work.

106.06 Partial and Final Acceptance. Maintain the work during construction and until the project is accepted. Damage caused by the Contractor prior to final acceptance of the entire project will be repaired at the Contractor's expense. See FAR Clause 52.236-11 Use and Possession Prior to Completion.

(a) Partial Acceptance. When a separate portion of the project is completed, a final inspection of that portion may be requested. If the portion is complete and in compliance with the contract, it may be accepted. If accepted, the CO will relieve the Contractor of further responsibility for maintenance of the completed portion. Partial acceptance does not void or alter any of the terms of the contract.

When public traffic is accommodated through construction and begins using sections of roadway as they are completed, the Contractor shall continue maintenance of such sections until final acceptance.

(b) Final Acceptance. When notified that the entire project is complete, an inspection will be scheduled. If all work is determined to be complete, the inspection will constitute the final inspection and the Contractor will be notified in writing of final acceptance as of the date of the final inspection. Final acceptance relieves the Contractor of further responsibility for the maintenance of the project.

If the inspection discloses any unsatisfactory work, the CO will provide to the Contractor a list of the work that is incomplete or requires correction. Immediately complete or correct the work. Furnish notification when the work has been completed as provided above.

Section 107. — LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01 Laws to be Observed. Follow the requirements of FAR Clause 52.236-7 Permits and Responsibilities.

Comply with all applicable laws, ordinances, safety codes, regulations, orders, and decrees. Protect and indemnify the Nation and its representatives against any claim or liability arising from or based on the alleged violation of the same.

Comply with all permits and agreements obtained by the Nation for performing the work that is included in the contract. Obtain all additional permits or agreements and modifications to Tribally-obtained permits or agreements that are required by the Contractor's methods of operation. Furnish copies of all permits and agreements.

107.02 Protection and Restoration of Property and Landscape. Follow the requirements of FAR Clause 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

Preserve public and private property, and protect monuments established for the purpose of perpetuating horizontal, vertical, cadastral, or boundary control. When necessary to destroy a monument, reestablish the monument according to applicable state statute or by the direction of the agency or individual who established the monument.

Do not disturb the area beyond the construction limits. Replace trees, shrubs, or vegetated areas damaged by construction operations as directed and at no cost to the Nation. Remove any damaged limbs of existing trees by an approved arborist.

Do not excavate, remove, damage, alter, or deface any archeological or paleontological remains or specimens. Control the actions of employees and subcontractors on the project to ensure that protected sites are not disturbed or damaged. Should any of these items be encountered, suspend operations at the discovery site, notify the CO, and continue operations in other areas. The CO will inform the Contractor when operations may resume at the discovery site.

When utilities are to be relocated or adjusted, the Nation will notify all utility owners affected by the relocations or adjustments. The relocations or adjustments will be performed by others or will be included in the contract work.

Before beginning work in an area, the Contractor shall have all utility owners locate their utilities. Protect utilities from construction operations. Cooperate with utility owners to expedite the relocation or adjustment of their utilities to minimize interruption of service and duplication of work.

If utility services are interrupted as a result of damage by the construction, immediately notify the utility owner, the CO, and other proper authorities. Cooperate with them until service is restored. Do not work around fire hydrants until provisions for continued service are made and approved by the local fire authority.

If utility adjustment work, not included in the contract, is required, compensation for the work will be provided under applicable clauses of the contract. Satisfactorily repair damage due to the fault or negligence of the Contractor at no cost to the Nation.

Repair of damage to underground utilities that were not shown on the plans or identified before construction, and not caused by the fault or negligence of the Contractor, will be paid for by the Nation.

107.03 Bulletin Board. Furnish a weatherproof bulletin board of suitable size and construction for continuous display of posters and other information required by the contract. Erect and maintain the bulletin board at a conspicuously accessible location on the project and remove and dispose of it after project final acceptance.

Display each of the following documents on the bulletin board:

- (a) "Equal Opportunity" poster, according to FAR Clause 52.222-26 Equal Opportunity;
- (b) "Notice" that the project is subject to Title 18, U.S. Criminal Code, Section 1020, FHWA Form 1022;
- (c) "Notice to Employees" poster, WH-1321, regarding proper pay;
- (d) "Right to Safe and Healthful Workplace" poster, according to Title 29, Code of Federal Regulations, Part 1903;
- (e) "General Wage Decision" contained in the contract; and
- (f) Company equal employment opportunity policy.

107.04 Railroad Protection. The Nation will obtain the necessary permits and

agreements from the railroad for specified contract work for relocating railroads or for work at railroad crossings. Make arrangements for all other work that, due to the method of operation, may also impact the railroad. Furnish copies of all permits and agreements.

Conduct the work covered by the railroad permit or agreement in a manner satisfactory to the railroad. Do not interfere with railroad operations. If the construction damages railroad property, reimburse the railroad for all damages, or at the railroad's option, repair the damage at no cost to the Nation.

Do not cross railroad tracks, with vehicles or equipment, except at existing and open public grade crossings or railroad approved temporarily grade crossings. If there is a need for a temporarily grade crossing, make the necessary arrangements with the railroad for its construction, protection, and removal. Reimburse the railroad for all temporary grade crossing work or, at the railroad's option, perform the work.

The requirements of the railroad are as follows:

(a) Indemnify and hold harmless the railroad according to Subsection 107.05. Carry insurance meeting the following minimums:

- (1)** Worker's compensation insurance. Minimum required by law.
- (2)** Bodily injury liability insurance. \$2,000,000 each occurrence.
- (3)** Property damage liability insurance. \$2,000,000 aggregate coverage.
- (4)** Railroad protective public liability and property damage liability insurance. \$2,000,000 each occurrence. \$6,000,000 aggregate coverage.

(b) Notify the railroad in writing not less than 1 week before beginning construction within the railroad right-of-way. Secure permission from the railroad before performing work within the railroad right-of-way. Confer with the railroad concerning clearance requirements, operations, and safety regulations.

(c) Reimburse the railroad for all flaggers and watchers provided by the railroad because of the work. The railroad generally requires 2 watchers or flaggers during construction operations that interfere with the railroad's tracks or traffic, that violate the railroad's operating clearances, or that involve a reasonable probability of accidental hazard to railroad traffic.

Flaggers are also furnished whenever, in the railroad's opinion, such protection is needed. Notify the railroad 36 hours in advance of required protective services.

(d) Railroad employees are paid the prevailing railroad hourly rate for regularly assigned 8-hour days for the work classification and overtime according to labor agreements and schedules in effect when the work is performed.

(e) Wage rates are subject to change by law or agreement between the railroad and employees and may be retroactive. If the wage rates change, reimburse the railroad based on the new rates.

(f) Reimburse the railroad monthly for the cost of all services performed by the railroad. Furnish satisfactory evidence that the railroad has received full reimbursement before final acceptance.

(g) Do not store any material, supplies, or equipment closer than 15 feet from the centerline of any railroad track.

(h) Upon completion of the work, remove all equipment and surplus material, and leave the railroad right-of-way in a neat condition satisfactory to the railroad.

107.05 Responsibility for Damage Claims. Indemnify and hold harmless the Nation, its employees, and its consultants from suits; actions; or claims brought for injuries or damage received or sustained by any person, persons, or property resulting from the construction operations or arising out of the negligent performance of the contract.

Procure and maintain until final acceptance of the contract, liability insurance of the types and limits specified below. Obtain insurance from companies authorized to do business in the appropriate state. The insurance shall cover all operations under the contract whether performed by the Contractor or by subcontractors.

Before work begins, furnish “*certificates of insurance*” certifying that the policies will not be changed or canceled until 30 days written notice has been given to the Nation. Insurance coverage in the minimum amounts set forth below shall not relieve the Contractor of liability in excess of the coverage.

Carry insurance meeting the following minimums:

- (a) Worker’s compensation insurance. Minimum required by law.
- (b) Comprehensive or commercial general liability insurance.
 - (1) Personal injury and property damage coverage;
 - (2) Contractual liability coverage;
 - (3) Completed operations liability coverage;
 - (4) \$1,000,000 combined single limit for each occurrence; and
 - (5) \$2,000,000 general aggregate limit.
- (c) Automobile Liability Insurance. \$1,000,000 combined single limit for each occurrence.

107.06 Contractor’s Responsibility for Work. Assume responsibility for all work until final acceptance except as provided in Subsection 106.07. This includes periods of suspended work. Protect the work against injury, loss, or damage from all causes whether arising from the execution or non-execution of the work.

Maintain public traffic. Rebuild, repair, restore, and make good all losses, injuries, or damages to any portion of the work. This includes losses, injuries, or damages caused by vandalism, theft, accommodation of public traffic, and weather that occurs during the

contract.

The Nation will only be responsible for losses, injuries, and damages to work put in place that was caused by declared enemies and terrorists of the Nation and cataclysmic natural phenomenon such as tornadoes, earthquakes, major floods, and other officially declared natural disasters. The Nation will only be responsible for costs attributable to repairing or replacing damaged work. The Nation will not be responsible for delay costs, impact costs, or extended overhead costs.

107.07 Furnishing Right-of-Way. The Nation will obtain all right-of-way.

107.08 Sanitation, Health, and Safety. Follow the requirements of FAR Clause 52.236-13 Accident Prevention.

Observe rules and regulations of Federal, State, and local health officials. Do not permit any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous.

Admit any OSHA inspector or other legally responsible official involved in safety and health administration to the project work site upon presentation of proper credentials.

Report accidents on forms furnished by the Nation or, with prior approval, on forms used to report accidents to other agencies or insurance carriers. Maintain a “*Log of Work Related Injuries and Illnesses*,” “OSHA Form 300, and make it available for inspection.

Install a reverse signal alarm audible above the surrounding noise level on all motorized vehicles having an obstructed view and on all earth-moving and compaction equipment.

107.09 Legal Relationship of the Parties. In the performance of the contract, the Contractor is an independent contractor and neither the Contractor nor anyone used or employed by the Contractor shall be an agent, employee, servant, or representative of the Nation. The Contractor’s independent contractor status does not limit the Nation’s general rights under the contract.

107.10 Environmental Protection. Do not operate mechanized equipment or discharge or otherwise place any material within the wetted perimeter of any waters of the U.S. within the scope of the Clean Water Act (33 USC § 1251 et seq.). This includes wetlands unless authorized by a permit issued by the U.S. Army Corps of Engineers according to 33 USC § 1344, and, if required, by any State agency having jurisdiction over the discharge of material into the waters of the U.S. In the event of an unauthorized discharge:

- (a) Immediately prevent further contamination;
- (b) Immediately notify appropriate authorities; and
- (c) Mitigate damages as required.

Comply with the terms and conditions of any permits that are issued for the performance of work within the wetted perimeter of the waters of the U.S.

Separate work areas, including material sources, by the use of a dike or other suitable barrier that prevents sediment, petroleum products, chemicals, or other liquid or solid material from entering the waters of the U.S. Use care in constructing and removing the barriers to avoid any discharge of material into, or the siltation of, the water. Remove and properly dispose of the sediment or other material collected by the barrier.

Repair leaks on equipment immediately. Do not use equipment that is leaking. Keep a supply of acceptable absorbent materials at the job site in the event of spills. Acceptable absorbent materials are those that are manufactured specifically for the containment and clean up of hazardous materials.

107.11 Protection of Forests, Parks, and Public Lands. Comply with all regulations of the State fire marshal, conservation commission, Forest Service, National Park Service, Bureau of Land Management, Fish & Wildlife Service, Bureau of Indian Affairs, or other authority having jurisdiction governing the protection of land including or adjacent to the project.

107.12 Contractor's Responsibility for Utilities. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, and power companies or are adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, the duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be necessarily interrupted. In the event of interruption to water or utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. If utility service is interrupted cooperation will be required until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. Any damage to underground utilities not shown on the plans, due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, shall be repaired by the Contractor, if so directed by the Contracting Officer, and payment will be made in accordance with an approved contract modification.

Section 108. — PROSECUTION AND PROGRESS

108.01 Commencement, Prosecution, and Completion of Work. Follow the requirements of FAR Clause 52.211-10 Commencement, Prosecution, and Completion of Work.

A preconstruction conference will be held after the contract is awarded and before beginning work. Seven days before the preconstruction conference, furnish three copies of the preliminary construction schedule according to Section 155.

108.02 Subcontracting. Follow the requirements of FAR Clauses 52.219-14 Limitations on Subcontracting, 52.222-11 — Subcontracts (Labor Standards), and 52.236-1 Performance of Work by the Contractor.

Subcontracting does not relieve the Contractor of liability and responsibility under the contract and does not create any contractual relation between subcontractors and the Nation. The Contractor is liable and responsible for any action or lack of action of subcontractors.

Within 14 days of subcontract award, submit an SF 1413 with Part I completed. Complete other forms that may be provided by the Nation to clearly show the work subcontracted and the total dollar amount of the subcontract. For subcontracts involving on-site labor, require the subcontractor to complete Part II of the SF 1413 and complete other forms that may be provided by the Nation. Submit a separate statement documenting the cumulative amount of all on-site subcontracts to date as a percentage of the original contract amount. Furnish this information on all subcontracts at lower tiers.

In FAR Clauses 52.2 19-8 Utilization of Small Business Concerns and 52.232-27 Prompt Payment for Construction Contracts, the subcontracts include both on-site and off-site work and supply contracts. In FAR Clause 52.219-14 Limitations on Subcontracting or in FAR Clause 52.236-1 Performance of Work by the Contractor, the percentage of work performed on-site by the Contractor will be computed as 100 percent less the combined initial dollar amount of all subcontracts involving on-site labor as a percent of the original dollar amount of the contract.

108.03 Determination and Extension of Contract Time. Follow the requirements of FAR Clause 52.211-10 Commencement, Prosecution, and Completion of Work.

Only delays or modifications that affect critical activities or cause non-critical activities to become critical will be considered for time extensions.

When Critical Path Method schedules are used, no time extension will be made for delays or modifications that use available float time as shown in the current construction schedule required by Section 155.

Time will not be extended for a claim that states insufficient time was provided in the contract.

When requesting a time extension, follow the applicable contract clauses. Make the request in writing and include the following:

- (a) Contract clause(s) under which the request is being made.
- (b) Detailed narrative description of the reasons for the requested contract time adjustment including the following:
 - (1) Cause of the impact affecting time;
 - (2) Start date of the impact;
 - (3) Duration of the impact;

- (4) Activities affected; and
- (5) Methods to be employed to mitigate the impact.

(c) Suggested new completion date or number of days supported by current and revised construction schedules according to Section 155.

108.04 Failure to Complete Work on Time. Follow the requirements of FAR Clause 52.211-12 Liquidated Damages — Construction.

Liquidated damages in the amount specified in Table 108-1 will be assessed for each day beyond the time allowed to complete the contract until substantial completion of the work.

If a winter shutdown occurs during this period, liquidated damages in an amount equal to 10 percent of the amount specified in Table 108-1 will be assessed for each day until work resumes at which time full liquidated damages will be assessed.

Liquidated damages in an amount equal to 20 percent of the amount specified in Table 108-1 will be assessed for each day beyond the time allowed to complete the contract beginning with the day after substantial completion and ending with the date of final completion and acceptance.

Liquidated damages will not be assessed for the following:

- (a) The day of the final inspection;
- (b) Days required to perform work added to the contract after substantial completion including items identified during the final inspection that were not required before that time; or
- (c) Delays by the Nation after all work is complete and before a formal acceptance is executed.
- (d) Periods of time when all work is complete but acceptance is delayed pending the plant establishment period or similar warranty period.

**Table 108-1
Charge for Liquidated Damages for Each Day
Work Is Not Substantially Completed**

Original Contract Price		Daily Charge
From More Than —	To and Including —	
\$ 0	\$ 1,000,000	\$500
1,000,000	2,000,000	1,100
2,000,000	5,000,000	2,200

5,000,000	10,000,000	2,700
10,000,000	and more	3,300

108.05 Stop Order. The CO may order the performance of the work to be stopped, either in whole or in part, for such periods deemed necessary due to the following:

- (a) Weather or soil conditions considered unsuitable for prosecution of the work; or
- (b) Failure of the Contractor to:
 - (1) Correct conditions unsafe for the workers or the general public;
 - (2) Carry out written orders given by the CO; or
 - (3) Perform any provision of the contract.

No adjustment in contract time or amount will be made for stop orders issued under (a) or (b) above except an adjustment in contract time, as provided by FAR Clause 52.249-10 Default (Fixed-Price Construction), may be made when the Contractor is able to demonstrate that the weather was unusually severe based on the most recent 10 years of historical data.

108.06 Methods and Equipment. All equipment used on the Project shall be of sufficient size and mechanical condition to meet the requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause injury to the roadway, adjacent property, or other highways.

When the methods and equipment to be used are specified, other methods and equipment shall not be used unless requested in writing and approved by the Nation. The request shall include a description of the methods and equipment proposed and the reasons for making the change. If approval is given, the Contractor shall be responsible for producing work meeting the Contract requirements. If the Contracting Officer's Representative determines that the work produced does not meet Contract requirements, the use of the substitute methods or equipment shall be discontinued and the remaining work shall be completed with the specified methods and equipment. Deficient work shall be removed and replaced or repaired to the specified quality by and at the Contractor's expense. No change will be made in the basis of payment for the construction items involved nor in Contract time as a result of approving a change in methods or equipment.

Section 109. — MEASUREMENT AND PAYMENT

109.01 Measurement of Work. The Contractor shall take and record measurements and perform calculations to determine pay quantities for invoicing work performed. Take or convert all measurements of work according to United States customary measure.

Unless otherwise specified, measure when the work is in place, complete, and accepted. Measure the actual work performed, except do not measure work outside the design

limits or other adjusted or specified limits (staked limits). Measure structures to the lines shown on the plans or to approved lines adjusted to fit field conditions.

Take measurements as described in Subsection 109.02 unless otherwise modified by the Method of Measurement Subsection of the Section controlling the work being performed.

Remeasure quantities if it has been determined that any portion of the work is acceptable but has not been completed to the lines, grades, and dimensions shown on the plans or established by the CO.

Submit measurement notes to the CO within 24 hours of completing the work. For on-going work, submit measurement notes weekly. When work is not complete, identify the measurement as being an interim measurement. Submit the final measurement when the installation is completed. Measurement notes form the basis of the Nation's receiving report (see Subsection 109.08(d)). For lump sum items, submit documentation to support invoiced progress payment on a monthly basis.

Use an acceptable format for measurement records. As a minimum, include the following information in all records of measurement:

- (a) Project name and number;
- (b) Contract item number;
- (c) Date the work was performed;
- (d) Location of the work;
- (e) Measured quantity;
- (f) Calculations made to arrive at the quantity;
- (g) Supporting sketch and details as needed to clearly define the work performed and the quantity measured;
- (h) Names of persons measuring the work;
- (i) Identification as to whether the measurement is interim or final; and
- (j) Signed certification statement by the persons taking the measurements, performing the calculations, and submitting them for payment that the measurement and calculations are correct to the best of their knowledge and that the quantity being measured is subject to direct payment for the identified item under the contract.

109.02 Measurement Terms and Definitions. Unless otherwise specified, the following terms are defined as follows:

- (a) **Acre.** 43,560 square feet. Make longitudinal and transverse measurements for area computations horizontally unless specified on the ground surface. Do not make deductions from the area computation for individual fixtures having an area of 500 square feet or less.

(b) Contract Quantity. The quantity to be paid is the quantity shown in the bid schedule. The contract quantity will be adjusted for authorized changes that affect the quantity or for errors made in computing this quantity. If there is evidence that a quantity specified as a contract quantity is incorrect, submit calculations, drawings, or other evidence indicating why the quantity is in error and request, in writing, that the quantity be adjusted.

(c) Cubic Yard.

(1) Cubic Yard in Place. Measure solid volumes by a method approved by the CO or by the average end area method as follows:

- (a)* Take cross-sections of the original ground and use with design or staked templates or take other comparable measurements to determine the end areas. Do not measure work outside of the established lines or slopes.
- (b)* If any portion of the work is acceptable but is not completed to the established lines and slopes, retake cross-sections or comparable measurements of that portion of the work. Deduct any quantity outside the designated or staked limits. Use these measurements to calculate new end areas.
- (c)* Compute the quantity using the average end areas multiplied by the horizontal distance along a centerline or reference line between the end areas. Deduct any quantity outside the designed or staked limits.

(2) Cubic Yard in the Hauling Vehicle. Measure the cubic yard volume in the hauling vehicle using three-dimensional measurements at the point of delivery. Use vehicles bearing a legible identification mark with the body shaped so the actual contents may be readily and accurately determined. Before use, mutually agree in writing on the volume of material to be hauled by each vehicle. Vehicles carrying less than the agreed volume may be rejected or accepted at the reduced volume.

Level selected loads. If leveling reveals the vehicle was hauling less than the approved volume, reduce the quantity of all material received since the last leveled load by the same ratio as the current leveled load volume is to the agreed volume. Payment will not be made for material in excess of the agreed volume.

Material measured in the hauling vehicle may be weighed and converted to cubic yards for payment purposes if the conversion factors are mutually agreed to in writing.

(3) Cubic Yard in the Structure. Measure according to the lines of the structure as shown on the plans except as altered by the CO to fit field conditions. Make no deduction for the volume occupied by reinforcing steel, anchors, weep holes, piling, or pipes less than 8 inches in diameter.

- (4) **Cubic Yard by Metering.** Use an approved metering system.
- (d) **Each.** One entire unit. The quantity is the actual number of units completed and accepted.
- (e) **Gallon.** The quantity may be measured by any of the following methods:
- (1) Measured volume container.
 - (2) Metered volume. Use an approved metering system.
 - (3) Commercially-packaged volumes.
- When asphalt material is measured by the gallon, measure the volume at 60 °F or correct the volume to 60 °F using recognized standard correction factors.
- (f) **Hour.** Measure the actual number of hours ordered by the CO and performed by the Contractor.
- (g) **Linear Foot.** 12 linear inches. As applicable, measure the work along its length from end-to-end; parallel to the base or foundation; along the top; along the front face; or along the invert. Do not measure overlaps.
- (h) **Lump Sum.** Do not measure directly. The bid amount is complete payment for all work described in the contract and necessary to complete the work for that item. The quantity is designated as “All” Estimated quantities of lump sum work shown in the contract are approximate.
- (i) **M-gallon.** 1,000 gallons. Measure according to (e) above.
- (j) **Mile.** 5,280 linear feet. Measure horizontally along the centerline of each roadway, approach road, or ramp.
- (k) **Pound.** Measure according to Subsection 109.03. If sacked or packaged material is furnished, the net weight as packed by the manufacturer may be used.
- (l) **Square foot.** 144 square inches. Measure on a plane parallel to the surface being measured.
- (m) **Square yard.** 9 square feet. Longitudinal and transverse measurements for area computations will be made horizontally. No deductions from the area computation will be made for individual fixtures having area of 9 square feet or less.
- (n) **Station.** 100 linear feet. Measure horizontally along centerline or reference line of each roadway, approach road, or ramp.
- (o) **Ton.** 2,000 pounds avoirdupois. Measure according to Subsection 109.03.

No adjustment in a contract unit price will be made for variations in quantity due to

differences in the specific gravity or moisture content.

Use net-certified scale masses, or masses based on certified volumes in the case of rail shipments as a basis of measurement subject to correction when asphalt material is lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt material is shipped by truck or transport, net-certified masses, subject to correction for loss or foaming, may be used for computing quantities.

When emulsified asphalt is converted from volume to mass, use a factor of 240 gallons per ton regardless of temperature.

109.03 Weighing Procedures and Devices. Batch masses may be acceptable for determination of pay quantities when an approved automatic weighing, cycling, and monitoring system is included as part of the batching equipment.

When a weighing device is determined to indicate less than true mass, no additional payment will be made for material previously weighed and recorded. When a weighing device is determined to indicate more than true mass, all material received after the last previously correct weighing accuracy test will be reduced by the percentage of error in excess of 0.5 percent.

When material is proportioned or measured and paid for by mass, provide one of the following:

(a) **Commercial Weighing System.** Use permanently-installed and certified commercial scales.

(b) **Invoices.** If bulk material is shipped by truck or rail and is not passed through a mixing plant, furnish a supplier's invoice with net mass or volume converted to mass. Periodic check weighing may be required.

(c) **Project Weighing System.** Furnish, erect, and maintain acceptable automatic digital scales. Provide scales that record mass at least to the nearest 100 pounds. Maintain the scale accuracy to within 0.5 percent of the correct mass throughout the range of use.

Do not use spring balances.

Install and maintain platform scales with the platform level with rigid bulkheads at each end. Make the platform of sufficient length to permit simultaneous weighing of all axle loads of the hauling vehicle. Coupled vehicles may be weighed separately or together according to Section 2.20 paragraph HR 3.3 of *NIST Handbook 44*.

Install and maintain belt-conveyor scales according to Section 2.21 of *NIST Handbook 44*.

Before production on the project, after relocation, and at least once per year, have the weighing portion of the system checked and certified by the State Bureau of Weights and Measures or a private scale service certified by the Bureau of Weights and

Measures. Seal the system to prevent tampering or other adjustment after certification.

Attach an automatic printer to the scale that is programmed or otherwise equipped to prevent manual override of all mass information. For weighed pay quantities, program the printer to provide the following information for each weighing:

- (1) Project number;
- (2) Item number and description;
- (3) Date;
- (4) Time;
- (5) Ticket number;
- (6) Haul unit number;
- (7) Net mass in load at least to the nearest 100 pounds;
- (8) Subtotal net mass for each haul unit since the beginning of the shift; and
- (9) Accumulated total net mass for all haul units since the beginning of the shift.

If a printer malfunctions or breaks down, the Contractor may manually weigh and record masses for up to 48 hours provided the method of weighing meets all other contract requirements.

Furnish competent scale operators to operate the system.

When platform scales are used, randomly weigh the empty haul units at least twice per shift.

Use an approved format for the mass records. Furnish the original record(s) and a written certification as to the accuracy of the masses at the end of each shift.

109.04 Receiving Procedures. When the method of measurement requires weighing or volume measurement in the hauling vehicle, furnish a person to direct the spreading and distribution of material and to record the location and placement of the material on the project. During the placement, maintain a record of each delivery and document it in an acceptable manner. Include the following information as applicable:

- (a) Project identification;
- (b) Contract pay item number and description;
- (c) Location where placed;
- (d) Date;
- (e) Load number;
- (f) Truck identification;
- (g) Time of arrival;

- (h) Mass or volume; and
- (i) Spread person's signature.

Use an approved format for the delivery record(s). Furnish the original record(s) and a written certification of the delivery of the material at the end of each shift.

109.05 Scope of Payment. Payment for all contract work is provided, either directly or indirectly, under the pay items shown in the bid schedule.

(a) Direct Payment. Payment is provided directly under a pay item shown in the bid schedule when one of the following applies:

- (1) The work is measured in the Method of Measurement Subsection of the Section ordering the work, and the bid schedule contains a pay item for the work from the Section ordering the work.
- (2) The Method of Measurement Subsection or Basis of Payment Subsection, of the Section ordering the work, references another Section for measuring the work and the bid schedule contains a pay item for the work from the referenced Section.

(b) Indirect Payment. Work for which direct payment is not provided is a subsidiary obligation of the Contractor. Payment for such work is indirectly included under other pay items shown in the bid schedule. This includes instances when the Section ordering the work references another Section for performing the work and the work is not referenced in the Method of Measurement Subsection of the Section ordering the work.

Compensation provided by the pay items included in the contract bid schedule is full payment for performing all contract work in a complete and acceptable manner. All risk, loss, damage, or expense arising out of the nature or prosecution of the work is included in the compensation provided by the contract pay items.

Work measured and paid for under one pay item will not be paid for under any other pay item.

The quantities shown in the bid schedule are approximate unless designated as a contract quantity. Limit pay quantities to the quantities staked, ordered, or otherwise authorized before performing the work. Payment will be made for the actual quantities of work performed and accepted or material furnished according to the contract. No payment will be made for work performed in excess of that staked, ordered, or otherwise authorized.

109.06 Pricing of Adjustments. Determine all costs according to the contract cost principles and procedures of FAR Part 31.105. Follow the requirements of all FAR clauses providing for an equitable price adjustment.

If agreement on price cannot be reached, the CO may determine the price unilaterally.

If the work will delay contract completion, request a time extension according to Subsection 108.03.

(a) Proposal.

(1) General. Submit a written proposal for each line item of the work or a lump sum for the total work. Identify the major elements of the work, the quantity of the element, and its contribution to the proposed price. Provide further breakdowns if requested by the CO.

When price is based on actual costs (e.g., cost-plus-fixed-fee), profit is based on the estimated cost of the work and may not exceed the statutory limit of 10 percent of the total cost. Due to the limited risk in this type of pricing arrangement, a lower profit percentage may be indicated.

(2) Data. Submit information as requested by the CO to the extent necessary to permit the CO to determine the reasonableness of the proposed price.

(3) Cost or Pricing Data. When the contract modification exceeds the amount indicated in FAR Clause 52.214-27 Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding, or FAR Clause 52.215-11 Price Reduction for Defective Cost or Pricing Data - Modifications, submit cost or pricing data.

Provide cost or pricing data, broken down by individual work item, for the Contractor and each major subcontractor. Include the information required by (b)(1) and (b)(2) below. When cost or pricing data is submitted before all or most of the work is performed, submit material and subcontractor quotes, anticipated labor and equipment usage, and anticipated production rates. Provide data for all proposed increases or decreases to the contract price.

Submit with the cost or pricing data a written proposal for pricing the work according to (1) above. See Table 15-2 following FAR Subpart 15.4 for guidance.

Upon completion of negotiations, certify the cost or pricing data as being accurate, complete, and current as of the date the agreement was reached.

(b) Postwork Pricing. When negotiating the price of additional or changed work after all or most of the work has been performed, furnish the following:

(1) Direct Costs.

(a) Material. Furnish invoices showing the cost of material delivered to the work.

(b) Labor. Show basic hourly wage rates, fringe benefits, applicable payroll costs (i.e., FICA, FUTA, worker's compensation, insurance, and tax levies), paid subsistence, and travel costs for each labor classification and

foreman employed in the adjusted work.

(c) *Equipment.* Provide a complete descriptive listing of equipment including make, model, and year of manufacture. Support rented or leased equipment costs with invoices. Determine allowable ownership and operating costs for Contractor- and subcontractor-owned equipment as follows:

(1) Use actual equipment cost data when such data can be acceptably determined from the Contractor's or subcontractor's ownership and operating cost records.

(2) When actual costs cannot be determined, use the rates shown in *Construction Equipment Ownership and Operating Expense Schedules (CEOES)* published by the U.S. Army Corps of Engineers for the area where costs are incurred. This document is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325. Adjust the rates for used equipment and for other variable parameters used in the schedules.

(3) Compute proposed standby costs from acceptable ownership records or when actual costs cannot be determined, according to *CEOES*. Do not exceed 8 hours in any 24-hour period or 40 hours in any calendar week. Do not include standby for periods when the equipment would have otherwise been in an idle status or for equipment that was not in operational condition.

(d) *Other direct costs.* Furnish documentation or invoices to support any other direct costs incurred that are not included above (e.g., bonds, mobilization, demobilization, permits, royalties, etc).

(e) *Production rates.* Provide actual hours of performance, on a daily basis, for each labor classification and for each piece of equipment.

(f) *Subcontract costs.* Provide supporting data as required above.

(2) Overhead. Identify overhead rate(s) and provide supporting data, which justifies the rate(s). List the types of costs, which are included in overhead. Identify the cost pool(s) to which overhead is applied. Apply the overhead to the appropriate pool.

Limit Contractor overhead applied to subcontractor payments to 5 percent of such payments unless a higher percentage is justified.

(3) Profit. Except when precluded by the FAR, include a reasonable profit reflecting the efficiency and economy of the Contractor and subcontractors in performing the work, the contract risk type, the work difficulty, and management effectiveness and diversity.

For work priced after all or most of the work is performed, profit is limited by statute to 10 percent of the total cost. Due to the limited risk in post-work pricing, a lower profit percentage may be indicated.

109.07 Eliminated Work. Follow the requirements of FAR Clause 52.243-4 Changes.

Work may be eliminated from the contract without invalidating the contract. The Contractor is entitled to compensation for all direct costs incurred before the date of elimination of work plus profit and overhead on the direct incurred costs. Anticipated profit and overhead expense on the eliminated work will not be compensated.

109.08 Progress Payments. Follow the requirements of FAR Clauses 52.232-5 Payments under Fixed-Price Construction Contracts and 52.232-27 — Prompt Payment for Construction Contracts.

(a) General. Only invoice payments will be made under this contract. Invoice payments include progress payments made monthly as work is accomplished and the final payment made upon final acceptance. Only one progress payment will be made each month. No progress payment will be made in a month in which the work accomplished results in a net payment of less than \$1,000. Full or partial progress payment will be withheld until a construction schedule or schedule update is submitted to, and accepted by, the CO.

(b) Closing Date and Invoice Submittal Date. The closing date for progress payments will be designated by the CO. Include work performed after the closing date in the following month's invoice. Submit invoices to the designated billing office.

(c) Invoice Requirements. Submit the invoice to the Nation's designated billing office. Include the following items in the invoice:

(1) The information required in FAR Clause 52.232-27(a)(2)(i) through (a)(2)(xi).

(2) A tabulation of total quantities and unit prices of work accomplished or completed on each pay item as of the monthly closing date. Do not include any quantities unless field note documentation for those quantities was submitted by the closing date. Do not include quantities of work involving material for which test reports required under Sections 153 or 154 or certifications required by Subsection 106.03 are, or will be, past due as of the closing date.

(3) The certification required by FAR Clause 52.232-5(c) and, if applicable, the notice required by FAR Clause 52.232-5(d). Provide an original signature on the certification. Facsimiles are not acceptable.

(4) If applicable, a copy of the notices that are required by FAR Clause 52.232-27(e)(5) and (g).

(5) The amount included for work performed by each subcontractor under the contract.

(6) The total amount of each subcontract under the contract.

(7) The amounts previously paid to each subcontractor under the contract.

(8) Adjustments to the proposed total payment that relate to the quantity and quality of individual items of work. Adjustments for the following may be made by the Nation after validation of the invoice:

- (a) Retent resulting from a failure to maintain acceptable progress;
- (b) Retent resulting from violations of the labor provisions;
- (c) Retent pending completion of incomplete work, other “no pay” work, and verification of final quantities;
- (d) Obligations to the Nation such as excess testing cost or the cost of corrective work pursuant to FAR Clause 52.246-12(g); or
- (e) Liquidated damages for failure to complete work on time.

(d) Nation’s Receiving Report. The Nation’s receiving report will be developed using the measurement notes received by the CO and determined acceptable. Within 7 days after the closing date, the CO will be available by appointment at the Nation’s designated billing office to advise the Contractor of quantities and unit prices appearing on the Nation’s receiving report.

(e) Processing Progress Payment Requests. No payment will be made for work unless field note documentation for the work was provided by the closing date.

(1) Proper Invoices. If the invoice meets the requirements of Subsection 109.08(c), and the quantities and unit prices shown on the Contractor’s invoice agree with the corresponding quantities and unit prices shown on the Nation’s receiving report, the invoice will be paid.

(2) Defective Invoices. If the invoice does not meet the requirements of Subsection 109.08(c), or if any of the quantities or unit prices shown on the Contractor’s invoice exceed the corresponding quantities and unit prices shown on the Nation’s receiving report, the invoice is defective, and the Contractor will be notified according to FAR Clause 52.232-27(a)(2). Defective invoices will be returned to the Contractor within 7 days after receipt by the Nation’s designated billing office. Correct and resubmit returned invoices. If the defects are minor, the Contractor may elect, in writing, to accept the quantities and unit prices shown on the Nation’s receiving report for payment.

(f) Partial Payments. Progress payments may include partial payment for material to be incorporated in the work, provided the material meets the requirements of the

contract and is delivered on, or in the vicinity of, the project site or stored in acceptable storage places.

Partial payment for material does not constitute acceptance of such material for use in completing items of work. Partial payments will not be made for living or perishable material until incorporated into the project.

Partial payments for material will not exceed the lesser of:

- (1) 80 percent of the contract bid price for the item; or
- (2) 100 percent of amount supported by copies of invoices submitted.

The quantity paid will not exceed the corresponding quantity estimated in the contract.

109.09 Final Payment. Follow the requirements of FAR Clause 52.232-5 Payment under Fixed-Price Construction Contracts and FAR Clause 52.232-27 Prompt Payment for Construction.

Upon final acceptance and verification of final pay records, the Nation will send, by certified mail, a final voucher (SF 1034) and a release of claims document. Execute both the voucher and the release of claims, and return the documents to the Nation for payment. The date of approval by the Nation of the final voucher for payment constitutes the date of final settlement of the contract.

If unresolved claims exist or claims are proposed, reserve the right to the claims by listing a description of each claim and the amount being claimed on the release of claims document.

Failure to execute and return the voucher and release of claims document within 90 days after receipt shall constitute and be deemed execution of the documents and the release of all claims against the Nation arising by virtue of the contract. In this event, the day after 90 days from receipt constitutes the date of final settlement of the contract.

Section 153. — CONTRACTOR QUALITY CONTROL

153.01 Description. This work consists of obtaining samples for Contractor quality control testing, performing tests for Contractor quality control, providing inspection, and exercising management control to ensure that work conforms to the contract requirements. See FAR Clause 52.246-12 Inspection of Construction.

Construction Requirements

153.02 Contractor Quality Control Plan. Before the start of the work, submit a written quality control plan for acceptance. With prior approval, submission of a quality control plan for items of work not immediately scheduled to begin may be deferred.

Submit the following with the quality control plan:

(a) Process Control Testing. List the material to be tested by pay item, tests to be conducted, the location of sampling, and the frequency of testing.

(b) Inspection/Control Procedures. Address each of the following subjects in each phase of construction:

(1) Preparatory Phase.

- (a)* Review all contract requirements.
- (b)* Ensure compliance of component material to the contract requirements.
- (c)* Coordinate all submittals including certifications.
- (d)* Ensure capability of equipment and personnel to comply with the contract requirements.
- (e)* Ensure preliminary testing is accomplished.
- (f)* Coordinate surveying and staking of the work.

(2) Start-up Phase.

- (a)* Review the contract requirements with personnel performing the work.
- (b)* Inspect start-up of work.
- (c)* Establish standards of workmanship.
- (d)* Provide training as necessary.
- (e)* Establish detailed testing schedule based on the production schedule.

(3) Production Phase.

- (a)* Conduct intermittent or continuous inspection during construction to identify and correct deficiencies.
- (b)* Inspect completed work before requesting Tribal inspection acceptance.
- (c)* Provide feedback and system changes to prevent repeated deficiencies.

(c) Description of Records. List the records to be maintained.

(d) Personnel Qualifications.

- (1)** Document the name, authority, relevant experience, and qualifications of person with overall responsibility for the inspection system.
- (2)** Document the names, authority, and relevant experience of all personnel directly responsible for inspection and testing.

(e) Subcontractors. Include the work of all subcontractors. If a subcontractor is to perform work under this Section, detail how that subcontractor will interface with the Contractor's and other subcontractor's organizations.

Modifications or additions may be required to any part of the plan that is not adequately covered. Acceptance of the quality control plan will be based on the inclusion of the required information. Acceptance does not imply any warranty by the Nation that the plan will result in consistent contract compliance. It remains the responsibility of the Contractor to demonstrate such compliance.

Do not begin the work until the quality control plan covering that work is accepted.

Supplement the plan as work progresses and whenever quality control or quality control personnel changes are made.

153.03 Testing. Perform testing according to the accepted quality control plan. Keep laboratory facilities clean and maintain all equipment in proper working condition. Allow unrestricted access for inspection and review of the facility.

153.04 Records. Maintain complete testing and inspection records by pay item number and make them accessible to the CO.

For each day of work, prepare an “*Inspector’s Daily Record of Construction Operations*” (Form FHWA 1413) or an approved alternate form. Detail inspection results including deficiencies observed and corrective actions taken. Include the following certification signed by the person with overall responsibility for the inspection system:

“It is hereby certified that the information contained in this record is accurate and that all work documented herein complies with the requirements of the contract. Any exceptions to this certification are documented as a part of this record.”

Submit the record and certification within one working day of the work being performed. If the record is incomplete, in error, or otherwise misleading, a copy of the record will be returned with corrections noted. When chronic errors or omissions occur, correct the procedures by which the records are produced.

Maintain linear control charts that identify the project number, pay item number, test number, each test parameter, the upper and lower specification limit applicable to each test parameter, and the test results. Use the control charts as part of the quality control system to document the variability of the process and to identify production and equipment problems, and to identify potential pay factor adjustments.

Post control charts in an accessible location and keep them up-to-date. Cease production and make corrections to the process when problems are evident.

153.05 Acceptance. The Contractors quality control system will be evaluated under Subsection 106.02 based on the demonstrated ability of the quality control system to result in work meeting the contract requirements.

If the Nation’s testing and inspection indicate that the Contractors quality control system is ineffective, make immediate improvements to the system to correct these inadequacies. Furnish notification in writing of improvements and modifications to the system.

153.06 Measurement and Payment. Do not measure Contractor Quality Control for payment.

Section 154. — CONTRACTOR SAMPLING AND TESTING

154.01 Description. This work consists of obtaining samples for testing and reporting required test results. It does not include Contractor quality control testing required under Section 153. However, include the work required under this Section in the Section 153 quality control plan.

Construction Requirements

154.02 Sampling. Sample material to be tested according to the Minimum Sampling and Testing schedule in Division II. The sampling schedules and times will be provided by the CO using a random number system. In addition, sample any material that appears defective or inconsistent with similar material being produced unless such material is voluntarily removed and replaced or corrected.

Sample and split samples according to AASHTO or other acceptable procedures. Allow the CO the opportunity to witness all sampling. Immediately perform splits when required. Deliver the Nation's portion of the sample or split sample in an acceptable container suitable for shipment. Label all samples with the following information:

- (a) Project number;
- (b) Source of material;
- (c) Pay item number;
- (d) Sample number;
- (e) Date sampled;
- (f) Time sampled;
- (g) Location sample taken;
- (h) Name of person sampling;
- (i) Name of person witnessing sampling; and
- (j) Type of test required on sample.

154.03 Testing. When there is a contract pay item for Contractor testing included in the bid schedule, perform all tests required by the Sampling and Testing Requirements tables at the end of each section. Allow the CO the opportunity to witness all testing. Testing of trial samples may be required to demonstrate testing competence.

154.04 Records. Report test results on forms containing all sample information required by Subsection 154.02. Label clearly all interim measurements used to determine the results. Attach work sheets used to determine test values to the test result forms when submitted. When tests are on material being incorporated in the work, report test results

within 24 hours except as specified in the Sampling and Testing Requirements tables. Payment for work may be delayed or the work suspended until test results are provided.

154.05 Acceptance. Contractor sampling and testing will be evaluated under Subsections 106.02 and 106.04 based on Tribal verification testing.

154.06 Measurement. Measure the Section 154 items listed in the bid schedule according to Subsection 109.02.

154.07 Payment. The accepted quantities will be paid at the contract price per unit of measurement for the Section 154 pay item listed in the bid schedule. Payment will be full compensation for the work prescribed in this Section. See Subsection 109.05.

Progress payments for Contractor testing will be paid as follows:

- (a) 25 percent of the item amount, not to exceed 0.5 percent of the original contract amount, will be paid after all the testing facilities are in place, qualified sampling and testing personnel are identified, and the work being tested has started.
- (b) Payment for the remaining portion of the item amount will be prorated based on the total work completed.

Payment for all or part of this item may be retained if Tribal verification testing invalidates the Contractor testing.

Section 155. — SCHEDULES FOR CONSTRUCTION CONTRACTS

155.01 Description. This work consists of scheduling and monitoring all construction activities. See FAR Clause 52.236-15 Schedules for Construction Contracts.

Construction Requirements

155.02 General. Submit 3 copies of a preliminary construction schedule at least 7 days before the preconstruction conference.

A preliminary construction schedule is a written narrative with a detailed breakdown of all contract activities for the first 45 days after the notice to proceed is issued. Within 7 days after the preconstruction conference, the preliminary construction schedule will be accepted or rejected. If rejected, submit a revised schedule within 3 days. Do not begin work, except mobilization and traffic control, without an accepted preliminary construction schedule.

Use either the Bar Chart Method (BCM) or the Critical Path Method (CPM) described below to develop the construction schedule for the total contract work. Preface each construction schedule as follows:

- (a) Project name;
- (b) Contract number;

- (c) Contractor;
- (d) Original contract time allowed or completion date;
- (e) Type of construction schedule (initial or update);
- (f) Effective date of the schedule;
- (g) Percent work complete; and
- (h) Percent time used.

Submit 3 copies of the construction schedule within 30 days after the notice to proceed is issued. Allow 14 days for acceptance or rejection of the construction schedule or a revised schedule. If rejected, submit a revised schedule within 7 days. No progress payment will be made for any work until a construction schedule is submitted to the CO and accepted by the CO.

Do not show conflicts with any scheduled activities, limits on operations, order of work requirements, interim or final completion dates, or other contract restrictions.

Show completion of the work within the contract time.

155.03 Bar Chart Method (BCM). The BCM construction schedule consists of a progress bar chart and a written narrative.

(a) Progress Bar Chart. The following applies to the initial submission and all updates:

- (1) Use a time scale to graphically show the percentage of work scheduled for completion during the contract time.
- (2) Define and relate activities to the contract pay items.
- (3) Show all activities in the order the work is to be performed including submittals, submittal reviews, fabrication, and delivery.
- (4) Show all critical (major) activities that are controlling factors in the completion of the work.
- (5) Show the time needed to perform each activity and its relationship in time to other activities.
- (6) Show the total expected time to complete all work.
- (7) Provide enough space for each activity to permit 2 additional plots parallel to the original time span plot. Use one space for revision of the planned time span, and one for showing actual time span achieved.

(b) Written Narrative. Furnish a written narrative of the activities displayed in the progress bar chart.

155.04 Critical Path Method (CPM). The CPM construction schedule consists of a

diagram, a tabulated schedule, and a written narrative.

(a) Diagram. Use the “*activity-on-arrow*” format for the arrow diagrams or the “*activity-on-node*” format for precedence diagrams. The following applies to the initial submission and all updates:

- (1) Use a time scale to graphically show the percent of work scheduled for completion by any given date during the contract time.
- (2) Define and relate activities to the contract pay items.
- (3) Show the sequence and interdependence of all activities including submittals, submittal reviews, fabrication, and deliveries.
- (4) Show all activity nodes, activity descriptions, and durations.
- (5) Show all network dummies (for arrow diagrams only).
- (6) Identify the critical path.

(b) Tabulated Schedule. The following requirements apply to the tabulated schedule:

- (1) For arrow diagrams, show activity beginning and ending node numbers. For precedence diagrams, list activities and show lead or lag times.
- (2) Show activity durations.
- (3) Show activity descriptions.
- (4) Show early start and finish dates.
- (5) Show late start and finish dates.
- (6) Show status (critical or not).
- (7) Show total float.

(c) Written Narrative. Furnish a written narrative of the activities displayed in the schedule diagram.

155.05 Written Narrative. The following applies to the written narrative:

- (a) Estimate starting and completion dates of each activity.
- (b) Describe work to be done within each activity including the type and quantity of equipment, labor, and material to be used.
- (c) Describe the location on the project where each activity occurs.
- (d) Describe planned production rates by pay item quantities (e.g., cubic yards of excavation per day/week).
- (e) Describe work days per week, holidays, number of shifts per day, and number of hours per shift.

- (f) Estimate any periods during which an activity is idle or partially idle. Show the beginning and end dates for reduced production or idle time.
- (g) Describe expected and critical delivery dates for equipment or material that can affect timely completion of the project.
- (h) Describe critical completion dates for maintaining the construction schedule.
- (i) Identify the vendor, supplier, or subcontractor to perform the activity. State all assumptions made in the scheduling of the subcontractor's or supplier's work.

155.06 Schedule Updates. Review the construction schedule to verify finish dates of completed activities, remaining duration of uncompleted activities, any proposed logic, and time estimate revisions. Keep the CO informed of the current construction schedule and all logic changes.

Submit 3 copies of an updated construction schedule for acceptance at least every 8 weeks or when:

- (a) A delay occurs in the completion of a critical (major) activity;
- (b) A delay occurs which causes a change in the critical path for CPM schedules or a change in a critical activity for BCM schedules;
- (c) The actual prosecution of the work is different from that represented on the current construction schedule;
- (d) There is an addition, deletion, or revision of activities caused by a contract modification; or
- (e) There is a change in the schedule logic.

Allow 7 days after receipt for acceptance of the updated construction schedule or a return for revisions.

No progress payment will be made for any work until an updated construction schedule has been submitted to, and accepted by, the CO.

155.07 Acceptance. Construction schedules will be evaluated under Subsection 106.02.

DIVISION II CONSTRUCTION PROVISIONS

GREENLEAF CHURCH ROAD SPECIFICATIONS

DIVISION II – CONSTRUCTION PROVISIONS

PROJECT OVERVIEW:

Greenleaf Church Road Project consists of the Construction of .77 Miles of Road; Asphalt, installing a 2-inch waterline, and removal and replacement of driveways (Detailed construction plans containing more specific information are available upon request.)

SCOPE:

The work covered by these specifications consists of furnishing all materials, labor, equipment, services, and incidentals necessary to perform all operations in connection with the Project, including but not limited to; the Construction of .77 Miles of Road; Asphalt, installing a 2-inch waterline, and removal and replacement of driveways

SPECIFICATIONS:

The Project generally incorporates by reference the Oklahoma Department of Transportation (ODOT) 2019 Standard Specifications for Highway Construction, as well as all subsequent supplemental specifications issued by ODOT.

All references to “Engineer”, “Materials Engineer”, or “Director” in the Oklahoma Department of Transportation standard specifications shall be revised to read the Nation’s Executive Director All references to the State, Department, Project Manager, Materials Division or Transportation Department shall be revised to read the Nation.

Any address for submittal of information shall be revised to read as follows:

Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, OK 74447

CERTIFICATIONS AND TEST REPORTS:

Contractor shall furnish the following required certifications and test reports for such materials used on the Project.

- 1) Silt Fence
- 2) Construction Fabrics
- 3) Mineral Aggregates
- 4) Bituminous Binder
- 5) Tack Coat
- 6) Asphalt for Prime Coat
- 7) Asphalt Mix Design Components
- 8) Corrugated Metal Pipe
- 9) Metal Culvert End Sections
- 10) R.C. Pipe
- 11) Fences and Gates
- 12) Wire and Posts for Fence
- 13) Pipe Railing
- 14) Sign Blanks
- 15) Reflective Sheeting
- 16) Sign Posts
- 17) Bolts and Nuts
- 18) Traffic Stripe Components
- 19) Guardrail & Guardrail Posts
- 20) Guardrail End Sections
- 21) Premolded Elastomeric Compression Joint Fillers & Sealers
- 22) Structural Steel
- 23) Steel Piling
- 24) Prestressed Concrete Beams
- 25) Cement for Structural Concrete
- 26) Concrete Mix Designs
- 27) Air-Entraining Admixture
- 28) Membrane Curing Compound
- 29) Reinforcing Steel
- 30) Bar Lists and Bending Schedules for Reinforcing Steel
- 31) Expansion Joint

Contractor shall not incorporate any material for which a certification or test report is required into the Project Work until a satisfactory certification or test report has been received by the Nation's Executive Director or Nation's Executive Director's Representative.

CONTRACTOR CONSTRUCTION QUALITY CONTROL:

Refer to the specifications entitled *Contractor Quality Control and Contractor Sampling and Testing* within Division 100, FP - 03, Sections 153 and 154, respectively for pertinent information.

DEVIATIONS FROM THE STANDARD SPECIFICATIONS:

The following Sections specify exceptions and/or additions to the Standard Specifications.

FOR PRICE ADJUSTMENT FOR ASPHALT BINDER

These Special Provisions revise, amend, and where in conflict, supersede applicable sections of the Oklahoma Department of Transportation 2009 Standard Specifications for Highway Construction, English and Metric. Units of measurement are provided in the subsections in both English and Metric equivalents. The units for this project shall be those specified in the project plans.

109.10 PRICE ADJUSTMENT FOR ASPHALT BINDER.

A price adjustment clause is included in this contract to provide additional compensation to the Contractor or a credit to the Nation for fluctuations in asphalt binder prices. This price adjustment is dependent upon a change in the average price of asphalt binder which results in an increase or decrease in the price of products utilized on this project.

- (a) Payment will be made to the Contractor for *weekly* fluctuation in the cost of asphalt binder used in performing the applicable items of Asphalt Concrete work as listed in the table below when the asphalt binder cost fluctuates by more than 3% from the base price defined below. Payments may be positive, negative, or nonexistent depending on the circumstances. Payments or deductions will only be calculated on that portion of the asphalt binder cost fluctuation that exceeds the 3% specified above. Payments or deductions for the asphalt binder cost adjustment will be included in the Contractor's progressive estimates, and the payment or deduction authorized for each estimate will be based upon the algebraic difference between the quantities for applicable items of work. The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.
- (b) The Asphalt Binder Cost Adjustment (ACA) for the current estimate will be computed according to the following formula:

$$ACA = Q \times F \times D$$

Where:

ACA = Asphalt binder cost adjustment, in dollars;

Q = The algebraic difference between the quantities for the applicable items on the current estimate and the quantities shown on the previous estimate, in tons of mix;

F = The Asphalt Binder Use Factor for the applicable items of work subject to this price adjustment, as listed in the following table, are:

ITEM OF WORK	ODOT SPECIFICATION NUMBER	ASPHALT BINDER USE FACTOR PER UNIT (metric and U.S. Customary units)
Open Graded Bituminous Base	319	0.025 ton of binder per ton of mix
Open Graded Friction Surface Course	406	0.058 ton of binder per ton of mix
Permeable Friction Course	409	0.062 ton of binder per ton of mix
Asphalt Concrete, Type S-6	411 (S6)	0.058 ton of binder per ton of mix
Asphalt Concrete, Type S-5	411 (S5)	0.053 ton of binder per ton of mix
Asphalt Concrete, Type S-4	411 (S4)	0.048 ton of binder per ton of mix
Asphalt Concrete, Type S-3	411 (S3)	0.042 ton of binder per ton of mix
Asphalt Concrete, Type S-2	411 (S2)	0.037 ton of binder per ton of mix
Asphalt Concrete, Type RBL	411 (V)	0.054 ton of binder per ton of mix
SMA	418	0.062 ton of binder per ton of mix

Note: When the units of measure in this contract for the Items of Work listed in the table do not correspond with the units shown in the table (i.e. Asphalt Concrete paid by the square yard, etc.), those Items will not be subject to the terms of this special provision or any asphalt binder price adjustment.

D = Allowable price differential, in dollars;

The allowable price differential, “D”, for the current estimate will be computed according to the following formulas:

When the current price, P, is greater than the base price, P_(b).

$$D = P - [1.03 \times P_{(b)}], \text{ but not less than zero.}$$

When the current price, P, is less than the base price, P_(b).

$$D = P - [0.97 \times P_{(b)}], \text{ but not greater than zero.}$$

In either case, P(b) shall be the base asphalt binder price, in dollars per ton (mton), defined as the average of the minimum and maximum prices for performance-graded binder using the Selling Price of PG 64-22 paving grade, F.O.B. manufacturer's terminal, as listed under "Midwest/Mid-Continent Market - Tulsa, Oklahoma/Southern Kansas area" as published in the last issue of Asphalt Weekly Monitor® furnished by Poten & Parners, Inc. for the month prior to the month in which the bids for the work were received.

In either case, P_(b), shall be the current asphalt binder price, in dollars per ton (mton), as defined above for the base asphalt binder price. The publication used will be the last issue published in the month prior to the month in which the progressive estimate is generated.

- (c) Items included in the contract that are listed in the table above are subject to adjustment in accordance with this provision, regardless of any amount of overrun to the plan quantity. Any new items of work added to the contract by supplemental agreement that are listed in the table above, will be subject to the asphalt binder price adjustments in accordance with this provision. The base asphalt binder price, P_(b), for any newly added eligible items will be the same P_(b) as the eligible items in the contract and the new unit price established by supplemental agreement shall be determined accordingly.

SPECIAL PROVISION STORMWATER POLLUTION DISCHARGE ELIMINATION

1.0 DESCRIPTION

Contractor acknowledges his role as having day-to-day responsibilities/control for the project. Accordingly, Contractor shall comply with the requirements of the Oklahoma Department of Environmental Quality (ODEQ) general stormwater permit for construction activities on all non restricted areas of the project and with the Environmental Protection Agency (EPA) stormwater permit requirements for construction activities on all restricted areas of the project. (For the purpose of this Special Provision, restricted areas are defined as lands held in trust by the Nation for the benefit of an individual Indian allottee, an allottee's heirs, or a Tribe/Tribal Entity)

Contractor shall use the remaining portions of this Special Provision in relation to stormwater pollution discharge elimination, as well as applicable portions of the Plans and Standard Specifications for the project, unless Contractor elects to develop a more comprehensive Stormwater Management Plan (SMP). In the event Contractor elects to develop a SMP, this plan shall be subject to the Nation's approval prior to commencing earth disturbing activities on the project.

Contractor shall, as needed, be responsible for initiating any modifications to the original permit connected with the location of his storage yard(s), plant sites, and borrow areas, regardless of location on/off the rights-of-way. This requirement shall

include modification to the existing stormwater pollution discharge elimination requirements associated with this Special Provision (as approved by the Nation) or, if Contractor elects to develop a more comprehensive plan, the Contractor's SMP. The Contractor shall be solely responsible for implementing the requirements of this Special Provision or his SMP and shall indemnify and hold harmless the Nation for enforcement actions and claims resulting from a failure to comply with the terms of the permit(s).

The Contractor shall be responsible for submitting the Notice of Intent (NOI) to the ODEQ, or if applicable, to the EPA, according to the associated permit requirements and shall allow sufficient time prior to commencing earth-disturbing activities.

Contractor's on-site Superintendent, as identified by FAR clause 52.236-06 of the Federal Acquisition Regulation, shall complete the forms immediately following this Special Provision as required by the permit(s) and timely submit copies to the Nation's field representative. In no event shall submittal times exceed seven (7) calendar days following completion of the form.

Failure to comply with requirements of this Special Provision and the permit(s), including but not limited to recordkeeping, inspections/monitoring, and maintenance of controls, shall justify the Nation's withholding of Contractor's progress payments.

2.0 CONTROLS TO REDUCE POLLUTION

2.1 Erosion and Sediment Control.

This Special Provision requires strict adherence to federal, state, and local erosion and sedimentation control requirements. Consequently, areas to remain undisturbed for 21 days or more shall be stabilized as soon as practicable, but in no case later than the 14th day after the last disturbance. Also, the Permit requires final stabilization of the Project 14 days after completion of the last soil-disturbing activities. Final stabilization is defined as meaning all soil disturbing activities at the Project have been completed; and uniform, perennial vegetative cover or equivalent permanent, structural stabilization measures (such as rip-rap, gabions, or geotextiles) have been established for 70-percent of the unpaved area.

The Contractor shall use erosion and sediment controls to divert up-slope stormwater runoff around disturbed areas, to limit the exposure of disturbed areas to the shortest duration possible, and to remove sediment from runoff at the toe of slopes prior to discharge from the Project. Two (2) types of controls, stabilization practices and structural practices, shall be utilized. The Drainage Map in the Construction Plans illustrates the Project's drainage area.

During construction, various controls will be implemented to reduce soil-erosion pollution to stormwater discharges from the Project. In addition to control features contained in the Construction Plans, the standard drawings illustrate stabilization and structural controls for implementation during the earth-disturbing construction activities.

2.1.1 Stabilization Practices. Various stabilization practices will be utilized to prevent soil erosion from polluting stormwater discharges from the Project. The following list describes some of the practices that may be used for this purpose.

- Temporary/permanent seeding,
- Mulching,
- Sod stabilization, and
- Vegetative buffer strips, and
- Protective trees.

Seeding, mulching, sod stabilization, vegetative buffer strips, or combinations of the aforementioned will be placed in susceptible areas to control soil erosion and prevent suspended solids from polluting the Project's stormwater discharges. Temporary seeding may be used during on-going construction activities as necessary. Fast-growing grasses, such as rye and fescue, should be used for this purpose. Permanent seeding or sodding will be utilized upon completion of all soil-disturbing construction activities as a final stabilization procedure at the Project. Permanent vegetation, such as grass, trees, or shrubs, will be used for this function. Mulching, sod stabilization, and/or vegetative buffer strips will be placed during construction as necessary to control erosion and remove sediment.

2.1.2 Structural Practices. Structural practices will be used in areas where stabilization practices are ineffective, such as continually disturbed areas and time-constrained areas. These practices will either divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of stormwater pollutants from the Project's exposed areas. The following list provides practices or measures that may be utilized in the aforementioned areas.

- Silt Dikes,
- Silt Fences,
- Drainage Swales,
- Sediment Traps,
- Rip-rap, and
- Geotextiles.

All of the aforementioned control devices will be constructed according to Best Management Practices.

2.2 Other Controls

Although the major anticipated stormwater pollutant from the construction Project is suspended solids, other types of pollution are possible. The management and control of other materials that may potentially contribute to pollution are discussed in this section of text.

2.2.1 Good Housekeeping Practices - Good housekeeping practices will be followed during the Project to reduce the risk of spills or other accidental

exposure of materials and substances to stormwater runoff. Materials likely to be present at the Project during construction include fuel, oil and grease, fly ash (or a similar soil-stabilization substance), asphaltic and Portland cement concrete, and general construction trash. All materials stored onsite will be stored in a neat, orderly manner. A plastic-lined fuel depot, which maintains sufficient secondary containment for the entire fuel tank, shall be constructed onsite. Additionally, the Contractor shall place bulk storage (i.e., a barge cargo container, mobile office, trailer, etc.) at the Project for storing oil and grease, as well as other materials capable of contaminating stormwater. Materials stored in these areas shall be kept in their original containers with the original manufacturer's label. The Contractor shall undertake reasonable efforts to store only enough product required to perform each job. Substances will not be mixed with one another unless recommended by the manufacturer. Whenever possible, all of a product will be used before disposing of the container. Finally, the Contractor's superintendent will ensure proper use and disposal of all materials and containers.

2.2.2 Waste Disposal - The Contractor is responsible for the cleanup of any spillage containing oil, grease, or fuel. Contaminated soil will be remediated according to state and federal requirements, and all materials will be handled in accordance with all State and Federal waste handling regulations. As necessary, materials will be properly documented and removed from the Project for disposal. Additionally, construction personnel will be instructed regarding the correct procedure for waste disposal. Notices stating these practices will be posted in the project trailer(s).

All non-hazardous wastes (e.g. concrete waste, general construction trash, etc.) shall be containerized by the Contractor and hauled off-site for proper disposal. Also, the Contractor will be responsible for providing temporary sanitary waste facilities, and will be responsible for collection and proper disposal of sanitary wastes.

The Contract does not anticipate generation or discovery of hazardous waste on the Project. In the event the Contractor generates or encounters hazardous waste, all hazardous waste materials will be disposed of in the manner specified by local or state regulations or by the manufacturer. The Project superintendent shall be responsible for seeing that these practices are followed.

2.2.3 Offsite Vehicle Tracking - Sediment reaching streets and highways generally routes to lakes, streams, and wetlands. Consequently, the tracking of dirt and mud onto public roads outside the Project will be minimized to the greatest extent possible.

2.2.4 Dust Suppression - Water sprays will be used to control dust during extended dry periods. Chemical dust suppressants shall not be used.

3.0 INSPECTION/MAINTENANCE OF CONTROLS

3.1 Inspections

Inspections will be performed every fourteen (14) calendar days, or within 24 hours of any significant storm event. Significant storm events are defined as precipitation occurrences greater than 0.5-inches. Areas requiring inspections include all disturbed areas, materials storage locations exposed to precipitation, stabilization control measures (i.e., grasses, trees, etc.), structural control measures (i.e., silt dikes, silt fences, etc.), and all locations where vehicles enter or exit the Project. Any necessary repairs or modifications resulting from the inspection shall be made within seven (7) days after the inspection and noted so that preventative measures are taken to limit repeated problems.

Inspections shall be conducted by the Contractor and documented on Form 1, entitled Inspection Report Form. Each inspection report will summarize the inspection scope, inspection date and time, inspector's name and title, major observations, and any necessary changes noted. These forms shall be maintained at the Project and timely submitted to the Nation's Executive Director's Representative. Additionally, copies of all inspection reports shall be kept by the Contractor for three (3) years after the construction is completed.

3.2 Maintenance

Sedimentation and erosion controls can become altered by construction activities or by stormwater events such that their ability to remove pollutants is severely limited. Therefore, maintenance of all controls will be implemented as necessary during the course of the project. Maintenance actions include but are not limited to the following.

- Irrigation of stabilization controls (grass, trees, etc.), as necessary.
- Replacement of damaged stabilization controls.
- Removal of sediment from silt fences when accumulations reach one-half the above ground silt fence height.
- Removal of sediment from sediment traps after all significant storm events or as necessary to ensure proper function.
- Maintenance of conveyance structures so as to operate according to design.

Additionally Contractor shall ensure that:

- Velocity attenuating channels, if required in the Contract, shall provide vegetation, rip rap or other means as designed to accomplish the desired result.
- Foreign debris, including leaves and lawn cuttings shall not be allowed to accumulate in drainage ditches.

Form 2, entitled Maintenance Action Report Form, shall be used to record all maintenance actions.

4.0 NON-STORMWATER DISCHARGES

Stormwater permits require all anticipated non-stormwater discharges to be identified and appropriate pollution prevention measures be implemented to eliminate them. Although the presence of materials such as fuels, lubricants, concrete, paint, detergents, fertilizers, and treated lumber are possible during the project, the Contractor shall store the materials in either a plastic-lined fuel depot, which maintains sufficient secondary containment for the entire fuel tank, or another appropriate storage container/area.

Consequently, the only likely non-stormwater discharge associated with the Project is water generated from watering and vehicle washing to minimize offsite tracking. However, vehicle washing operations are anticipated to be minimal and will likely occur offsite. Accordingly, no non-stormwater discharges are anticipated. In the event of an unforeseen, non-stormwater discharge occurrence, the Contractor shall collect the material for appropriate disposal according to state and federal requirements.

5.0 SIGNATURES AND ADMINISTRATION

The Contractor and all subcontractors shall acknowledge this Special Provision by signing the Contractor/Subcontractor Certification(s) following Form 3, prior to commencing work. This signed acknowledgement form and the associated Special Provision shall be retained on the Project by the Contractor and made available to subcontractors; state and local agencies involved with either sediment and erosion plans, grading plans, or stormwater management plans; the ODEQ; and the EPA.

In the event that this Special Provision or Contractor's SMP fails to adequately fulfill the permit requirements, Contractor shall timely amend the appropriate document to assure compliance. Examples of instances requiring amendment include:

- Special Provision or SMP proves ineffective in eliminating or significantly minimizing the pollutants in stormwater discharges at the Project.
- Contractor performs significant construction changes that may potentially affect stormwater discharge quality.
- The ODEQ, EPA, or any another applicable regulatory agency request amendments/revisions.

All revisions shall be recorded on Form 3, entitled Revision Log.

When the Project has undergone final stabilization and the Project no longer discharges stormwater associated with construction activities, the Contractor shall submit a Notice of Termination (NOT) to the Nation and appropriate regulatory agency, thereby transferring operational responsibility of stormwater requirements back to the proper authority. Upon submission, the Contractor will attach a copy of the NOT to this Special Provision and retain the document for at least three (3) years.

6.0 BASIS OF PAYMENT

Payment for all Work under this Special Provision shall be included in the price bid for items listed in the Bid Schedule. Such payment shall be full compensation for furnishing all materials, equipment, labor, fees, and incidentals necessary to complete the work as specified in this Special Provision.

FORM 1

INSPECTION REPORT FORM

INSPECTION DATE: _____ TIME: _____

INSPECTOR'S NAME: _____ TIME: _____

A. REASON FOR THIS INSPECTION: _____ Routine weekly inspection _____ Rainfall event greater than 0.5 inches	
B. POINTS OF INSPECTION/POSSIBLE PROBLEMS	
1. Disturbed Areas	- Any signs of pollutants entering drainage system? _____ YES _____ NO
2. Materials Storage Areas Exposed to Precipitation	- Any signs of pollutants entering drainage system? _____ YES _____ NO
3. Stabilization Control Measure	- Any control measures not in place or not operating correctly? _____ YES _____ NO
4. Structural Control Measure	- Any control measures not in place or not operating correctly? _____ YES _____ NO
5. Locations where Vehicles Enter or Exit the Site	- Any evidence of off-site sediment tracking? _____ YES _____ NO
C. LIST ANY PROBLEMS NOTED (CHECKED YES IN SECTION B) AND THE CORRESPONDING REMEDIAL ACTION. 	
D. SWPPP REVISION NECESSARY? _____ YES _____ NO	
E. INSPECTOR'S CERTIFICATION: <i>"I certify under penalty of law that this Inspection Report Form was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Furthermore, I acknowledge that this document will be maintained on-site and that it will be made available for review by either the United States Environmental Protection Agency, Oklahoma Department of Environmental Quality, or any other state or local authority upon request."</i> <div style="text-align: center;"> _____ SIGNATURE </div>	

FORM 2
MAINTENANCE ACTION REPORT FORM

ACTION DATE: _____ **TIME:** _____

PREPARER'S TITLE: _____ **NAME:** _____

DESCRIPTION OF PROBLEM:	
DESCRIPTION OF ACTION TAKEN:	
COMPLETION AND FOLLOW-UP REMARKS:	
DATE AND TIME OF COMPLETION:	
PREPARER'S SIGNATURE: <div style="text-align: right;">_____ SIGNATURE</div>	

FORM 3
CONTRACTOR/SUBCONTRACTOR CERTIFICATION(S)

“I certify under penalty of law that I have reviewed and understand the terms and conditions of this Special Provision for Stormwater Pollution Discharge Elimination as they pertain to the general Oklahoma Pollutant and Discharge Elimination System (OPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified below as part of this certification.”

Name/Title

Date

Contractor/Subcontractor Company Name

Contractor/Subcontractor Address

Contractor/Subcontractor Phone Number

Site Location

FORM 4
REVISION LOG

All revisions to the Storm Water Pollution Prevention Plan must be documented.

Revision 1:

Date: _____

Section(s) Revised: _____

Purpose of Revision: _____

Revised By: _____

Work Phone Number: _____

Revision 2:

Date: _____

Section(s) Revised: _____

Purpose of Revision: _____

Revised By: _____

Work Phone Number: _____

Revision 3:

Date: _____

Section(s) Revised: _____

Purpose of Revision: _____

Revised By: _____

Work Phone Number: _____

SECTION 411
PLANT MIX ASPHALT CONCRETE PAVEMENT

This Section of the Standard Specification shall apply in its entirety with the following revision(s):

411.02 MATERIALS.

(Revision)

Materials shall meet the requirements of Section 708, as well as the applicable Special Provision, available from ODOT. Contractor shall have ample material in the stockpiles at the site at the beginning of each day's operation to supply and be used for that day's operation as provide to the Nation's Executive Director's representative results of quality control tests on a daily basis.

411.04 CONSTRUCTION METHODS.

(Revision)

(a) Stockpiling Materials. Deliver and stockpile aggregates in accordance with Subsection 105.05

(Revision)

(j) Compaction.

(2) Acceptance.

2.1 All lifts 1 1/2 inch or greater in nominal (Plan) thickness.

AVERAGE LOT DENSITY % of Max. Theoretical Density (Calculated at the JMF AC Content) (ALD)	PAY ADJUSTMENT FACTOR (PAF)
Above 97.0	Unacceptable*
92.0 – 97.0	1.00
91.0 – 91.9	1.00 – (0.07)(92.0 – ALD)
88.1 – 90.9	0.93 – (0.15)(91.0 – ALD)
Below 88.1	Unacceptable *

Use PAF for Roadway Density in Combined Pay Factor equation in Section 411.04(m)

* Unless otherwise directed by the Nation's Executive Director's Representative, products testing in this range are unacceptable and shall be removed and replaced at no additional cost.

(Addition)

(j)(2)(2.3) Longitudinal Joint Density. For each lot, or subplot at locations where roadway density tests are to be taken, perform a joint density evaluation at each pavement edge that is or will become a longitudinal joint. Determine the joint density information in accordance with OHD L-14, Appendix C. The joint density is considered failing if the density at the joint is more than 30.0 pcf below the density at the random sample location at the same station and the correlated joint density is less than 90%.

Investigate joint density failures and take corrective actions during production and placement to improve the joint density. Suspend production if two (2) consecutive evaluations fail unless otherwise approved. Resume production after the Nation's Executive Director's Representative approves changes to production or placement methods.

(m) Mix Properties.

(1) General. The Contractor should provide quality control personnel as necessary to assure the production of quality products as specified. He shall be responsible for the process control of all materials during handling, blending, mixing and placing operations to produce an acceptable asphalt concrete.

At no time will the Nation's Executive Director's Representative issue instructions to the Contractor or producer as to the setting of dials, gauges, scales, and meters. However, he/she may advise the Contractor against the continuance of any operations or sequence of operations or sequence of operations which will result in non-compliance with Specification requirements.

(2) Acceptance. While the Contractor shall be fully and exclusively responsible for producing an acceptable product, acceptance responsibility rests with the Nation's Executive Director's Representative. The entire lot of asphalt as defined in paragraph 2.2 "Lot Selection" will be accepted or rejected and paid for on the basis of acceptance test results.

2.1 Basis of Acceptance and Payment. The following characteristics will be considered when determining the acceptability and pay factors for Plant Mix Asphalt Concrete Pavement. However, all of the requirements of the Standard Specifications on materials and workmanship except those superseded by Special Provisions in this Contract, shall remain in effect.

Asphalt Cement Content
Air Voids (Lab-Molded)
Roadway Density (Section 411.04(j))

Several methods are available to test for the above characteristics. While only one method will used, several tests may be made to measure

each characteristic. The basis for acceptance and pay factors will be the average of the deviations from specified standards as indicated Table I. For the characteristics of asphalt cement content and air voids, signs of the deviations will be disregarded when computing averages. (Deviation above target will be penalized the same as those below target, for the previously mentioned characteristics).

Although gradation will not be considered in determining payment, it must be monitored for each sample. All sieves specified in Section 708.04 of the Standard Specifications or as modified by Special Provisions in this Contract must be run. If any sieve does not fall within the specified tolerance from the JMF, the following actions must be taken by the Contractor:

- 1) Provide documentation that the gradation falls within the allowable broad band specified in Section 708.04.
- 2) Provide documentation that the lab-molded air voids at N_{des} and VMA fall within the allowable ranges specified in Section 708.04.

A new mix design shall be required if the broad band gradation, lab-molded air voids at N_{des} , or VMA specifications cannot be met.

Pay factors for asphalt cement content, lab-molded air voids, and roadway density will apply to all asphalt concrete placed. Any additional pay factors for other parameters will be considered individually in determining payment.

The total adjustment to payment (Combined Pay Factor) due to deviations from specified standards will be determined from the following formula:

$$\text{CPF} = (4\text{RD} + 3\text{AC} + 3\text{AV}) \div 10$$

Where:

CPF = Combined Pay Factor

RD = Pay Factor for Roadway Density

AC = Pay Factor for Asphalt Cement Content

AV = Pay Factor for Air Voids (Lab-Molded)

For lifts less than 1 ½ inches thick, the pay factor for density shall be considered “1”. For PFC, OGFSC, and OGGB mixes, which do not have a target roadway density or target lab-molded air void content, the associated pay factors shall be considered “1”.

2.2 Lot Selection. The asphalt concrete will be randomly sampled and tested for all control test characteristics on a lot to lot basis in accordance with the following requirements. However, any load of mixture which is visually unacceptable for reasons of being excessively segregated or aggregate improperly coated will be rejected for use in the work.

Excessively high or low temperature will also be cause for rejection. Furthermore, sections of completed pavement which from visual observation or known deficiencies appear to be seriously inadequate will be tested. The results of such tests will not be used for pay adjustment purposes but will be used to determine whether the section is totally unacceptable and must be removed. In the event that it is determined to be unacceptable its removal and replacement shall be at no additional cost. A standard size lot at the asphalt plant shall be 1,000 tons. However, the Nation's Executive Director's Representative may terminate a lot at any point and designate a new one when a materials or workmanship adjustment has been made which results in the desired correction. On a multiple project contract, the lots of the asphalt will carry over from project to project within that contract.

2.3 The Nation's Executive Director's Representative's Acceptance Procedures. Once a lot has been defined, its identity will be maintained throughout the mixing and placement process. Pay factors, determined from random sampling and testing the lot at appropriate locations will be used in computing its payment adjustment.

In general the following schedule will be used for acceptance purposes, however, depending on the available time and his confidence in the Contractor's Process Control the Nation's Executive Director's Representative may elect to perform more or less sampling and testing.

Asphalt Cement Content – 1 specimen and/or test randomly selected for each characteristic per lot. Roadway Density – 3 specimens and/or tests per lot randomly selected, averaged and considered as one test in Table I. Air Voids – 2 specimens and/or tests per lot randomly selected, averaged, and considered as one test in Table I.

**TABLE I
ACCEPTANCE SCHEDULE**

Characteristics	1 Test	Pay Factor
Deviation from JMF (Without Regard to Sign)		
ASPHALT CEMENT CONTENT (Extraction, Nuclear or Ignition Oven) Target JMF Percent (%)	0.00-0.40	1
	0.41-0.80	1.40 – (Deviation from JMF)
	Over 0.80	Unacceptable ²
Deviations from JMF (Without Regard to Sign)		
ASPHALT CEMENT CONTENT (Digital Printout from Hot-Mix Plant) Target JMF Percent (%)	0.00-0.20	1
	0.21-0.30	1.80 – 4 x (Deviation from JMF)
	Over 0.30	Unacceptable ²

Characteristics	1 Test	Pay Factor
Average of Deviations from Target (Without Regard to Sign)		
AIR VOID (LAB MOLDED SPECIMENS) ¹ Target(Superpave, SMA) = 4% Target (RBL) = 2%	0-1.50	1
	1.51-2.50	1.40 – (Deviation from JMF)
	Over 2.50	Unacceptable ²

Footnotes:

- (1) *X* is the average of deviations
- (2) Unless otherwise directed by the Nation's Executive Director's Representative, products testing in this range are unacceptable and Nation's Executive Director shall be removed and replaced at no additional cost.

411.06 BASIS OF PAYMENT.

(Addition)

411(S1)	(SP) ASPHALT CONCRETE, Type S1	TON
411(S2)	(SP) ASPHALT CONCRETE, Type S2	TON
411(S3)	(SP) ASPHALT CONCRETE, Type S3	TON
411(S4)	(SP) ASPHALT CONCRETE, Type S4	TON
411(S5)	(SP) ASPHALT CONCRETE, Type S5	TON
411(S6)	(SP) ASPHALT CONCRETE, Type S6	TON
411(S3)	(SP) ASPHALT CONCRETE, Type S3, (PATCHING)	TON
411(S4)	(SP) ASPHALT CONCRETE, Type S4 (PATCHING)	TON

SECTION 641
MOBILIZATION

This Section of the Standard Specification shall apply in its entirety with the following addition(s):

641.01 DESCRIPTION.

(Addition)

All Work under Division I, Section 155 *Schedules for Construction Contracts* shall be included in the unit price for items under Section 641 *Mobilization*. The method of measurement for Work under this item, including construction schedules, shall remain as lump sum.

641.06 BASIS OF PAYMENT.

(Revision to third paragraph)

The second and final payment will be made on the next estimate following the completion of substantial mobilization. The determination of when an estimate is due shall be in accordance with Subsection 109.09. Mobilization will not be considered in this determination. The completion of the erection of materials processing plants, if any, will not be required as a condition to release of the final payment.

(Revision to first note for Table A)

* In the event the lump sum bid for mobilization exceeds the amount stated herein, the difference (remainder) will not be paid until the project is complete in accordance with Subsection 106.06(b).

SECTION 880
CONSTRUCTION SIGNING AND TRAFFIC CONTROL

This Section of the Standard Specification shall apply in its entirety with the following revision(s):

880.01 DESCRIPTION.

(Addition)

All Work under Division I, Section 155 *Schedules for Construction Contracts* shall be included in the unit price for items under Section 880 *Construction Traffic Control*. The method of measurement for Work under this item, including construction schedules, shall remain as lump sum.

880.02 MATERIALS.

(a) Construction Signing and Traffic Control Materials.

(Revision)

10. Plastic Drums. Drums shall be of two-piece breakaway type, meeting the requirements of the “*Manual on Uniform Traffic Control Devices,*” , current edition. Vendor shall submit a letter of “Certificate of Crashworthiness” that drums, with conventional barricade warning lights securely attached, meet the NCHRP-350 Category I Device requirements. These drums are to be used as Channelizing devices on construction and maintenance operations.

Plastic drums shall have a minimum overall height of approximately thirty-six inches (36”) with a minimum diameter of eighteen inches (18”) at any point. The upper body of the unreflectorized drum shall weigh a minimum of 9.5 pounds. The base shall weigh a minimum of 40 pounds.

Drums shall be constructed of impact resistant, low density polyethylene (density of 0.925 and melt index of 0.3). The material shall be bright orange in color and resistant to color fading. The material shall maintain structural integrity throughout a temperature range of -58°F to +120°F. All sheeting surfaces shall be 100% flame treated to maximize adhesion of reflective sheeting to the channelizer body.

Drums shall be designed to accept horizontal, circumferential bands of reflectorized sheeting four inches (4”) to six inches (6”) wide. The drum shall have a D-shaped configuration at the base attachment point to minimize rolling after impact. The unit shall have an enclosed top and be weather tight and shall have provisions for drainage to prevent water from accumulating. Drums shall be stackable without damaging the reflective surface. Drums shall provide the facility for attaching two type “A” or “C” conventional barricade warning light which stay in place with repeated impacts with speeds greater than 55 M.P.H. and meet the NCHRP-350 requirements.

Drum base sections shall not exceed four inches (4”) in height. The base shall be an integral component of the Plastic Drum. The base shall be manufactured with a minimum quantity of 45% post consumer or post industrial (recycled) rubber, with a total weight of 40 pounds, and with a maximum 3” vertical profile. Drum base shall be designed so that it may be attached or detached by one person without the use of any tools. The assembled unit shall withstand 60 M.P.H. winds, turbulence created by passing trucks and cars, moderate winds, or repeated movement during construction and maintenance operations.

The top portion of the unit, upon impact by a vehicle, shall deform and breakaway from the base and ballast. The ballast must remain in place, allowing the vehicle to pass over it.

The exterior vertical surface shall have alternating, two-orange-two-white circumferential stripes starting with the orange stripe at the top of the drum. Each stripe shall be four inches (4”) wide and shall be reflectorized. The bottom portion of the drum shall not be reflectorized. If there are non-

reflectorized spaces between the horizontal orange and white stripes, they shall be no more than two inches (2") wide.

Reflectorized sheeting shall meet the requirements of the latest ASTM D4956 for Type III reboundable sheeting.

(b) **Sampling and Testing.** A Type D certification shall be furnished in accordance with subsection 106.03.

880.04 CONSTRUCTION METHODS.

(Addition)

Unnecessary traffic control devices shall be immediately removed or covered in a manner approved by the Nation's Executive Director's Representative.

880.05 METHOD OF MEASUREMENT.

(Revision to seventh paragraph)

During any period that contract time is suspended in accordance with Subsection 108.03, any traffic control devices required for the safety of the motoring public will continue to be measured and paid for.

(Addition)

Construction Traffic Control will be paid for as a lump sum pay item. Contractor shall be responsible for construction traffic control and for construction signing in accordance with the Manual on Uniform Traffic Control Devices, latest edition, and applicable ODOT standard drawings.

Price bid for this item shall be payment in full for the installation and removal of Construction Signing and Traffic Control. Contractor shall be responsible for removal of all necessary construction traffic control items upon completion of the project.

All change orders approved which provide for additional work **and** additional calendar days shall provide for additional compensation for Traffic Control and Construction Signing. Payment for additional traffic control and construction signing shall be determined by dividing the lump sum bid for traffic control and construction signing shall be determined by dividing the lump sum bid for Traffic Control and Construction Signing by the number of calendar days specified in the contract as the contract time. The daily rate thus derived shall then be multiplied by the number of additional days provided by the change order. The sum computed by this multiplication shall be added to the change order price for additional work and shall be full compensation for all Traffic Control and Construction Signing for the added work.

To facilitate prompt maintenance and/or changes in traffic control devices, the Nation's Executive Director's Representative may give written notice to the Contractor. The identified items must be corrected within 24 hours of receipt of the notice. If the Contractor fails to correct the specified items within the 24 hour period,

the Nation's Executive Director's Representative may assess a daily charge equal to ½ of the daily rate derived above. The Nation's Executive Director's Representative may continue to assess the daily charge for each additional 24 hour period until the items are corrected. The charge will be subtracted from the Contractor's next progress payment and will be unrecoverable.

There will be no additional compensation for Traffic Control and Construction Signing for time extensions and/or suspensions due to unusually severe weather or weather related conditions.

880.06 BASIS OF PAYMENT.

(Addition)

All Traffic Control and Construction Signing for this project as bid as a lump sum. All necessary traffic control items listed under Section 880.02, except for those items listed below, are paid under the Construction Traffic Control pay item. Payment for this item will be made progressively as a percentage of the total lump sum bid for traffic control and construction signing equal to the total percentage earned on the project. Any amounts remaining on the date of completion will be paid on the next estimate. Any amounts assessed for failure to correct traffic control items will be deducted from the next progressive payment.

MINIMUM SAMPLING AND TESTING SCHEDULE

The following sampling and testing schedules shall supplement the Standard Specifications, and subject to the **Nation's Executive Director's** approval, shall supersede and/or control where conflicting provisions arise.

Embankment

In Place Density & Moisture Content One per 1,000-linear feet per lift.

Borrow

Classification & Proctor Density One per each source or when a visual change in soil characteristics occurs.

Fabric Reinforcement

Fabric Identify as being from an approved source. One Manufacture's Certificate with Laboratory Analysis and test results for each source.

Asphalt Cement Identify as being from an approved source. One refinery certificate with Laboratory Analysis and test results for each day or per shipment, whichever occurs more frequently.

Riprap

Materials Supplier's (or ODOT Approved) Certificate of Compliance.

Filter Blanket (for Rip Rap)

Gradation One per 1000-tons or per source.

Vegetative Mulch

Materials Field inspection of material by BIA personnel.

Fertilizer

Materials Supplier's Certificate of Compliance for each shipment.

Seed

Materials Supplier's Certificate of Compliance for each shipment, and Oklahoma State Agricultural Board placard placed on each container.

Subgrade

Classification One per 1,000-feet of finished grade and one for each type of soil (AASHTO Classification Method). At least one per mile of finished grade.

In Place Density One per 1,000-feet of each lift placed and at least one per 500-feet of finished grade.

Subgrade Modification (Including Lime Treatment)

Materials Manufacturer's Certificate of Compliance for each shipment.

Aggregate Base or Traffic Bound Surface Course

Quality One per source.

Gradation, LL & PI One per 1,000-linear feet or per 1000-tons, whichever occurs more frequently.

Thickness (In-Place) One per 500-linear feet.

Grade Tolerance One per 100-linear feet.

Density One per 500-linear feet.

Tack Coat

Bituminous Material

Identify as being from an approved source. One Refinery Certificate with Laboratory Analysis and test results for each source every 5,000 Gal.

Asphaltic Concrete

Asphalt Cement

For PG-76, PG-70, and PG-64, identify as being from an approved source. One refinery certificate with Laboratory Analysis and test results for each day or per shipment, whichever occurs more frequently.

Aggregate

One L.A. Abrasion test, One Durability test, One Micro Duvall test, One Sand Equivalent Test and One Gradation test for each source every 10,000 Ton.

Mix

One Rice Specific Gravity, One Asphalt Content, One Sieve Analysis, Two Lab Molded Densities, Three Roadway Densities and Three Mat Thicknesses for each mix every 1,000 Ton.

MINIMUM SAMPLING AND TESTING SCHEDULE (CONT'D)

Asphaltic Concrete (cont'd)

Mat Thickness/Roadway Density

Three cores per day or three cores per 1,000 tons, whichever occurs more frequently.

Density

One per day or one per 1000-tons, whichever occurs more frequently.

Concrete - Class "C"

Material

Four compressive strength specimens per pour for each structure or per 100-cubic yards.

Culverts (CMP or RCP), Metal End Sections

Materials

One Manufacturer's Certificate of Compliance, including Chemical Analysis, Spelter Report, and Heat Numbers, for each source. Additionally, one Manufacturer's Certificate of Compliance for each load test and size of RCP.

Treated Timber Posts

Treatment

Manufacturer's Certificate of Compliance.

Material

Field inspection of material by BIA personnel.

Fence and Fence Posts (Metal)

Materials

Supplier's Certificate of Compliance for wire and posts.

Bolt and Bolt Accessories

Materials

Field inspection of materials by BIA personnel.

Cattle Guard

Materials

Field inspection of materials by BIA personnel.

MINIMUM SAMPLING AND TESTING SCHEDULE (CONT'D)

Guardrail

Rail	Manufacturer's Certificate of Compliance including Chemical Analysis, Spelter Report, and Heat Numbers, for each source.
Posts	Manufacturer's Certificate of Compliance.

Construction Signing

Reflective Sheeting	Manufacturer's Certificate of Compliance for each shipment.
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Signs

Panels & Sheeting	Manufacturer's Certificate of Compliance.
Posts	Manufacturer's Certificate of Compliance.

Traffic Stripe

Glass Beads	Manufacturer's Certificate of Compliance for each shipment.
Thermoplastic	Manufacturer's Certificate of Compliance for each shipment.
Removable Tape	Manufacturer's Certificate of Compliance for each shipment.

Reinforcing Steel

Material	Manufacturer's Certificate and Mill Test Report for each shipment, or per 20-tons, whichever occurs more frequently.
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Structural Concrete

Portland Cement	One Certificate of Compliance with project specifications or manufacturer's certification that cement was manufactured under the quality control agreement with the Oklahoma State Highway Commission. One certificate for every 2,000-bags, 500-bbls, or for each shipment.
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MINIMUM SAMPLING AND TESTING SCHEDULE (CONT'D)

Structural Concrete (cont'd)

Aggregate	
- Quality	One initial laboratory quality test per source or Supplier's Certificate of Compliance.
- Gradation	One Fine Aggregate and one Course Aggregate gradation per 100-cubic yards of concrete.
-Organic,	Deleterious, one test per 1000-cubic yards.
Water - Quality	When required by the Nation's Executive Director's Representative, the water quality shall be in accordance with AASHTO T 26.
Material	Four compressive strength specimens per pour for each structure or per 100-cubic yards.
Curing Agents	Manufacturer's Certificate of Compliance for each brand and each shipment.
Air Entraining Agent	Manufacturer's Certificate of Compliance for each brand and each shipment.
Air Content & Slump	One of each test per 25-cubic yards.
Yield	One test per 50-cubic yards.

Backfill For Culverts & Bridge Abutments

Materials	One gradation per 200-cubic yards placed.
Density	One per lift (i.e., collected at alternating sides of the culvert) per installation.

Premolded Elastomeric Compression Joint Fillers and Sealers

Material	Certificate of Compliance that material meets project specifications.
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Elastomeric Bearing Pads

Material	Certificate of Compliance that material meets project specifications.
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Prestressed Concrete Beams

Material	One Certificate of Compliance that material meets project specifications with verification by on-site, independent inspection of concrete quality and prestressing loads.
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