



# 2015 EXTERNAL CIVIL RIGHTS TRAINING INTERMEDIATE SESSION



# WELCOME

- ▶ General Housekeeping:
  - Emergency Exits, Bathrooms
  - Two breaks
- ▶ ECR Manual page numbers
  - Arial Black for changes
- ▶ Offering class for inexperienced and another for experienced project engineers

## EXTERNAL CIVIL RIGHTS MANUAL

FEBRUARY 2015

Prepared by

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
608 EAST BOULEVARD AVENUE  
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[www.dot.nd.gov](http://www.dot.nd.gov)

DIRECTOR  
Grant Levi, P.E.

Civil Rights Division  
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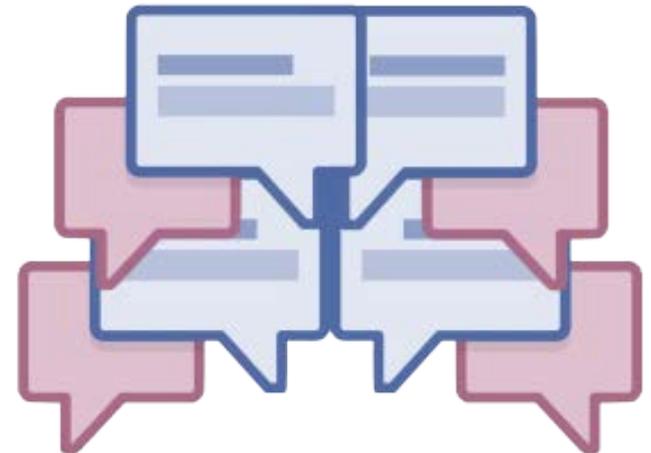


# DEFINITIONS

- ▶ Project Engineer (PE): engineer or manager
- ▶ ADE: Assistant District Engineers
- ▶ CR Hierarchy: – ADE – Civil Rights (program adm. or director) – ADE
- ▶ Documentation: photo, project diary, email

# CHAT BOX

- ▶ Slide number with written question/comment
- ▶ End of each section
- ▶ Final PowerPoint program
- ▶ RIGHT NOW: who and where



# PRESENTERS

- ▶ Title VI & Nondiscrimination/ADA : Paula Messmer
- ▶ Disadvantaged Business Enterprise: Denise Spanjer
- ▶ Contractor Compliance: Gail Brown
- ▶ On-The-Job Training: Denise Spanjer
- ▶ Labor Compliance: Gail Brown

## Civil Rights



Diane Laub  
Director  
328-2576



Gail Brown  
328-2605



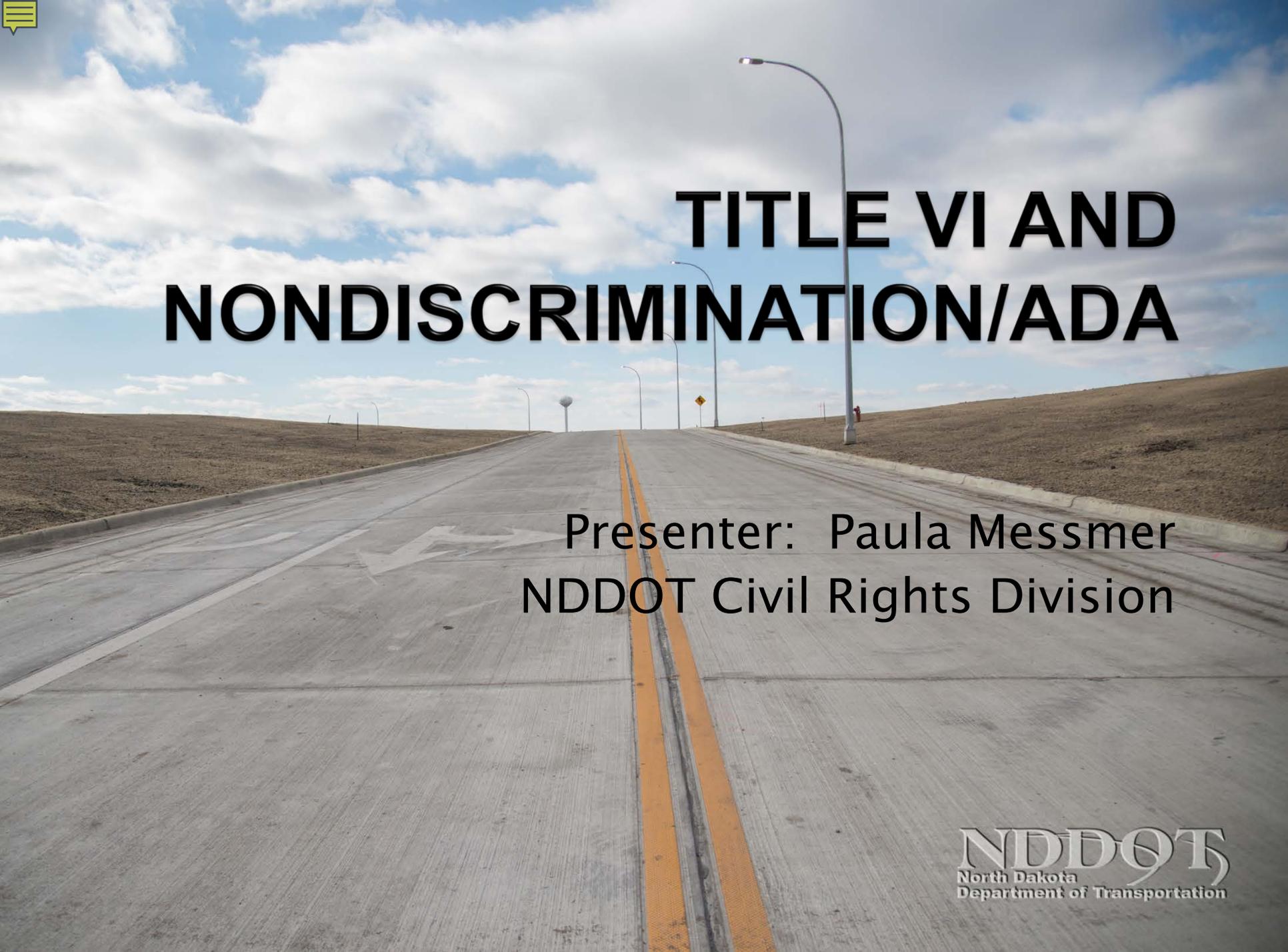
Amy Conklin  
328-2637



Paula Messmer  
328-2978



Denise Spanjer  
328-3116



# TITLE VI AND NONDISCRIMINATION/ADA

Presenter: Paula Messmer  
NDDOT Civil Rights Division



# TITLE VI



DBE  
OJT

Title VII  
Contractor Compliance  
Labor Compliance

# Title VI and Nondiscrimination/ADA Program

- ▶ Restoration Act of 1987
- ▶ Ensures compliance with Title VI
- ▶ Data Collection Process
  - Public Meetings/Hearings
  - NDDOT Title VI Public Participation Survey and Instructions
- ▶ Exhibit I–A, page 6

# CTS LanguageLink

- State of ND contract
- Available for state and local governments
- Consultant used interpreter service





# Title VI/ADA Legal Authorities

ECRM  
Sec. 1 p. 2

- Civil Rights Act of 1964
- Federal–aid Highway Act of 1973
- Age Discrimination Act of 1975
- Section 504 of the Rehabilitation Act of 1973
- Civil Rights Restoration Act of 1987
- Americans with Disabilities Act (ADA) of 1990
  - Request For Reasonable Accommodations
  - Exhibit I–B, page 9



# Executive Orders (E.O.)

- Environmental Justice (EJ)  
E.O.12898
- Limited English Proficiency (LEP)  
E.O.13166

# Title VI Assurances

- ▶ NDDOT required to sign Title VI Assurances
- ▶ Appendix A and E of the Title VI Assurances
- ▶ Required in all contracts
  - State and federally funded, all tiers
- ▶ Prime contractors /consultants requirements
- ▶ Exhibit I-C, page 11



# Title VI

## Compliance Oversight

ECRM  
Sec. 1 p. 4

- NDDOT enforcement responsibilities
- Noncompliance and reporting
- Examples of discrimination

# Title VI/ADA

- Race, color, national origin
- Sex
- Age
- Disability
- Environmental Justice
- Limited English Proficiency

# Title VI Complaints

- Right to File a Complaint
- File Complaints with NDDOT
- File Complaints with U.S. DOT
- Title VI Complaint Process  
(SFN 51795 Rev. 12-2014)
- Exhibit I-D, page 19



# Scenario

- ▶ An individual calls you and wants to file a complaint against their employer, a contractor, for racial discrimination. What do you do?
- ▶ a. Schedule a meeting with the caller to discuss the alleged discrimination.
- ▶ b. Direct the caller to NDDOT website for a Complaint form and instructions.
- ▶ c. Provide caller the EEOC contact information.
- ▶ d. All of the above.



# QUESTIONS AND ANSWERS





# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

Presenter: Denise Spanjer  
NDDOT Civil Rights Division



# DBE Certification

DBEs are small for-profit businesses certified by the NDDOT UCP Board.

- Owned by disadvantaged individual

- Day to Day Control

- Real & Substantial Financial Investment

- Independence

- Expertise to Operate Services

- Gross Receipts

- Personal Net Worth

# DBE Overall Goal – 6.22%

## RACE/GENDER CONSCIOUS

RGC – Percent greater than zero

NDDOT RGC goal – 2.75%

GFE on all replacements

Careful monitoring for any changes after time of award

Replacements require written approval

## RACE/GENDER NEUTRAL

RGN – Zero percent

NDDOT RGN goal – 3.47%

No GFE monitored

Notify CRD when changes occur



# SP in effect through life of project

RGN and RGC SPs have changed in 2015 due to:

- ▶ DBE Rule Modifications
- ▶ Simplifying language
- ▶ Match the voice and mood of the 2014 Standard Specifications

Each project is governed for the life of the project by the SP in effect at the time of bid.

SP in place on ongoing projects – carry over projects remain the same as when the project was awarded.



# Working with CRD

## Communication Channels

Prime > Project Engineer > ADE > CRD

CRD > ADE > Project Engineer > Prime

Permits

Replacements

Special Provisions  
Req. to Sublet

Truck tickets

MULTIPLE  
Self-performance

DBE Rules

# Communication

## Prime must:

- ▶ Notify and invite all subs and any DBE firms listed on Form C
- ▶ Address issues to assure DBE program compliance
- ▶ Provide the DBE with the pre-construction form and pre-construction minutes

# Locate Participation Review

## Project Engineer DBE Preparation:

- ▶ Locate DBE Participation Review in CARS
  - PCN > Search Documents > Document Type: Reference > Click Search
  - DBE Participation Review for the Job is the only document that will be found
- ▶ Identify the applicable DBE SP
  - RGC or RGN at the top of Participation Review p. 1

# DBE Participation Review

Page 1

**DBE PARTICIPATION REVIEW – RACE CONSCIOUS**  
 North Dakota Department of Transportation, Civil Rights Division

SFN 13743a (Rev. 2-2013) Update – 11/26/2014 **6.59%**

**GOAL: 3.00%**  
**ACH: 4.76%**

**BID OPENING**  
 November 14, 2014

<b>APPARENT LOW BIDDER</b> KNIFE RIVER MATERIALS		<b>LOW BID</b> \$1,630,814.45
<b>JOB NUMBER</b> 34	<b>PCN(S)</b> 18336	<b>PROJECT NUMBER(S)</b> SNH-6-005(028)300
<b>WORK TO BE COMPLETED</b> 2" MILL & 2" RECYCLED HBP FAA 43 OVERLAY AND ADA PEDESTRIAN RAMS ALON SHARED USE		<b>LOCATION</b> PEMBINA; ND 5 FROM EAST JCT ND 32 EAST TO CAVALIER

**DBEs LISTED ON FORM A**

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
West River Striping	28,676.03	1.76%	100%	762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

**ADDITIONAL DBE PARTICIPATION COMMITTED TO AFTER BID SUBMITTAL**

DBE	AMOUNT	% ACH	DBE %	BID ITEM/PRODUCT SUPPLIED
Reiner Contracting	78,780.78	4.83%	100%	411-0105, 702-0100

**DBE BID ITEMS KNIFE RIVER MATERIALS WILL DO WITH THEIR OWN FORCES:** 302-0100, 411-0105, 430-0143 haul only and 430-5828

**DBEs NOT USED BECAUSE KNIFE RIVER MATERIALS WILL DO THE WORK:** Miigwech Trucking (formerly known as Keith Brown Trucking), and JD Donovan

**DBEs NOT USED DUE TO BID DIFFERENTIAL:** West River Striping – rumble strips, Morris Sealcoat & Trucking – fog only, Hudson, Inc. and Reiner Contracting.

**DBES NOT USED DUE TO OTHER (Specify):** DBE West River Striping was used over DBEs Muscha Pavement Marking and Dallmann Services Co. for pavement marking

**ACTIVITIES & CONTACT:**  
**DBEs Quoting:**  
 Dallmann Services Co: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124  
 Decorative Concrete Designs: 750-2115  
 Hudson Incorporated: 411-0105  
 JD Donovan: asphalt cement haul only **LATE**  
 Miigwech Trucking, Inc.: 302-0100, 411-0105, 430-0143 haul only  
 Morris Sealcoat & Trucking: 702-0100, 760-0005, 760-0007  
 Muscha Pavement Marking: 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124  
 Reiner Contracting: 411-0105  
 West River Striping: 702-0100, 760-0005, 760-0007, 762-0103, 762-0430, 762-0434, 762-1104, 762-1108, 762-1124

- ▶ Summary of Prime's DBE Participation at time of award
  - Contract amount
  - DBE subcontractors used
  - Intention to self-perform
  - Non-DBE subcontractors used
  - Management decisions

# Prepare for Trucking

DBE Trucking firms may count “one-for-one” match trucks toward the DBE goal.

For every DBE-owned truck the DBE is allowed to bring along another truck to count toward the goal.

Make note to request a list of DBE owned and the match trucks from the DBE Trucking firm

We are asking DBE trucking firms to provide a weekly trucking report to assist you in your project management.

[SFN 60791](#) – DBE Weekly Trucking Report



# Self-Performance by Prime

The Prime stated that all trucking would be self-performed.

The prime requested approval to hire replacements because they could not keep up with their own equipment and employees. Requests to sublet were submitted, signed by the subcontractors two months earlier.

What should be done?



# Self-Performance by Prime

What should be done?

- a) Approve the requests to sublet. It was probably a mistake on all five truckers.
- b) Ask the prime what's up with that?
- c) Contact the ADE.
- d) Nothing, it's just part of the "self-performance game."
- e) A & D
- f) B & C

# Prepare for Schedule

- ▶ Review Progress Charts
- ▶ When are DBEs to be on the job?
- ▶ “Note to self” tell Prime to provide an updated progress chart to the DBE any time changes are made in the proposed work schedule

on which on-site work is started, whichever is earlier. \*See

Working Day Contract NA \_\_\_\_\_ working days counted  
 or from the actual date on which on-site work is started, w

Contract Amount \$ \_\_\_\_\_ Engineer \_\_\_\_\_

Non-DBE Subcontractor

YEAR	PROPOSED WORK SCHEDULE									
	JAN.	FEB.	MAR.	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.
2014									xx	xx
2015										

# Counting Participation

Most DBE work counts 100% toward the goal

- ▶ DBE truckers and manufacturers count 100%

Suppliers are counted on a case-by case basis

- ▶ Regular Dealers have the capacity to deliver and have products in inventory – 60% of the cost of goods count.
- ▶ Brokers facilitate a service or purchase without taking possession. Only the mark-up on the product counts toward the goal.



# EXCEPTION

- ▶ Work is required by permit
- ▶ Prime notifies DBE or non-DBE/BD and project engineer
- ▶ DBE or non-DBE/BD cannot do the work in the time required?
  - Text or phone message acceptable
- ▶ Explain in writing in one calendar day
- ▶ ADE has authority to replace



# Prepare for Required Forms

Print required forms for distribution at Pre-Construction Conference.

- ▶ [SFN 60597](#) – DBE Performance – Commercially Useful Function Certification
- ▶ [SFN 60638](#) – Monthly Record of DBE Project Payments
- ▶ [SFN 14268](#) – DBE Participation Certification
- ▶ [SFN 60595](#) – Replacement Approval Request
- ▶ [SFN 60791](#) – DBE Weekly Trucking Report

# SFN60597

ECRM  
 Sec. 2 p. 5  
 RGC SP  
 CUF/Counting  
 Participation

## DBE PERFORMANCE - COMMERCIALLY USEFUL FUNCTION CERTIFICATION

North Dakota Department of Transportation, Civil Rights Division  
 SFN 60597 (02-2014)

**PRIME CONTRACTOR:** Complete this CUF review with the DBE in the first 5 days the DBE is actively working on the project. Submit to the Project Engineer within 5 working days. By signing this form, the prime contractor certifies that the DBE contractor is performing a commercially useful function as outlined in 49 CFR § 26.55.

PCN		Project Number		County			
Prime Contractor			DBE Firm				
Contact Person			Contact Person				
Title			Title				
Address		City	State	ZIP Code	Address		
City		State	ZIP Code	City		State	
State		ZIP Code	Address		City	State	
ZIP Code		Address		City	State	ZIP Code	
I hereby affirm that this DBE is performing a commercially useful function on this project. The DBE is: Yes No <input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work of the contract <input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved <input type="checkbox"/> <input type="checkbox"/> Responsible (with respect to materials and supplies used on the project) for negotiating price, determining quality and quantity, ordering the material, and installing and paying for the material <input type="checkbox"/> <input type="checkbox"/> Claiming commensurate participation credit considering the work being subcontracted, industry practices, and the amount we are paying the DBE <input type="checkbox"/> <input type="checkbox"/> Not an extra participant in this transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation <input type="checkbox"/> <input type="checkbox"/> Performing or exercising responsibility for at least 30 percent of the total cost of the DBE contract with its own work force <b>Complete for DBE Trucking Firms:</b> The DBE: Yes No <input type="checkbox"/> <input type="checkbox"/> Is responsible for the management and supervision of the entire trucking operation for which it is responsible on this project <input type="checkbox"/> <input type="checkbox"/> Owns and operates at least one fully licensed, insured, and operational truck being used on this project <input type="checkbox"/> <input type="checkbox"/> Owns, insures, and operates its trucks using DBE employed drivers			I hereby affirm that I am performing a commercially useful function on this project. I am: Yes No <input type="checkbox"/> <input type="checkbox"/> Responsible for execution of the work of the contract <input type="checkbox"/> <input type="checkbox"/> Performing, managing, and supervising the work involved <input type="checkbox"/> <input type="checkbox"/> Responsible (with respect to materials and supplies used on the project) for negotiating price, determining quality and quantity, ordering the material, and installing and paying for the material <input type="checkbox"/> <input type="checkbox"/> Claiming commensurate participation credit considering the work being subcontracted, industry practices, and the amount that I am being paid <input type="checkbox"/> <input type="checkbox"/> Not an extra participant in this transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation <input type="checkbox"/> <input type="checkbox"/> Performing or exercising responsibility for at least 30 percent of the total cost of my contract with my own work force <b>DBE Trucking Firms complete the following:</b> I affirm that I: Yes No <input type="checkbox"/> <input type="checkbox"/> Am responsible for the management and supervision of the entire trucking operation for which I am responsible on this project <input type="checkbox"/> <input type="checkbox"/> Own and operate at least one fully licensed, insured, and operational truck being used on this project <input type="checkbox"/> <input type="checkbox"/> Own, insure, and operate my trucks using driver's that I employ				
Signature		Date		Signature		Date	

### DBE INTENDED AMOUNTS, SPEC & CODE NUMBERS AND WORK DESCRIPTION AS INDICATED ON FORM C

SPEC. & CODE NUMBER	APPROX. QUANTITY	UNIT	WORK DESCRIPTION	ITEMIZED INTENDED AMOUNT
<b>TOTAL</b>				0.00
Project Engineer Signature (only after DBE Performance - Project Engineer on-site work confirmation has been completed.)		Date	Project Engineer Employer	

**PROJECT ENGINEER:** Sign only after completing DBE Performance - Project Engineer on-site work confirmation. Review, sign, and put in CARS within 5 days of receipt. If Project Engineer disagrees, contact ADE immediately.

SFN60597 must be submitted for every DBE on every project no later than 5 days after the DBE starts working the project.

## Project Engineer On-site Work Confirmation

1. Is the DBE subcontractor performing the work listed on their subcontract?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are all of the DBE firm's employees carried on the DBE firm's payroll?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Does the DBE firm's equipment have the DBE firm's name or logo on it?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Is the DBE firm's equipment leased from the prime contractor or any other contractor on the project?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
5. Have other contractors on the project performed the work subcontracted to the DBE firm?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Is the DBE superintendent or foreman working as an employee of any other contractor or subcontractor on the project?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
7. Are any of the DBE firm's employees also working for the prime contractor?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No



# Tracking Achievement

## Uniform Semi-Annual Report

- DBE Commitments & Awards

- Payments on ongoing projects

- Payments on completed projects

SFN60638 – Monthly Record of DBE Payments

SFN05682 – Request to Sublet

SFN14268 – DBE Participation Certification

SFN 60791 – DBE Weekly Trucking Report

# SFN60638

## MONTHLY RECORD OF DBE PROJECT PAYMENTS

North Dakota Department of Transportation, Civil Rights Division  
SFN 60638 (Rev. 11-2014)

For DBE Project Payment (Enter month and year)

Prime contractors and subcontractors are required to submit a monthly record of project payments to Disadvantaged Business Enterprise (DBE) firms on highway construction project. If no payments have been made, please indicate "none" on the form.

Submit by the 15th working day of every month. The payments listed should reflect those made to the listed DBE in the previous month.	Submit to: CIVIL RIGHTS DIVISION by EMAIL: <a href="mailto:CIVILRIGHTS@ND.GOV">CIVILRIGHTS@ND.GOV</a> or FAX: 701-328-0343
--	---

Project Number			This payment is a : <input type="checkbox"/> Partial Payment <input type="checkbox"/> Final Payment
PCN	Bid Opening Date	Job Number	
Prime Contractor/Consultant			
Subcontractor/Subconsultant			

Payments made in the previous month are detailed below (Include additional sheets as needed.)

Intended			Dollar Amounts Paid			Remaining on Contracted Amount
Bid Items Number	Bid Item Description	Amount indicated on Original Form A and/or Request to Sublet	Amount Paid on this Payment	Previous Amount Paid	Total Amount Paid to Date	
					0.00	

Due the 15th of every month after the DBE begins work on the project.

# SFN 5682

## PRIME CONTRACTOR'S REQUEST TO SUBLET

North Dakota Department of Transportation, Construction  
SFN 5682 (Rev. 07-2012)

PCN	Project Number	County
Subcontractor		Address
Prime Contractor		Address
<p>A prime contractor's organization shall perform work amounting to not less than 30 percent of the total original contract amount. By signing this form, the prime contractor certifies that the subcontract contains all the applicable provisions and requirements of the prime contract with the North Dakota DOT.</p>		

**SUBCONTRACTORS** who are **NOT PREQUALIFIED**, certified as Disadvantaged Business Enterprise (DBE), or registered with the Department for the type of work being subcontracted must submit a Subcontractor Registration Form (SFN 52243) with this request.

Is Subcontractor a certified DBE in North Dakota?  Yes  No

Name								
Title								
Subcontractor								
<p>I hereby acknowledge that I have received and am aware of the following applicable provisions to this subcontract:</p> <p style="text-align: center;"><b>NOT</b></p> <table style="width: 100%;"> <tr> <td style="text-align: center;"><b>APPLICABLE</b></td> <td style="text-align: center;"><b>APPLICABLE</b></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> <p>Labor Rates from Department of Labor. Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto. Appendix A of the Title VI Assurances.</p>	<b>APPLICABLE</b>	<b>APPLICABLE</b>	<input type="checkbox"/>					
<b>APPLICABLE</b>	<b>APPLICABLE</b>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							

Name								
Title								
Prime Contractor								
<p>I hereby acknowledge that I have provided for or assured that the subcontractor has the following applicable provision:</p> <p style="text-align: center;"><b>NOT</b></p> <table style="width: 100%;"> <tr> <td style="text-align: center;"><b>APPLICABLE</b></td> <td style="text-align: center;"><b>APPLICABLE</b></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> <p>Labor Rates from Department of Labor. Required Contract Provisions on Federal Aid Contracts (FHWA 1273) and addendums thereto. Appendix A of the Title VI Assurances.</p>	<b>APPLICABLE</b>	<b>APPLICABLE</b>	<input type="checkbox"/>					
<b>APPLICABLE</b>	<b>APPLICABLE</b>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							
<input type="checkbox"/>	<input type="checkbox"/>							



# Scenario

Prime was forging ahead with their project. But did not contact the DBE they listed on their Forms A & C at the time of award.

Project engineer reminded the prime that their project had been awarded with a DBE.

The Prime claimed that they contacted the DBE and that the DBE would not show up and had to be replaced.



# Scenario

What should be done?

- a) Require the prime to go through GFE for replacement along with a letter from the DBE on the circumstances surrounding their refusal to work.
- b) Contact the ADE
- c) The DBE should have shown up, it is their fault, so no problem.
- d) A & B
- e) B & C
- f) C

# SFN14268

## DBE PARTICIPATION CERTIFICATION

North Dakota Department of Transportation, Construction  
 SFN 14268 (Rev. 01-2014)

Complete this form for each disadvantaged business enterprise (DBE) for which a Form C (Notification of Intent to Use DBE) was submitted in accordance with the Disadvantaged Business Enterprise Program Special Provision. The DBE, intended amount, and bid item numbers must reflect what was entered on Form C. If additional DBE participation is realized during the course of the project, this form must be completed and submitted for **ONLY** those additional DBE firms that were certified by NDDOT. In those instances, "not intended" should be entered in the "\$ Amount Intended" column.

This statement certifies that the DBE firm listed below performed on the project in accordance with the Disadvantaged Business Enterprise Program Special Provision. The following is a true and accurate statement of the monetary amount of the intended participation and the actual amount paid to the DBE.

Prime Contractor	DBE Firm		
Project Number	Job Number	Bid Opening Date	

Prime submits SFN14268 to project engineer within 4 weeks of the DBE contract work being completed.

# SFN60595

**REPLACEMENT APPROVAL REQUEST**  
North Dakota Department of Transportation, Civil Rights Division  
SFN 60595 (Rev. 01-2015)

**STEP 1**  
**INSTRUCTIONS: Complete and submit immediately to Project Engineer when any change, replacement, substitution, or additional work is identified.** No work may commence until a written replacement approval is provided by the Department. No payment will be made for any replacement or additional work which commenced prior to Civil Rights Division's written approval of this request.

Prime Contractor or Subcontractor		NDDOT Bid Opening Date	
Project Engineer		District	
Project Location	PCN	Project Number	
Date Project Engineer was Notified	Explain if Notice was not Given		

**Status of Intended Project Goal:**  
Identify the DBEs currently on the project and the status of the intended DBE participation achievement.

DBE Firm	Original Intended Amount	Amount Paid to Date	New Intended Amount	Participation Loss or Gain

What was your firm's goal achievement percentage at the time of award?

If this replacement is approved, what will your firm's goal achievement be?

Explain your firm's efforts to hire DBE contractors.

Prime Contractor Signature	Date
Project Engineer Signature	Date

*Project engineers monitor contract work to ensure the DBEs listed on the DBE Participation Review perform the items of work specified at the time of award and that no improper substitutions occur.*

If there are any changes in project as it was awarded:

- SFN60595 Replacement Approval Request must be submitted.
  - Except where the intended amount has been paid to the DBE.

# Complete GFE Documentation?

- ▶ Must contact all DBEs certified to perform work to be replaced
- ▶ If DBEs are not available:
  - Must determine which type of work may be substituted to maintain or increase goal achievement.
  - Prime must contact all DBEs that perform the substitute service.
- ▶ Must document calls, emails, indicating contacts made and responses/results.
- ▶ Must submit SFN 60595 & documents for approval

# Quick Facts Info

<b>RGC</b>	Goal not met	DBE or Non-DBE/BD can't perform	Replacement Approval Request Process
<b>RGC</b>	Goal not met	Prime can't self-perform	Replacement Approval Request Process
<b>RGC</b>	Goal met	DBE or Non-DBE/BD can't perform	Goal \$\$ Paid? If not, Replacement Approval Request Process
<b>RGC</b>	Goal met	Prime can't self-perform	Goal \$\$ Paid? If not, Replacement Approval Request Process
<b>RGN</b>	Goal exceeded	DBE can't perform	Submit written explanation; DBE acknowledgment
<b>RGN</b>	No participation	Non-DBE can't perform	Nothing required



# QUESTIONS AND ANSWERS





# CONTRACTOR COMPLIANCE PROGRAM

Presenter: Gail Brown  
NDDOT Civil  
Rights Division





# PURPOSE

To ensure that federal contractors and sub-contractors do not discriminate in their employment and contracting practices on Federal-Aid Construction Projects.



# PRIMARY AUTHORITIES

ECRM  
Sec.3 p.1-4

- 23 USC 140 (a)
- State EEO Assurances
- 23 CFR 230 – Subparts A, C and D
- FHWA 1273





# FHWA – 1273

## Nondiscrimination Contract Provisions

1. EEO Policy Statement;
2. EEO Officer;
3. Dissemination of Policy;
4. Recruitment;
5. Personnel Actions;
6. Training and Promotion;
7. Unions;
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment; and
9. Records and Reports.



# Role & Responsibilities

- ▶ Contractor has to take all reasonable and necessary steps to ensure that the terms and conditions of its contract are fully met.
- ▶ NDDOT is responsible for developing and implementing effective processes to monitor and determine contractor's compliance.
- ▶ FHWA has the stewardship, monitoring and enforcement responsibility.



# Stages of Compliance Reviews

1. Review Scheduling;
2. Contractor Notification;
3. Preliminary Analysis/Desk Audit;
4. On-site Verification and Interviews;
5. Exit Conference;
6. Compliance Determination, and
7. Formal Notification.



# Corrective Actions

- ☑ Issue Show Cause Notice;
- ☑ Conduct mandatory meeting to discuss Corrective Action Plan;
- ☑ Accept CAP or Initiate Contract Sanctions; and
- ☑ Conduct follow-up review.



# Noncompliance Finding

- ▶ First noncompliance finding for at least a decade this last summer.
- ▶ Wagner Construction out of International Falls, Minnesota
- ▶ Statements by management concerning preference not to hire women; no female hours on 7.5 M project.



# Scenario #1

- ▶ You are a Project Engineer on a federal-aid construction project.
- ▶ In discussions about OJT trainees with the Project Superintendent, he confides to you that the company does not like to hire women in the trades. So, they want only a minority male trainee.
- ▶ What do you do with this information.



# Scenario #1 – Answer

- ▶ This is a serious matter.
- ▶ Document the conversation as soon as you can – write it down.
- ▶ Contact your ADE immediately. CRD will become involved from there.



# Scenario #2

- ▶ You are a manager on a federal-aid job, and your are onsite during peak employment.
- ▶ You have noticed that there are no women on the Project, either at the Prime level, or for any subcontractor at any tier.
- ▶ What do you do with this information?



# Scenario #2 – Answer

- ▶ a. Check the certified payrolls to make sure that you are correct.
- ▶ b. Begin an investigation on whether the workers for the prime have female workers on other jobs or sites. Call a buddy who is the Project Engineer in another district for another project of the Prime.
- ▶ c. Interview project superintendent as to why there are no female workers on the project.

# Disparate Treatment/Impact

- **Disparate treatment** is discrimination that occurs when an employer treats some employees less favorably because of their race, color, religion, sex or national origin.
- **Disparate Impact** is a facially neutral employment practice that has an unjustified adverse impact on members of a protected class. (No discrimination on face, rather it is one that is discriminatory in its application or effect.)



# Scenario #4

- ▶ A female flagger has come to you and said that she wants to apply for a higher paying position, but she cannot lift 150 pounds. The job announcement for a Laborer 2 position, which pays over the DB minimum, says that she must lift 150 pounds. She says that she watches the men who do the job and they rarely lift more than 50 pounds. Is she complaining of discrimination?



# Hostile Work Environment

- ▶ **Unwelcome comments or conduct based on gender, race, or other legally protected characteristics**
- ▶ **Must unreasonably interfere with an employee's work performance or create an intimidating, hostile or offensive work environment**
- ▶ **Anyone (supervisor, co-worker, contractor) may create and even a witness may be considered a victim**



# Discrimination “Don’ts”

The ADE and Project Engineer (or their staffs) do not conduct investigations.

The ADE and Project Engineer do not make findings for people complaining of discrimination.



# Noncompliance Outcome

Contractor was able to hire two female operators and bring the percentage of female hours up from zero to 5%

Contractor completely restructured its recruitment procedures and is working with its local unions to get a female apprentice.



# EEO/Labor Compliance Interviews

ECRM,  
Sec.3 p.9 & p.11-12

- ▶ **Complete at least 5 Interviews**
  - ❖ **Complete up to 2 weeks** prior to Conference
  - ❖ Interview those most likely to be harassed or discriminated against
  - ❖ Interview at least **1 female** and **1 minority** worker
  - ❖ At least **3 days** prior to Conference

# Bulletin Boards



Thank you for filling out the Bulletin Board Review Forms and for taking pictures this year! Project staff did an amazing job and I thank you.

Thank you also for inspecting them monthly and making sure things are up to date. I have little to add on this as staff was A+ on getting this done.



# QUESTIONS AND ANSWERS





# ON-THE-JOB TRAINING (OJT) PROGRAM



Presenter: Denise Spanjer  
NDDOT Civil Rights Division



# OJT Program

ECRM  
Sec. 4 p. 2

- ▶ Master List
- ▶ Primary role of Project Engineer
  - Observe, report, support
- ▶ Trainee training time on the equipment, in the truck, etc.
  - Doesn't have to be 100%
- ▶ OJT Supportive Services On-Site Visits
  - Meet, acknowledge trainee, provide wage rate and curriculum

# Wold Engineering – OJTSS

- ▶ OJT Supportive Services On-Site Monitor
  - Visits trainees, superintendent, trainer, project engineer on the project site
- ▶ OJT Supportive Services Project Assistant
  - Contacts contractors weekly to check on trainee status, progress
  - Checks payrolls and hours on projects
- ▶ District Payroll Responsibility
  - Trainee graduates to Journeyworker



# Assignments

- ▶ OJT Special Contract Provision
- ▶ Trainees are assigned to contractors
  - Not projects
  - May move trainees from project to project
- ▶ Contractors from other states may have different experiences with OJT Program
  - Trainee hours are assigned to projects as a bid item



# Completion is Important

- ▶ Trainee positions are assigned based on a contractor's cumulative contract dollars
- ▶ Contractors are strongly encouraged to complete a trainee's program/curriculum within one construction season
  - If they have not completed the position, the position may be carried over



# Scenario

Every time you've been on the project a Qualified Testing Technician Trainee has been working; but, he is working as a laborer, not working as a testing technician with his trainer.

What do you do?

- a) Record the incident in your diary and contact the ADE
- b) Check in with the trainer and ask how many hours the trainee has completed in the program
- c) Visit with the trainee to see how things are going with his training
- d) None of the above
- e) All of the above



# OJT Program

ECRM  
Sec. 4 p. 5

- ▶ Apprenticeships
  - Contractor may fulfill positions with apprentices
  - Contractor must choose program for apprentice
- ▶ Trainee candidates are screened for prior experience
- ▶ Minimum wage rates are noted in the OJT Program Manual
  - At no time, may the trainee be paid less than the lowest Laborer wage rate.

# Program Approval

- ▶ Contractors must request approval for program and trainee candidate separately
- ▶ All requests come through CRD
- ▶ Curriculum is outlined in the OJT Program Manual available at
- ▶ <http://www.dot.nd.gov/divisions/civilrights/docs/ojtprogram.pdf>



# Reimbursement

- ▶ Training hours on state and federal funded projects are reimbursable at \$4 per hour
- ▶ There is no reimbursement for hours of work on county, TERO, city, private, out-of-state
  - Some training hours count toward completion
- ▶ Contractors must submit their trainee's hours monthly by the 15<sup>th</sup> or there is no reimbursement



# Credit for Training Hours

- ▶ Training hours may be earned on federal and state funded projects
  - Trainees may receive credit for hours spent in training on other projects.
    - County, TERO, city, private, out-of-state
    - Hours count toward completion up to 25% of the total hours (500 hour program = 125 max)



# Failure to Comply

ECRM  
Sec. 4 p. 10

- ▶ Failure to fill trainee position
  - The contractor must show good faith in their attempts to hire a trainee to fill a need in their company.
  - Contractors who refuse to fill the position face consequences.
- ▶ Failure to train
  - Using trainee position as laborer or flagger, etc.
  - “Train Yourself” – lacking supervision of trainer



# OJT Program

ECRM  
Sec. 4 p. 4

- ▶ Contractor may create a custom program
  - Project Manager has not received adequate supervision.
- ▶ Abbreviated programs
  - Apprenticeships
  - CDL holding Trucker
- ▶ Trainee may fulfill two position assignments
  - Not at same time



# QUESTIONS AND ANSWERS





# LABOR COMPLIANCE (Davis-Bacon) PROGRAM

Presenter: Gail Brown  
NDDOT Civil Rights Division





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# The Basics of Davis–Bacon and Related Acts

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Prime Contractor is ultimately responsible for payment by all subcontractors

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Prime Contractor and all subcontracts must pay wages as described in ND2 Wage Decision.

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All must submit weekly certified payroll



# More DBRA Basics

ECRM  
Sec. 5 p. 2-3

- ▶ ND has no state prevailing wage law
- ▶ DBRA applies only to work onsite
- ▶ “Onsite” is within or virtually adjacent to the project’s boundaries – this means up to ½ mile, as the crow flies.



# DBRA Classification – Who Is Covered

- Equipment Operators
- Laborers
- Concrete Masons
- Apprentices or Trainees, if approved
- Truck Drivers, who are onsite more than a de minimis amount of time.





# Who Is Not Covered:

ECRM  
Sec. 5 p. 51–54

- Timekeepers, inspectors, engineers, officials, administrative, and professional employees as defined under FLSA
  
- Management, including Foremen are generally not covered, except
  - *Working foremen are generally covered (i.e. non-exempt)*
  - *Paid only for time spent working in trade and not for supervisory time*

# Wage Decisions

- Must be posted in a prominent and accessible place
  - usually with posters and notices
- Workers must be paid the wages of the classification in which they work
- The Wage Decision in effect when a contract is awarded stays with it for life.

# The Copeland “Anti-Kickback” Act

- ▶ Illegal to induce any person to “give up any part of the compensation to which he is entitled”
- ▶ This is a criminal statute, with fines and imprisonment up to 5 years.
- ▶ As a result, we must look at any unexplained deduction from a federal-assisted project paycheck.





# Fringe Benefits

- ▶ Under DBA, FB's are a component "prevailing wage"
- ▶ The Wage Determination (WD) obligation may be satisfied by:
  - Paying the BHR and FB in cash
  - Contributing payments to a bona fide plan
  - Any combination of the two





# Payment of Fringe Benefits

- Cash payments in lieu of fringe benefits (FBs) must be paid on regular pay date (29 C.F.R. § 4.165(a))
- Payments into *bona fide* FB plans must be made no less often than quarterly (29 C.F.R. § 4.175(d))
- FB costs may not be credited toward wage requirements (29 C.F.R. § 4.167)



# Scenario #1 – Payment of Fringes:

If the DB wage decision requires a wage of \$20.00/hour and fringe rate of \$5.00/hour, which of the following can the contractor pay:

- \$25.00 in cash wages; or
- \$20.00 in cash plus \$5.00 in an approved plan; or
- \$19.00 in cash plus \$6.00 in an approved plan

# Examples of Fringe Benefits

- ▶ Life Insurance
- ▶ Health Insurance
- ▶ Pension
- ▶ Vacation
- ▶ Holiday
- ▶ Sick leave



# Funded Fringe Benefit Plans

- ▶ Contractors may take credit (without prior approval from DOL) for bona fide FB fund contributions made to third-party trustees or insurers that:
  - Are *irrevocably* paid; and,
  - Are made regularly, not less often than *quarterly*
- ▶ Credit is for payments made for individual workers eligible to participate in the plan, program, or fund



# What Makes a Fringe Benefit Plan “Bona Fide”?

- ▶ Specified in writing and communicated to covered employees in writing
- ▶ Irrevocable contributions
- ▶ Group benefit plan
- ▶ Contributions made to a third party or trust
- ▶ Convey a benefit to the person actually performing the work
- ▶ Accounted for on an hourly basis (weekly payroll reporting form WH347)



# Amount Employer May Claim As A Fringe Benefit

ECRM, Sec.5, p.27

- ▶ Applies to benefits of a continuous nature (*e.g.*, health insurance, pension plans)
- ▶ Determine hourly rate of contribution that is creditable towards contractor's Davis-Bacon prevailing wage obligation by:
  - Dividing the total annual contributions by the total annual hours worked (both Davis-Bacon and non-Davis-Bacon work); and
  - Allocating fringe benefit credits so that Davis-Bacon work is not used to fund benefits on private (non-Davis-Bacon) work



# Pickup Driver vs. Single Axle Truck Driver

Old Rule – In the past, whether a  $\frac{1}{2}$  ton,  $\frac{3}{4}$  ton or 1 ton truck was a pickup (Group 1 Laborer) or a single axle truck (Truck Driver, Single Axle) was determined by what type of equipment was in the truck.

New Rule: Depends on Gross Vehicle Weight rating.



# New Rule – Trucks / Pickups

- ▶  $\leq 26,000$  pounds GVW rating is a Pickup Truck. The driver will be paid as a Group 1 Laborer.
- ▶  $> 26,000$  pounds GVW rating is a Single Axle Truck. The driver will be paid as a Truck Driver, Single Axle, or above.



# Determining Gross Vehicle Weight Rating

In determining GVWR, do not consider the vehicle's actual weight, but rather the total hauling capacity.

GVWR is assigned by the vehicle manufacturer and represents the maximum weight of the vehicle and what it can carry when fully loaded.

Label is commonly found on the truck door jamb or on the inside of the door.

If towing a trailer, find GVWR label and add to GVWR of the truck towing the trailer.



# Scenario # 2 – GVWR

- ▶ You see a 1 ton truck on the site – you check and the truck weighs 5,000 pounds empty and has a hauling capacity of 5,000 pounds. What is the GVW rating?
- ▶ The truck is hauling a trailer with a capacity of 15,000 pounds and a weight of 1,500 pounds. What is the combined GVW rating of both?

# Worker Classification

- ▶ Rule, at this time, remains that an employee who moves between classifications must be paid for time in each job classification.
- ▶ The employee must be paid and listed on Certified Payroll for the piece of equipment her or she is actually operating.
- ▶ It is acceptable, however, to pay a worker at the highest rate across the board. (i.e. they work as both a Group 3, 4 and 5 operator at times, but are always paid at Group 3).



# Scenario #3

- ▶ You are a Project Engineer on a federally-assisted highway project. An employee identified by the contractor as an Equipment Operator comes to you and complains that he is not being paid properly on the job. He maintains that the prime contractor is altering his timesheets, both taking time off each week, and downgrading his Group # for certain hours each week. What do you do with this information?



# Scenario #3 – Answer

- ▶ A. You ask for copies of the employee's timesheets and begin monitoring the employees activities.
- ▶ B. You approach the project superintendent and inquire as to whether he knows anything about the allegations.
- ▶ C. You tell the employee that he has the option of filing a Davis–Bacon Wage Complaint and refer him to the online form.
- ▶ D. You note the issue in the project diary and contact your ADE.

# Davis-Bacon Wage Complaint Form:

❖ All written DB complaints should use this form.

❖ Page 2 is only for Truckers, hauling to/from the site

DAVIS BACON WAGE COMPLAINT			
North Dakota Department of Transportation, Civil Rights Division SFN ????? (12-2013)			
<b>Contact Information</b>			
Name			
Address		City	State Zip Code
E-mail Address (Optional)	Home Telephone Number	Cell Phone Number	
<b>Project Information</b>			
Project Number (if available)	PCN	Prime Contractor	
Project Location (Highway or Street)		City	State Zip Code
<b>Employer Information</b>			
Name			
Address		City	State Zip Code
Are you still employed by this employer? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, last date worked	
Was your termination <input type="checkbox"/> Voluntary <input type="checkbox"/> Involuntary			
<b>Wage/Work Performed</b>			
Position/Job Classification			
List work Performed			
Tools/Equipment Used or Operated			
Date Worked on Project		Hourly Rate of Pay	
From	To	REG	OT
Note: It is important that you provide records of hours worked, through a time sheet, pay stub, etc.			
<b>Complaint</b>			
Nature of Complaint <input type="checkbox"/> Wage Rate <input type="checkbox"/> Overtime <input type="checkbox"/> Fringes <input type="checkbox"/> Unpaid Hours			
Please Describe Complaint (Add sheets, if necessary)			



# New Davis–Bacon Wage Complaint Form (cont.):

ECRM  
Sec. 5 p. 66

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Employee must fill out the form completely,  
print it out and sign it

---

CRD will accept a faxed or emailed copy of  
the signed form

---

The employee filing a complaint must provide  
proof of complaint through documentation or  
witnesses



# Wage Conformance

- Classification (work) not on wage decision
- Conformance issues by project
- Classification is utilized in the area by the construction industry
- Bear a reasonable relationship to the wage rates contained on the wage decision
- Approved by NDDOT and submitted
- Final approval by U.S.DOL



# Scenario # 4

- ▶ You notice that an employee you know is classified as a Laborer 2 is operating skidsteer intermittently throughout the day. How should he be classified and paid?
- ▶ The contractor says he was unaware that the skidsteer classification was added to the Wage Decision and he has always paid his workers who operate the skidsteer as laborers. What do you do?

# Labor Interviews

- ▶ Interview workers who might be vulnerable to demands for kickbacks – new employees, those who speak little English, etc.
- ▶ Interview workers alone – never together
- ▶ Never use one worker or foreman to translate for another – we have an interpreter's service.
- ▶ Try to do prime's labor interviews early, when there is time to fix issue.
- ▶ Do subcontractor interviews as possible.



# Scenario #5

- ▶ You are doing labor interviews on a federal-aid highway job. You have interviewed 3 workers of a lower-tier subcontractor, who are all telling you they earn less than DBRA wages for their classification.
- ▶ One of the workers pulls out a paystub, which you ask to take a copy of. When you review certified payroll, there is no question that the Payroll and check stub do not match up. What do you do?



# Scenario #5

- a. You call the subcontractor in order to gather a little more information before making a serious accusation.
  
- b. You call the prime contractor and ask the prime to gather more information before bringing the issue up to your ADE.
  
- c. You take the issue to the ADE even if you are not sure a violation has occurred.

# Red Flags for Falsification

- ▶ If pay stubs don't match up with pay check, you have a serious issue
- ▶ Other red flags – employees who report not receiving paychecks, illegal deductions, evidence of multiple checks being cut.





# Scenario #6

- ▶ After talking to the Prime, you get a call from a VP of the subcontractor, who begins yelling at you. The subcontractor admits to filing false payroll and doing the same thing on non-NDDOT federal work. Your first instinct is to calm the very upset owner. What do you do?



# Scenario #6 – Answers

- a. Get more information on the filing of false payroll and document the conversation very well for the ADE.
  
- b. Apologize that you will need to hang up and do so.
  
- c. Ask the ADE or another project engineer to be a witness and put the call on speaker.

# Scenario #6 – Do You Report?

- a. Since the VP admitted to falsifying payroll only on non-NDDOT projects, you exceed your job duties if you investigate it. You keep what was said to yourself.
- b. You call the fraud hotline for the IG or AG office. You have a duty to disclose, but this way, you can remain anonymous.
- c. You disclose what happened to your ADE.





# Suppliers and Leasing Companies

- ▶ **Material suppliers** are not subject to Davis–Bacon except that drivers may become so if they spent **more than a de minimis** time on site.
- ▶ **Equipment Lease companies** are different – they might be subject to DBRA if time on site is **more than incidental**.



# Suppliers and Leasing Companies

- ▶ The following scenario comes from a concern of Rob Rayhorn:
- ▶ An equipment company has been asked to provide a large crane on a federally-assisted job site for 2–3 hours on one day. The company provides a worker to operate the crane as well as the crane itself. Does this company need to provide Davis–Bacon Certified Payrolls this work?



# QUESTIONS AND ANSWERS



The background is a photograph of a modern, multi-story building with a light-colored facade and dark vertical accents. An American flag and a blue flag are visible on the left. Green trees and bushes with pink flowers are in the foreground. Large white text is overlaid on the image.

# THANK YOU FOR PARTICIPATING IN THE 2015 EXTERNAL CIVIL RIGHTS TRAINING

Please send your questions/comments to:  
[civilrights@nd.gov](mailto:civilrights@nd.gov) or call 701-328-2637