

**STATE OF RHODE ISLAND  
PROCUREMENT REGULATIONS**

**SECTION 12: RHODE ISLAND DEPARTMENT OF TRANSPORTATION  
PROJECTS**



**Amended regulations adopted June 20, 2011**

Division of Purchases  
Rhode Island Department of Administration  
One Capitol Hill, Second Floor  
Providence, Rhode Island 02908

Tel: (401) 574-8100

The following amended State of Rhode Island Procurement Regulations were adopted by me, as Director of the State of Rhode Island Department of Administration, on the \_\_\_\_\_ day of June 2011.

---

Richard A. Licht, Director  
State of Rhode Island  
Department of Administration  
One Capitol Hill  
Providence, Rhode Island 02908

Date of Public Notice: May 5, 2011  
Date of Public Hearing: June 8, 2011  
End of Comment Period: June 8, 2011

**SECTION 12–RHODE SLAND DEPARTMENT OF TRANSPORTATION PROJECTS**

12.1 INTRODUCTION ..... 12-4

12.2 DELEGATION OF AUTHORITY TO RIDOT TO ENTER INTO  
CONTRACT AMENDMENTS (AS DEFINED IN RIGL 37-2-7(6)). ..... 12-4

12.3 INCORPORATION OF ADDITIONAL PROVISIONS. .... 12-4

12.3.5-12.100 [RESERVED] ..... 12-5

12.101 – DEFINITION AND TERMS ..... 12-5

12.102 - BIDDING REQUIREMENTS AND CONDITIONS ..... 12-15

12.103 - AWARD AND EXECUTION OF THE CONTRACT ..... 12-24

12.104 - SCOPE OF WORK ..... 12-27

12.105 – CONTROL OF WORK ..... 12-33

12.106 - CONTROL OF MATERIAL..... 12-47

12.107 – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC ..... 12-51

12.108.01 – SUBLETTING OF CONTRACT ..... 12-62

12.109 – MEASUREMENT AND PAYMENT ..... 12-87

## **SECTION 12–RHODE ISLAND DEPARTMENT OF TRANSPORTATION PROJECTS**

### **12.1 Introduction.**

12.1.1 The Rhode Island Department of Transportation (RIDOT) is responsible for the majority of road, bridge, and heavy construction transportation projects within the State of Rhode Island. RIDOT possesses specialized knowledge and expertise in all aspects of projects for which it is primarily responsible including, but not limited to, procurement activities, planning, contracting, engineering, contract administration and construction. Many RIDOT projects are performed with Federal-aid funding and pursuant to federal regulation and oversight.

As an example, Volume 23, Section 1.3 of the Code of Federal Regulations mandates that state transportation departments be authorized to make all final decisions in all matters relating to, and to enter into, all contracts and agreements for projects (i.e. an undertaking by the state for road, bridge, heavy construction, or other work utilizing Federal-aid funding) and to take such other actions on behalf of the state as may be necessary to comply with federal laws and regulations. In light of the unique nature of RIDOT's projects and the federal and state oversight attendant to such projects, it is appropriate to delegate certain authority to the Director of RIDOT or his/her designee.

### **12.2 Delegation of Authority to RIDOT to enter into Contract Amendments (as defined in RIGL 37-2-7(6)).**

12.2.1 Due to the nature of RIDOT projects, it is customary and usual for changes occurring during the project to require Contract Amendments.

12.2.2 The Chief Purchasing Officer together with the Purchasing Agent, through the Rhode Island General Laws 37-2-7(6) can delegate to the Director of RIDOT the delegated Purchasing Authority to enter into binding Contract Amendments on behalf of the State, as authorized by the Chief Purchasing Officer by written determination, for all RIDOT projects that were originally solicited by the Chief Purchasing Officer or his/her designee. Notwithstanding the foregoing, this delegation of authority to the Director of RIDOT to enter into Contract Amendments shall be limited to the amount of State and/or FHWA funds that have been allocated to the particular project.

### **12.3 Incorporation of Additional Provisions.**

12.3.1 Historically, the Chief Purchasing Officer has adopted and utilized the Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction (as amended) (hereinafter referred to as the "Blue Book") in and as a part of the solicitation for bids for RIDOT projects as well as making them an integral and essential part of all DOA contracts relating to RIDOT projects.

12.3.2 RIDOT, in furtherance of meeting the State's obligations with the Federal Highway Administration (FHWA) and to address the specialized needs of this type of procurement, has

referred to and incorporated the Blue Book into its Purchase Requisitions, as defined in RIGL § 37-2-7(17), submitted to the Chief Purchasing Officer and/or Purchasing Agent.

12.3.3 The Chief Purchasing Officer has determined that, as a matter of policy, the specifications contained in the Blue Book, as amended and as may be amended, having been revised and adopted by the FHWA and having established the specialized criteria for properly administering state road, bridge, and heavy construction transportation projects, shall be utilized in and made a part of all DOA solicitations for bids for RIDOT projects.

12.3.4 All other sections of these Regulations shall apply to RIDOT unless they are inconsistent with any provision of this Section 12, in which event the provisions of this Section 12 shall control. If any provision of this Section 12 is determined to be unenforceable, the remainder of this Section 12 shall continue to be in full force and effect. This Section 12 shall also be interpreted so as to be consistent with all applicable State and Federal statutes and regulations.

### **12.3.5-12.100 [reserved]**

## **12.101 – Definition and Terms**

12.101.01 ABBREVIATIONS. Wherever the following abbreviations are used in the Contract, they mean:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration; U.S. Department of Transportation
FSS	Federal Specifications and Standards
IMSA	International Municipal Signal Association
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices (For Streets & Highways)
NEC	National Electrical Contractors
NEMA	National Electrical Manufacturers Association

OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
TMP	Transportation Management Plan
UL	Underwriters Laboratory

**12.101.02 ACTUAL COST.** The cost actually incurred by the Contractor or subcontractor in the performance of work. Actual costs will include labor, material, actual ownership cost of equipment or invoiced rental rates, verified payroll burdens, verified general and administrative overhead, and profit. While the Contractor is required to establish such costs with competent documentation (i.e., invoices, certified payrolls, financial statements) the Department may rely upon an audit of the Contractor's financial records by a Department appointed auditor.

**12.101.03 AWARD.** The written acceptance by the State of the successful Proposal consisting of the executed Contract Agreement and Purchase Order.

**12.101.04 BIDDER.** An individual, partnership, corporation or joint venture submitting a Proposal for the advertised work. (The terms "Bidder" and "Contractor" are frequently used synonymously.)

**12.101.05 BID DOCUMENTATION.** The term "bid documentation" as used in this clause means all writings, working papers, computer printouts, charts, computer data files associated with the preparation and/or submittal of a bid proposal, and all other data compilation which contains or reflects information, data or calculations used by the Contractor to determine its bid submitted for a project. The term "bid documentation" includes material relating to the determination and application of equipment rates, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, schedules for time or any determination of time related to project overhead, as well as quotations from subcontractors and material suppliers to the extent that such rates and quotations were used by the Contractor in formulating and determining the amount of the bid. The term "bid documentation" also includes any manuals which are standard to the industry used by the Contractor in determining the bid for a project. These manuals may be included in the bid documentation by reference, and will show the name and date of the Publication and the Publisher. The term does not include bid documents provided by the Department for use by the Contractor in bidding on a project.

**12.101.06 BRIDGE.** A structure, including supports, erected over a depression or an obstruction, such as water, highway or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than twenty (20) feet between undercopings of abutments or extreme ends of openings for multiple boxes.

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

**b. Bridge Roadway Width.** The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or in the case of multiple height of curbs, between the bottom of the lower risers or in the case of no curbs, between the inner faces of parapet of railing.

**12.101.07 CALENDAR DAY.** Each and every day shown on the calendar, beginning and ending at midnight.

**12.101.08 COMPENSABLE DELAY.** An excusable delay for which the Contractor may be entitled to additional monetary compensation.

**12.101.09 COMPLETION.** Completion of the project occurs when; 1) The work has been satisfactorily completed in all respects in full accordance with the Contract, and; 2) the Contractor has satisfactorily executed and delivered to the Engineer all documents, certificates, and proofs of compliance as required by the Contract.

**12.101.10 CONSTRUCTION AND MAINTENANCE AGREEMENT/UTILITIES.** An agreement between the State, acting through its Department of Transportation, and the Owners of Utilities. Owners may be either Municipalities or private Utility Companies. The agreements establish conditions for removing, relocating, or otherwise altering the location of utilities to facilitate proposed highway construction work. They divide responsibility for such alterations between the two parties and establish payment procedures by which the State will reimburse the Owners for costs they incur in performing their respective portions of the work.

**12.101.11 CONTRACT.** The agreement between the State and the Contractor for the performance of the prescribed work and consisting of the following:

**a. Contract Agreement.** The written statement, executed by the State through the State Purchasing Agent and the Contractor; and approved by the Director, Department of Transportation, setting forth the obligations of the parties for the performance of the work.

**b. Contract Documents.** The Notice to Contractor (advertisement for bids); Proposal; Contract Bond(s); Standard Specifications; Supplemental Specifications; Special Provisions; General and Detailed Plans; Notice of Award; Notice to Proceed; and any subsequently executed Contract Addenda that are required to complete the construction of the work in an acceptable manner, including authorized Contract Time Extensions.

**c. One Instrument.** The executed Contract Agreement and the Contract Documents constitute one instrument; i.e., the Contract.

**12.101.12 CONTRACT ADDENDUM.** Any change to the Contract made after its initial execution, which change shall become part of the Contract Agreement. Contract Addenda must be set forth in writing and executed by the original signatories, or their successors in interest, or their designees. Each Contract Addendum must be preceded and documented by a corresponding Report of Change.

**12.101.13 CONTRACT BONDS.** The approved form of securities, executed by the Contractor and its Surety or Sureties, guaranteeing complete execution of the Contract and all supplemental agreements pertaining thereto, and the payment of all legal debts pertaining to the construction of the project.

**12.101.14 CONTRACT ITEM (PAY ITEM).** A specific item of work for which a price is provided in the Bid Schedule.

**12.101.15 CONTRACT TIME.** The number of work days or calendar days allowed for completion of the Contract including authorized time extensions. When a calendar date of

completion is specified in the Proposal, the Contract shall be substantially completed on or before that date.

**12.101.16 CONTRACTOR.** The individual, partnership, corporation, or any combination thereof, or joint venture contracting with the State for performance of the prescribed work. (The terms "Contractor" and "Bidder" are frequently used synonymously.)

**12.101.17 COUNTY.** The county in which the work specified is to be performed.

**12.101.18 CULVERT.** Any structure which provides an opening under the roadway but which does not meet the classification of a "bridge" as defined in **Subsection 12.101.06.**

**12.101.19 DAILY CHARGE.** The per diem rate for liquidated damages specified in the Contract and so established in accordance with the "Schedule of Liquidated Damages."

**12.101.20 DEPARTMENT.** The Department of Transportation, as constituted under the laws of this State.

**12.101.21 DIG SAFE.** A one-call damage prevention system, established and funded by public utilities that own and operate underground facilities within the State, for the purpose of receiving and giving notice of proposed excavation activity pursuant to Chapter 39-1.2 of the General Laws of Rhode Island entitled, EXCAVATION NEAR UNDERGROUND UTILITY FACILITIES.

**12.101.22 DIVISION OF PURCHASES.** A division in the Department of Administration of the State of Rhode Island, the head of which is the State Purchasing Agent.

**12.101.23 ENGINEER.** The Chief Engineer of the Division of Public Works, acting directly or through his or her duly authorized representatives, who is responsible for engineering and administrative supervision of the Contract.

**12.101.24 EQUIPMENT.** All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the construction and completion of the Contract.

**12.101.25 EQUITABLE ADJUSTMENT.** An adjustment in the Contract price and time occasioned by the performance of work beyond that required by the original Contract, including extra work, changes, differing site conditions and changes in quantities. The equitable adjustment of Contract price will be based on an agreed upon lump sum, agreed upon unit prices, force account, or the actual cost of the work. The equitable adjustment of the Contract time will be based on a comparison of the time demonstrated by the Contractor's schedule and the time required for the execution of the work.

**12.101.26 EXCUSABLE DELAY.** A delay to the Contract or Milestone/phase completion date which was unforeseeable and beyond the Contractor's control and not caused by the Contractor's fault or negligence and for which a Contract or Milestone time extension may be granted by the Department.

**12.101.27 EXTRA WORK.** Work not provided for in the Contract as awarded but considered essential to the satisfactory completion of the Contract.

**12.101.28 FINANCIAL STATEMENTS.** A set of reports detailing, on an annual, semi-annual or other prescribed time period, the financial activity of a company, corporation or other business venture. For purposes of Post Qualification and Award, these shall include a complete set of audited financial statements certified by a Certified Public Accountant (CPA) or, in the case of contracts valued at \$500,000 or less, a bidder's financial references and an original copy of its current financial statement.

**12.101.29 FORCE ACCOUNT.** A method of payment for extra work ordered by the Engineer when no other method of payment is provided for in the Contract and when the Contractor and the Engineer are unable to agree upon an acceptable method. The force account method of payment provides for reimbursing the Contractor for those actual costs it incurred in performing such work.

**12.101.30 GEOTEXTILE.** Any permeable textile material used with foundation, soil, rock, earth, drainage, or any other geotechnical engineering related material, as an integral part of a man-made project, structure, or system.

**12.101.31 HIGHWAY, STREET, OR ROAD.** A general term denoting a public way for purposes of vehicular and pedestrian travel, including the entire area within the Right-of-Way.

**12.101.32 HOLIDAYS.** In the State of Rhode Island legal holidays occur on New Year's Day; Martin Luther King Day; Memorial Day; Independence Day; Victory Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas. If any holiday listed above falls on a Sunday, the following Monday shall be considered a holiday.

**12.101.33 INCLEMENT WEATHER.** Any day or days for which the Engineer decides that weather conditions are so extreme and/or severe that normal construction operations should not proceed.

**12.101.34 LABORATORY.** The testing laboratory of the Department or any other testing laboratory which may be designated by the Engineer.

**12.101.35 LIQUIDATED DAMAGES.** Deductions from monies due the Contractor, assessed on a daily basis, to compensate the State for losses incurred because of the failure of the Contractor to complete the work within the time established by the Contract.

**12.101.36 MAJOR AND MINOR CONTRACT ITEMS.** Any item having an original value in excess of 5 percent of the original Contract amount shall be considered to be a major item. All other original Contract items shall be considered minor items. In addition, any minor item which increases by 100 percent will be considered a major item. The revised quantity will then be considered the original Contract quantity for purposes of determining a major item of work under **Subsection 12.104.07; Significant Changes in the Character of Work.**

**12.101.37 MATERIALS.** Any substances specified for use in the construction of the project.

**12.101.38 NONCOMPENSABLE DELAY.** An excusable delay for which the Contractor may be entitled to an extension of time but no additional monetary compensation.

**12.101.39 NON-EXCUSABLE DELAY.** A delay to the Contract or Milestone/phase completion date which was reasonably foreseeable and within the control of the Contractor for which no time extension will be granted.

**12.101.40 NOTICE TO CONTRACTORS.** A public announcement inviting bids for work to be performed and/or materials to be furnished. Such notice will indicate with reasonable accuracy the nature and location of the work to be performed; the time and place of the opening of Proposals; and any Contract statutory provisions required by the Federal Government.

**12.101.41 NOTICE TO PROCEED.** Written notice from the Engineer to the Contractor to commence the Contract work and which designates the date of beginning of Contract time.

**12.101.42 NOTICE OF TENTATIVE AWARD.** A written communication from the State to the successful bidder indicating the conditional intention of the State to award the Contract. This communication instructs the successful bidder to arrange a meeting with the appropriate State official within 15 days of the receipt of said notice for the purpose of executing the Contract Agreement and Contract Bonds, and for the delivery of the required Certificates of Insurance.

**12.101.43 PAVEMENT STRUCTURE.** The combination of subbase, base course and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

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

**b. Subgrade Treatment.** Modification of roadbed material by stabilization.

**c. Subbase.** The layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

**d. Base Course.** The one or more layers of specified material and thickness placed on a subbase or a subgrade to support a surface course.

**e. Surface Course.** One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "wearing surface."

**12.101.44 PLANS.** The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be performed.

**12.101.45 PRECONSTRUCTION CONFERENCE.** A meeting between the Contractor and the Engineer prior to the actual commencement of work for the purpose of reviewing the following:

a. The Contractor's submission of construction schedules.

- b. The Contractor's involvement with public and private utilities.
- c. The Contractor's proposed methods and procedures for prosecuting the work.
- d. Any questions the Contractor may wish to ask relative to the prosecution of the work.

**12.101.46 PROFILE GRADE.** The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context provided.

**12.101.47 PROJECT.** The specific section of the highway or other specific property on which construction is to be performed as described in the Contract.

**12.101.48 PROPOSAL.** The written offer of a bidder, on prescribed forms generated by the Department of Transportation's approved proposal preparation computer software, to perform the stated work at the prices quoted. As used herein, "Proposal" is synonymous with "bid."

**12.101.49 PROPOSAL FORM.** The prescribed form, generated by the Quest Lite bid preparation software, on which the offer of a bidder is submitted.

**12.101.50 PROPOSAL GUARANTY.** The security furnished with a Proposal to assure that the bidder will enter into the Contract if the Proposal is accepted.

**12.101.51 PURCHASE ORDER.** A document issued by the State Purchasing Agent, and transmitted to the Contractor with copies of the executed Contract, that indicates that appropriate accounts have been established and that funds have been assigned to those accounts for the purpose of reimbursing the Contractor for its work in implementing the Contract.

**12.101.52 QUEST LITE.** The computer software used by bidders to prepare a bid proposal.

**12.101.53 RESIDENT ENGINEER.** The Engineer's authorized representative at the site of the work whose main responsibility is to insure Contract compliance.

**12.101.54 RESPONSIVE BID.** A Proposal which complies with all material requirements of the Notice to Contractors.

**12.101.55 REPORT OF CHANGE.** A written order to the Contractor covering contingencies, extra work, increases or decreases in Contract quantities, and additions or alterations to the Plans or Specifications, within the scope of the Contract, and establishing the basis of payment and

time adjustments for the work affected by said changes. A Report of Change provides the required documentation for the execution of a Contract Addendum.

**12.101.56 RIGHT-OF-WAY.** A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

**12.101.57 ROADBED.** The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

**12.101.58 ROADSIDE.** A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

**12.101.59 ROADSIDE DEVELOPMENT.** Those items necessary for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers; such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

**12.101.60 ROADWAY.** The portion of a highway within limits of construction.

**12.101.61 SHOULDER.** The portion of the pavement structure contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**12.101.62 SIDEWALK.** That portion of the roadway primarily constructed for the use of pedestrians.

**12.101.63 SPECIALTY ITEMS.** Those specific work items listed in either the Bid Schedule or elsewhere in the Contract whose Item Numbers are designated by the prefix "S." The work required to implement specialty items is considered to be a type that a Contractor would not generally perform with its own organization.

**12.101.64 SPECIFICATIONS.** The compilation of provisions and requirements for the performance of the prescribed work and consisting of the following:

**a. Standard Specifications;** a book of specifications approved for general application and repetitive use. Specifically, the Rhode Island Standard Specifications for Road and Bridge Construction of latest revision.

**b. Supplemental Specifications;** approved additions and revisions to the Standard Specifications.

**c. Special Provisions;** additions and revisions to the Standard and Supplemental Specifications applicable for an individual project.

**d. The Required Contract Provisions for Federal-Aid Projects,** when applicable.

**e. Federal Wage Rates;** a schedule of prevailing rates of wages of labor for the geographical area in which the work of the Contract is to be performed; compiled by, and issued from time to time by the Secretary of the United States Department of Labor.

**12.101.65 SPECIFICATION BOOKLET. [DEFINITION DELETED]**

**12.101.66 SPECIFIED COMPLETION DATE.** The date stated in the Proposal on which the Contract work, or specified portion thereof, is to be substantially completed.

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

**12.101.68 STATE.** The State of Rhode Island and Providence Plantations acting through its authorized representatives.

**12.101.69 STRUCTURES.** Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other features which may be encountered in the work.

**12.101.70 SUBCONTRACTOR.** An individual or legal entity with whom the Contractor sublets part of the work.

**12.101.71 SUBSTANTIAL COMPLETION.** Substantial completion of a unit, or portion of the work such as a structure, an interchange, or section of road or pavement occurs at the point at which the portion of the work is complete such that it can be safely and effectively used by the public and when the following criteria are realized: **1)** All courses of pavement are complete; **2)** curbing and sidewalks are placed; **3)** all project drainage is complete; **4)** guardrail and terminal sections are properly installed; **5)** pavement markings are in place; **6)** traffic signal systems meet the following requirements: (a) isolated traffic signals - the signal control equipment is fully programmed, detectors are installed and functioning, and the signal is in actuated operation, (b) coordinated traffic signal systems - the requirements of condition (a) are met, the interconnect is installed and functioning, and the signals are operating as a coordinated system, (c) closed loop signal systems - the conditions of (a) and (b) are met, the communications link is operating, and the monitoring functions, including system and intersection graphics, are installed and operating at the Department's monitoring stations; **7)**

regulatory and warning signs are installed; and, **8)** highway lighting is operational; and **9)** only corrective or repair work remains for the physical completion of the Contract.

**12.101.72 SUBSTRUCTURE.** All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, and including backwalls, wingwalls and wing protection railings.

**12.101.73 SUPERINTENDENT.** The Contractor's authorized representative in responsible charge of the work.

**12.101.74 SUPERSTRUCTURE.** The entire structure except the substructure as defined in **Subsection 12.101.72.**

**12.101.75 SUPPLEMENTAL AGREEMENT.** A Contract Addendum signed by the Department and the Contractor for the performance of work which is beyond the scope of the original Contract but which the Department elects to perform in conjunction with the existing Contract.

**12.101.76 SURETY.** The legal entity, or individual other than the Contractor, executing a bond or bonds furnished by the Contractor.

**12.101.77 TITLES (OR HEADINGS).** The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**12.101.78 TOWNSHIP, TOWN, CITY OR DISTRICT.** A subdivision of the State used to designate or identify the location of the proposed work.

**12.101.79 TRAVELED WAY.** The portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

**12.101.80 WINTER SHUTDOWN.** The period from December 15th through the following April 15th.

**12.101.81 WORK.** The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project in accordance with the Contract.

**12.101.82 WORKING DAY.** A calendar day during which normal construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays and holidays.

**12.101.83 REPETITION OF EXPRESSIONS.** In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered, necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable,

unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

**12.101.84 CONTRACT AWARD BOOKLET.** A document provided to the Contractor after the award of the Contract containing the following elements of the Contract Documents: Notice to Contractors; the Bidder's Proposal; executed copies of both the Contract Agreement and Contract Bonds; and a Contract Award compact disk (CD) containing the RI Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Required Contract Provisions for Federal-Aid Projects, Federal Wage Rates, all Contract Addenda issued prior to the date of the opening of proposals, Distribution of Quantities, Plans, Appendices and Bid Analysis Reports.

**12.101.85 CONTRACT BID PACKAGE.** A compact disk (CD) containing the following items, provided to prospective bidders for bid preparation purposes: RI Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Required Contract Provisions for Federal-Aid Projects, Federal Wage Rates, Distribution of Quantities, Plans, Appendices, the Quest Lite installation software and the Quest Lite bid file.

**12.101.86 TRANSPORTATION MANAGEMENT PLAN.** The document that lays out the set of coordinated transportation management strategies that will be used to manage the work zone safety and mobility impacts of the project.

**12.101.87 TMP IMPLEMENTATION MANAGERS.** The project managers with the primary responsibility and authority for implementation of the Transportation Management Plan. The Department and the Contractor must each designate on the Transportation Management Plan their respective TMP Implementation Manager for the project.

## **12.102 - BIDDING REQUIREMENTS AND CONDITIONS**

**12.102.01 PREQUALIFICATION OF BIDDERS.** Prequalification of bidders shall be in accordance with 23 CFR 635 and Rhode Island General Law 37-2, together with regulations and procedures promulgated thereunder.

**12.102.02 CONTENTS OF PROPOSAL FORMS.** The completed Proposal Form is generated by the Department's Quest Lite bid preparation software, which is furnished to the prospective bidder on compact disk (CD) as part of the Contract Bid Package with the Plans, Specifications and additional contract bid documents in accordance with the instructions set forth in the Notice to Contractors.

The Proposal Form consists of three parts. The first part, the "Preamble," outlines the various understandings and agreements required of the prospective bidder as conditions to its offer to perform the stated work. The second part, the "Bid Schedule," is that portion of the form where the various items of work are listed in a numbered sequence, and includes the unit prices entered by the bidder and total bid amounts of each item, which are computed by Quest Lite. The third part of the form is the "Signature Page," which includes the "Total, or Gross Sum of Bid" and which must be signed by the bidder or his authorized signatory. This signature signifies the bidder's acceptance of all requirements and conditions of the Contract and its agreement to substantially complete the work by a calendar date certain.

The Plans, Specifications and other contract bid documents designated in the Proposal Form will be considered a part of the Proposal.

When applicable, prospective bidders will be required to pay the Department the sum stated in the Notice to Contractors for each set of Contract Bid Packages taken out by said bidders.

In the case of joint ventures, Contract Bid Packages must be taken by the Joint Venture; this does not, however, preclude entities comprising the Joint Venture from taking out Contract Bid Packages independently. In addition, the Joint Venture must be independently registered as a user of the Department's Electronic Bidding System known as Quest Lite.

**12.102.03 INTERPRETATION OF QUANTITIES IN BID SCHEDULE.** The quantities appearing in the Bid Schedule are estimated and are used for the comparison of Proposals. Payment to the Contractor will be made for the actual quantities of work performed and accepted or materials furnished in accordance with the Contract. The estimated quantities of work to be performed and the materials to be furnished may be increased, decreased, or omitted as deemed necessary or advisable by the Engineer, or as hereinafter provided.

**12.102.04 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK.** The bidder is expected to carefully examine the site of the proposed work, the Proposal, the Plans, the Rhode Island Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Distribution of Quantities and Contract Forms before submitting a Proposal. The submission of a Proposal will be considered conclusive evidence that the bidder has made such an examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the Contract as defined in the Contract Documents.

Boring logs and other records of subsurface investigations are available for inspection by bidders. It is understood that such information was obtained and used for Department design and estimating purposes only. It is made available to bidders so all have access to identical subsurface information available to the Department. Furthermore, this information is not intended as a substitute for personal investigation, interpretations, and judgment of the bidders.

The locations of all utilities as shown on the Plans are approximate. The Contractor shall seek to determine the exact location of all existing utilities, both underground and overhead, by notifying Dig Safe in accordance with State law. Damage to utilities which are shown on the Plans or located by the respective utilities in accordance with the Dig Safe process shall be the responsibility of the Contractor. Damage to utilities and their associated service connections which are not shown on the Plans or located by the respective utilities in accordance with the Dig Safe process, will be paid for by the Department.

**12.102.05 PREPARATION OF PROPOSAL.** The bidder's attention is directed to the fact that all Proposals must be generated by the Department of Transportation's Quest Lite software, and the Proposal must be submitted to the Purchasing Division of the Department of Administration in the form of an electronic file on a compact disk (CD), which should be labeled and identified, at a minimum, with the bidder's name and the Rhode Island construction contract

number of the project being bid. In addition, the bidder shall submit its Proposal in hard copy format on forms generated by the Department of Transportation's Quest Lite program.

The bidder shall specify a unit price in words and figures, for each pay item for which a quantity is provided. All pay items for which a bidder is required to specify a unit price shall have a bid price of at least one cent. The Quest Lite software requires a unit price to be entered for each pay item and will not allow a unit price of less than one cent to be entered as a bid price for an individual pay item. The bidder shall show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the Proposal obtained by adding the amounts of all items. The total bid price is to be based on the unit prices written in words, correctly extended and added. In case of a discrepancy between the unit prices written in words and those written in figures, the unit prices written in words shall govern. The State reserves other rights as noted in **Subsection 12.103.01; Consideration of Proposals**.

When the Proposal contains a choice to be made by the bidder, the bidder shall indicate its choice in accordance with the instructions for that particular item. Thereafter, no further choice will be permitted.

Erasures and alterations to the Proposal shall not be permitted.

A copy of the Joint Venture agreement must be included with the Proposal when submitted. The Joint Venture agreement must clearly identify the entities which comprise the Joint Venture and the Officers of the Joint Venture.

The bidder's hard copy Proposal generated from the Quest Lite software must be signed in ink by an authorized signatory of the partnership, joint venture, corporation, or by such other agent of the Contractor legally qualified and acceptable to the State as hereinafter provided.

If the Proposal is made by an individual, his/her name and mailing address shall be shown; by a partnership, the name and mailing address of each partnership member shall be shown; as a joint venture, the name and mailing address of each member or officer of the firms represented by the joint venture shall be shown; by a corporation, the name of the corporation and the business address of its corporate office shall be shown. In the case of Partnership and/or Joint Venture, the names and addresses of each member or officer of the partnership or joint venture must be listed in a separate attachment to be included with the submitted proposal.

All certification documents are contained within the bid file that is used by the Quest Lite program. By utilizing Quest Lite, bidders are agreeing that they have executed all required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" which is located at the end of the Proposal Form. Failure to comply with the requirements of the Quest Lite software will not enable the bidder to successfully complete the preparation of a bid proposal.

**12.102.06 PROPOSAL GUARANTY.** A Proposal will not be accepted or considered unless accompanied by a guaranty in the form of an original Bid Bond made payable to the State of Rhode Island. Bid bonds must be provided by surety companies licensed and authorized to conduct business in the State of Rhode Island. All surety companies must be listed with the Department of the Treasury, Fiscal Services, Circular 570, (Latest Revision published by the

Federal Register). The amount of the Proposal Guaranty shall be as designated in the Notice to Contractors.

When the bidder is a joint venture, the Proposal Guaranty must be made out to the name of the Joint Venture and all parties of the Joint Venture must be named in the execution of the Proposal Guaranty made by the same thereon. If there is more than one surety to the Bid Bond, each surety shall be named and execution made by same thereon.

Execution of the Bid Bonds will not be considered complete unless accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

#### **12.102.07 IRREGULAR PROPOSALS.**

**a. Mandatory Reasons for Disqualification.** The Department will declare a proposal non-responsive and shall disqualify a bidder for any of the following irregularities:

1. If the Proposal Form is obtained from any party other than the Department. (Proposal Forms are non-transferable.)
2. If the Proposal is on a form other than that generated by the Department of Transportation's Quest Lite software; or if the form is altered or any part thereof is detached or incomplete;
3. If there are unauthorized additions, unauthorized conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
4. If the bidder adds any provisions reserving the right to accept or reject an award;
5. If the Proposal is not completed using the Quest Lite software;
6. If the Department determines that the low bid is both mathematically and materially unbalanced;
7. If the Proposal is received after the time designated for the opening of bids;
8. If the bidder fails to execute the required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" located at the end of the Proposal;
9. If the bidder fails to submit an original Bid Bond, properly executed.
10. If the compact disk (CD) data files and the hard copy submission do not match, unless such a discrepancy is determined to be the result of an error or malfunction within the Department's Quest Lite software.
11. If a compact disk (CD) is not submitted; or
12. If the Proposal pages generated by the Quest Lite software have been altered in any way.

**b. Other Reasons for Disqualification.** The Department and the Division of Purchases reserve the right to declare a proposal non-responsive and may disqualify a bidder for any of the following irregularities:

1. If the bidder fails to include at least a minimum amount where required for a particular item;
2. If the Proposal does not contain a "total or gross sum of bid," written in words and figures, in the space provided;
3. If the Proposal is not properly signed;
4. If the bidder fails to comply in every detail with the instructions provided in **Subsection 12.102.05; Preparation of Proposal;**
5. If the Proposal is not submitted in a sealed envelope and clearly labeled as to its contents;
6. If the compact disk (CD) containing the bidder's Proposal is unreadable by the Department of Transportation's bid proposal software.

**12.102.08 DELIVERY OF PROPOSALS.** Proposals shall be submitted in sealed envelopes. The envelope shall be labeled to clearly indicate its contents. When sent by mail, the sealed Proposal shall be addressed in care of the official in whose office the bids are to be received, all as indicated in the Notice to Contractors. Proposals shall be filed prior to the time and at the place specified in the Notice to Contractors.

**12.102.09 WITHDRAWAL OR REVISION OF PROPOSALS.** A bidder may withdraw or revise a Proposal after it has been deposited with the Division of Purchases, provided the request for such withdrawal or revision is received by the Division of Purchases, in writing or by telegram, not later than two (2) hours before the time set for opening proposals. Upon presentation of its written request at the proper time, a bidder's Proposal will be returned unopened. If a Proposal is withdrawn in accordance with this provision, the proposal guaranty shall be returned to the bidder.

Whether or not Proposals are opened exactly at the time set for such opening, a Proposal will not be received, nor may any be withdrawn, after the time set for the opening of proposals.

The Department reserves the right to revise the Plans, Specifications, other Contract Documents, the Proposal, and bid opening date for any project at any time prior to the time set for opening of Proposals. Such revisions will be made by addendum, duly numbered and dated, and made accessible to bidders through the RIDOA, Division of Purchases' website known as the R. I. Vendor Information Program (RIVIP) at <http://www.purchasing.state.ri.us/>.

**12.102.10 COMBINATION OR CONDITIONAL PROPOSALS.** If the Department so elects, Proposals may be issued for projects in combination or separately, so that Proposals may be submitted either on the combination or on separate units of the combination. The Department and Division of Purchases reserve the right to make awards on combination bids or separate bids

to the advantage of the State. No combination of Proposals, other than those as specified by the Department, will be considered. Separate contracts will be written for each individual project included in the combination.

Conditional proposals will be considered only when specified in the Special Provisions.

**12.102.11 PUBLIC OPENING OF PROPOSALS.** Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors or as amended by duly authorized Contract Addenda. Bidders, their authorized agents, and other interested parties are invited to be present at the opening of Proposals.

**12.102.12 DISQUALIFICATION OF BIDDERS AND REJECTION OF PROPOSALS.**

**a. Mandatory Reasons for Disqualification.** The Department will declare a Proposal unresponsive and shall disqualify a bidder for any of the following reasons:

1. More than one Proposal for the same work from an individual, partnership, corporation or joint venture under the same or different name;

2. Evidence of collusion among bidders. Participants in such collusion will not be considered for future proposals until re-qualified by the Department;

3. The making of false statements on prequalification documents and/or other required bidder's certifications;

4. Failure to comply with any prequalification requirements as set forth in **Subsection 12.102.01**;

5. Debarment by Federal or State authorities; or

6. Failure to provide a properly executed Contract Bond.

**b. Other Reasons for Disqualification.** The Department and the Division of Purchases reserve the right to declare a Proposal unresponsive and may disqualify a bidder for any of the following reasons:

1. Lack of competency and adequate machinery, plant and other equipment;

2. Uncompleted work under Contract which, in the judgment of the Department, might hinder or prevent the prompt completion of additional work, if awarded;

3. Failure to pay, or satisfactorily settle, all bills due for the Prime Contractor's labor and material on Contracts in force with the Department at the time of the Bid Opening;

4. Failure to pay or satisfactorily settle Subcontractor Payments as provided for under Section 12.109.12, Subcontractor Prompt Payment where good cause, as determined by the Department of Transportation, has not been accepted. Determination of failure to pay or satisfactorily settle Subcontractor Payments will be made within 30 days of bid opening;

provided however that the bidder shall have the right to either pay or settle any such claims within said 30-day period.

5. Failure to comply with any post qualification regulations or requirements of either the Department or the Division of Purchases;

6. Default under previous contracts;

7. Unsatisfactory performance on a previously awarded contract; or

8. Failure to reimburse the State for monies owed on any previously awarded contracts including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.

**12.102.13 MATERIAL GUARANTY.** The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work, together with samples to be tested for conformance with Contract provisions.

**a. Domestic Steel Products.** The bidder is advised of the “Buy American” requirements that apply to domestic steel products as set forth in **Subsection 12.106.01(a)** of these Specifications.

#### **12.102.14 BIDDING CERTIFICATIONS.**

##### **a. Non-Collusive Bidding Certification.**

**1. The Certificates.** Every Proposal submitted to the Department shall contain an Anti-Collusion Certificate for Contract and Force Account (Unsworn Declaration), duly subscribed to and affirmed by the bidder as true under the penalties of law.

**2. Certifications.** By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Anti-Collusion Certificate on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(a) The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.

(b) Unless required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed and will not knowingly be disclosed by the bidder, directly or indirectly, to any other bidder or competitor prior to opening of Proposals.

(c) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

**3. Non-Compliance.** The Quest Lite software will not enable a prospective bidder to complete the preparation of a Proposal unless the bidder certifies that he is in compliance with **Paras. 2(a), 2(b), and 2(c)**, above.

The fact that a bidder; (1) has published price lists, rates, or tariffs covering items being procured, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of **2(a)**.

The Proposal submitted to the Department will be considered as authorized by the board of directors of the bidder. Such authorization will be deemed to include the signing and submission of the Proposal and the inclusion therein of the certificate as to non-collusion on the part of the corporation.

The signers of the Proposal hereby tender to the Department a statement that the named Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the Proposal.

**b. Certification Regarding Debarment, Suspension and Other Responsibility Matters.**

**1. The Certificate.** Every Proposal submitted to the Department shall contain a Certification Regarding Debarment, Suspension and Other Responsibility Matters, duly subscribed to and affirmed by the bidder as true under the penalties of law.

**2. Certification.** By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Debarment Certification on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three-year period preceding the submission of a Proposal been convicted of or had a civil judgment rendered for commission of fraud or a criminal offense in connection with obtaining or performing a public contract or transaction;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity;

(d) Have not, within the prior three-year period, had one or more public transactions terminated for cause or default.

**3. Non-Compliance.** In the event a prospective bidder is unable to certify to one or more of the conditions above, the bidder must attach a list of exceptions to the hard copy proposal generated by the Quest Lite program. Exceptions listed will not necessarily result in denial of award, but will be considered in determining contractor responsibilities.

The Quest Lite software allows a prospective bidder to either certify that he is in compliance with the provisions outlined in **Paras. 2(a), (b), (c), and (d)**, above, or to not certify these provisions and instead provide with his Proposal a list of exceptions to document the

reason(s) why he is unable to certify his compliance with these provisions. In the latter case, the software will generate a statement on the signature page of the Proposal that additional documentation is attached in support of the bidder's inability to fully certify to the provisions.

**c. Disadvantaged Business Enterprise Affirmative Action Certificate.**

**1. The Certificate.** For all contracts containing provisions for the participation of Disadvantaged Business Enterprises (DBEs), prospective bidders shall be required to complete a Certification affirming compliance with the U.S. Department of Transportation and applicable State of Rhode Island regulations regarding participation by Disadvantaged Business Enterprises in the contract as contractors, subcontractors and/or suppliers of materials and services.

**2. Certification.** By submission of a Proposal, each bidder and each person signing a Proposal which includes the DBE Certification certifies that the organization shall affirmatively seek out and consider Disadvantaged Business Enterprises to participate in the contract, and develop and submit for approval to the Department, within ten days from the receipt of bids, a Disadvantaged Business Enterprise Program in accordance with the provisions of the DBE Certification.

**3. Non-Compliance.** The Quest Lite software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder completes the DBE Certification form in the Proposal.

**d. Disclosure of Lobbying Activities.**

**1. The Certificate.** Every bidder shall be required to certify and disclose, through the bid preparation process, any lobbying of Federal agencies, employees, officers, Members of Congress, or officers or employees of Congress or Members of Congress in connection with a covered Federal action.

**2. Certification.** By submission of a Proposal, each bidder and each person signing a Proposal certifies that, to the best of their knowledge and belief:

(a) No Federal appropriated funds have or will be paid, by or on behalf of the prospective bidder, to any individual or entity for the purpose of influencing or attempting to influence any Federal agency, employee or officer thereof in connection with the awarding of any Federal contract, the making of a Federal grant or loan, or any other form of a contractual nature.

(b) If any funds other than Federal appropriated funds have been paid for the purpose of influencing any Federal agency, employee or officer thereof, the prospective bidder shall complete and submit as part of the bid Proposal submission, Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

The prospective bidder also acknowledges by submitting a bid Proposal, that the requirements of this certification shall also apply to all lower tier subcontracts which exceed \$100,000, and that all subcontractors shall certify and disclose accordingly.

**3. Non-Compliance.** The Quest Lite software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder certifies that he has met the requirements of **Paras. 2 (a) and (b)**, above. In order to complete a bid Proposal, the bidder is required to certify that no Federal appropriated funds have been used for lobbying purposes, to

certify whether other sources of funds have been used for lobbying and if so, to report this activity on Standard Form LLL, which is included in the Quest Lite software.

## **12.103 - AWARD AND EXECUTION OF THE CONTRACT**

**12.103.01 CONSIDERATION OF PROPOSALS.** After the Proposals are opened and read, they will be compared on the basis of the summation of the products of the estimated quantities shown in the Proposal by the unit bid prices. The results of such comparisons will be made available to the public.

The State reserves the right to correct arithmetic errors in the Proposals prior to comparison of said Proposals. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The State reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals.

### **12.103.02 POST-QUALIFICATION REQUIREMENTS AND AWARD OF CONTRACT.**

**a. Submission of Post Qualification Requirements.** All post qualification requirements shall be submitted as specified in the Contract Documents. This includes, but is not limited to, all documentation and requirements referenced under Part II: ACTION REQUIRED BY CONTRACTOR, as contained in the Special Provision entitled, "Disadvantaged Business Enterprise Affirmative Action Certification for Contractors and Consultants." This Special Provision is located in the section of the Contract Documents entitled, REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID PROJECTS.

As part of the post qualification submission, the Contractor must designate on the Transportation Management Plan the Contractor's TMP Implementation Manager for the Contract. The Contractor's TMP Implementation Manager, together with the Department's TMP Implementation Manager are the persons with the primary responsibility and authority for implementation of the Transportation Management Plan.

**b. Financial Statements.** The successful bidder will be required to submit a complete set of audited financial statements certified by a Certified Public Accountant (CPA). For contracts valued at \$500,000 and under, the successful bidder is required to submit only its financial references and an original copy of its current financial statement.

**c. Award of Contract.** Contract award, if it be awarded, will be made within sixty (60) calendar days following the opening of Proposals, or within the time specified in the Notice to Contractors, to the lowest responsible and qualified bidder who submits the lowest responsive Proposal.

The successful bidder will first receive a Notice of Tentative Award. This written communication will indicate the conditional intention of the State to award the Contract and instruct the successful bidder to arrange for the execution of the Contract Agreement and Contract Bond and for the delivery of the Certificates of Insurance, all as hereinafter provided.

On Contracts jointly bid, Contractors will be held jointly and severally liable for the entire Contract.

Corporate bidders must furnish documentary evidence that they have met all legal requirements to transact business in the State of Rhode Island as a condition precedent to approval of the Contract.

**12.103.03 CANCELLATION OF AWARD.** Both the Department and Division of Purchases reserve the right to cancel the award of any Contract before the execution thereof by all parties without any liability against the State.

**12.103.04 RETURN OF PROPOSAL GUARANTY.** The State reserves the right to retain the surety of all bidders until either the successful bidder enters into the Contract or until such time as the award or cancellation of the Contract is announced. At this point sureties will be returned to all bidders.

A Contractor will not be released from the bidding obligation because of an alleged error in the preparation of the Proposal unless the State returns the Contractor's Proposal Guaranty.

**12.103.05 CONTRACT BOND.** At the time of the execution of the Contract, the successful bidder shall furnish a Contract Bond in a sum equal to the full amount of the Contract. The Contract Bond shall guarantee the following; complete performance of the Contract; full payment for all materials and equipment; and full payment of all wages of labor.

The form of the Contract Bond shall be acceptable to both the Department and the Division of Purchases. In the event the surety fails or becomes financially insolvent, the successful bidder shall file a new Bond in the amount designated by the Department within thirty (30) days of such failures or insolvency.

The Bond submitted to the Department shall be provided by a surety both acceptable to the Department and licensed and authorized to conduct business in the State of Rhode Island. All surety companies must be listed with the Department of the Treasury, Fiscal Services, Circular 570, (Latest Revision published by the Federal Register). Subsequent to award of Contract, the Department or Division of Purchases may call for additional security as required. Changes, additions, and modifications to the Contract may be made without the consent of surety.

**12.103.06 EXECUTION AND APPROVAL OF THE CONTRACT.** The Contract shall be executed by the successful bidder, hereinafter referred to as the Contractor, in accordance with the instructions contained in the Notice of Tentative Award. At the specified time and place, the Contractor shall deliver the Contract Bond and required Certificates of Insurance, execute the Contract Agreement, and comply with all other stipulations set forth in said notice.

Receipt by the Contractor of the executed Contract Agreement and a Purchase Order signed by the Director of the Department and/or the Purchasing Agent and the State Controller constitutes the official "Award" of the Contract.

The Contract execution date may be extended by mutual agreement of the Department and the successful bidder.

### **12.103.07. FAILURE TO EXECUTE CONTRACT.**

**a. Failure of State to Execute Contract.** If the Contract is not executed within fifteen (15) calendar days following execution of the Contract Agreement and Bond by the Contractor, said Contractor shall have the right to withdraw its Proposal without penalty.

**b. Failure of the Bidder to Execute Contract.** Failure of the successful bidder to execute the Contract Agreement and Contract Bond, deliver the required Certificates of Insurance; and comply with other stipulations within fifteen (15) calendar days of receipt of the Notice of Tentative Award shall be considered revocation of said notice and require forfeiture of the Proposal Guaranty to the State. Such forfeiture shall not be considered a penalty, but rather a liquidation of damages sustained by the State.

Furthermore, the Department will not issue or receive subsequent proposals for construction work from a bidder who fails to execute a Contract until said bidder demonstrates its ability to obtain the necessary bonding and insurance coverage to the complete satisfaction of the Department.

In the event a Contract is not executed with the first-designated responsible bidder, the Department may either award the Contract to the next lowest responsible bidder or reject all bids and re-advertise the Project for the purpose of soliciting new Proposals.

**12.103.08 ESCROW OF BID DOCUMENTATION.** The placing in escrow of bid documentation in accordance with this Section shall be required only when specifically called for in the Notice to Contractors. Otherwise, this Section shall not apply.

**a. Scope and Purpose.** The purpose of this Specification is to preserve the bid documents of the Contractor for use by the parties in any claims or litigation between the Department and Contractor arising out of this Contract.

The Contractor shall submit to the Department a legible copy of bid documentation used to prepare the bid for this Contract. Such documentation shall be placed in escrow with a banking institution or other bonded document storage facility and preserved by that institution/facility as specified in the following Sections of this clause.

**b. Submittal and Return of Bid Documentation.** Prior to execution of the Contract, the Contractor shall submit to the Department the required bid documentation in a sealed container. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Contractor's name and address, the date of submittal, the Project Number, the Contract Number, and Project Name.

**c. Affidavit.** In addition to the bid documentation, the Contractor shall submit an affidavit, signed under oath by a representative of the Contractor authorized to execute bidding proposals, listing each bid document submitted by author, date, nature, and subject matter. The affidavit shall attest that the affiant has personally examined the bid documentation, that the affidavit lists all of the documents relied upon by the Contractor in preparing its bid for this project, and that all such bid documentation is included in the submission to the Department.

**d. Duration and Use.** The Department and the Contractor will jointly deliver the sealed container and affidavit to a banking institution or other bonded document storage facility

selected by the Department for placement in a safety deposit box, vault or other secure accommodation.

The agreement with the document depository shall reflect that the bid documentation and affidavit shall remain in escrow during the life of the Contract or until the Contractor notifies the Department of his intention to file a claim or initiate litigation against the Department related to the Contract. Notification of the Contractor's intention to file a claim, or initiation of litigation against the Department, shall be sufficient grounds for the Department to obtain the release and custody of the bid documentation. In the absence of such action and provided that the Contractor has signed the final Standard Release Form, the Department shall instruct the document depository to release the sealed container to the Contractor.

In accordance with its representation that the sealed container placed in escrow contains all of the materials relied upon by the Contractor in preparing its bid, the Contractor agrees to waive its right to use any bid documentation other than that placed in escrow in disputes arising out of this Contract.

**e. Refusal or Failure to Provide Bid Documentation.** Failure to provide bid documentation in accordance with the requirements of this Section shall be considered revocation of the notice of award and forfeiture of the Proposal Guaranty to the State.

**f. Confidentiality of Bid Documentation.** The bid documentation and affidavit in escrow are, and will remain, the property of the Contractor. The Department has no interest in, or right to, the bid documentation unless notification of the intention to file claim is received or litigation ensues between the Department and Contractor. In the event of such notification or litigation, the bid documentation and affidavit shall become the property of the Department; provided, however, that these materials, and all copies made by the Department, shall be returned to the Contractor at the conclusion of litigation, or final resolution of all outstanding claims, upon execution of a final release. Moreover, the Department shall make every reasonable effort to insure that bid documentation to which it has gained access will remain confidential within the Department and will not be made available to anyone outside the Department, or used by a former Department employee.

**g. Cost and Escrow Instructions.** The cost of the escrow will be borne by the Department. The Department will provide escrow instructions to the document depository consistent with this clause.

There will be no separate payment for compilation of the data, container or cost of verification of the bid documentation. All costs shall be included in the overall Contract bid price.

## **12.104 - SCOPE OF WORK**

**12.104.01 INTENT OF CONTRACT.** The intent of the Contract is to provide for the construction and completion in every detail of the work as described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work, all in accordance with the Plans, Specifications and terms of the Contract.

**12.104.02 CHANGES IN THE CONTRACT.**

**a. Right to Change.** The Engineer reserves the right to make changes in the Contract at any time during the progress of the work as are necessary to satisfactorily complete the Project. Such changes shall not invalidate the Contract nor release the Surety. The Contractor agrees to perform the work as directed by the Engineer. Any costs applicable to such changes will be paid for by the execution of an appropriate Contract Addendum.

**b. Causes for Changes.** Changes in the Contract may result from any of the following causes:

1. Differing site conditions.
2. Alterations in the Plans or Details; additions to, reductions in, or elimination of an existing item of work contained in the Proposal.
3. Extra or unforeseen work for which there is no item of work in the Proposal.
4. Suspension of the work for any reason.
5. Significant changes in the character of the work.

**12.104.03 DIFFERING SITE CONDITIONS.** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

**12.104.04 ALTERATIONS IN THE PLANS OR DETAILS.** The Engineer may order changes in the Plans or Details, increase, reduce, or eliminate any Contract work item deemed necessary to satisfactorily complete the Project. Should such alterations in the Contract result in changes in the quantities of work to be performed, the Contractor shall complete such altered quantities in the same manner prescribed for the corresponding unaltered quantities. Unless otherwise provided for under **Subsection 12.104.07; Significant Changes in the Character of the Work**, such altered work shall be paid for at the same unit prices as for the corresponding unaltered items of work.

**a. Prefabricated Materials.** The Engineer may find it necessary to decrease or eliminate items of work that involve prefabricated materials which are not considered stock commercial items. In the event fabrication of such materials was started or completed before the Contractor is advised of the decrease or elimination of the items in question, the Department may:

1. Upon verification, reimburse the Contractor for the fabrication cost, including material cost less salvage value; or

2. Instruct the Contractor to have the fabricated material delivered to the project to be placed in the care of the Engineer for subsequent use by the State on other work. Payment for such material will be made in accordance with **Subsection 12.109.06; Partial Payments.**

**12.104.05 EXTRA WORK.** The Contractor shall perform extra work, for which there is no price included in the Contract, whenever it is deemed necessary or desirable to complete the work as contemplated. Such work shall be performed in accordance with the Specifications and as directed, and will be paid for as provided under **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work.**

**12.104.06 SUSPENSIONS OF WORK ORDERED BY THE ENGINEER.** If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or Contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

**12.104.07 SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK.** The Engineer reserves the right to make in writing at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.

**a. Circumstances for Significant Change.** The term "significant change" shall be construed to apply only to the following circumstances:

1. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or;

2. When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**12.104.08 MAINTENANCE OF TRAFFIC.** Unless otherwise provided, the Contractor shall maintain the road undergoing improvement open to all traffic during the work of the Contract. Where so provided on the Plans, the Contractor may bypass traffic over an approved detour route. Additional detours not shown on the Plans may be employed only if plans for the detours are designed, submitted, reviewed, approved, and implemented in accordance with the requirements indicated in the Transportation Management Plan and such plans receive the written approval of the local City/Town Public Works Director. Detours of a short-term nature, which may be implemented only during the Contractor's scheduled hours of operation, and which must be removed at the close of the day's operations, shall require a 24-hour advance notice and approval of the Engineer. The Contractor shall keep the portion of the project being used by public traffic, whether it be through or local traffic, in a condition that shall safely and adequately accommodate such traffic. The Contractor shall furnish, erect and maintain all temporary traffic control devices in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, latest Edition.

The Contractor shall bear all expense of maintaining traffic over the section of road undergoing improvement without direct compensation, except as provided below:

**a. Special Detours.** When the Contract contains items for "maintenance of detours" or "removing existing structures and maintaining traffic," the payment for such items shall cover all cost of constructing and maintaining detour or detours, including the construction of temporary bridges and accessory features and the subsequent legal removal of the same. The failure or refusal of the Contractor to construct detours at the proper time and to maintain same in working condition shall be sufficient cause for suspending the work until such detours are provided in satisfactory condition for use by public traffic. Right-of-way for temporary roads or bridges will be furnished by the Department.

**b. Maintenance of Traffic During Suspension of Work.** During any suspension of the work, the Contractor shall make passable and shall open to traffic those sections of the project, together with temporary roadways or portions thereof as may be agreed upon between the Contractor and the Engineer, for the temporary accommodation of traffic during the anticipated period of suspension. Thereafter, and until an issuance of an order for the resumption of construction operations, the maintenance of the temporary roadways and sections of the project will be the responsibility of the Department. When work is resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such temporary use of the project; remove to the extent directed by the Engineer any work or materials used in the temporary maintenance thereof by the State; and complete the project in every respect as though its prosecution had been continuous and without interferences. Additional work caused by such suspension, for reasons beyond the control of the Contractor, will be paid for by the State in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work and Force Account Work.**

**c. Maintenance Directed by the Engineer.** If the Engineer directs special maintenance for the benefit of the traveling public, then the Contractor will be paid on the basis of prevailing unit prices or in accordance with **Subsection 12.104.05; Extra Work.** The Engineer will be the sole judge of work to be classed as special maintenance.

Detours or routes used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained at its own expense. In order to provide for the safety, comfort, and well-being of residents of heavily populated residential areas, the Contractor shall select haul routes between the project and material sources that will minimize disturbance to such residents. The Contractor shall submit for the Engineer's review its planned route of haul and its plan for minimizing the adverse effect of such hauling operations on local residents. It shall be the responsibility of the Contractor to obtain all necessary permits, approvals and licenses and to comply with the ordinances, rules and regulations of the local community concerning haul routes and detours, all at no expense to the Department.

The Department reserves the right to select alternative haul routes, to divide the hauling traffic over several routes, and to impose such other restrictions it deems necessary to minimize the impact of the hauling operation on local residents.

The Contractor shall not store barricades, material, or equipment in a manner that would impede or impair the safety of the traveling public.

**d. Maintenance for Traffic Flow-Utility Work.** The Contractor shall provide, as part of the Contract, construction signing in accordance with the Manual on Uniform Traffic Control Devices for all utility work performed directly by utility companies, municipalities, or their respective subcontractors. Also included is the provision by the Contractor of flaggers, traffic persons, and the setting up, maintaining, and moving of signs, all in accordance with applicable provisions contained in **PART 900** of the Standard Specifications (Blue Book).

**12.104.09 MAINTENANCE OF PUBLIC ACCESS.** Unless otherwise provided, the Contractor shall maintain existing streets, highways, roads, private walks and sidewalks which may be involved with the Project, open for vehicular and/or pedestrian traffic. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, and intersections with trails, roads, streets, businesses, parking lots, residences, garages, farms, and other features as may be necessary, and at its own expense and as directed by the Engineer.

With respect to maintaining public access as described above, the Contractor will not be required to remove snow.

If the Engineer decides that the interests of the public and/or abutting property owners so-require, the Contractor shall construct plank crossings, or other such approved temporary crossings, over trenches in streets, roads, or private ways. All such temporary crossings shall be provided as directed by the Engineer.

**12.104.10 RIGHTS IN AND USE OF MATERIALS FOUND ON THE PROJECT.** The Contractor, with the approval of the Engineer, may use on the project such stone, gravel, sand, or other material determined suitable by the Engineer, as may be found in the excavation and will be paid both for the excavation of such materials at the corresponding Contract unit price and for the pay item for which the excavated material is used. The Contractor shall replace at its own expense with other acceptable material all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise. No charge for the materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location which is not within the grading limits, as indicated by the slope and grade lines, without prior written authorization from the Engineer.

**12.104.11 FINAL CLEANING-UP.** Prior to any inspections performed subsequent to the Contractor's "Notice of Substantial Completion," all areas occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment. All parts of the work shall be left in an acceptable condition.

The cost of the final clean-up shall be incidental to other items of work and no separate payment shall be made.

The Contractor shall remove its equipment, materials and other obstacles from the project right-of-way and from property adjacent to the project site which is not owned or controlled by the Contractor within thirty (30) days after completion of the Project. The Contractor shall clean and remove all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, bituminous materials, dirt, and other foreign materials on or in any structure, curb, gutter, median or gore marker due to its operation.

**12.104.12 RAILWAY-HIGHWAY PROVISIONS.** If the Contract requires that materials be hauled across the tracks of any railway, the Department will arrange with the railway for new crossings or for the use of any existing crossings. If the Contractor elects to use crossings other than those specified in the Contract, the Contractor shall make arrangements for the use of the crossings.

Work to be performed by the Contractor on the railway Right-of-Way shall be performed to avoid interference with the movement of trains or traffic of the railway company. The Contractor shall avoid accidents, damage, or unnecessary delay or interference with railway trains and other property.

**12.104.13 CONSTRUCTION OVER OR ADJACENT TO NAVIGABLE WATERS.** Work over, on, or adjacent to navigable waters shall be so conducted so that free navigation of the waterways will not be interfered with and that the existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

**12.104.14 CONTRACTOR'S RESPONSIBILITY FOR THE WORK.** Until substantially complete, the Contractor shall be responsible and shall protect all work against injury or damage from all causes whether arising from the execution or the non-execution of the work. At the Contractor's expense, the Contractor shall rebuild, repair, restore, and make good all losses, injuries, or damages to any portion of the work from any cause except those beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities.

In case of suspension of work from any cause, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for normal drainage, and shall erect necessary temporary structures, signs, or other facilities. During the suspension period, the Contractor shall also maintain in an acceptable growing condition all living material in newly established planting, seedings, and soddings furnished under the Contract, and shall protect new tree growth and other important vegetative growth against injury.

All costs associated with the work described in this Subsection shall be borne by the Contractor, unless otherwise provided, under **Subsection 12.104.03; Differing Site Conditions**.

**12.104.15 ENVIRONMENTAL PROTECTION.** The Contractor shall comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials, and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

When work areas or pits are located in or adjacent to live streams, such areas shall be separated from the main stream by a dike or barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Water from aggregate washing or other operations containing sediment shall be treated by filtration, settling basins, or other means sufficient to reduce the sediment content to not more than that of the stream or lake into which it is discharged.

Other requirements relating to temporary and permanent erosion and water pollution controls are set forth in **SECTIONS 206 through 210**, respectively, of the Specifications (Blue Book).

**a. Plant and Pest Control Requirements.** The United States Department of Agriculture has advised that soil and soil-moving equipment operating in regulated areas of certain counties will be subject to plant and pest quarantine regulations. In general, these regulations provide for cleaning soil from equipment before it is moved from regulated areas. Complete information may be secured from appropriate divisions of the Rhode Island Department of Environmental Management and the United States Department of Agriculture.

Contractors shall comply with these regulations where applicable to the State of Rhode Island.

## **12.105 – Control of Work**

**12.105.01 AUTHORITY OF THE ENGINEER.** The Engineer will decide all questions related to the quality and acceptability of materials furnished; work performed; and the rate of progress of the work; questions regarding the interpretation of the Contract Documents; and questions as to the acceptable fulfillment of the Contract by the Contractor.

The Engineer will have the authority to suspend the work completely or in part due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods necessary due to unsuitable weather; for failure to correct damages to public or private properties caused by the Contractor and/or its Subcontractors, for conditions considered unsuitable for the prosecution of the work or for any other condition or reason determined to be in the State's interest.

**12.105.02 PLANS AND SHOP DRAWINGS.** Plans will show details of all structures, lines, grades, typical cross sections of the roadway, location and design of all structures and a summary of items appearing on the Proposal. Bridge plans will either show all dimensions and details necessary for complete construction or such information that when supplemented by additional field data gathered by the Contractor will enable the Contractor to prepare complete shop drawings.

The Contractor shall keep one set of plans available at the site at all times, and shall provide approved shop drawings to the Engineer upon request.

All shop drawings will be submitted in a timely fashion such that the Contractor's approved schedule will not be adversely impacted by the submittal process. Shop drawings shall consist of such detailed plans required to control the work that are not included in the Plans furnished by the Department. They shall include, but not be limited to, stress sheets, erection plans, false work plans, sheeting plans, cofferdam plans, bending diagrams for reinforcing steel or any other supplementary plans or similar data required of the Contractor. The Contractor shall submit eight (8) sets of shop drawings to the Engineer and one set to the design consultant of record. Shop drawings shall be accompanied by eight (8) sets of design computations, cuts from manufacturers' catalogs, and/or supporting technical bulletins.

Engineering shop drawings and design computations shall be stamped only by a Rhode Island Registered Professional Engineer. The stamping of Plans for professional design shall be in accordance with the applicable requirements of the Rhode Island Board of Registration for Professional Engineers, or other Boards of Professional Registration, as applicable.

Within forty-five (45) calendar days of submission, all shop drawings shall be reviewed by the Engineer and returned to the Contractor for appropriate action. Shop drawings that are found to be erroneous, lacking information necessary to control construction, or not in conformance with accepted design criteria will be disapproved and returned to the Contractor. The Contractor shall address the Engineer's comments and resubmit revised shop drawings and/or design computations. The Contractor will not be allowed any increase in Contract time for the time taken by the Contractor to submit revised shop drawings caused by an erroneous submission, or by a previous submission either lacking the information necessary to control construction, or not conforming to accepted design criteria. Also, the time taken by the Engineer to review the revised shop drawings does not constitute justification for additional Contract time.

Shop drawings must be approved by the Engineer prior to performance of the work involved. Such approval shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work.

Unless otherwise specified in the Contract Documents, the Contract price will include the cost of furnishing all shop drawings.

**12.105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS.** Work performed and materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions and material requirements, including tolerances, specified in the Contract Documents.

In the event the Engineer finds the materials furnished, work performed, or the finished product are not within reasonably close conformity with the Contract Documents, but that reasonably acceptable work has been produced, the Engineer shall determine if the work should be accepted and remain in place. If accepted, the Engineer will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such work or materials as necessary to support this determination.

In the event the Engineer finds the materials furnished, work performed or the finished project are not in reasonably close conformity with the Contract Documents, and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

"Reasonably close conformity" means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where such variations will not materially affect the value or utility of the work or the interests of the State.

**12.105.04 COORDINATION OF PLANS, SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS.** The Standard Specifications, Supplemental Specifications, Plans, Special Provisions, and Contract Addenda are essential parts of the Contract; and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; Plans will govern over Standard and Supplemental Specifications; Supplemental Specifications will govern over Standard Specifications; and Special Provisions will govern over Standard Specifications, Supplemental Specifications and Plans.

The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers such an error or omission, the Engineer shall be promptly notified. The Engineer will then make such corrections and interpretations necessary to fulfill the intent of the Contract Documents.

**12.105.05 COOPERATION BY CONTRACTOR.** The Department will supply the Contractor with a Contract Award Booklet containing a Contract Award compact disk (CD),

from which the plans, specifications, contract addenda and other contract documents may be printed. The Contractor will be required to keep one set of printed copies of the Contract Documents available on the project site at all times.

The Contractor shall give the work the constant attention necessary to facilitate progress and shall cooperate fully with the Engineer, the Department's Resident Engineer and inspectors, and other Contractors.

The Contractor shall have on the project site as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and experienced in the type of work being performed. The superintendent shall receive orders or instructions from the Engineer, shall be authorized to act for the Contractor on the work, and shall have full authority to execute orders or directions of the Engineer without delay.

The Contractor shall promptly supply, irrespective of the amount of work sublet, the necessary materials, equipment, tools, labor, and other incidentals to complete the Contract.

**a. Causes for Removal.** The Engineer may remove the superintendent from the project at any time if:

1. The performance of the superintendent is unsatisfactory; or
2. The superintendent is uncooperative in his relationship with the Engineer.

**12.105.06 COOPERATION WITH UTILITIES.** The Department will notify all utility companies, all pipe line owners, or other parties affected, and endeavor to have all necessary adjustments of public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable.

Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction in which the respective owners hold no private easements are to be relocated or adjusted by said owners in accordance with executed Construction and Maintenance Agreements/Utilities.

It is understood that the Contractor has considered in its Proposal all of the permanent and temporary utility facilities in their present or relocated positions as specified in the Contract and as revealed by site investigation. No additional compensation will be allowed the Contractor for any delays, inconvenience, or damage sustained by it due to any interference caused by such facilities or the operation of relocating them, unless otherwise provided for in **Subsection**

**12.104.03; Differing Site Conditions.**

In general, the Contract will indicate those various utility items which are to be relocated or adjusted by the utility owner in accordance with Construction and Maintenance Agreements, and those which are to be relocated or adjusted by the Contractor. In this latter case, all underground construction required under the Contract for new or existing electric and/or telephone related facilities shall be performed by a contractor approved by the respective utility company. The Contractor may perform this work if it has been so-approved; otherwise, the Contractor shall retain a firm that has been approved for such work. The work involved would include all adjustments to utility manholes, frames and grates, as well as the utility lines themselves. Prior to the preconstruction conference, the Contractor shall submit to the Engineer written statements

from the respective utility companies that the firm or firms selected by the Contractor are approved for such work. See **Special Provision Code 105.2000**.

Prior to commencing work, the Contractor shall make arrangements to protect the properties of railway, telegraph, telephone, water, gas, and power companies, or other property, from damage that could result in considerable expense, loss, or inconvenience.

In addition, the Contractor shall notify each utility owner and/or municipality whose facilities might be affected by its work 24 hours in advance of the commencement of such work. This notification shall also request the respective utility owner and/or municipality to assign a representative to be present at the site of the work during the period of the Contractor's operations.

The locations and depths of existing utilities as shown on the Plans are approximate and should not be relied upon by the Contractor. The Contractor shall check and verify the location of all existing utilities, both underground and overhead, before proceeding to commence the work or order materials. Excavation shall be in accordance with all statutes, ordinances, and regulations of the Municipality, State or Federal Government that may be applicable. The Contractor is specifically required to follow the Dig Safe process. Damage to existing utilities which are shown on the Plans or located by the respective utilities in accordance with the Dig Safe process shall be the sole responsibility of the Contractor.

The Contractor shall cooperate with the utility owners in the removal and rearrangement of any underground or overhead utilities in order that these operations may progress in a reasonable manner; that duplication of rearrangement work may be reduced to a minimum; and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption to water or utility services as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate fully in the restoration of such services.

If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

The Contractor shall prevent damage to pipes, cables, and other utilities. Repairs to damaged utilities caused by carelessness or omissions on the Contractor's part will be corrected at the Contractor's expense. The damaged facilities shall be restored to a condition similar or equal to that existing before the damage occurred. If the Engineer determines that adjustment or relocation of utilities is necessary to accommodate construction, the Engineer will make necessary arrangements with the owner if the work is not otherwise provided for in the Contract.

If the Engineer determines that adjustment of utility facilities is necessary to accommodate construction, and the adjustment work is not provided for in the Contract, the Contractor will be paid for the work in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work**.

**a. Contractor Coordination with U.S. Postal Service.** The Contractor shall notify and coordinate with the U.S. Postal Service in situations where existing U.S. Postal Boxes (mail drop/collection boxes) within the limits of the Contract are to be removed and reset to allow for sidewalk/curbing construction. This requirement applies only in the case of standard U.S. Postal Service main drop boxes; it is not applicable for the removal and resetting or replacement of

private mailboxes. The removal and resetting of U.S. Postal Service mail drop boxes must be conducted only by the U.S. Postal Service, and therefore, a reasonable time allowance must be provided by the Contractor to allow the Postal Service to complete the removal prior to start of construction. Finally, the Contractor shall coordinate with the Post Office when construction is complete and acceptable such that the boxes may be reset.

**b. Contractor Coordination with Narragansett Bay Commission.** The Contractor must obtain a sewer facility alteration permit from the Narragansett Bay Commission prior to undertaking any work that affects sanitary sewer facilities that fall within NBC jurisdiction. The permit will be issued through the NBC and can be obtained at the location indicated in **Special Provision Code 105.1000** of the Contract.

**12.105.07 COOPERATION BETWEEN CONTRACTORS.** The Department reserves the right to contract for, and perform other or additional work on or near the work covered by the Contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct its work without interfering or hindering the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed by the Engineer.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Department from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project unless otherwise provided for under **Subsection 12.104.03; Differing Site Conditions**.

The Contractor shall arrange the work and shall place and dispose of the materials being used without interfering with the operations of the other contractors within the limits of the same project. The work shall be coordinated with that of the others in an acceptable manner and shall be performed in proper sequence with that of the other contractors.

**12.105.08 CONSTRUCTION STAKES, LINES, AND GRADES.** The Contractor will set construction stakes establishing lines, slopes, profile grades, centerline and benchmarks for roadwork, bridge work, culvert work, protective and accessory structures, and appurtenances. These stakes and marks shall constitute the field control by which the Contractor shall establish other necessary controls and perform the work.

The contractor will maintain construction lines, points and grade staking to assure accurate and proper control of the work and to verify final grades and construction lines. The Contractor shall be held responsible for preserving all stakes and marks, and if the stakes or marks are destroyed or disturbed by the Contractor, the responsibility of replacing them will be borne by the Contractor at his own expense.

The Contractor will be responsible for the accuracy of lines, slopes, grades, and other engineering work set forth under the contract documents and the provisions of **SECTION 934; FIELD CONTROL AND CONSTRUCTION LAYOUT** of the Specifications (Blue Book).

**12.105.09 AUTHORITY AND DUTIES OF RESIDENT ENGINEER.** As the representative of the Engineer, the Resident Engineer has immediate charge of the engineering details of each construction project, and is responsible for the administration and satisfactory completion of the project. The Resident Engineer is delegated commensurate authority by the Department and is, thereby, authorized to reject defective material and to suspend any work that is being improperly performed. The Resident Engineer is authorized to make changes that involve increases or decreases in quantities not greater than ten-percent of the corresponding values that appear in the Proposal. The Resident Engineer is not authorized to make changes in any design element or project specification; or to make increases or decreases in quantities greater than ten-percent of the corresponding values that appear in the Proposal.

**12.105.10 INSPECTION OF WORK.** All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If requested by the Engineer, the Contractor, before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract. Should the work thus exposed or examined prove acceptable, the uncovering, removing, and replacing the covering, or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, removing, and replacing of the covering, or making good of the parts removed, shall be at the Contractor's expense.

Work performed or materials used without supervision or inspection by an authorized Department representative as a result of failure of the Contractor to notify the Engineer may be ordered removed and/or replaced at the Contractor's expense.

When any unit of government or political subdivision, utility or railroad corporation is required to accept and/or pay a portion of the cost of the work covered by this Contract, its representatives shall have the right to inspect the work. Such inspection shall not make any unit of government or political subdivision, utility, or railroad corporation a party to this Contract, and shall in no way interfere with the rights of either such party.

**12.105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK.** Work which does not reasonably conform to the requirements of the Contract will be considered unacceptable, unless otherwise determined acceptable under the provisions of **Subsection 12.105.03; Conformity with Plans and Specifications.**

Unacceptable work, whether the result of poor workmanship, use of defective materials, or damage through carelessness, found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner at the Contractor's expense.

Work performed contrary to the instructions of the Engineer; work performed beyond the lines and grades shown on the Plans, or as otherwise provided; or any extra work performed without authority, will be considered as unauthorized work and will not be paid for under the provisions of the Contract. Work so performed may be ordered removed and/or replaced at the Contractor's expense.

If the Contractor fails to promptly comply with any order of the Engineer made under the provisions of this Subsection, the Engineer is authorized to require unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs incurred thereby from any monies due or to become due the Contractor.

**12.105.12 LOAD RESTRICTIONS.** The Contractor shall comply with all legal load restrictions in the hauling of equipment or materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage which may result from the moving of such equipment or materials.

The operation of equipment on hauling loads which cause damage to structures or the roadway, or to any other type of construction, will not be permitted. Handling or hauling of materials over the base course or surface course under construction shall be limited as directed by the Engineer to prevent damage to the pavement structure. No loads will be permitted on a concrete pavement, base or structure before the concrete has attained its required strength unless otherwise authorized in writing by the Engineer.

**12.105.13 MAINTENANCE DURING CONSTRUCTION.** The Contractor shall maintain the work during construction and until the project is substantially complete. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that the roadway or structures are kept in satisfactory condition.

If the Contract requires the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

Cost of maintenance work during construction and before the project is substantially completed shall be included in the Contract unit prices of the various pay items and the Contractor will not be paid an additional amount.

**12.105.14 OPENING SECTIONS OF PROJECT TO TRAFFIC.** Opening of sections of the work to traffic prior to completion of the entire Contract may be desirable from a traffic service standpoint; or may be necessary due to conditions inherent in the work, or by changes in the Contractor's work schedule; or necessary due to conditions or events unforeseen at the time of the Contract award. Such openings to traffic shall be made when ordered by the Engineer. Under no condition shall the openings constitute acceptance of the work or a waiver of any provisions of the Contract.

The Contract will state which sections shall be opened to traffic prior to completion of the Project. On any section opened by order of the Engineer, whether covered in the Contract or not, the Contractor shall not be required to assume any expense in maintaining the road for such traffic. Such expense will be borne by the Department, or compensated for in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work and Force Account Work.**

If, however, the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may notify the Contractor in writing and establish a period of time in which the work should be completed. If the Contractor is dilatory, or fails to

make a reasonable effort toward completion in this period of time, the Engineer may order all or a portion of the project opened to traffic. On sections which are so ordered to be opened, the Contractor shall conduct the remainder of the construction operations to cause the least obstruction to traffic. Costs incurred due to the dilatory nature of the Contractor's response to instructions of the Engineer shall be borne solely by the Contractor.

On any section opened to traffic under the above conditions, whether stated in the Contract or opened by necessity of Contractor's operations, or unforeseen necessity, damage to the highway not attributable to traffic that occurs (except slides) shall be repaired at the expense of the Contractor. The removal of slides shall be done by the Contractor on a basis determined by the Engineer prior to removal.

Unless otherwise specified, the Contractor shall schedule pavement removal such that no location shall remain unpaved for longer than ten (10) working days. This means that once the Contractor commences with the removal of existing full depth pavement from any location where traffic flow is to be maintained, he must restore the roadway with no less than a full depth bituminous base course at that particular location within 10 working days. In the case of partial depth pavement removal (cold planning/milling), the Contractor shall schedule the pavement removal such that no location shall remain without a new bituminous asphalt layer for longer than seven (7) calendar days.

**12.105.15 FURNISHING RIGHT-OF-WAY.** The Department is responsible for securing Rights-of-Way in advance of construction. Exceptions will be indicated in the Contract.

**12.105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE.** If the Contractor fails to comply with the provisions of **Subsection 12.105.13; Maintenance During Construction**, the Engineer will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the project. The entire cost of this maintenance will be deducted from monies due or to become due the Contractor.

#### **12.105.17 ACCEPTANCE.**

**a. Partial Acceptance.** When the Contractor substantially completes a unit or portion of the work in accordance with the definition contained in **Subsection 12.101.71; Substantial Completion**, the Contractor may request an inspection of that unit or portion of the project. The Engineer's inspection shall disclose the following:

1. Work not started, but required to be completed.
2. Incomplete work, the completion of which is required.
3. Unsatisfactory work, the correction of which is required.

The Engineer shall provide the Contractor with a report containing the results of this inspection along with instruction for completing the construction of the unit or portion of the work under consideration. The Contractor shall immediately comply with these instructions. Upon completing and correcting the work, the Contractor may request another inspection.

If, upon completion of this second inspection, the Engineer finds that the unit or portion of the work has been satisfactorily completed in compliance with the Contract, the Engineer may

accept that unit or portion of the work as physically completed, and the Contractor may be relieved of further responsibility for such unit or portion of the work, provided that the Contractor agrees to deliver full documentation, certificates and proofs of compliance for said work during final acceptance.

If, however, during this second inspection the Engineer finds any incomplete or unsatisfactory work, no partial acceptance will be granted, and acceptance of the unit or portion of the work must await the final acceptance of the entire project.

Partial acceptance shall not void or alter any of the terms or provisions of the Contract.

**b. Final Acceptance.** Final acceptance of the project will be made by the Engineer on behalf of the State when the Contractor has completed the project in full accordance with the definition contained in **Subsection 12.101.09; Completion**. The procedure for obtaining final acceptance follows:

1. When the Contractor determines that the work of the Contract is substantially completed in accordance with the definition of **Subsection 12.101.71; Substantial Completion**, the Contractor shall notify the Engineer of this fact.

2. Within 30 calendar days of the Contractor's official notice, the Engineer will schedule a time and date for an inspection.

3. The Engineer's inspection shall take place at the time and date established in subparagraph (2), above.

4. Within 60 calendar days of the inspection, the Engineer will notify the Contractor, in writing, as to the following:

(a) Any outstanding work items that remain to be completed.

(b) Any unsatisfactory work that must be corrected.

(c) The required submission of any and all executed documents, certificates, or proofs of compliance as required by the Contract.

Subparagraphs (a), (b), and (c), above, constitute the Engineer's so-called, "punch list."

5. The Contractor shall complete the work, correct unsatisfactory work, submit the required documents, and comply with all directions contained in the Engineer's "punch list" within 60 calendar days of the date of the Engineer's transmittal to the Contractor of said "punch list" except that;

If, during the progression of these 60 calendar days for the Contractor to complete the work, the date of December 15th is encountered, said progression of days shall stop, and shall not again be resumed until the date of the following April 15th is encountered, the intervening 120 days being designated by **Subsection 12.108.07; Determination and Extension of Contract Time**, as winter "shut down" time.

6. At the conclusion of the 60 calendar days for the Contractor to complete the work, the progression of which is defined above, the Engineer shall make another inspection of the work. If the Engineer determines that the work of the Contract has been satisfactorily completed in full accordance with **Subsection 12.101.09; Completion**, such inspection shall constitute the Final Inspection. In such event, the Engineer will make final acceptance of the project on behalf of the State and shall notify the Contractor in writing of this acceptance as of the date of the aforementioned Final Inspection.

If, however, this second inspection discloses that work remains to be completed, unsatisfactory work remains to be corrected, and documents remain to be submitted, the process will revert to that of **Para. b.4**, above, and proceed accordingly; with the additional stipulation that liquidated damages will commence on the date of the second inspection and will remain in effect until final acceptance is subsequently achieved, all as hereinafter provided for in **Subsection 12.108.08; Failure to Complete on Time**.

## **12.105.18 CLAIMS FOR ADJUSTMENTS AND DISPUTES.**

**a. Notification.** If the Contractor deems that additional compensation is due for work or material not clearly covered in the Contract, the Contractor shall notify both the Engineer and the Chief of Construction Operations in writing of its intention to make claim for such additional compensation before beginning or continuing the affected work; also, the Contractor shall proceed diligently with performance of the contract pending final resolution of any request for relief, payment, claim, appeal or action arising under the contract, and comply with any decisions of the Engineer<sup>1</sup>. If such notification is not given, or the Contractor does not afford the Engineer proper facilities for keeping strict account of the actual costs, the Contractor thereby waives any claim for additional compensation. Notice by the Contractor, and the fact that the Engineer has kept account of the costs, shall not be construed as substantiating the validity of the claim.

**b. Submission.** Claims must be submitted within 120 days of substantial completion of the project. Claims submitted after 120 days will not be accepted. An equitable adjustment will be made to the Contract if the claim is found to be just.

Nothing in this Subsection shall be construed as establishing any claim contrary to the terms of **Subsections 12.104.02; 12.104.03; 12.104.04; 12.104.05; 12.104.06 and 12.104.07** of these Standard Specifications.

**c. Documentation of Claims.** Any claim shall be in sufficient detail to enable the Engineer to determine the basis for entitlement and the resulting costs. The following minimum information must accompany each claim submitted:

1. A detailed factual statement of the claim providing all necessary dates, locations and items of work affected by the claim.

2. The date actions resulting in the claim occurred or conditions resulting in the claim became evident.

3. A copy of the "Notice of Potential Claim" must be filed for the specific claim.

4. The name and title of each Department employee knowledgeable about facts that gave rise to such claim.

5. The name and title of each Contractor or employee knowledgeable about facts that gave rise to such claim.

6. The specific provisions of the Contract which support the claim, and a statement why such provisions support the claim.

7. The identification of any pertinent documents, and the substance of any material or communications relating to the claim.

8. A statement whether the additional compensation or extension of time is based on the provisions of the Contract or an alleged breach of Contract.

9. If an extension of time is also sought, the specific days for which it is sought and the basis for such claim as determined by an analysis of the construction schedule.

10. The amount of additional compensation sought and a breakdown of that amount.

**d. Certification of Claims.** When submitting a claim, the Contractor must certify in writing, under oath in accordance with the formalities required as to the following:

1. The claim is made in good faith.
2. Supportive data is accurate and complete to the Contractor's best knowledge and belief.
3. The amount of the claim accurately reflects the actual cost incurred by the Contractor.

**e. Auditing of Claims.** All claims filed against the Department shall be subject to audit by the Department at any time following the claim filing, whether or not the claim is part of a suit pending in the courts of this State. The audit may begin on ten days notice to the Contractor, Subcontractor, or Supplier. The Contractor, Subcontractor, or Supplier shall make a good faith effort to cooperate with the auditors and shall provide, at a minimum, access to the following documents:

1. Daily time sheets and foreman's daily reports.
2. Union agreements, if any.
3. Insurance, welfare, and benefits records.
4. Payroll register.
5. Earnings records.
6. Payroll tax returns.
7. Material invoices, purchases orders, and all material and supply acquisition contracts.
8. Material cost distribution worksheets.

9. Equipment records (list of company equipment, rates, etc.)
10. Vendor rental agreements, and subcontractor invoices.
11. Subcontractor payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost report.
14. Job payroll ledger.
15. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on this project.
18. Income tax returns whether such records are maintained by the company involved, its accountant, or others.
19. Depreciation records on all company equipment.
20. All other documents used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment.
21. All documents which reflect the Contractor's actual profit and overhead during the time the project was being performed and for each of the five years prior to the commencement of this project.
22. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based unless the documents are placed in escrow under other provisions of the Contract.
23. Worksheets used to prepare the claim, establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

**12.105.19 PROCEDURE FOR CLAIMS AND DISPUTES.** Every effort shall be made by the parties to the Contract to resolve claims and disputes in accordance with the internal procedures of the Department. If such efforts are unsuccessful, claims and disputes will be submitted to either binding arbitration or litigation for resolution in accordance with State Law.

**12.105.20 PROJECT DELAYS.**

**a. General Conditions Concerning Delays.** Given the nature and extent of costs arising out of work that has been delayed, and the intent of both the Contractor and the State to

promptly assign responsibility for such delay and to have all associated costs as fully documented as possible, strict adherence to the provisions of this Subsection is a condition precedent to the Contractor's entitlement to additional compensation or an extension of time because of project delays.

**b. Notification of Delay.** Within 30 calendar days of any Department action or omission which the Contractor believes has delayed or may delay the project, the Contractor shall notify the Resident Engineer of such a delay and indicate whether it intends to file a request for delay costs. The Contractor shall confirm such notification in writing to the Engineer within 5 calendar days of its notification to the Resident Engineer.

**c. Procedures.** Upon notifying the Resident Engineer, the Contractor shall keep daily records of all non-salaried labor, material and equipment expenses for all operations that are allegedly affected by the delay. The Contractor shall also identify in the daily records each operation affected by the delay and the station location of each such operation. The Department will also keep daily records. Each Monday, the Contractor shall compare the previous week's daily records with those maintained by the Department. The Contractor shall report to the Engineer within 10 calendar days of each such comparison all disagreements with Department records.

Failure to meet to review the Department's records or to report disagreements between the two sets of records will constitute the assumption that the Department's records are accurate.

Delay costs allegedly incurred prior to notifying the Resident Engineer that operations have been delayed will not be allowed.

1. Each Monday, the Contractor shall prepare and submit written reports to the Resident Engineer regarding alleged delays which contain the following information:

- (a) Number of days behind schedule.
- (b) Identify all operations that have been delayed, or will be delayed.
- (c) Explain how the Department's act or omission delayed each operation, and estimate the amount of time required to complete the project.
- (d) Itemize all extra costs being incurred, with explanations for each such cost.

2. Within 15 calendar days of the termination of an alleged delay, the Contractor shall submit a report to both the Resident Engineer and the Engineer containing the following information:

- (a) A description of the operations that were delayed. Documentation and explanation of how the Department caused the delay to include the reports of all scheduling experts or other consultants, if any; and
- (b) An as-built chart, or other graphic depiction of how the operations were delayed.
- (c) An item-by-item calculation and explanation of extra costs being sought.

3. The Engineer will review the Contractor's submission and any reports prepared by the Resident Engineer. A written decision will be provided to the Contractor within 60 days of the receipt of the Contractor's submission. If the Engineer determines that the Department is responsible for delays to the Contractor's operations, an equitable adjustment to the Contract will be authorized in accordance with **Subsection 12.109.10; Compensation for Project Delays.**

**12.105.21 WORK ZONE TRAINING.** The Contractor's TMP Implementation Manager and all other Contractor/Subcontractor personnel responsible for the setup, operation, maintenance, inspection, movement and/or breakdown of temporary traffic control devices shall be trained in accordance with the Department's "Training Guidelines for Personnel Responsible for Work Zone Safety & Mobility" and shall possess a certificate of satisfactory completion of such training. Training shall be at a level appropriate to the individual's job responsibilities and to the job decisions the individual is required to make and shall be completed prior to the commencement of work.

## **12.106 - CONTROL OF MATERIAL**

**12.106.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.** Materials used on the work shall meet all quality requirements of the Contract and the "Master Schedule for the Preparation of a Project Schedule for Sampling, Testing, and Certification of Materials. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of the proposed sources of materials prior to delivery. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If, after trial, it is found that sources of supply which have been approved do not produce a reasonably uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish materials from other sources. All materials shall be new unless otherwise specified in the Contract.

No material which, after approval, has become unfit for use shall be employed in the work.

The Department reserves the right to retest all materials which have been previously tested and accepted at the source of supply and delivered to the site. However, prior to incorporation into the work the Department may reject all such materials which, when retested, do not reasonably meet the requirements of these Specifications, or those established for the specific project.

**a. Buy American Requirements for Domestic Steel.** In accordance with the U.S. Code of Federal Regulations Title 23 and Section 165 of the Surface Transportation Assistance Act of 1982, only such permanently incorporated steel materials as have been manufactured in the United States will be used on all projects. Further, any pig iron and/or pelletized and reduced iron ore, used to produce permanently incorporated steel materials or permanently incorporated non-steel products, must be manufactured in the United States.

Bidders are advised that the Contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials.

**1. Certification of Steel.** All manufacturing processes of the steel material in a project (i.e., smelting, and any subsequent process which alters the steel material's physical form or shape or changes its chemical composition) must occur within the United States to be considered

of domestic origin. This includes processes such as rolling, extruding, machining, bending, grinding, drilling and the application of coatings, including iron.

**2. Minimal Use of Foreign Steel.** Section 635.410(b)(4) of Title 23 CFR permits a minimal amount of foreign steel to be incorporated into a Federal-aid project. This amount is defined as one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The cost of the foreign steel is defined as its value delivered to the project.

**12.106.02 LOCAL MATERIAL SOURCES.** Possible sources of local materials may be designated on the Plans and described in the Special Provisions. In general, the quality of material in such deposits will be acceptable. However, the Contractor shall determine the amount of equipment and work required to produce a material meeting the requirements of these Specifications. The Contractor shall understand that it is not feasible to ascertain from samples the limits for an entire deposit, and that variations shall be considered as usual and are to be expected. The Engineer may order procurement of material from any portion of a deposit and may reject other portions of the deposit as unacceptable.

The Department may acquire and allow the Contractor to take materials from sources designated on the Plans and/or as specified in the Special Provisions. The Department may also allow the Contractor to use such other property as may be specified, for plant site, stockpiles and hauling roads.

If the Contractor desires to use material from sources other than those designated, the Contractor shall acquire the necessary rights to take materials from the sources and shall pay all costs related thereto, including any which may result from an increase in length of haul. All costs of exploring and developing such other sources shall be borne by the Contractor. The use of material from other than designated sources will not be permitted until representative samples taken by the Engineer have been approved and written authority is granted for the use thereof.

When material deposits are neither described in the Special Provisions nor designated on the Plans, the Contractor shall provide sources of material acceptable to the Engineer.

When sources of material or material deposits are provided by the Contractor, the Department will assume the cost of processing samples to determine the suitability of the material.

Sites from which material has been removed shall, upon completion of the work, be left in a neat and presentable condition.

**12.106.03 SAMPLES, TESTS, CITED SPECIFICATIONS.** Materials will be inspected, tested and accepted by the Engineer before incorporation in the work. Work in which untested and unaccepted materials are used without approval of the Engineer shall be performed at the Contractor's risk. No payment will be made for materials found to be unacceptable and/or unauthorized. Unless otherwise designated, tests in accordance with the cited current standard methods of AASHTO, ASTM or other organizations used by the Department will be made by, and at the expense of the Department. Samples will be taken by a qualified representative of the Department. Materials being used are subject to inspection, test or rejection at any time prior to incorporation into the work. Copies of all tests will be furnished to the Contractor's representative upon request.

Whenever there is an AASHTO designation followed by an ASTM designation, the AASHTO designation will govern when there are minor differences between the two specifications.

**12.106.04 CERTIFICATION OF COMPLIANCE.** The Engineer may permit use, prior to sampling and testing, of certain materials or assemblies accompanied by Certificates of Compliance, stating that such materials or assemblies fully comply with the requirements of the Contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a Certificate of Compliance and clearly identified.

Materials or assemblies used on the basis of Certificates of Compliance may be sampled and tested and if found not in conformity with Contract requirements will be subject to rejection whether in place or not.

The form and distribution of Certificates of Compliance shall be as approved by the Engineer.

The Engineer is authorized to refuse permission for use of materials or assemblies on the basis of Certificates of Compliance.

Unexpired Warranties. If the Contractor is furnished a warranty at the time of purchase of any product or material and the warranty has not expired at the time of acceptance of the work by the State, the warranty shall then be turned over to the State.

**12.106.05 PLANT INSPECTION.** The Engineer may undertake the inspection of materials at the source. Manufacturing plants may be inspected for compliance with specified manufacturing methods. Material samples will be obtained for laboratory testing for compliance with materials quality requirements. This may be the basis for acceptance of manufactured lots as to quality.

**a. Conditions.** In the event plant inspection is undertaken the following conditions shall apply:

1. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom it has contracted for materials.
2. The Engineer shall at all times have full access to those parts of the plant where the manufacture or production of materials is taking place.
3. Adequate safety measures shall be provided and maintained.

**12.106.06 STORAGE OF MATERIALS.** Materials shall be stored to insure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection.

**a. Location of Stored Materials and Equipment.**

**1. Roads without Curbing and Sidewalks.** Construction materials and equipment may be stored within the "clear zones" designated below provided that prior written approval has been granted by the Engineer. Material stored in these clear zones must be removed within fourteen (14) calendar days. Equipment may be stored in the clear zones only during workdays; i.e., no overnight storage of equipment will be allowed.

<b>Clear Zone</b>	<b>Posted Speed</b>	<b>Distance from Edge of Travel Lane</b>
	35 mph or less	12 feet
	40-45 mph	16 feet
	50 mph or less	20 feet
	55 mph or less	30 feet

Any area of the clear zones which is used for storage of construction material and/or equipment must be clearly delineated with appropriate traffic control devices.

Storage sites shall be restored to their original condition at the sole expense of the Contractor.

Additional space required for storage shall be provided at the Contractor's expense. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested by the Engineer, copies of such written permission shall be furnished by the Contractor.

The Contractor shall comply with all Federal, State and local statutes and/or ordinances in reference to the storage of materials, and shall be liable for all damages arising from the violation thereof.

**2. Roads with Curbing and Sidewalks.** No portion of the shoulders and sidewalks may be used for storage of construction equipment and/or material.

**12.106.07 HANDLING MATERIALS.** Materials shall be handled in such manner to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles constructed to prevent loss or segregation of materials after loading and measuring.

**12.106.08 UNACCEPTABLE MATERIALS.** Materials not reasonably conforming to the requirements of the Specifications will be considered as unacceptable and all such materials will be rejected and removed immediately from the site of the work unless otherwise instructed by the Engineer. Rejected material, the defects of which have been corrected, shall not be used again until approval by the Engineer has been granted.

**12.106.09 DEPARTMENT-FURNISHED MATERIAL.** The Contractor shall furnish materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the Contract Documents.

The cost of handling and placing Department-furnished materials after they are delivered to the Contractor shall be included in the Contract price for the item in which they are used.

The Contractor will be responsible for all material delivered. Deductions will be made from any monies due the Contractor for shortages, deficiencies, other causes, and damage which may occur after delivery. Demurrage charges, resulting from the Contractor's failure to accept the material at the designated time and point of delivery will also be deducted from monies due the Contractor.

## **12.107 – Legal Relations and Responsibility to Public**

**12.107.01 LAWS TO BE OBSERVED.** The Contractor shall keep fully informed of Federal and State laws, local laws, ordinances, and regulations and orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Project, or which affect the conduct of the Project. The Contractor shall observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor, the subcontractors, suppliers of materials or services, or others engaged by the Contractor, or the employees of any of them. If any discrepancy or inconsistency is discovered between the Contract and any law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Engineer in writing.

The Contractor shall execute and file such documents, statements and affidavits required under applicable Federal or State law or regulation affecting its Proposal, Contract or the prosecution of the work. The Contractor shall permit the examination of any records made subject to such examination by Federal or State law or by regulations promulgated thereunder by any State or Federal agency charged with the enforcement of such law.

**12.107.02 SPECIFIC STATUTES REQUIRED TO BE INSERTED.** Every contract for the construction of public works by the State, or by persons or organizations contracting with the State for such construction, shall contain the following provisions from the General Laws of Rhode Island:

**a. Title 37, Chapter 13, Sections 5, 6, and 7,** respectively, of the General Laws of Rhode Island, 1956, entitled "Labor and Debts of Contractors," read as follows:

"37-13-5. PAYMENT FOR TRUCKING OR MATERIALS FURNISHED -- Withholding of sums due. -- A contractor or subcontractor on public works authorized by a proper authority shall pay any obligation or charge for trucking and material which have been furnished for the use of such contractor or subcontractor, in connection with the public works being performed by him, within ninety (90) days after such obligation or charge is incurred or the trucking services has been performed or the material has been delivered to the site of the work,

whichever is later. When it is brought to the notice of the proper authority in a city or town, or the proper authority in the state having supervision of such contract, that such obligation or charge has not been paid by the contractor or subcontractor, the proper authority may deduct and hold for a period not exceeding sixty (60) days, from sums of money due to the contractor or subcontractor, the equivalent amount of such sums certified by a trucker or materialman creditor as due him, as provided in this section, and which the proper authority determines is reasonable for trucking performed or materials furnished for such public works."

"37-13-6. ASCERTAINMENT OF PREVAILING RATE OF WAGES.

-- Before awarding any contract for public works to be done, the proper authority shall ascertain from the director of labor the general prevailing rate of the regular, holiday and overtime wages paid and the general prevailing payments on behalf of employees only, to lawful welfare, pension, vacation, apprentice training and educational funds (payments to said funds must constitute an ordinary business expense deduction for federal income tax purposes by contractors) in the city, town, village or other appropriate political subdivision of the state in which the work is to be performed, for each craft, mechanic, teamster, laborer or type of workman needed to execute the contract for the public works, and shall specify in the call for bids for the contract and in the contract itself the general prevailing rate of the regular, holiday, and overtime wages paid and the payments on behalf of employees only, to such welfare, pension, vacation, apprentice training and education funds existing in the locality for each craft, mechanic, teamster, laborer or type of workman needed to execute the contract or work."

"37-13-7. APPLICABILITY AND DETERMINATION OF PREVAILING RATE OF WAGES. -- every call for bids for:

(a) every contract in excess of \$1,000 to which the State of Rhode Island or any political subdivision thereof is party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the State of Rhode Island or any political subdivision thereof, and which requires or involves the employment of employees shall contain a provision stating the minimum wages to be paid various types of employees which shall be based upon the wages that will be determined by the director of labor to be prevailing for the corresponding types of employees employed on projects of a character similar to the contract work in the city, town, village, or other appropriate political subdivision of the State of Rhode Island in which the work is to be performed; and every contract shall contain a stipulation that the contractor or his subcontractor shall pay all said employees employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the call for bids, regardless of any contractual relationships which may be alleged to exist between the contractor or subcontractor and such employees and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary to pay to such employees employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid said employees on the

work and the rates of wages received by such employees and not refunded to the contractor, subcontractors, or their agents;

(b) the term `wages, scale of wages', `wage rates', `minimum wages', and `prevailing wages' shall include:

- (1) the basic hourly rate of pay; and
- (2) the amount of

(A) the rate of contribution made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bonafide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits: Provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of director of labor insofar as this chapter of this title and other acts incorporating this chapter of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2) (A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to a paragraph (2) (B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2)."

**b. Title 28, Chapter 26, Section 5 of the General Laws of Rhode Island, 1956,** entitled "License Required for Operation of Hoisting Machinery - Public Contracts," reads as follows:

28-26-5. No persons shall operate or be in direct charge of a hoisting or excavation gasoline, steam, diesel, electric or compressed air hoist, shovel, crane, excavator, of five horsepower or more without obtaining a license to do so as provided in this chapter. No user or agent of use of any such described steam, gasoline, diesel, electric or compressed air hoisting machinery shall permit it to be operated unless it is operated by a duly licensed person as hereinafter provided by this chapter.

**c. Chapters 85, 86 AND 88 of the Public Laws or Rhode Island, 1960:**

Section 123 of the aforesaid chapters defines the authority of Director of Department of Public Works and use of Federal assistance and provides in part that in the event that Federal funds or Federal assistance are made available to the State for use in carrying out highway projects, said projects shall be carried out and executed in all respects subject to the provisions of the appropriate Federal law providing for the construction of such projects and the rules and regulations made pursuant thereto, and to such terms, conditions rules and regulations, not inconsistent with such Federal law, rules and regulations as said Director may establish to ensure the proper execution of said projects, therefore, any provisions of the State laws that conflict with the Federal laws, rules and regulations are not applicable to projects financed in whole or in part with Federal Aid Highway funds.

**d. Public Law - Chapter 5-6-2;** entitled "Work for Which License Required," reads as follows:

No person, firm, or corporation shall enter into, engage in, or work at the business of installing wire, conduits, apparatus, fixtures and other appliances for carrying or using electricity for light, heat or other purpose, unless such person, firm or corporation shall have received a license and a certificate therefore, issued by the State Board of Examiners of Electricians.

**12.107.03 PERMITS, LICENSES AND TAXES.** The Contractor shall procure all permits (except those specifically provided in the Contract Documents) and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. These costs shall be included in the unit prices bid for the various items of the Contract work.

**12.107.04 PATENTED DEVICES, MATERIALS, AND PROCESSES.** If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material, process, trademark or copyright. The Contractor shall indemnify the State for costs, expenses, and damages which it may be obligated to pay by reason of any infringement thereof, during the prosecution or after the completion of the Project.

**12.107.05 RESTORATION OF SURFACES OPENED BY PERMIT.** The right to construct or reconstruct any utility service in the highway or street or to grant permits for same is expressly reserved by the Department for the proper authorities of the municipality in which the work is performed. The Contractor shall not be entitled to damages either for digging up the street or for any delay occasioned thereby, unless otherwise provided for under **Subsection 12.104.03; Differing Site Conditions.**

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. When ordered by the Engineer, the Contractor shall make all necessary repairs necessitated by such openings. Such necessary work will be paid for as either Extra Work, or as otherwise provided in these Specifications. All repair work will be subject to the same conditions as applied to original work.

**12.107.06 FEDERAL-AID PARTICIPATION.** When the United States Government participates in the cost of the work covered by the Contract, the work shall be performed under the supervision of the Department but otherwise subject to the inspection and approval of the appropriate officials of the United States Government. Such inspection shall neither make the Federal Government a party to this Contract nor interfere with the rights of either party to said Contract.

When any Federal laws, rules, or regulations are in conflict with any provisions of a Federally-assisted Contract, the Federal requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions.

**12.107.07 SANITARY, HEALTH AND SAFETY PROVISIONS.** The Contractor shall observe rules and regulations of Federal, State and local health officials. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

The Contractor shall admit without delay and without the presentation of an inspection warrant, any inspector of the Occupational Safety and Health Administration or other legally responsible agency involved in safety and health administration upon presentation of proper credentials.

**12.107.08 PUBLIC CONVENIENCE AND SAFETY.** The Contractor shall conduct the work to assure the least possible obstruction to traffic. The safety and convenience of both the general public and the residents along and adjacent to the highway, as well as the protection of persons and property, shall be provided by the Contractor as specified under **Subsection 12.104.08; Maintenance of Traffic**, or as the Engineer may direct.

The Contractor shall comply with the safety provisions of all laws, rules, codes, and regulations applicable to the type of work being performed. The Engineer will suspend the work of the Contract if the Contractor fails either to comply with said safety provisions or provide adequate protection for inspection of the work by the Engineer or his/her authorized representatives.

**a. Accident Reports.** The Contractor shall furnish the Engineer with two copies of a report of any accident occurring on the Project that involves:

1. Personal injury requiring treatment by a physician.
2. Loss of time on the job.

3. Public liability or property damage.

Accident reports shall be submitted on forms acceptable to the Engineer.

**12.107.09 BARRICADES AND WARNING SIGNS.** The Contractor shall provide, erect, and maintain all necessary barriers, barricades, lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and the safety of the public.

Highways or bridges closed to traffic shall be protected by effective barricades. Suitable warning signs and protective devices shall be provided to properly control and direct traffic.

Barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Manual on Uniform Traffic Control Devices for Streets and Highways published by the U.S. Government printing office.

**12.107.10 USE OF EXPLOSIVES.** When explosives are necessary for the prosecution of the work, the Contractor shall not endanger life, property or new work. The Contractor shall be responsible for damage resulting from the use of explosives.

The Contractor shall comply with all laws and ordinances, as well as with Title 29 and Title 30 of the Code of Federal Regulations, and the Safety and Health Regulations for Construction of OSHA, whichever is the most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.

**a. Additional Specific Requirements.** The Contractor shall comply with the following:

1. The Contractor shall be solely responsible for employing such plant, equipment and construction methods necessary to accomplish the work of this Contract with complete safety and without damage to persons, existing buildings, structures, facilities and utilities.

2. The Contractor shall furnish the services of technical representatives of the manufacturer of the explosive materials. Such individuals shall be experienced in the use of high explosives in blasting operations under the circumstances to be encountered in the work of this Contract. The Contractor shall furnish the services of the explosive manufacturer's representatives for such lengths of time prior to starting blasting operations as is necessary to determine the proper equipment, devices, materials, methods and procedures to be used for the proper performance of the work. The Contractor shall also furnish the services of the explosive manufacturer's representatives during the preparation for, and progress of blasting operations for such lengths of time and as frequently as necessary to assure that blasting operations shall be performed in a safe and proper manner.

3. Prior to commencement of work, the Contractor shall meet and confer with the Engineer at which time the Contractor shall outline in detail his proposed administration of an overall safety program, which program shall at all times be satisfactory to the Engineer. The Contractor shall furnish to the Engineer copies of the current safety program and procedures for the safety and prevention of injury to persons and the prevention of damage to property and

the work. The Contractor shall comply with this program at all times during the prosecution of the work.

4. All operations involving explosives and/or blasting agents shall be in accordance with the "Suggested Code for the Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents" published by the Institute of Makers of Explosives, as amended. Wherever the Code and the Rhode Island Standard Specifications conflict, the Code shall apply. The Contractor shall be responsible for developing techniques necessary to obtain the required ledge slopes consistent with maximum safety requirements.

**b. Care in Blasting.** It is especially required that blasting operations shall be conducted with all possible care and in such a manner as to prevent injury to persons and property. A sufficient warning shall be given to all persons in the vicinity of the work before blasting.

No blasting will be allowed within 25 feet of an existing building or in-service underground utility line.

**c. Power of Explosives.** The explosives employed in the work shall be of such power and placed in such quantities and positions that will not:

1. Unduly enlarge the excavation.
2. Unnecessarily shatter the rock upon or against which the work will be installed.
3. Injure work already in place.

**d. Transportation, Handling, and Storage.** Explosives must be carefully transported, stored, handled and used as required by applicable State and local ordinances and laws. The necessary permits for such transportation, storage, handling and use shall be obtained by the Contractor. The Contractor shall show such permits to the Engineer before any blasting will be allowed. The Contractor shall keep on the job only such quantity of explosives as may be needed for the work underway and only during such time as they are being used. Explosives shall be stored in a secure manner and separately from all tools. Caps or detonators shall be stored separately and at a point over 100 feet distant from the explosives. When the need for explosives is ended, all such material remaining on the job shall be promptly removed from the premises.

**e. Approval of the Engineer.** The approval of the Engineer shall first be obtained before blasting is permitted. If, in the opinion of the Engineer, blasting is unsafe or dangerous to persons, or to existing structures and utilities, the Contractor shall employ pneumatic tools, drilling and splitting mechanically, or by hand, or by other such means that do not require the use of explosives for the removal of rock, boulders, or ledge, all at no additional expense to the State.

**f. Notification of Local Authorities.** Before any dynamite or detonator caps are stored or used under this Contract, the Contractor shall contact the Police and Fire Departments of the city or town in which the project is located for instructions relative to the regulations for possession and use of explosives in that community. The Contractor shall obtain all required permits or licenses for possession and use of explosives on the site or sites of construction under this Contract. In addition, the Contractor shall be responsible:

1. For designating an individual who shall be responsible for the explosive materials at all times.

2. For the immediate reporting to the Police Department of the Cities or Towns in which the project is located of all unaccounted for explosive materials.

**g. Records.** The Contractor shall keep a complete record of blasting operations, noting the date, exact location with reference to a datum, weight of charge, and whether the firing was instantaneous or delayed. The Contractor shall furnish the Engineer with a complete record of operations during the preceding weekly period.

1. Records shall indicate by date the quantity and type of explosive materials delivered to the construction sites(s); the quantity of explosive material used; and the quantity of such material subsequently removed from the construction site(s).

2. All records related to the possession and use of explosive materials shall be open for inspection by the Engineer and the Police Departments of the cities and towns in which the project is located.

3. The Contract prices for the various items of work shall include full compensation for providing a complete record of blasting operations.

**h. Repairs.** The Contractor is cautioned that it will be responsible for any damage to existing roadway surfaces, drainage lines, structures or other objects as a result of blasting operations. The Contractor will be required to repair such damage as may be directed by the Engineer in accordance with prevailing Rhode Island Special Provisions or Standards for the particular type of work involved. The Contractor shall assume the full cost of making such repairs.

#### **12.107.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.**

The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location. The Contractor shall not move such monuments and marks until so directed.

When the Contractor's operations encounter remains of prehistoric dwelling sites or artifacts of historical or archaeological significance, the operations shall be temporarily discontinued. The Engineer will contact archaeological authorities to determine the disposition thereof. When directed by the Engineer, the Contractor shall excavate the site to preserve the artifacts and shall remove and deliver them to the custody of the proper state authorities. Such excavation will be paid for as hereinafter provided in **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work.**

The Contractor shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, or misconduct in, of either the Contractor's or its subcontractors' manner or method of executing the work, or in consequence of the non-execution thereof. Furthermore, the Contractor shall be responsible for all such damage due to defective materials. The Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as directed by the Engineer.

Should the Contractor enter into, either directly or indirectly, an agreement with a property owner within the project limits, the Contractor must first obtain the signature of the property owner on the so-called LETTER TO THE PROPERTY OWNER to be provided by the Department. This document explains that the State is not a party to the agreement between the Contractor and the property owner and must be signed by the property owner and returned to the Resident Engineer. If the agreement affects or changes the design of the roadway, the Contractor must first submit these modifications, via shop drawings, to the Chief Engineer for approval.

**12.107.12 FOREST PROTECTION.** In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the State Fire Marshall, Conservation Commission, Forestry Department, or other authority having jurisdiction governing both the protection of forests and the prosecution of work within such forests. The Contractor shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to such forest areas. The Contractor shall maintain the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires. Furthermore, the Contractor shall require its employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire observed by them.

**12.107.13 RESPONSIBILITY FOR DAMAGE CLAIMS.**

**a. Indemnification.** The Contractor shall defend, indemnify and hold harmless the State, the Department, its officers and employees, from any and all suits, actions, claims, losses, expenses, damages and any and all other liabilities of any character resulting in any injuries or damage to any person, entities, or property arising out of (or which may be claimed to arise out of) any act and/or omission of the Contractor or its subcontractors, in performance of work covered by the Contract, and/or in consequence of any neglect in safeguarding the work; and/or through use of unacceptable materials in constructing the work; and/or because of any neglect, or misconduct of the Contractor; and/or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; and/or from any claims or amounts arising out of or recovered under the Workers' Compensation Act, or any other law, ordinance, order, or decree. The State may retain for its exclusive use, without recourse by the Contractor or anyone claiming under the Contractor, any and all amounts due the Contractor as provided under the Contract Documents to assure the Contractor's compliance with this Section. In the event no money is due or the retained sums are insufficient to fully indemnify the State hereunder, the Surety shall be held liable with the Contractor until this Section is complied with in full; except that money due the Contractor will not be withheld when satisfactory evidence is produced that the Contractor is adequately protected by public liability and property damage insurance, the insurer has been given proper, timely notice of any claims arising from the work performed by the Contractor pursuant to the Contract, and the insurer has assumed defense of the claim. The Contractor shall provide written confirmation satisfactory to the Department that all such actions have been properly addressed prior to final payment under **Subsection 12.109.09.**

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved by the State.

**b. Liability Insurance.** The Contractor shall procure and maintain at the Contractor's own expense, until final acceptance of Contract, insurance coverage for damages assumed by Contract or imposed by law, of the kinds and in the amounts specified, with insurance companies authorized to do business in the State. The insurance shall cover all operations performed under the Contract, whether by the Contractor or by subcontractors. Before commencing the work, the Contractor shall furnish certificates of insurance in the form satisfactory to the Department certifying that the policies will not be changed or canceled until 30-days written notice has been given to the Department. The types and limits of insurance are as follows:

**1. Workers' Compensation Insurance.** Coverage shall be in accordance with prevailing laws.

**2. Liability and Property Damage Insurance.** Each policy shall name the Department as an additional insured and shall include a provision requiring the insurer to investigate and defend the Department against any and all claims for death, bodily injury or property damages even if groundless. Coverages shall be in the following amounts:

(a) Bodily injury liability:

\$500,000, each person.  
\$1,000,000, each occurrence.

(b) Property damage liability:

\$500,000, each occurrence.  
\$1,000,000, aggregate.

**c. Insurance Covering Special Hazards.** Special hazards shall be covered by either riders to the liability and/or property damage policy or policies hereinabove specified, or by separate policies of insurance as follows:

1. Property Damage Liability arising out of the collapse of or structural injury to any building or structure due to:

(a) excavation (including borrowing, filling, or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or

(b) moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof.

2. Property Damage Liability for injury to or destruction of property arising, directly or indirectly from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.

**12.107.14 THIRD PARTY BENEFICIARY CLAUSE.** It is specifically agreed between the parties executing this Contract that it is not intended by the provisions of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the provisions of the Contract.

**12.107.15 PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES.** The Director, Engineer, or their authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract.

**12.107.16 NO WAIVER OF LEGAL RIGHTS.** Upon completion of the Contract, the Department will expeditiously make final inspection and notify the Contractor of acceptance. Final acceptance, however, shall neither preclude the Department from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor prevent the Department from recovering from the Contractor or Surety or both, overpayments sustained by failure on the part of the Contractor to fulfill the obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the Contract, shall be liable to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

**12.107.17 HAZARDOUS MATERIAL.** If the Contractor encounters or exposes during construction any abnormal condition which indicates the presence of a hazardous material or toxic waste, it shall immediately suspend work in the area and notify the Engineer. The Contractor's operation in this area shall not resume until so directed by the Engineer; however, the Contractor shall continue working in other areas of the project, unless otherwise directed by the Engineer.

Abnormal conditions shall include, but shall not be limited to, the following: presence of barrels; obnoxious odors; excessively hot earth; smoke; or any other condition which could be a possible indicator of hazardous material or toxic waste. The conditions shall be treated with extreme caution.

Disposition of the hazardous material or toxic waste shall be made in accordance with the requirements and regulations of the Rhode Island Department of Environmental Management. Where the Contractor performs necessary work required to dispose of these materials, the work will be performed under a supplemental agreement. Should the disposition of waste material require special procedures by certified personnel, the Department will make arrangements with qualified persons to dispose of the material.

**12.107.18 CIVIL RIGHTS.** The Contractor shall comply with Federal, State and local laws, rules and regulations which set forth unlawful employment practices including that of discrimination because of race, religion, color, sex or national origin, and which define actions required for Affirmative Action and Minority (Disadvantaged) Business programs.

### **12.108.01 – Subletting of Contract**

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or contracts or any portion thereof, or of its right, title, or interest therein, without written consent of the Engineer. If such consent is given, the Contractor will only be permitted to sublet a portion thereof. The Contractor will be required to perform with its own organization, work amounting to not less than 40 percent of the adjusted contract cost. The adjusted contract cost is the total contract cost less the total cost of subcontract specialty items listed in the Proposal. Specialty Items are defined in **Subsection 12.101.63.**

No subcontracts or transfers of Contract shall relieve the Contractor of liability under the Contract and Bonds. A copy of written agreements with subcontractors must be submitted when making application to sublet any work under the Contract. Furthermore, no agreements between the Contractor and its subcontractors or vendors shall create any "third party" relationships between said subcontractors or vendors and the State.

The Contractor shall provide written notice to, and obtain prior written consent from the Engineer, before allowing any subcontractor to sublet any portion of its work to a lower-tier contractor.

**12.108.02 NOTICE TO PROCEED.** The "Notice to Proceed" will stipulate the date the Contractor is expected to begin the construction and from which date contract time will be charged. Commencement of work by the Contractor constitutes a waiver of this notice.

### **12.108.03 PROSECUTION AND PROGRESS**

- a. General Requirements.
- 1. Project Schedule Program

All construction Projects require an integrated schedule management and controls program that the Contractor shall comply with through completion. A Critical Path Method (CPM) Schedule must be developed and maintained for all Projects. The

Contractor shall be required to participate in Schedule Development meetings facilitating knowledge-sharing and updating of Schedules. An integrated stepped Schedule Development process will begin once the Apparent Low Bidder letter is sent to the Contractor. The level of detail and Schedule Submission requirements will be based on the Schedule Level A, B, or C, which shall be defined in the Special Provisions of the Contract Documents.

- Schedule Level A Projects with a high level of complexity, impact to the motoring public or community, and/or larger size Projects.
- Schedule Level B Projects of average to moderate complexity, moderate impact to the motoring public or community, and/or average size.
- Schedule Level C Smaller projects with minimal to no complexity, and minimal impact to the community. Typical examples would be resurfacing, maintenance, and landscaping projects.

The CPM Schedule shall be the Contractor's primary tool to organize and communicate their plan for the timely completion of the Project. The Schedule will be used to assess progress, delays, projection of time required, Contractor and RIDOT resources requirements, and any mitigation if necessary. The Schedule shall include all the work to be performed/required by the Primary Contractor, Subcontractors, equipment vendors, suppliers, Utility Companies, regulatory agencies, owner review and other work that is interrelated to the Contractor's work. The CPM Schedule shall accurately portray the work planned and executed and shall reflect coordination of work.

The following Schedule Submittals are required for all Projects:

- (A.) PRELIMINARY PROJECT SCHEDULE
- (B.) BASELINE PROJECT SCHEDULE
- (C.) STATUS SCHEDULE UPDATES

Recovery Schedules will be required if requested by RIDOT.

The Project Schedules shall be used by the Engineer and Contractor for the following purposes as well as those stated in these Specifications:

- To identify the Critical Path and its specific activities.
- To identify any changes in proposed work that differs from the Specifications or the Plans (i.e., alternate phasing, Value Engineering Proposals).
- To document the actual progress of work and evaluate the time impact of changes in the work.

- Allow the Department the opportunity to mitigate the impact of unforeseen events.
- To enable the Engineer to track and prioritize the review of Shop Drawings and Submittals. To evaluate resource requirements of the Contractor and the Engineer (Level A).
- To coordinate the work of 3<sup>rd</sup> party contractors into the sequencing of the Contractor's work where necessary.

Having a timely Schedule/Schedule Update affects the Engineer's decision making. The Department shall not be liable for delays to the Contractor's work when the Contractor has failed to provide a Schedule Update in accordance with the requirements of the Contract Documents. Progress payments may be withheld if the Contractor fails to submit required Schedule Submissions. This includes, but is not limited to Schedule Development, Schedule Updates, and Recovery Schedule Submissions.

### **Additional Requirements for Schedule Level A**

The Contractor shall retain a scheduler(s) dedicated to the Project, with a minimum of three (3) years experience on Projects similar in size and scope. The scheduler shall be responsible for developing, updating, and maintaining the Schedule. The Contractor shall submit the resume of the proposed scheduler(s) to the Engineer for acceptance within 3 days of receiving the "Apparent Low Bidder" Letter. Determination of the scheduler(s) acceptability is made at the discretion of the Engineer. The scheduler shall be present at all required meetings, including but not limited to the Schedule Development, Schedule Update, and any other meetings which may affect the Project's Schedule.

#### 2. Software

The software used to generate the CPM Schedule shall be capable of producing schedules in accordance with the requirements of the Contract Documents and fully compatible with software utilized by the Engineer: currently Primavera Project Planner (P3). The Contractor shall purchase and maintain a valid software maintenance agreement for each license of software necessary to produce and maintain the Project Schedules. Unless specified elsewhere in the Contract Documents, the Contractor shall comply with the terminology defined by the Primavera Project Management Manual.

#### b. Schedule Development.

##### 1. Schedule Development Submittals

The scheduling requirements and Submittals will be based on the defined schedule level. The Schedule Development Process will commence on the date that the Apparent Low Bidder letter is mailed to the Contractor, which will be considered Day 1 for all Scheduling Submittals. The table below details the required Submissions and their corresponding Submission due dates for each schedule level.

STEP	STEP DESCRIPTION	SCHEDULE LEVEL			ENGINEER REVIEW DEADLINE (After receipt of submission)
		A	B	C	
Step 1	Scheduler's Resume	Day 3		-	3 days
Step 2	Initial Schedule Framework	Day 7	-	-	4 days
Step 3	Complete Schedule Framework	Day 14	Day 14	-	5 days
Step 4	Preliminary Schedule	Day 28	Day 28	Day 28	7 days
Step 5	Baseline Schedule	Day 42	Day 42	Day 42	7 days
Step 6	Bid Item Loaded Baseline Schedule	*Day 70	*Day 70	*Day 70	7 days
Step 7	Resource Loaded Schedule	Day 84	-	-	7 days
Step 8	Finalized Baseline	Day 98	Day 98	Day 98	7 days
*Required by Day 70 but no earlier than 10 Days after NTP		<i>All days are calendar days</i>			

Refer to Section D for Technical Scheduling Requirements; refer to the Special Provisions for project specific information, including Project Groups, ID Standards, Milestones and Activity Data.

The requirements for each Schedule Development Submission are listed below. Meetings will be held on a weekly basis, or as necessary, to facilitate the schedule development. Each Submission shall incorporate the accepted components, and address the comments from the previous Submission(s). If any Schedule Development Step Submission does not conform to Specification and is therefore Unacceptable, the Contractor shall revise and resubmit this for acceptance prior to proceeding to the next step. Each Submission shall include three (3) paper and (2) two electronic files (in their corresponding format).

Step 1: Scheduler's Resume

Step 2: Initial Schedule Framework Submittal:

- a) Work Breakdown Structure (WBS)
- b) Activity Codes: All Contractor defined activity code values.
- c) Calendars: All Contractor defined calendars
- d) Contractor's Submittal List (including all required Contractor Submittals)
- e) Potential Value Engineering or alternate sequencing/methods.

Step 3: Complete Schedule Framework Submittal:

- a) All requirements of Step 2 with prior comments addressed.
- b) Activity Data for all Milestones, Submittals, Procurement and Work by Others. Data includes (1) Activity ID, (2) WBS ID, (3) Responsibility

Code, (4) Activity Type, and (5) Calendar IDs.

- c) Resource Definitions (Levels A Only): labor resources, work types, and equipment resources detailed by crews, incorporating all Engineer comments to date.

Step 4: Preliminary Schedule Submittal:

- a) All requirements of Step 3 with prior comments addressed.
- b) Activity Data, including all logic, for all work required to be performed within the first 120 days after the NTP.
- c) All work after the first 120 days from NTP shall be shown in summary activities (summary activities shall not have durations greater than 30 days).
- d) Narrative explaining the sequence of the work and all critical Submittals and activities.

Step 5: Baseline Schedule Submittal:

- a) All requirements of Step 4 with prior comments addressed.
- b) Completed Schedule showing all work activities and logic for the complete Contract.
- c) Narrative Report.

Step 6: Bid Item Loaded Schedule Submittal:

- a) All requirements of Step 5 with prior comments addressed.
- b) Complete Bid Item Loaded Schedule.
- c) Schedule Narrative which shall explain the use of resources and an explanation of all logic changes since the Baseline Schedule Submittal.

Step 7: Resource Loaded Schedule Submittal (Level A Only):

- a) All requirements of Step 6 with prior comments addressed.
- b) Resource loading completed for all activities in the Schedule for the entire Project
- c) Schedule Narrative which shall explain the use of resources and an explanation of all logic changes made since the Baseline Schedule Submittal.

Step 8: Finalized Baseline Schedule Submittal:

The Contractor shall revise the original Baseline Schedule Submittal until the Schedule conforms to the Plans and Specifications. No additional changes shall be made. The revised Baseline Schedule Submittal shall be revised and resubmitted until accepted by the Engineer.

## 2. Review and Acceptance of Project Schedule Submittals

The Engineer shall review Schedule Submittals for conformance with the requirements of the Contract Documents. The planning, scheduling, and execution of the work and the accuracy of any Project Schedule shall remain the responsibility of the Contractor. The Contractor is also responsible for errors in any previously accepted

Project Schedule, including but not limited to activity durations, relationships between activities, resource allocation, or any float suppression techniques.

Schedules that do not accurately reflect the work may be identified at any time. Once identified, they shall be addressed by the Contractor at no additional cost to the State. The acceptance of any Project Schedule by the Engineer does not constitute acceptance or approval of any change to the requirements of the Contract Documents including but not limited to any mandated construction sequences. Such acceptance shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work.

c. Project Schedule Updates.

Schedule Update Meetings shall be held every two weeks from Notice to Proceed to the completion of the Project. The Contractor shall be required to attend each meeting with all their update information (data as of the data date) compiled in advance. The Contractor shall have a complete and accurate report of the current progress and depiction of how future work plans shall meet the contract completion dates. Failure to attend meetings or submit Schedule Updates may result in Progress Payments being withheld. The Contractor shall provide a sufficient number of copies of the Updated Schedules at the meetings. The format of this update form shall be provided by the Engineer at the Schedule Development Meeting.

Schedule Update Submittals shall be submitted to the Engineer every two weeks on the scheduled meeting dates or no later than two (2) working days after the Project Schedule Update Meeting. If a meeting is not held, Updates shall still be submitted. The Engineer's review period for the Schedule Update Submittal is five (5) working days. Three copies of the Schedule Updates shall be submitted to the Engineer with the following components:

1. A Schedule Narrative detailing the current Milestone Status, Critical Path, and all changes made to the Schedule, including Actual Dates, Calendar and Duration changes, and logic revisions as defined in section E-3, of this specification.

2. Activity Column/Bar Chart Diagram utilizing the layouts provided by the Department at the first Schedule development meeting. This will highlight the past period progress and be utilized for the Update information.

3. Copies of the current RFI and Submittal Logs.

4. Any other documents and/or reports requested by the Engineer.

5. Computer Disk(s) with record schedule incorporating all submitted Schedule Update Data (UXXX).

All Schedule data, logic or duration changes, or any modifications to the Schedule shall be addressed and discussed with the Engineer at the Project Schedule Update

Meeting. This shall be done prior to the Contractor submitting their final Schedule Updates.

Changes to the accepted Baseline Schedule shall be detailed in the Schedule Update Narrative. The acceptance and inclusion of these changes shall not be the sole basis of acceptance or entitlement to any time extension(s) or cost(s).

Schedule Update Submittals shall never be used as the sole basis for any adjustment in the Contract Time(s), regardless of any acceptance or approval by the Engineer. Any acceptance or approval of the Schedule Update Submittal by the Engineer, either expressed or implied, shall only apply to the issue of progress and not to any issue of acceptability or accuracy of the Schedule Update Submittal for use as a basis for measuring adjustments in Contract Time(s).

**d. Technical Schedule Requirements.**

For the purpose of enabling both the Engineer and the Contractor to readily evaluate CPM Schedules, including derived data and reports, the Schedules shall be developed and maintained in accordance with the following requirements. The Contractor will have access to templates of these requirements during Schedule Development.

All CPM Schedules shall utilize a Work-Breakdown Structure (WBS) which shall be developed by the Contractor, during Schedule Development. The following is the basic dictionary for the WBS which may be appended, with Engineer's acceptance, when further detail is required. Title Case shall be utilized in the development of the WBS descriptions. The WBS will be the primary code for displaying and organizing the graphical output schedules utilized for the project, unless otherwise directed by the Engineer.

1. Basic Structure for WBS:

- XX.00 Contract Name
  - XX.10 Milestones
  - XX.15 Summary Activities
  - XX.30 Procurement/Shop Drawings
  - XX.40 Utility/RR & Work by Others
  - XX.60 Construction
- XX are contract specific, alpha-numeric characters that will be defined by the Engineer.

2. Project Naming Standards:

- Preliminary Project Schedule: PS00
- Baseline Schedule: BL00
- Bi-Weekly Status Schedules: Uxxx
- Recovery Schedule: Rxxx

### 3. Project Milestones.

The Contractor shall include Milestones as specified in the Special Provisions of the Contract Documents. Late Finish Constraints shall be assigned to the Milestones where applicable.

### 4. Activity ID.

The Activity IDs shall be coded in accordance with the following convention:

	XX	----	----
	Project Specific (Alpha-numeric)	WBS Code (Levels 2-5)	Contractor Specific (Alpha-numeric)
Example:	XX	1000	1000
	Project Specific (Alpha-numeric)	WBS Code (Levels 2-5)	Contractor Specific (Alpha-numeric)
Example:	XX10001000		

The first two characters shall be contract specific, provided by the Engineer: "XX"

Next characters: WBS codes levels 2 through 5 (two to six digits) assigned to the activity, without the decimal points.

Last two characters: unique alpha numeric characters as designated by the Contractor.

All 10 characters shall be used in the activity ID.

### 5. Activity Codes.

The CPM Schedules shall contain activity code classifications and code values. The Contractor shall propose a coding structure for the Engineer's review and acceptance. The activity code structure combined with the activity identification number shall provide the capability to organize information by location, road or ramp, structure, work type, Subcontractor, discipline, etc., as deemed necessary by the Engineer. The Contractor shall reserve three (3) code classifications (fields) and a minimum of six (6) characters for the Engineer's use.

RESP code will be utilized for identification of responsible party. RESP values shall be discussed at the Schedule Development Meetings.

### 6. Activity Descriptions.

Each activity description shall have a narrative description consisting of verb or work function (i.e. form, pour, excavate, etc.), object (i.e. slab, footing, wall, etc.), and location (i.e. STA, bridge, pier, or retaining wall number, street, ramp, etc.). There shall be no two activities with the same activity description. For example, an acceptable description would be, "Pour Footing Ramp Rt -Sta. 42+00 to 42+50". The word(s) "Miscellaneous" or "Misc" or other non-specific terminology shall not be used in the activity's description. Any abbreviations used in the activity descriptions shall be consistent with the abbreviations used throughout the Contract Documents, and should be listed therein. The formatting of the activity description in the software shall be left-justified and capitalized.

## 7. Activity Durations.

The CPM Schedule shall have a minimal number of activities with durations less than two (2) (a short duration) and more than twelve (12) (a long duration) working days. The Contractor may request permission from the Engineer to assign durations greater than twelve (12) working days. If the Engineer accepts the Contractor's request to use a long duration, the reason for the request shall be detailed in the Preliminary and Baseline Schedule Narratives.

## 8. Activity Type.

The following types of activities are required for use in the Schedule:

(a) Milestone Activities – Only Milestones that are defined in the Contract's Special Provisions shall utilize these activity types.

(b) Summary (Hammock) Schedule Activities –The Contractor shall maintain a summary schedule of hammock activities. These schedule activities must remain in all of the Schedule Submittals. The Hammock's predecessors and successors may be modified to include all those activities that are entered into the Schedule and considered part of the respective hammock activity's scope of work.

(c) Task Activities – This is the primary activity type. All activities other than Milestone and Summary as defined above shall be task activities.

## 9. Activity Dates.

Activity Early and Late Start and Finish dates shall be calculated for each activity based upon the schedule data date, actual dates, schedule logic, schedule constraints, calendars, and original duration or remaining duration in accordance with the scheduling parameters defined in this section. Actual dates shall be agreed upon by the Engineer.

## 10. Cash Flow/Activity Bid Item Loading.

The Contractor shall allocate the quantity for all bid items listed in the proposal pages. Each bid item will be associated with the corresponding schedule activity(ies). Each bid item shall be allocated to an activity or distributed to a group of activities. This shall be done through the use of Primavera's resources dictionary and resource assignment. The summed value of that portion of the activities allocated to each bid item shall equal the total value of the corresponding bid item. The bid item loading will identify the quantity of the bid item(s) associated with each schedule activity. The result of this Bid Item Loading will be an accurate portrayal of the owner's cash flow requirements for the project.

## 11. Calendars.

The following calendars shall be used in the Contractor's Schedule. The Contractor may request permission from the Engineer to create additional calendars, however, use of these calendars is by Engineer's acceptance. Additionally, the Contractor may not schedule work during the winter shutdown period unless the Contract specifically states that work will be performed at this time or it is later agreed to and documented. It is the responsibility of the Contractor to schedule their work during the time allotted in the Contract. The following calendars are:

- Calendar 1- 5-day workweek (includes Holidays and Winter Shut Down)
- Calendar 2- Procurement
- Calendar 3- 6-day workweek (includes Holidays and Winter Shut Down)
- Calendar 4- 7-day workweek (includes Holidays and Winter Shut Down)
- Calendar 5- 5-day workweek (includes Holidays and No Winter Shut Down)
- Calendar 6- 6-day workweek (includes Holidays and No Winter Shut Down)
- Calendar 7- 7-day workweek (includes Holidays and No Winter Shut Down)
- Calendar 8- Interstate 5-day workweek (includes Holidays & Winter Shut Down)
- Calendar 9- Interstate 6-day workweek (includes Holidays & Winter Shut Down)
- Calendar A - Seeding
- Calendar B - Wetland Seeding
- Calendar C- Plants B&B

## 12. Data Date.

The following are the definitions of the data dates for the CPM Schedules:

- Preliminary CPM Schedule –Date of Bid Opening
- Baseline CPM Schedule –Date of Bid Opening
- Status Update Schedules –TBD at Schedule Development Meeting

## 13. Logic.

The logic in the Schedules shall represent the progression of time and the sequence of work performed within the contract time. The CPM Schedules shall conform to the following requirements:

Every activity shall have logically assigned predecessors and successors. Unless otherwise specified, the activity “Bid Opening” shall be the only activity without a predecessor, “Contract Completion” and each Contract Milestone shall be the only activities without successors.

The use of activity constraints is limited to the use of Start-No-Earlier-Than and Finish-No-Later-Than, for access restraints and Completion Milestone(s). The Contractor may request permission from the Engineer to use these constraints for other activities but acceptance is required for incorporation in the CPM Schedule. The use of Zero Free Float, Start On, Expected Finish, Mandatory Start or Mandatory Finish is strictly prohibited.

Activity lag durations shall not have a negative value unless the Contractor can convince the Engineer that it best represents realistic conditions. Activity lags shall not be used in lieu of logic relationships.

Redundant ties to preceding activities in a sequential series of activities will not be permitted. For example:

- Activity C is a successor in a Finish-Start relationship to B
- Activity B is a successor in a Finish-Start relationship to A
- Activity shall not have redundant Finish-Start relations to C

A tie representing a different constraint will not be considered redundant. For example, a logic tie showing the completion of the work scope of a predecessor is required before the successor can start is different from a logic tie representing a resource limitation and will not be considered redundant.

The Critical Path for a project shall be defined as the longest continuous series of activities progressing toward a Contractual Milestone or Contract Completion.

Out-of-sequence logic shall not be permitted to be included in a submitted CPM Schedule. The Contractor is responsible for identifying, correcting, and updating any out-of-sequence logic in a Schedule.

Float is not for the exclusive use or benefit of either the Engineer or the Contractor. It is an expiring resource available to all parties, acting in good faith, as needed to meet any Contract Milestone(s).

## 14. Schedule Layout Requirements.

The Engineer will provide the Contractor with the required layouts for the Schedule.

## 15. Schedule Calculations.

Performing scheduling calculations requires the following settings:

- Turn off automatic scheduling and leveling.

- When scheduling activities, apply retained logic.
- Calculate the start-to-start lag from early start.
- Schedule durations as: contiguous.
- Show open ends as: non-critical.
- Calculate total float as: finish float.
- Summary calculations shall use Calendar No. 1 and the weighting factor for determining percent complete shall be duration.
- Set the auto-inserting option on automatic with a minimum increment of three (3).
- Initially set critical activities using defined critical as: total float less than one (1). This option may be changed at the direction of the Engineer.
- Set language for output as: U.S. English.

## 16. Submittals and Procurement.

All Submittals and Shop Drawings will be represented in the Contractor's Submittal List (CSL) and shall be cross referenced in the Project Schedule utilizing the Item Codes from the Specifications. At a minimum, each submittal in the CSL will have a corresponding submittal preparation activity in the Schedule. Each submittal activity will have corresponding review and approval activity. Each submittal item will also have a corresponding procurement activity identifying the duration for the procurement of the corresponding materials, equipment, etc. The accuracy and completeness will be the responsibility of the Contractor. The Contractor is responsible for any delays due to inaccuracies in identifying Shop Drawings, Submittals, and Procurement Requirements.

### e. **Schedule Submission Narratives.**

#### 1. **Preliminary Schedule Narrative.**

The Preliminary Schedule Narrative shall contain the following information:

- (a.) Identification of the data date and schedule file name.
- (b.) A description of the planned flow of work, identifying all key or driving activities/resources for the first 120 days in detail and remaining project in summary. Summary activities shall not be greater than 30 calendar days in duration.
- (c.) Identify any alternates or substitutions.
- (d.) Response to all the owner's comments. The identification and explanation of all changes made to the schedule submission.

#### **Additional Requirements for Schedule Level A**

- (e.) A summary of planned labor utilization for the Project for the first 120 days in detail. This shall identify the average and maximum number of workers by craft

designation on site each month based on the resource loaded Project Schedules and the shifts to be worked. Identify actual and potential labor resource limitations.

(f.) A summary of planned equipment utilization for the Contract for the first 120 days in detail, identifying each type of operated equipment to be used in the work, the planned quantity of each type of operated equipment utilized each month, and the criteria for mobilizing and demobilizing each piece of equipment to and from the site. Identify actual and potential labor resource limitations.

(g.) Key constraints and potential problems affecting the Contractor's work must be identified: construction interfaces with existing plant operations, third parties at the project site, temporary contractor plants, facilities or fixed equipment planned for use whether within the contract ROW, contract easement, or off-site. Include length of time the plant is to be used, any planned moves, and any potential conflicts that could arise if the plan is not followed.

## **2. Baseline Schedule Narrative.**

The Baseline Schedule Narrative shall contain the following information:

- (a.) Identification of the data date and schedule file name.
- (b.) A description of the planned flow of work identifying all key or driving resources.
- (c.) Identify any alternates or substitutions.
- (d.) Response to all of the owner's comments and the identification and explanation of all changes made to the schedule submission.
- (e.) An explanation of how adverse weather has been addressed in the Baseline Schedule. Identify any and all activities that contain contingency days for adverse weather. Lack of preparation for normal adverse weather is unacceptable.

### **Additional Requirements for Schedule Level A**

(f.) A summary of planned labor utilization for the Project identifying the average and maximum number of workers by craft designation on site each month based on the resource loaded Project Schedules and the shifts to be worked.

(g.) Identify actual and potential labor resource limitations.

(h.) Key constraints and potential problems affecting the Contractor's work must be identified: construction interfaces with existing plant operations, third parties at the project site, temporary Contractor plants, facilities or fixed equipment planned for use whether within the contract ROW, contract easement, or off-site. Include length of time the plant is to be used, any planned moves, and any potential conflicts that could arise if

the plan is not followed.

### **3. Schedule Update Narrative.**

The Schedule Update Narrative shall contain the following information:

- (a.) Identification of the Update Period, the data date, and the schedule file name.
- (b.) Narrative of work accomplished in the past two weeks and work planned for the next two weeks. Identify what planned work was not accomplished and why.
- (c.) Narrative of the current critical path to each contractual completion Milestone.
- (d.) Identify any alternates or substitutions.
- (e.) Response to all of the owner's comments, and the identification and explanation of all changes made to the Schedule Submission.
- (f.) Elective Change: An elective change is defined as a revision to logic or duration(s) by the Contractor to effectively use labor and resources which have no adverse effect on the owner or Contract. The Engineer may use this as a request to a change in the Schedule. Mutual agreement on the change must be attained to implement either request. The Elective Change Narrative shall contain the following information:
  - (1.) Identification of the activities changed.
  - (2.) A description of the scope of the elective change and identification of the advantages and disadvantages of implementing the change. Identify all driving resources, if any. Identify key constraints influencing the Contractor's approach to the work.

#### **Additional Requirements for Schedule Level A**

- (g.) Identification of activities with critical or near critical float (within ten (10) Working Days of the Critical Path) that were planned to occur during the Update Period, but did not occur or occurred later than the scheduled late start or late finish date, and an explanation of these delays. Identification of delays to activities taking place off the project site, e.g., Submittal preparation, fabrication, and delivery activities.
- (h.) Provide a listing of all activities which have surpassed their planned duration by more than twenty (20) percent and any justification for maintaining original planned durations for future activities of like work.
- (i.) A summary of any changed plans for labor utilization for the Project, identifying the average and maximum number of workers on site each month. Identify actual and potential labor resource limitations. A summary of the actual labor utilization used over the past month.

(j.) A summary of any changed plans for equipment utilization for the project, identifying each type of operated equipment to be used on the Work, the planned quantity of each type of operated equipment utilized each month, and all changes to the criteria for mobilizing and demobilizing each piece of equipment to and from the site. Identify actual and potential equipment resource problems. A summary of the actual equipment utilized over the past month.

**f. Progress Delays.**

The Contractor shall identify and promptly report to the Engineer all schedule and progress delays during the prosecution of the work. The Contractor shall promptly take appropriate action to develop a Recovery Schedule in the form of a revised Baseline Schedule whenever the actual physical progress is behind schedule, as compared to the Current Baseline Schedule, or whenever requested by the Engineer.

At a minimum, the Contractor shall submit a Recovery Schedule whenever the Project Schedule Update becomes thirty (30) or more Days late to any Milestone(s) designated in section 108.03, Milestones. The Proposed Baseline Schedule Revision shall be in accordance with corresponding section contained herein. The development and submission of a Recovery Schedule does not relieve the Contractor from continuing with the submission of the Project Status Schedule Submittals.

The submission of the Recovery Schedule shall be at no cost to the Engineer and shall be submitted within (30) days of the Project Schedule Update. The Recovery Schedule shall demonstrate a clear procedure for bringing the Project into compliance with a time line acceptable to the Engineer.

The Department may request a Recovery Schedule due to a delay that is not the fault of the Contractor. Cost associated with the development of these Schedules will be considered a reimbursable expense. Normal adverse weather shall be anticipated by, and planned for by the Contractor. Delays due to such weather events are unacceptable. Failure to submit such a Recovery Plan shall provide a basis for future Payment Application withholdings, either in whole, or in part, by the Engineer.

**Baseline Schedule Revisions.**

In the event of a significant delay, or changes to the Project's Schedule as determined by the Engineer, or any situation where time needs to be recovered, a Revised Baseline Schedule may be required.

Baseline Schedule Revision Submittals shall include a comprehensive listing of all activities added to or deleted from the Current Baseline Schedule of Record as well as a complete listing of all logic and activity relationship changes which have been made. All changes in the schedule must be fully described in an accompanying narrative. No Baseline Schedule Revision Submittal will be accepted unless it satisfies the following requirements:

- Any out-of-sequenced logic is corrected or explained to the satisfaction of the Engineer.
- Start and Finish dates are verified for accuracy.
- The Schedule accurately reflects the Contractor's plan (including accurate logic and durations) for completing the remaining work.

All changes from the accepted Baseline Schedule to the proposed Revised Baseline Schedule must be identified and accepted by the Engineer prior to incorporation into the Revised Schedule. Any proposed changes and/or revisions to the Current Baseline Schedule accepted by the Engineer pursuant to its review of a Proposal Schedule (definition required) submitted by the Contractor shall be incorporated into the Current Baseline Schedule and submitted as a Baseline Schedule Revision Submittal. A Baseline Schedule Revision Submittal shall be due within 5 days following the Engineer's acceptance of the proposed schedule changes and/or revisions, as submitted in a Proposal Schedule, and shall consist of the requirements of the Baseline Schedule, as supplemented below. The Baseline Schedule Revision shall include a cost distribution for added work and/or costs for review and acceptance by the Engineer.

Once a Baseline Schedule Revision Submittal is accepted by the Engineer it shall become the Current Baseline Schedule Revision of Record (and be used for subsequent Schedule Update Submittals), and shall be referred to by its revision number.

Except as otherwise designated by Change Order, no Current Baseline Schedule Revision that extends performance beyond any Contract Time and/or Contract Milestone(s) shall qualify as a Current Baseline Schedule Revision of Record that would allow it to be used to demonstrate entitlement to a Time Extension. In no case shall a Schedule Update be construed as a Baseline Schedule Revision of Record unless it is specifically submitted and accepted as such by the Engineer.

**12.108.04 LIMITATION OF OPERATIONS.** The Contractor shall conduct the work to assure the least interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started or completed. The Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is essential to public convenience. Any extra costs will be considered under **Subsection 12.104.04; Alterations in the Plans or Details.**

**12.108.05 CHARACTER OF WORKERS.** The Contractor shall employ sufficient labor, supervision, and equipment for prosecuting the several classes of work to full completion in the manner and time required by the Contract.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have

sufficient experience in such work and in the operation of the equipment required to satisfactorily perform such work.

Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may withhold progress payments from the Contractor which are or may become due, and suspend the work by written notice until such orders are complied with.

**12.108.06 METHODS AND EQUIPMENT.** All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall not cause injury to the roadway, adjacent property, or other highways.

When the methods and equipment to be used by the Contractor are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the requirements of the Contract.

When the Contract specifies the use of certain methods and equipment, these methods and equipment shall be used unless others are approved by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, it may request approval from the Engineer for such use. The request shall be in writing and shall include full description of the methods and equipment proposed for use and the reasons for making the change. If approval is granted, it will be on the condition that the Contractor will be responsible for producing construction work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in the basis of payment for the construction items involved nor in contract time as a result of approving a change in methods or equipment.

**12.108.07 DETERMINATION AND EXTENSION OF CONTRACT TIME.**

**a. Completion Time.** The number of days allowed for the completion of work, or date by which the work shall be completed, will be stated in the Proposal and Contract Agreement, and will be known as the "Contract Time."

The time for completion stated in the Contract, is expressed as a fixed calendar date, and is based on the original quantities as defined in **Subsection 12.102.03; Interpretation of Quantities in Bid Schedule**. If satisfactory completion of the Contract requires work to be performed in greater quantities than those set forth in the Contract Documents, and the Contractor shall show to the satisfaction of the Engineer that the additional work effects his schedule and contract completion date(s), the time allowed for completion shall be increased on a basis corresponding with the new contract schedule.

The time for completion stated in the Contract has been developed on the assumption that work will be suspended during winter shutdown, i.e., the period from December 15th through the following April 15<sup>th</sup> unless otherwise specified in the contract documents.

**b. Delays.** If the Contractor finds it beyond their control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this Subsection, the Contractor may, at any time prior to the expiration of the contract time, make a written request to the Engineer. The Contractor's claim that insufficient time was specified is not a valid reason for extension of time.

The Contractor shall be responsible for notifying the Resident Engineer within thirty (30) calendar days of any Department action or omission which the Contractor believes has delayed or may delay the project. Notification and documentation of the delays shall be in accordance with **Section 12.105.20 Project Delays**. Such notification shall be a precondition to consideration of an extension of time.

If the Engineer determines that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the time for completion may be extended for such period as conditions justify.

**c. Requirements for Time Extension Request.** The Contractor's request shall be submitted as a comprehensive Time Extension Request Package. It shall include a narrative, project schedules, copies of all supporting documentation, and related correspondence. The submissions shall be considered a single package and all information shall mutually substantiate the requested extension of time.

1. At a minimum the narrative shall include the following:
  - (a) Detailed project history including overall project performance by the Contractor, subcontractors, the Department, and third parties that affected the necessity for the time extension request.
  - (b) Identification, description, and documentation for each delay issue. This shall include the circumstances which occurred resulting in the delay, the responsible parties for the delay and when the Contractor notified the Department regarding the delay. The number of calendar days each delay impacted each milestone shall be calculated and reported.

- (c) Identification, description, and documentation for each mitigation action. This shall include the actions taken by each party to mitigate delays, the dates of such actions, and the resulted calendar days which were gained or mitigated by such actions.

2. At a minimum, project schedules shall be included in the Time Extension Package to substantiate the delays and mitigation actions to the project. Engineer Accepted Schedules shall be referenced as is; schedules either Accepted as Noted, Not Accepted, or Rejected shall be corrected before for use in the delay analysis. The number of days requested shall be substantiated by the project schedules.

3. At a minimum the project documentation and correspondence shall be included in the submitted Time Extension Package. This documentation shall include letters, memos, directives, field notes, emails, etc which substantiates any delays or mitigation detailed in the narrative.

#### **12.108.08 FAILURE TO COMPLETE ON TIME.**

**a. Phased Completion, Interim Completion and Substantial Completion.** For each day, including work days, Saturdays, Sundays, and Holidays, that any unit or portion of the work shall remain uncompleted as defined by **Subsection 12.105.17; Acceptance, Para. a., Partial Acceptance**, the applicable Daily Charge will be deducted from any money due the Contractor, not as a penalty but as liquidated damages. The Job Specific Phased and Interim Completion Dates and Associated Liquidated Damages are defined in **Special Provision Code 12.108.1000; Prosecution and Progress**.

An adjustment of the contract time for completion of the work granted under the provisions of **Subsection 12.108.07** hereto will be considered in the assessment of liquidated damages.

Permitting the Contractor to continue and finish the work, or any part of it, after the contract time, or any extensions thereof, has passed will not waive the Department's rights under the Contract. Unless otherwise specified, liquidated damages will not be assessed during the winter shutdown period, i.e., December 15<sup>th</sup> through the following April 15<sup>th</sup>.

**b. Final Completion.** For each day, including work days, Saturdays, Sundays, and Holidays, that any work shall remain uncompleted after the time established for completion of the work in **Subsection 12.105.17; Acceptance, Para. b, Final Acceptance**, the applicable Daily Charge specified below, will be deducted from any money due the Contractor, not as a penalty, but as liquidated damages. An adjustment of the contract time for completion of the work granted under the provisions of **Subsection 12.108.07** hereto will be considered in the assessment of liquidated damages.

Permitting the Contractor to continue and finish the work, or any part of it, after the contract time or any extensions thereof, has passed will not waive the Department's

rights under the Contract. Unless otherwise specified, liquidated damages will not be assessed during the winter shutdown period, i.e., December 15<sup>th</sup> through the following April 15<sup>th</sup>.

Rates for liquidated damages will be established in accordance with the Schedule. When the contract time is either the calendar day or fixed calendar day basis, the schedule for calendar days shall be used. When the contract time is on a work day basis, the schedule for work days will be used.

**Schedule of Liquidated Damages**

<b>Original Contract Amount</b>		<b>Daily Charge</b>	
<b>From More Than</b>	<b>To and Including</b>	<b>Calendar Day or Fixed Date Work Day</b>	
\$ 0	\$ 25,000	\$200.00	\$250.00
25,000	50,000	300.00	400.00
50,000	100,000	450.00	600.00
100,000	500,000	550.00	750.00
500,000	1,000,000	900.00	1,250.00
1,000,000	2,000,000	1,200.00	1,650.00
2,000,000	4,000,000	1,500.00	2,050.00
4,000,000	6,000,000	1,750.00	2,450.00
6,000,000	10,000,000	2,250.00	3,150.00
10,000,000	-----	2,650.00	3,700.00

**(Job Specific)**

**CODE 12.108.1000**

**PROSECUTION AND PROGRESS**

In accordance with **Section 12.108.08, Failure to Complete on Time, Para. a., Phased and Interim Completion** the following defines the Phase and Interim Completion Dates and Associated Liquidated Damages:

1. Phase 1 Completion: *<Phase 1 Completion Date>*

All work shall be completed for the *<Phase 1 of Project>*. Completion will be the point at which all work within the phase is complete such that it can be safely and effectively used by the public and when the following criteria are realized: *<Job-Specific Criteria>*

Liquidated Damages: \$            per calendar day.

**5.1** 2. Phase 2 Completion: *<Phase 2 Completion Date>*

All work shall be completed for the *<Phase 2 of Project>*. Completion will be the point at which all work within the phase is complete such that it can be safely and effectively used by the public and when the following criteria are realized: *<Job-Specific Criteria>*

Liquidated Damages: \$            per calendar day.

3. Substantial Completion: *<Substantial Completion Date>*

All Contract work shall be completed, as defined by **Section 12.101.71**.

Liquidated Damages: \$            per calendar day.

**12.108.09 DEFAULT OF CONTRACT.**

**a. Conditions.** If the Contractor;

1. Fails to begin the work under the Contract within the time specified in the Notice to Proceed, or

2. Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or

3. Fails to perform the work in accordance with the contract requirements and/or refuses to remove and replace rejected materials or unacceptable work, or

4. Discontinues the prosecution of the work, or

5. Fails to resume work that has been discontinued within a reasonable time after notice to do so, or

6. Becomes insolvent or is declared bankrupt, files a voluntary petition for bankruptcy under the Federal Bankruptcy Act, or commits any act of bankruptcy or insolvency, or

7. Allows any final judgment to remain unsatisfied for a period of 10 days, or

8. Is a party to fraud, or

9. Makes an assignment of the Contract for the benefit of creditors, or

10. Fails to comply with contract requirements regarding minimum wage payments or EEO requirements, or

11. Fails to carry on the work in an acceptable manner in accordance with the Contract requirements; the Engineer may declare the Contractor to be in default of the Contract and shall give notice in writing to the Contractor and the Surety of such default, advising the Contractor of actions required to remedy said default.

If the Contractor or Surety, within a period of 10 days of receipt of such notice, does not proceed in accordance therewith, then the Department will have full power and authority, without violating the Contract, to assume prosecution of the work from the Contractor. The Department may appropriate or use the Contractor's materials and equipment at the site as may be suitable for use in the project and may enter into an agreement with another contractor for the completion of said Contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of Contract.

All costs and charges incurred by the Department as a result of the default, including the cost of completing the work under Contract and any applicable liquidated damages, will be deducted from any monies due or to become due the Contractor. If such costs exceed the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Department the balance of such costs in excess of the contract amount.

If it is determined, after termination of the Contractor's right to proceed, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department in accordance with **Subsection 12.108.10**. Thus, damages to which a Contractor may be entitled as a result of the improper default termination will be limited to appropriate amounts for the items listed in **Subsection 12.108.10; Termination of Contract**.

#### 12.108.10 TERMINATION OF CONTRACT.

**a. Reasons for Termination.** The Department may terminate the entire Contract, or any portion thereof, when the Contractor is prevented from proceeding with the prescribed work for any of the following reasons:

1. An Executive Order of the President of the United States with respect to the prosecution of war; in the interest of national defense; or any civil emergency or natural disaster.

2. An Executive Order of the Governor of the State with respect to a natural disaster or civil emergency.

3. Court orders relating to energy consumption, and orders or injunctions obtained by third party action resulting from national or local environmental protection laws.

4. Discovery of unanticipated archaeological artifacts of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly recovery.

5. Occurrence of an unanticipated environmental situation of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly mitigation.

6. Any other circumstances beyond the control of either the Department or the Contractor that precludes the orderly prosecution or completion of the work and that is in the public interest.

The Engineer shall terminate the Contract by delivering to the Contractor a Notice of Termination which shall specify the extent of the termination, the reasons therefore, and the effective date thereof.

**b. Termination Procedures.** After receipt of a Notice of Termination, and except as directed by the Engineer, the Contractor shall immediately proceed with the following obligations:

1. Stop work as specified in the notice.

2. Place no further subcontracts or orders (referred to as subcontracts in this clause for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.

3. Terminate all subcontracts to the extent they relate to the work terminated.

4. With approval or ratification to the extent required by the Engineer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

5. As directed by the Engineer, transfer title and deliver to the Department the fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and the

completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Department.

6. Complete performance of the work not terminated.

7. Take any action that may be necessary, or that the Engineer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Department has or may acquire an interest.

8. At the direction of the Engineer, acceptable materials obtained by the Contractor for the Project but which have not been incorporated therein, may be purchased from the Contractor at actual cost delivered to a prescribed location, or disposed of as mutually agreed.

When the Department orders termination of a Contract, or portion thereof, effective on a certain date, all completed items of work as of that date will be paid for at the contract bid prices. Payment for partially completed work will be made either at agreed prices or in accordance with the subparagraph below entitled, "Contractor and Department Fail to Agree." Items that are eliminated in their entirety by such termination shall be paid for as provided in **Subsection 12.109.05; Eliminated Items**.

The Contractor shall submit, within 60 days of the effective termination date, a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an equitable settlement be reached with the Contractor. In no event will loss of anticipated profits be considered as part of any settlement.

The Contractor and the Department may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work performed. The Contract shall be amended, and the Contractor paid the agreed amount.

**c. Contractor and Department Fail to Agree.** If the Contractor and the Department fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Department shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon above;

1. For contract work performed before the effective date of termination, the total of the following:

(a) The cost of this work;

(b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract; and

(c) A sum, as profit on (a), above, determined by the Department to be fair and reasonable; however, if the Contractor would have sustained a loss on the entire Contract had it been completed, the Department shall allow no profit and shall reduce the settlement to reflect the indicated rate loss.

2. The reasonable costs of settlement of the work terminated, including:

(a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;

(b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

3. Except for normal spoilage, and except to the extent that the Department expressly assumed the risk of loss, the Department shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Department or to the buyer.

4. In arriving at the amount due the Contractor under this clause, there shall be deducted:

(a) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;

(b) Any claim which the Department has against the Contractor under this Contract; and

(c) The agreed price for, or the proceed of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Department.

**d. Partial Termination.** If the termination is partial, the Contractor may file a proposal with the Department for an equitable adjustment of the price(s) of the continued portion of the Contract. The Department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Engineer.

**e. Records.** The Department may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the

terminated portion of the Contract, if the Department believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

The Contractor shall maintain and make available all project cost records to the Department for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Department, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Department, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**f. Contractual Responsibilities.** Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

## **12.109 – Measurement and Payment**

**12.109.01 MEASUREMENT OF QUANTITIES.** Work completed under the Contract will be measured by the Engineer according to United States standard measure, or by the metric system when the Contract so provides.

A station when used as a definition or term of measurement will denote 100 linear feet.

The method of measurement and computations to be used to determine quantities of materials furnished and work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures in the roadway having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans.

Structures will be measured according to neat lines shown on the Plans or as altered to fit field conditions.

Items which are measured by the linear foot, such as pipe culverts, curb, guardrail, underdrains, etc., will be measured parallel to the base or foundation upon which such structures are placed, unless otherwise shown on the Plans.

In computing volumes of excavation the average end area method, or other acceptable methods, will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pile, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches.

The term "gauge" shall mean the standard gauges as established by AASHTO, ASTM, U.S.A.S.I. or Manufacturer's standards, in the order of precedence listed.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. Materials which are measured or proportioned by weight shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that payment is made only for the actual weight of such material. However, car weights will not be acceptable for material that is passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the Engineer directs. Each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured in such vehicles at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual volume may be readily and accurately determined. Vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. However, any "heap" above the water level line may be computed for quantity if authorized by the Engineer.

When requested by the Contractor and approved in writing by the Engineer, material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be acceptable to the Contractor before such method of measurement of quantities is employed.

Bituminous materials will be measured as indicated in the Proposal. Volumes will be measured at 60<sup>o</sup>F or will be corrected to the volume at 60<sup>o</sup>F using ASTM D1250 for asphalts or ASTM D633 for tars.

Net certified scale weights, or weights converted from certified volumes in the case of rail shipments, will be used as a basis of measurement. Such weights, however, shall be subject to correction whenever bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the pound.

Timber will be measured by thousand foot-board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used in the Bid Schedule as an item of payment will mean complete payment for the work so described in the Contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary travel time within the limits of the project. If special equipment has been ordered by the Engineer in connection with force account work, travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Engineer, half-time rates for the equipment will be paid.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the respective industries will be accepted.

Scales for the weighing of highway and bridge construction materials that are required to be proportioned or measured and paid for by weight, shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within  $\frac{1}{2}$  of 1 percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the Inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed  $\frac{1}{10}$  of 1 percent of the nominal rated capacity of the scale; but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be arranged so that the operator and inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50 pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales over weighing (indicating more than true weight) will not be permitted to operate and materials received subsequent to the last correct weighing accuracy test will be reduced by the percentage of error in excess of ½ of 1 percent.

In the event inspection reveals the scales have been under weighing, they shall be adjusted and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

Costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house, and for all other items specified in this Subsection for weighing of highway and bridge construction materials for proportioning or payment shall be included in the unit contract prices for the various pay items of the project.

When the estimated quantities for a specific portion of the work are designated as pay quantities in the Contract, they shall be the final quantities for which payment will be made, unless the dimensions of the work shown on the Plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of work, the final quantities for payment will be revised in the amount represented by the authorized changes.

**12.109.02 SCOPE OF PAYMENT.** The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the work, subject to the provisions of **Subsections 12.104.03; Differing Site Conditions and 12.107.16; No Waiver of Legal Rights.**

If the "Basis of Payment" clause in the specifications relating to any unit price in the Bid Schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract.

**12.109.03 COMPENSATION FOR ALTERED QUANTITIES.** When the accepted quantities of work vary from the quantities in the Bid Schedule, the Contractor shall accept payment at the original contract unit prices for the accepted quantities of work performed. No allowance will be made for any reason except as provided for in **Subsections 12.104.03; 12.104.05; and 12.104.07; Differing Site Conditions, Extra Work, and Significant Changes in the Character of the Work,** respectively.

**12.109.04 DIFFERING SITE CONDITIONS, CHANGES, EXTRA WORK AND FORCE ACCOUNT WORK.**

**a. Methods of Payment.** Differing site conditions, changes, extra work, and significant changes in the character of the work, all performed in accordance with **SECTION 12.104; SCOPE OF WORK,** will be paid for in accordance with the following methods as appropriate:

1. Contract unit prices.
2. Unit prices agreed upon in the order authorizing the work.
3. An agreed upon lump sum amount.
4. If directed by the Department, on a Force Account Basis to be compensated in the following manner:

**(a) Labor.** For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage actually paid as shown by its certified payroll, which rate shall be at least the prevailing rate of wage (or scale), for each and every hour that said labor and foremen are actually engaged in the work.

No part of the salary or expenses of anyone connected with the Contractor's forces above the grade of foreman, and having general supervision of the work, will be included in the labor item as specified above.

The Engineer reserves the right to determine the number and type of labor employed.

The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.

An amount equal to 20 percent of the sum of the above items will also be paid the Contractor.

**(b) Bond, Insurance and Tax.** For property damage, liability, worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes incurred on force account work, the Contractor shall receive the actual cost, to which cost a surcharge of 6-percent will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bonds, insurances and taxes.

**(c) Materials.** For materials accepted by the Engineer and used in the work, the Contractor shall receive the actual cost of such materials delivered to the site, including transportation charges paid (exclusive of machinery rentals as hereinafter set forth), to which cost a surcharge of 15 percent will be added. The Contractor will not be reimbursed for any penalty or carrying charge incurred due to late or delayed payment for materials used in the work.

**(d) Equipment.** For any machinery or special equipment (other than small tools) including transportation cost, the use of which has been authorized by the Engineer, the Contractor shall receive either the "hourly rental rates" as prescribed herein by the Department, or the actual documented cost plus an amount equal to 10 percent of said

actual documented cost, whichever is less. Under no circumstance shall the payment exceed the replacement cost of the equipment.

All rental rates shall include the estimated operating cost as indicated for that equipment in either the Rental Rate Blue Book or the Rental Rate Blue Book for Older Equipment, including the Rate Adjustment Tables approved for projects wholly or partially funded by the Federal Highway Administration (FHWA). Operators' wages are not included in the estimated operating cost and are paid separately, except for certain specified equipment in which the operator's wages are included.

The "hourly rental rate" for an individual piece of equipment shall be determined by dividing the associated monthly rate, modified by the Rate Adjustment Tables, as contained in the Rental Rate Blue Book by one hundred seventy-six (176). There will be no adjustment to the hourly rate for the period of use.

For rented equipment, the cost shall be based on the actual documented cost plus an amount equal to 10-percent of said actual documented cost, subject to the conditions set forth below. The actual documented cost shall consist of the paid invoice for rented equipment plus other documented operating costs (i.e. fuel, maintenance, repairs, etc.).

Actual documented costs plus 10 percent of said costs shall not exceed the cost as calculated from the RENTAL RATE BLUE BOOK or the RENTAL RATE BLUE BOOK FOR OLDER CONSTRUCTION EQUIPMENT. The Contractor shall submit documentation for both the hourly rental rates and actual documented costs to determine that the actual documented costs plus 10 percent of said costs does not exceed the calculated rental rate costs. No percentage surcharges will be added to the "Blue Book" rates as prescribed herein for rented equipment.

For equipment which is already on the project, the rental period shall start when such equipment is ordered to work by the Engineer, and shall continue until ordered to stop work.

For equipment which has to be brought to the project specifically for use on force account work, the State will pay all loading and unloading costs, and all transportation costs to and from the project, including assembling and dismantling, provided, however, that the cost of return transportation shall not exceed that of moving the equipment to the project. Loading, unloading and transportation costs will not be paid if the equipment is used for work other than force account work while on the project. The rental period shall start at the time the equipment is ready for operation, and shall extend during the period of time the equipment is actually utilized on force account work. The rental period shall end when the equipment is released by the Engineer.

All equipment, including trucks, shall, in the judgment of the Engineer, be in good working condition and suitable for the purpose intended. The Engineer reserves the right to determine the number of units of the various types of equipment to be employed on force account work. The manufacturer's model identification shall be the basis for

identifying the type of equipment for payment purposes. Certification for the model year of the equipment will be required.

**(e) Miscellaneous.** No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

**(f) Compensation.** The Contractor's representative and the Engineer shall daily compare records of work completed on a force account basis. The Engineer will then prepare the daily work sheets and said sheets will be signed by the Contractor's representative no later than noon of the next working day.

**(g) Statements.** No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with six copies of itemized statements of the cost of such work, incurred on a daily basis, and detailed as follows:

(1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.

(2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(3) Quantities of materials, prices, and extensions.

(4) Transportation of materials.

(5) Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes.

Statements shall be accompanied and supported by certified payrolls, and receipted invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

**12.109.05 ELIMINATED ITEMS.** Should any items contained in the Contract be found unnecessary for the proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate the items from the Contract, and the action shall not invalidate the Contract. When a Contractor is notified of the elimination of items, the Contractor will be reimbursed for actual work performed and all costs incurred, including mobilization of materials prior to said notification.

**12.109.06 PARTIAL PAYMENTS.**

**a. Amount.** Partial payments will be made bi-weekly as the work progresses. The amount of the partial payments shall be 97 percent of the Contract price for the work performed during the previous payment period, all as measured and/or estimated and accepted by the Engineer. Partial payment will be subject to a 3 percent retainage.

Retainage will be released when all items on the punch list and the required documentation have been addressed to the satisfaction of the Engineer.

No partial payments shall be made when, in the judgment of the Engineer, the work has not proceeded according to provisions of the Contract. Partial payments shall not be construed as an acceptance by the Department of any materials furnished or work performed.

No partial payments shall be made on perishable plant materials until such plant materials are planted as specified in the Contract.

Upon written request from the Contractor, supported by delivery invoices, and for those conditions outlined below, the Engineer may allow partial payment on such approved materials, supplies and equipment as are delivered to an approved site in acceptable condition. Such materials, supplies and equipment, as yet not incorporated into the work, shall be identified, set aside and suitably stored at or near the site of the work.

**b. Conditions.** The conditions under which the Engineer may allow partial payments for those materials, supplies, and equipment not yet incorporated into the work include any of the following:

1. The schedule of completion of the work has been terminated by authorized suspension of Contract work (pending final settlement), or
2. The schedule of completion of the work has been hindered and delayed by seasonal closing of the project or by similar causes over which the Contractor has no control, or
3. When, in the opinion of the Engineer, the advance delivery of such materials is in the best interest for the timely completion of the project.

**c. Maximum Payment.** Under these conditions partial payments for such materials, supplies and equipment furnished at an approved site shall not exceed the lesser of the following amounts.

1. 100 percent of the actual cost incurred by the Contractor, or
2. 80 percent of the amount generated by the quantity of materials so delivered and accepted, multiplied by the unit price bid for such materials as contained in the Bid Schedule.

Such payment shall be made as a partial payment under the related item or items by adjustment of the quantity progressively allowed. The Contractor must furnish a paid invoice for the furnished materials, supplies or equipment within thirty (30) days after receiving the partial payment. Otherwise, the amount of the partial payment will be deducted from subsequent invoices.

**12.109.07 PARTIAL PAYMENT OF LUMP SUM ITEMS.** Each bi-weekly period the Engineer and the Contractor will consult and subsequently agree on the progress of work performed under those lump sum items indicated in the Bid Schedule. Partial payments for the completed and accepted portions of such work will be made to the Contractor based on the Engineer's estimate of the value of said completed work.

Prior to award of the Contract, or in any case within ten (10) calendar days after the date of the Notice of Award, the Contractor shall submit to the Engineer for approval two copies of the breakdown of each lump sum bid item that appears in the Bid Schedule, (excluding the Mobilization item). The breakdown of Lump Sum-Superstructure and Lump Sum-Substructure items shall include only those items listed on the Plans, and shall include the Contractor's verified quantities it used in preparing its bid. All other additional costs (such as engineering, shop drawings, formwork, equipment, etc.) to complete those items of work shall be included and distributed in the breakdown of those listed items. For other lump sum items not identified on the Plans, the Contractor shall provide a breakdown of the various items that constitute the respective lump sum work items.

The Engineer will use as a guide the Lump Sum breakdowns submitted by the Contractor if they fairly represent the cost of the various items of work. If, in the opinion of the Engineer, the prices submitted by the Contractor do not fairly represent the cost of the various items of work, the Engineer may substitute other prices that do fairly represent the cost of such work.

**12.109.08 PAYMENT OF WITHHELD FUNDS.**

**a. Payment.** Upon request, the Department will make payment of funds withheld from progress payments if the Contractor deposits, in escrow, securities eligible for the investment of State funds or bank certificates of deposit, upon the following conditions:

1. The Contractor shall bear the expenses of the Department and the State Treasurer in connection with the escrow deposit made.

2. Securities or certificates of deposit to be placed in escrow will be subject to the approval of the Department and, unless otherwise permitted by the escrow agreement, shall be of a value of at least 100 percent of the amounts of retention to be paid to the Contractor pursuant to this Section.

3. The Contractor shall enter into an escrow agreement satisfactory to the Department.

4. The Contractor shall obtain the written consent of the Surety to the agreement.

**12.109.09 ACCEPTANCE AND FINAL PAYMENT.** When the project has been accepted as provided in **Subsection 12.105.17**, the Engineer will prepare the final estimate of work performed. If the Contractor approves the final estimate or files no claim or objection to the quantities therein within 30 days of receiving the final estimate, the Department will process the estimate for final payment. With approval of the final estimate by the Contractor, payment will be made for the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provision of the Contract.

If the Contractor files a claim in accordance with Contract requirements, it shall be submitted in writing in sufficient detail to enable the Engineer to ascertain the basis and amount of such claim. Upon final adjudication of the claim, any additional payment determined to be due the Contractor will be placed on a supplemental estimate and processed for payment.

All prior partial estimates and payments will be subject to correction in the final estimate and payment.

#### **12.109.10 COMPENSATION FOR PROJECT DELAYS.**

**a. Compensable Delays.** The Department will provide an equitable adjustment to the Contractor for those delays created by the Department's acts or omissions. Unless otherwise specified, the Contractor assumes the risk of damages from all other causes of delay.

The term "delay" shall be deemed to mean any event, action, force or factors which extends the Contractor's time of performance of the Contract. This Subsection is intended to cover all such events, actions, forces or factors, whether they be styled "delay," "disruption," "interference," "impedance," "hindrance" or otherwise.

Strict compliance with the provisions of this Subsection will be an essential condition precedent to any equitable adjustment for delays.

**b. Limitation of Costs.** Only the additional actual costs associated with the following items will be recoverable by the Contractor as an equitable adjustment for delays.

1. Documented and substantiated additional or escalated job site non-salaried labor expenses.
2. Documented and substantiated additional or escalated costs for materials.

3. Documented and substantiated equipment costs or escalated equipment costs. When measuring additional equipment expenses (i.e., ownership expenses) arising as a direct result of a delay caused by the Department, use actual records kept in the usual course of business, and measure increased ownership expenses pursuant to generally accepted accounting principles.

4. Documented and substantiated extended job-site overhead to include those costs necessary to maintain the job site during the delay such as field office (inclusive of equipment, copy and fax machines, computers etc), field office utility bills (i.e. electricity, gas, water, etc.), field office supplies and janitorial services, and security. Under no circumstances will any of the contractor's labor costs (inclusive of extended field labor) be paid under extended job-site overhead. Labor costs are paid subject to the conditions of No.b.1 and No.b.5 of this section.

5. An additional surcharge of 10 percent of the total of items 1, 2, 3, and 4, to account for home office overhead as well as all salaried labor (both home office and extended field supervision), and profit.

**Note:** Where documentation, payment for equipment, and/or cost substantiation is specified, the Contractor shall adhere to the requirements in Section 12.109.04 of these Standard Specifications. Payment for costs submitted for reimbursement will be made only to the extent that the requirements of Section 12.109.04 are met to the satisfaction of the Engineer.

**c. Waiver of Liability.** The parties agree that, in any adjustment for delay costs, the Department will have no liability for the following items of damages or expense:

1. Profit in excess of that provided herein;
2. Loss of profit;
3. Labor inefficiencies;
4. Home office overhead in excess of that provided herein;
5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency;
6. Indirect costs or expenses of any nature;
7. Attorneys fees, claims preparation expenses or costs of litigation.

**12.109.11 PROMPT PAYMENT PROCEDURES.** In accordance with Title 42, Chapter 11.1-1 of the General Laws, all invoice vouchers submitted by the Contractor will be paid within thirty (30) days, provided however, that according to 42-11.1-5(B)2,

the thirty (30) day period will not commence until the Department has reviewed and accepted all invoice documentation in its proper and approved form.

**12.109.12 SUBCONTRACTOR PROMPT PAYMENT.** The Prime Contractor shall make prompt payment for satisfactory subcontract work for which the Department has made partial or full payment. The term “Subcontractor” as used herein, is defined in **Subsection 12.101.70; Subcontractor.**

When a Subcontractor has not received payment for work paid to the Prime Contractor within 30-days from receipt of the actual check by the Prime Contractor from the State, a formal complaint may be filed under the following procedures:

a) The Subcontractor will send written notification to the Department, including contract item numbers, date work performed, a copy of the invoice(s) from the Subcontractor to the Prime, and a copy of the Progress Payment where payment to the Prime Contractor was included. The latter item may be obtained from the Department’s field supervisor or Construction Office. If the Subcontractor has not provided a payment/performance bond for this work to the contractor, then the formal complaint must also include verification that all suppliers and other debts on these items have been paid or documented reasons for non-payment acceptable by the Department. Failure to provide this verification will be considered “good cause” for postponement of payment by the Prime Contractor.

b) The Department will notify the Prime Contractor of the formal complaint in writing within 15 days and will proceed to withhold an amount equal to the previous payment(s) made to the Prime Contractor for the specific subcontractor’s work. The Prime Contractor must submit written documentation to the Department demonstrating good cause for not making the required payment within 15 days. If the Department does not receive the required documentation within the required 15 days or does not accept the Contractor’s good cause justification, the Department will withhold or continue to withhold an amount equal to all previous payments to the Prime Contractor for the specific Subcontractor’s work until the Department has verified payment to the Subcontractor. If the Department accepts the Prime Contractor’s good cause justification, it will notify the Subcontractor of its decision that this is categorized as a dispute and payment to the Prime Contractor will be released. The Subcontractor and Prime Contractor may solve their dispute in any fashion they so choose (arbitration, mediation, litigation, etc.). The cost of any such arbitration/mediation shall be borne by both parties at an equal share or as otherwise provided for in any agreement between the parties.

c) Should the two parties enter into a payment agreement/settlement, the Department will only release previous monies held in accordance with the agreement/settlement. Should the Prime Contractor default again, the Department will contact the bonding company and request complete payment within 15 days. Should the bonding company and/or Prime Contractor fail to make complete payment after a 15-day

period, all progress payments to the Prime Contractor will stop until the subcontractor is paid and the dispute is resolved to the satisfaction of the Department.

Any delays and/or claims resulting from the actions taken by the Department under this Specification will not be the responsibility of the State.