



1200 New Jersey Avenue SE
Washington DC 20590

U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

PIPELINE SAFETY
2018 One Call Application

for

NORTH DAKOTA PUBLIC SERVICE COMMISSION

Please follow the directions listed below:

1. Review the entire document for completeness.
2. Review and have an authorized signatory sign the main application page, page 3.
3. Scan the signed document to your computer and email to Carrie.Winslow@dot.gov.

FedSTAR Information

Electronic Submission Date: 7/11/2018 10:01:16 AM

DEPARTMENT OF TRANSPORTATION

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
2018 One Call Grant Applicant Eligibility

Changes to Section 6103 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2006, *effective 01/03/2014*, will affect States eligibility in applying for the One Call Grant. The State agency submitting the application is required to answer the following questions and provide data to clearly demonstrate compliance with these requirements. Failure to provide the requested information may void the application.

a) Does the State one-call notification program allow all underground facility operators, including all government operators, to participate as appropriate*? (list any pipeline exemptions) Yes

b) Does the State one-call notification program allow all excavators, including all government and contract excavators, to participate as appropriate*? Yes

c) Does the State one-call notification program provide for flexible and effective enforcement under State law? (Please provide citation to the state statute for enforcement and identify the enforcement authority.) Yes

North Dakota Century Code section 49-07-01.1

d) Does the State one-call notification program require that the one-call notification system requirements of the program are applicable without exemptions to municipalities, State agencies, or their contractors? (If you are currently determined to be ineligible by PHMSA based on this requirement, you do not qualify for this grant!) Yes

e) Does the State one-call notification program provide for consideration of the gravity of the offense and risk to the public in determining appropriate enforcement? Yes

f) Does the State one-call notification program provide for no cost underground facilities locate requests, excluding design, for all individuals planning excavation activities? Yes

Excavators are charged \$1.10 per locate request. Utilities are charged \$1.10 per locate request for their underground facilities.

g) Does the State one-call notification program provide for voluntary participation of underground facilities owners or an activity of a type of excavator which have been determined by the State to be de minimis risk to public safety? Yes

Items that pose a de minimis risk to the public or environment are listed under North Dakota Century Code section 49-23-01 paragraph 7.

h) To the extent the State has determined it to be appropriate and necessary; has the State provided for administrative or civil penalties commensurate with the seriousness of a violation of the State one-call notification program by an excavator or facility owner? Yes



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DEPARTMENT OF TRANSPORTATION

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

2018 One Call Application

Office: NORTH DAKOTA PUBLIC SERVICE COMMISSION



Priority	Project Title	Request
1	2018 Damage Prevention Awareness Billboard Advertising 1.2 Compliance Enforcement - Cost of enforcement and/or complaint investigations	\$50,000.00
3	2018 Damage Prevention Awareness Billboard Advertising 3.6 Development and/or conduct of damage prevention awareness campaigns - Advertisements	\$10,000.00
Project Totals		\$60,000.00

Patrick Jahn
 Authorized Signature

July 11, 2018
 Date

DIRECTOR - PUBLIC UTILITIES DIVISION
 Title



1.2 Compliance Enforcement - Cost of enforcement and/or complaint investigations

Has this activity been performed previously? If yes, what were the results? Provide sufficient details about the effectiveness of this project in order to support the approval of this project for another year.

Yes. 2017 One-Call Grant Priority 1 funds are being used to reimburse the State for expenses incurred in the enforcement of North Dakota Century Code Chapter 49-23: "One-Call Excavation Notice System" law. In calendar year 2017 to date, the Commission has received 6 complaints alleging violation of the One-Call law resulting in investigation and enforcement. Of the 6 complaints, 3 has been investigated, processed, and closed. Two of these complaints resulted in penalties assessed for a total of \$11,500. In calendar year 2017 to date, \$6,000 in penalties have been collected and deposited to the State's general fund. The Commission has worked with staff to better streamline the process to more efficiently address these complaints. This has resulted in a smoother and less time consuming effort from receipt of complaints to closure of these cases. 16 complaints filed in previous calendar years alleging violation of the One-Call law continued to be investigated and processed in calendar year 2017 and were closed in calendar year 2017. Two of these complaints resulted in penalties assessed for a total of \$36,500. Of that amount, \$31,500 in penalties have been collected and deposited to the State's general fund.

What do you plan to do with the 2018 requested funds for this project? If you have entered costs under the "Other" budget category, you must explain those costs here.

2018 One-Call Grant Priority 1 funds will be used to reimburse the State for expenses incurred in the enforcement of the ND One-Call law. Allegations of One-Call law violation are treated as administrative cases and are documented. Commission employees involved in the Commission's One-Call enforcement activities will record their time to support any cost reimbursement requested under the One-Call grant. Dollar amounts have been included for only the personnel, fringe benefits and indirect costs categories since these costs alone will likely exceed the \$50,000 amount requested.

Commission employees are involved in the development and implementation of the Commission's damage prevention enforcement program, and participate in the Commission's administrative proceedings regarding such enforcement. Commission staff also participate in the North Dakota One-Call Board quarterly meetings and One-Call Stakeholder meetings to discuss improvements to One-Call law and enforcement activities.

North Dakota Century Code Chapter 49-23: One-Call Excavation Notice System law was enacted to avoid damage to and minimize interference with underground facilities including underground lines, pipelines, cables, facilities, systems, and their appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide. Under North Dakota Century Code section 49-07-01.1, the North Dakota Public Service Commission was given authority to issue a civil penalty not to exceed twenty-five thousand dollars to any person who violates the One-Call law.

Personnel costs: \$29,900, Fringe benefits: \$11,800, Indirect costs: \$8,300

Please indicate the One Call Enforcement Authority for your State and/or Agency:

North Dakota Century Code Chapter 49-23: One-Call Excavation Notice System law took effect on August 1, 1995.

North Dakota Century Code section 49-07-01.1 titled "Violation of statute, commission order, or commission rule ? Assessment of civil penalty," gives the North Dakota Public Service Commission authority to issue a civil penalty to any person who violates the One-Call law. The provision states that "A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand

dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender."

Estimated Budget for this Project:

Personnel	\$29,900.00
Fringe Benefits	\$11,800.00
Travel	\$0.00
Equipment	\$0.00
Supplies	\$0.00
Contractual	\$0.00
Other	\$0.00
Indirect	\$8,300.00
Total Requested Cost for this Activity:	\$50,000.00

Will any of the grant funds be used to pay for services and/or goods through a contract or service agreement? No

Is there Equipment and/or Items associated with this activity? No

3.6 Development and/or conduct of damage prevention awareness campaigns - Advertisements

Has this activity been performed previously? If yes, what were the results? Provide sufficient details about the effectiveness of this project in order to support the approval of this project for another year.

Yes. All previous Priority 3 grant awards have been used for damage prevention awareness including 811 awareness advertising campaigns in the State of North Dakota. Grant funds have been used to procure advertising for approximately 16 to 20 billboards per year. Billboards have been placed in or near the following cities: Beulah, Bismarck, Bowman, Carrington, Devils Lake, Dickinson, Fargo, Garrison, Glen Ullin, Grand Forks, Jamestown, Killdeer, Linton, Mandan, Minot, New Town, Rugby, Towner, Valley City, Wahpeton, Washburn, West Fargo, and Williston.

Using CY2017 Priority 3 grant funds, billboards will again be placed in or near the major markets listed above. The advertising will be placed to coincide with the next North Dakota "Safe Digging Month" campaign, which is April 2018.

The effectiveness and results are difficult to judge as we are not aware of a reliable method to quantify the impact of this specific activity. Ryan Schmaltz, representative from North Dakota One Call, has stated on numerous occasions that the billboards have indeed produced a noticeable effect. The billboards that have been placed around the state are very well done, very visual and attract attention while presenting the desired message. Ryan receives very positive feedback from individuals who have seen the billboards and taken the time to express their thoughts by sharing their opinions of the effectiveness of the signs, and also that the layout and design of the new billboards is very well done.

What do you plan to do with the 2018 requested funds for this project? If you have entered costs under the "Other" budget category, you must explain those costs here.

2018 Priority 3 Grant funds will again be used for a billboard advertising campaign throughout the state of North Dakota. Funds will be used to procure advertising on approximately 16 to 20 billboards during the North Dakota "Safe Digging Month" campaign, which will be in April 2019. Billboards will be strategically placed to attract the attention of excavators, including residents and businesses, utilities and motorists. The billboards are placed in or near the major markets, with emphasis on the areas of elevated activity in construction and traffic, to better relay this message to the general public. The billboards are designed to communicate the important message of calling 811 or contacting One-Call at NDONECALL.com prior to digging. Billboard advertising continues to be an efficient, effective, high-impact way of getting an important advertising message to the residents and businesses throughout the State of North Dakota.

Please indicate the One Call Enforcement Authority for your State and/or Agency:

North Dakota Century Code Chapter 49-23: One-Call Excavation Notice System law took effect on August 1, 1995.

North Dakota Century Code section 49-07-01.1 titled "Violation of statute, commission order, or commission rule ? Assessment of civil penalty," gives the North Dakota Public Service Commission authority to issue a civil penalty to any person who violates the One-Call law. The provision states that "A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will

take into consideration the severity of damages and the conduct of the offender."

Estimated Budget for this Project:

Personnel	\$0.00
Fringe Benefits	\$0.00
Travel	\$0.00
Equipment	\$0.00
Supplies	\$0.00
Contractual	\$10,000.00
Other	\$0.00
Indirect	\$0.00

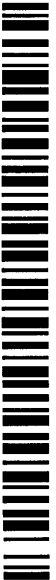
Total Requested Cost for this Activity: **\$10,000.00**

Will any of the grant funds be used to pay for services and/or goods through a contract or service agreement? Yes

Is there Equipment and/or Items associated with this activity? No

One Call Application Attachments

CY2018 Title VI_signed .pdf



The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The *North Dakota Public Service Commission* (herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the *Pipeline and Hazardous Materials Safety Administration*, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Pipeline and Hazardous Materials Safety Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above General Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted *PHMSA One Call Grant*:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the *PHMSA One Call Grant* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

"The North Dakota Public Service Commission in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that with respect to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, *North Dakota Public Service Commission* also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the *Pipeline and Hazardous Materials Safety Administration* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the *Pipeline and Hazardous Materials Safety Administration*. You must keep records, reports, and submit the material for review upon request to *Pipeline and Hazardous Materials Safety Administration*, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

North Dakota Public Service Commission gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *PHMSA One Call Grant*. This ASSURANCE is binding on *North Dakota*, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the *PHMSA One Call Grant*. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____ *North Dakota Public Service Commission* _____
 (Name of Recipient)

by *Randy Christman*
 (Signature of Authorized Official)

DATED *Sept. 19, 2017*

