

Native American Hiring Provision Implementation Guide

for Contractors



Wisconsin Department of Transportation
Tribal Affairs

Introduction

This guide is intended for the use of contractors working on a WisDOT project that includes the Native American Hiring Provision. From project bidding through construction closeout, this guide will aid contractors in facilitating the successful implementation of the Native American Hiring Provision.

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Special thanks to Tribal Labor Advisory Committee (TLAC) for their work on developing the Native American Hiring Provision and to WisDOT Labor Compliance for their assistance in developing this guide.

About WisDOT Tribal Affairs

The WisDOT Tribal Affairs initiative works exclusively on tribal relations and all transportation related issues affecting tribal communities.

The United States government has a unique legal relationship with federally recognized Tribal Governments as set forth in the Constitution, treaties, statutes and court decisions. WisDOT has a responsibility and is committed to this unique government-to-government relationship that respects tribal sovereignty and self-determination.

Terminology in this guide

Tribes in Wisconsin have a variety of organizational structures. In this guide, the phrase *Tribal Leadership* is used to refer to Tribal Council or Legislature. Tribal staff involved with the NAHP may include Economic Development, Environmental/Natural Resources, Roads Department, Human Resources, Labor, or Community/Workforce Development depending on the size and structure of the tribal government.

Task Forces and Committees

Inter-Tribal Task Force (ITTF)

ITTF consists of representatives designated by tribal leaders and WisDOT staff to forge and enhance government-to-government relationships between the 11 Tribes and the state and federal transportation agencies.
wisdottribaltaskforce.org

Tribal Labor Advisory Committee (TLAC)

TLAC develops strategies to enhance Native American Labor opportunities on state and federal projects.

Tribal Historic Preservation Office (THPO)

THPO works to strengthen tribal participation in WisDOT programming and projects with a focus on historic preservation and environmental issues.

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The Native American Hiring Provision

The Native American Hiring Provision (NAHP) is a Standardized Special Provision (STSP) that requires contractors provide information about hiring and employment opportunities for members of a Federally Recognized Tribe in Wisconsin. The provision includes directions and project specific requirements that are not otherwise stated explicitly in the department's current Standard Specifications for Highway and Structure Construction. The provision covers Native American Labor, not businesses.

The purpose of the Native American Hiring Provision is to outline the requirements and procedures necessary to promote and encourage Native American employment opportunities on WisDOT construction projects located on, partially on and adjacent to a reservation or land that maintains a reservation status. The provision also applies on projects that are off reservations if there is a tribally owned parcel held in trust directly adjacent to the right of way of the corridor of that project. It is applied to both state and federal funded projects.

The provision was officially adopted in March 2013. It was developed with direct consultation among WisDOT and the eleven Federally Recognized Tribes of Wisconsin and was refined through coordination with industry representatives. The provision was established to promote the goals of native labor creation identified within Tribal Employment Rights Ordinances within the statutory authorities allowed to WisDOT. While the provision is a tool designed to enhance labor opportunities, WisDOT - Tribal Labor Advisory Committee (TLAC) and Statewide Native American labor initiatives have established other tools and resources designed to promote labor enhancements that extend beyond project-by-project hiring. For example, **TrANS (Transportation Alliance for New Solutions)** – a program that helps to fulfill entry-level laborer positions for construction contractors. It is a collaborative effort combining the strengths of industry and labor, community-based organizations, government and the contractors of Wisconsin.

The provision is designed to stimulate early and meaningful dialog between contractors doing business in tribal communities and tribal workforce development programs. It encourages Native American hiring opportunities through enhanced communications and reporting mechanisms.

- TrANS is a comprehensive six-week (180-hr) industry awareness course for entry-level road construction jobs for adults. It provides no-cost training including CDL exam prep and apprenticeship exam prep.
- Contractors are eligible for wage subsidies in the form of a reimbursement for anyone put on a project with ASP1 or ASP1-T provisions.
- Visit wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/trans.aspx for more information.

FAQ on the Native American Hiring Provision

What is the Native American Hiring Provision?

NAHP is a part of the project contract. It requires that the prime contractor and all sub-contractors on the construction project provide information about hiring and employment opportunities to the tribe identified in the provision. The provision covers Native American Labor, not businesses, but outreach to tribes may include inquiries about Native American owned DBE businesses. Doing so will help to fulfill the project's DBE percentage requirements.

Is it like Tribal Preference?

No, the NAHP process differs. Tribal preference derives from a provision in the Indian Civil Rights Act (1968), which allows Tribes to provide preference in employment.

I've heard of Tribal Employment Rights Ordinance (TERO), is this also NAHP?

Unlike NAHP, TERO is an ordinance that Tribes may enact through their own governmental power, to give Tribal members "Indian preference", which gives Native Americans first consideration when applying for employment on or near reservations. The NAHP hiring provision is in lieu of TERO.

How is NAHP different from TERO?

NAHP is an initiative of WisDOT. TERO is a tribe-specific ordinance enacted by Tribes to offer preferential hiring on reservations by tribally owned businesses. Individual tribes may choose to enact their own TERO ordinances, although many tribes do not have TERO laws in force. The Native American Hiring Provision is enforced on tribal land by WisDOT contract specifications.

Who should you contact if issues with the NAHP arise?

If an issue arises, the contractor should contact the Regional Tribal Liaison. The Liaison will coordinate the appropriate staff to discuss and resolve the issue.

Bidding on a NAHP Project

Per the NAHP, all bidding prime contractors are *required* to contact the tribe to provide information on hiring procedures and future employment opportunities and gather information on the tribal work force.

Projects that require the NAHP are identified during the design process. WisDOT works with the Tribes involved in those projects to explain expectations and define responsibilities associated with the provision to be prepared for the bid phase of the project. During the bid phase, prospective prime contractors are required to contact the tribe to share their hiring procedure, links to company websites, and future employment opportunities. The tribe's labor contact, identified in the provision, will note which contractors contacted them and take down any pertinent employment information to share with community members who are interested. Although it isn't required by the provision, this stage is an ideal time for the prime contractor to ask about any Native American owned DBEs. This will help to fulfill DBE percentage requirements. Contractors should reach out to WisDOT Bureau of Project Development with any general questions.

Requirements for inclusion on the eligible bidders list

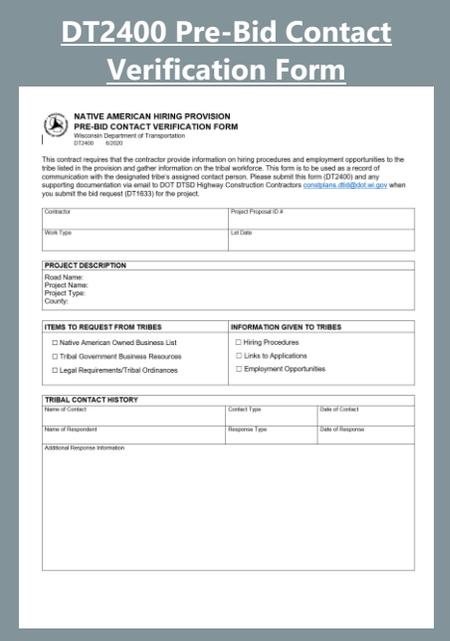
Prospective contractors must submit documentation confirming this communication with the Proposal Request Form to the Bureau of Project Development: DOTDTSDDHighwayConstructionContractors@dot.wi.gov.

What should documentation include?

The provision includes a form to document all communication efforts with the Tribe's designated contact: [DT2400 Pre-Bid Contact Verification Form](#). Details include project description, a list of items to coordinate with the tribe on, and a record of all communication with the tribe.

Who should be involved?

- Contractors bidding on the project
- Designated contact from tribal staff as listed in the NAHP¹
- Bureau of Project Development



The image shows a screenshot of the DT2400 Pre-Bid Contact Verification Form. The form is titled "DT2400 Pre-Bid Contact Verification Form" and is part of the "NATIVE AMERICAN HIRING PROVISION PRE-BID CONTACT VERIFICATION FORM" from the Wisconsin Department of Transportation. It includes a section for "PROJECT DESCRIPTION" with fields for Road Name, Project Name, Project Type, and County. There are two columns of checkboxes: "ITEMS TO REQUEST FROM TRIBES" (Native American Owned Business List, Tribal Government Business Resources, Legal Requirements/Tribal Ordinances) and "INFORMATION GIVEN TO TRIBES" (Hiring Procedures, Links to Applications, Employment Opportunities). A "TRIBAL CONTACT HISTORY" table is also present, with columns for Name of Contact, Contact Type, Date of Contact, Name of Respondent, Response Type, and Date of Response. An "Additional Response Information" section is at the bottom.

¹ The Special Provision will include appropriate contact information for the tribe. The WisDOT Regional Tribal Liaison will confirm the tribal contact and update the project team if necessary.

Optional Tribal Outreach Meeting

The Tribal Outreach Meeting is an optional meeting that is entirely coordinated by the tribe. WisDOT encourages tribes to reach out to the construction industry to promote available tribal resources such as labor, materials, Native American owned DBEs, equipment, waste sites, etc. However, this is considered part of the contractor bidding process and WisDOT personnel is not able to participate in these interactions. The target timeline for this meeting is at least 5 business days before bids are due, as set by the tribe.

Who is involved?

- Tribe (lead) and any staff they deem pertinent such as Labor Development, Roads Manager, THPOs and Environmental staff
- All eligible bidders, prime contractors and sub-contractors

If a tribe chooses not to hold this meeting, pre-bid contact requirements can be met by requiring eligible bidders to send employment opportunity information via mail or email to the specified tribal contact. All pre-bid contact used to fulfill bid request requirements must be documented and verifiable. If a tribe decides to hold this meeting, prime and sub-contractors are encouraged to attend.

The tribes are encouraged to utilize information that is publicly available on the [Highway Construction Contract \(HCCI\)](#).² Each bid letting has a specific page that contains information about the proposals being let. Access bid letting pages on the WisDOT webpage through the [Construction Bid Letting - General Process Overview](#).³

- **Plans and Proposals** – all projects are posted on the WisDOT website at the time of advertisement, approximately 5 weeks prior to the bid letting, have a link to the plans and proposals for that letting.
- **Approved Eligible Bidders** – a list of approved eligible bidders is available on the bid letting page for each letting in the Reports section. The list provides the company name, an email address and a phone number.
- **Plan Holders** – a list of approved eligible bidders is available on the bid letting page for each letting in the Reports section. The list provides the company name, an email address and a phone number.

² <https://wisconsin.gov/Pages/doing-business/contractors/hcci/default.aspx>

³ <https://wisconsin.gov/Pages/doing-business/contractors/hcci/bid-let.aspx>

Responsibilities After Award

After award, the prime contractor continues coordination with the tribe. The prime should be accessible and responsive to the tribal staff. The prime is responsible for organizing the Tribal Coordination meeting, discussed in more detail below.

What role does WisDOT play?

WisDOT staff will support and monitor communication between the contractor and the tribe. The project team and the [Tribal Affairs team](#) will ensure the prime has the correct contact information for tribal labor representative(s). Project staff and the Regional Tribal Liaison should be included on all project communication.

What is the Tribe's responsibility?

The Tribe's responsibility is to be responsive to the contractor during the pre-bid process, and once the contract has been awarded. The tribe will be invited to the Tribal Coordination Meeting, provide the list of who from the tribe should be invited, and should invite community members interested in construction employment.

Tribal Coordination Meeting

Attendance to the Tribal Coordination meetings are required for all project contractors by the provision. The meeting is an opportunity for the tribal labor development staff to bring anyone interested in applying for work with the bid winning contractors to learn more about the project and employment opportunities. When the meeting is done there should be an opportunity for speed interviews.

Who is the meeting organizer?

Meetings are organized by the prime contractor, who must work with the identified tribe for a mutually acceptable time and location for the prime's project managing team, sub-contractors, WisDOT and tribal staff to discuss project details and coordination expectations. Responsibilities include: sending meeting invitations, tracking attendance, recording and following up with notes/questions. This meeting is typically held at a tribal office or facility.

When should the meeting occur?

The Tribal Coordination Meeting must occur prior to the pre-construction meeting but not on the same day.

Who is responsible for attendance of sub-contractors?

The prime contractor ensures that all sub-contractors working on the project are represented at the Tribal Coordination Meeting.

Who pays for the Tribal Coordination Meeting?

The prime contractor bears the cost of the meeting.

Meeting Agenda

The meeting agenda should include the following items:

- Project overview
- Constructing schedule, staging, detours or traffic disruptions
- Details on hiring opportunity
- Reporting requirements
- Borrow pits and waste site locations
- Communication preferences and, if any, construction meeting schedules
- Any relevant tribal laws, permits, procedures and programs that will affect the project
- Additional coordination needs or expectations from either party

See [Appendix D](#) for a sample meeting agenda.

Meeting Attendees

- Prime contractor
- All sub-contractors

TRIBAL ATTENDEES

- Tribal Leadership (optional)
- Tribe's ITTF Representative
- Tribal office representatives from:
 - Transportation/Roads
 - Tribal Human resources
 - Workforce development
 - Historic preservation
 - Environmental/Natural Resources
 - TrANS graduates and any other work applicants

WisDOT ATTENDEES

- Project leadership and key staff
- [Regional Contract Compliance Specialist](#)
- [Regional Tribal Liaison](#)
- [State Tribal Affairs Program Managers](#)

Note: The same tribal staff that attends this meeting should be invited to the pre-construction meeting

Pre-Construction Meeting

A pre-construction meeting is held of every project regardless of the NAHP. The pre-con meeting will discuss project schedule, contacts, construction safety, access during construction, traffic impacts, and phasing/staging. Regional Contract Compliance Specialists will cover state and federal contract requirements such as DBE, FHWA 1273, ASPs, payroll reporting, and more.

Tribal staff who attended the coordination meeting should be invited and are *optional* attendees. The tribe should notify the contractor if there are additional staff or businesses who are interested in attending.

Responsibilities on Active Projects

Communication

Prime contractors should respond to tribal leadership if they have project-specific questions. Otherwise, contractors can work through the project engineer and Region Tribal Liaison to address the communication needs they cannot take care of themselves.

As with any project, prime contractors may hold construction update meetings, but they are not required as part of the provision. The tribe may request construction update meetings throughout the project. Contractors should do their best to comply with the tribe’s request to meet or agree on another suitable way to communicate project progress and updates.

Reporting

The prime contractor is responsible for labor data and documentation as part of the contract provision. Payment may be withheld if compliance is not completed in a timely manner. Reporting for a NAHP project includes communication between the tribal labor office and the contractors and all hiring activity (referrals, hires, hours those hires work, and terminations or transfers) for the project. The [DT2405 Native American Hiring Provision Report](#) form is to be used and submitted to WisDOT and the tribe on the **15th of every month** while the project is being constructed.

For all reporting, use [DT2405 Native American Hiring Provision Report](#).

WisDOT NATIVE AMERICAN HIRING PROVISION REPORT – DT2405
Wisconsin Department of Transportation
Updated 1/2022

Prime Contractor Company: Company Representative's Name/Title: Tribal Workforce Development Contact: Name: Email Address:	Project ID(s): Reporting Period: _____ to _____ Report Type: Monthly <input type="checkbox"/> Due on the 15 th of each month during construction Final <input type="checkbox"/> Include project totals for all hires and submit on the 15 th of the month following all contract work completed
*The prime contractor is responsible to collect, document and submit information under the Native American Hiring Provision. Use this template to fulfill that requirement for project hires including those from all subcontractors working during this reporting period, if there have been no Native Americans hired during this timeframe, please note the reason below.	
*Reason for no Native American hires: (Use letter associated with reason in column below) A. No job openings B. No qualified applicants C. No applicants D. Other	

Individual's Name	Contractor/Subcontractor	Reason for no hires (see above)	Current Status: i.e. - Referral Only/Not Hire/applied/Laid-off/on different project	If hired, please complete: Trade Classification	Date of Hire	# Hours	OPTIONAL: Tribal Affiliation

Comments:	Prime Contractor: The undersigned contractor hereby certifies that the listed information is true and correct as required by the WisDOT Special Provision 107-200 for Native American Employment for the prime contractor and all subcontractors. Contractor Signature/Title: _____
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FAQs on Reporting

Who is responsible for sub-contractor reporting?

The prime contractor. Sub's should give any hiring information to the prime to be included on the main report. There is a line to identify which contractor did the hire.

As a Prime, can I legally ask sub's for employee reporting information?

Yes, the prime can legally ask for employee reporting information for the project they have been awarded.

What is my recourse for unresponsive or non-compliant sub-contractors?

NAHP is a provision in a legally binding contract, so it is subject to enforcement rules like any other portion of the contract specifics if the prime finds the sub in breach of contract.

Who receives these reports?

Tribal labor contact, WisDOT/Consultant project engineer, [WisDOT Regional Tribal Liaison](#), and [WisDOT Regional Contract Compliance Specialist](#). In addition to providing the required data to the tribe, documentation of communication with subs related to the provision should be sent to the WisDOT/Consultant project engineer, WisDOT Region Tribal Liaison, and WisDOT Regional Contract Compliance Specialist.

Final Reporting and Documentation

Upon completion of the project, the prime should submit to the tribe, the project leader, the Region Tribal Liaison, the Regional Contract Compliance Specialist, and the State Tribal Affairs Managers documentation summarizing all the communications held regarding job opportunities that occurred throughout the life of the project.

A final report of all hiring activities for the prime and all sub-contractors must be completed using **DT2405 Native American Hiring Provision Report** (Appendix E). Ensure 'Final' is checked in the Report section. Documentation of communications and the final hiring activity for the project must be submitted accordingly before the final estimate is paid.

In addition, the prime must also provide a final report of all hiring activities for the prime and all sub-contractors. The final report is forwarded to the tribe, the project leader, Region Tribal Liaison, the Regional Contract Compliance Specialist, and the State Tribal Affairs Managers.

Post-NAHP Evaluation

WisDOT considers any hires a success, however, the goal of the provision is to establish and increase communication with contractors and Tribes for future employment opportunities. The hope is the ultimately provide a career for whoever was hired through NAHP.

FAQs on Performance Measures

What performance measures are used?

Performance measures include head count, hours, and retainment.

Can poor performance affect my company negatively?

Possibly, although WisDOT will consider the entire process, including the efforts made by the contractor to fulfill the provision obligations as well as what efforts the tribe made to respond to the contractor's outreach and efforts.

Contact Information

For additional questions about the Native American Hiring Provision, or for assistance coordinating with a tribe, work with your Regional Tribal Liaison or the Statewide Tribal Affairs Managers at the contact information below:



Sandy Stankevich, Tribal Affairs Program Manager
stankevich@dot.wi.gov
(715) 365-5784



Cyless Peterson, Tribal Affairs Project Manager
cyless.peterson@dot.wi.gov
(608) 261-0131

WisDOT Tribal Affairs Management
4822 Madison Yards Way, 4th Floor South
Madison, WI 53705

Regional Tribal Liaisons:

www.wisconsin.gov/Pages/doing-bus/civil-rights/tribalaffairs/contacts.aspx

Regional Contract Compliance Contacts:

<https://wisconsin.gov/Pages/doing-bus/civil-rights/labornwage/contacts.aspx>

Appendices

Appendix A – Pre-Advertising Meeting

9650-17-71 - STH 47 Roundabout Project Meeting Agenda

Pre-advertising meeting – 9650-17-71 STH 47 Roundabout Project
1:30 pm 1/18/2018
Keshena, WI
Community Development Building

AGENDA:

- Introductions
- Project scope brief review of plan
- Timeline expectations, explain phases
- Review Native American Hiring Provision (NAHP)
- Bidding/Advertising procedures
- Outreach expectations
- Expectations for tribal coordination meeting, who does what
- THPO and environmental questions or concerns
- Any other tribal project coordination needs or requirements

Appendix B - Native American Hiring Provision Pre-Bid Contact Verification Form

This form is used to record communication between the designated tribe's assigned contact person and the contractor.



NATIVE AMERICAN HIRING PROVISION PRE-BID CONTACT VERIFICATION FORM

Wisconsin Department of Transportation
DT2400 6/2020

This contract requires that the contractor provide information on hiring procedures and employment opportunities to the tribe listed in the provision and gather information on the tribal workforce. This form is to be used as a record of communication with the designated tribe's assigned contact person. Please submit this form (DT2400) and any supporting documentation via email to DOT DTSD Highway Construction Contractors constplans.dtid@dot.wi.gov when you submit the bid request (DT1633) for the project.

Contractor	Project Proposal ID #
Work Type	Let Date

PROJECT DESCRIPTION
Road Name: Project Name: Project Type: County:

ITEMS TO REQUEST FROM TRIBES	INFORMATION GIVEN TO TRIBES
<input type="checkbox"/> Native American Owned Business List <input type="checkbox"/> Tribal Government Business Resources <input type="checkbox"/> Legal Requirements/Tribal Ordinances	<input type="checkbox"/> Hiring Procedures <input type="checkbox"/> Links to Applications <input type="checkbox"/> Employment Opportunities

TRIBAL CONTACT HISTORY		
Name of Contact	Contact Type	Date of Contact
Name of Respondent	Response Type	Date of Response
Additional Response Information		

Appendix C – Tribal Outreach Meeting (Optional)

Blank Agenda for a Tribal Outreach Meeting. The tribe is responsible for setting the agenda.

Tribe
Project Name / ID

Tribal Outreach Meeting
Date & Time
Location / Address

1. **Introductions**
2. **Project Overview**
3. **Other Upcoming Tribal Road Construction Projects**
Tribal Roads Manager
4. **Review of any relevant Tribal laws or preferences**
Tribal land management, labor, planning, roads, or other staff
5. **Tribal Cultural / Environmental Programs**
THPO and Environmental staff
6. **Questions**
7. **Meet and Greet**

Appendix D – Tribal Coordination Meeting

9231-08-70 – STH 47 – Tribal Coordination Meeting Agenda



P.O. Box 98 Mosinee, WI 54455-0098 Phone: 715-693-5200
Fax: 715-693-5220

TRIBAL COORDINATION MEETING AGENDA THURSDAY, AUGUST 3, 2017 9:00 AM

Location: Lac du Flambeau Education Department
562 Peacepipe Road
Lac du Flambeau, WI 54538

Project: 9231-08-70 / WISC 2016 350
STH 47
Woodruff – Manitowish - Lower Sugar Bush Lane – USH 51
Iron County

TOPICS OF DISCUSSION

Native American Hiring Provision Overview / Background	Kelly Jackson
Presentation of Project and Timelines	Prime & Subcontractors
Presentation / Discussion	DOT Project Team
Available Employment Opportunities	Prime & Subcontractor
Employee Network Working	Kelly Jackson / Brooks BigJohn
Other Tribal Departments and Areas of Opportunity	Brooks BigJohn and Tribal Representatives
<ul style="list-style-type: none">• Tribal Business / Roads• Tribal Historic Preservation / Environmental Department• Land Management• Planning• Leadership• Education• Water and Sewer• Safety / Inspection	

EEO/AA Employer

Appendix E – Pre-Construction Meeting

9231-07-70 - STH 47/55 Roundabout Pre-Con Meeting Agenda



"GRADING YOUR FUTURE WITH INTEGRITY"

605 Grossman Drive • Schofield, WI 54476 • TEL 715.359.4042 • FAX 715.359.4142 • www.integrityge.com

Meeting Agenda – TENTATIVE
Pre Construction / Pre Hire Meeting
Monday July 1, 2013 1pm
Tribal Council Room

William Wildcat Tribal Community Center

Come to know who is working on the project
Hwy 47 Vilas County, 9231-07-70

Introduction of attendees, and Sign In

Meet and Greet with Tribal Community Members and Sub Contractors

Overview – of the project

- WI DOT Project Manager - Jim Volkman
- Prime Contractor - Integrity Grading and Excavating, Inc. - Dan Weinkauf

Preconstruction meeting – Slated for tentative 07/08/13

Schedule -

Time line – Start _____ End _____

Expected Road Closure Dates _____

ECIP Plan

ECIP – was submitted on 06/21/2013 /

2 week leadtime – should hear back by 07/05/2013

- Sub Contractors –

Fencing Plus, Inc.	-Erosion Control	Maines & Associates	-Staking
Century Fence	-Pavement Markings	Pieper Electric Inc.	-Electric
ASTI Sawing	-Saw Cutting	Northeast Asphalt	-Asphalt
Rent-A-Flash	-Traffic Control	Chippewa Concrete	-Concrete

Presentation by Lac du Flambeau Tribal Member(s)

- Government Programs:
 - TERO - Hiring
 - Education
 - THPO - Tribal Historic Preservation Office ldfthpo@nnext.net (715) 588-2139
Sensitive work areas notify the engineer and (THPO)
 - Environmental
 - Planning
 - Roads
 - Water & Sewer
 - Land Management
- Other Upcoming Tribal projects that may require construction assistance

Speed Networking –Integrity Grading and Excavating, Inc.- Ruth Geier (Facilitator) (5 Minute Intervals)



Site Development • Roadways • Environmental Clean-up • Excavation • Snow Removal



AN EQUAL
OPPORTUNITY
EMPLOYER

Appendix F - Native American Hiring Provision Report

This form is used by the contractor to report on Native American hiring activity.

