I-95 VIADUCT NORTHBOUND PROVIDENCE

PROVIDENCE, RHODE ISLAND

Bid# 7598876PH2

BEST VALUE DESIGN-BUILD PROCUREMENT FOR BRIDGE GROUP 75T-5B (I): I-95 VIADUCT NORTHBOUND

REQUEST FOR PROPOSALS

PART 3

TERMS AND CONDITIONS

November 21, 2019

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

I-95 VIADUCT NORTHBOUND IN
PROVIDENCE, RHODE ISLAND
DESIGN-BUILD PROCUREMENT
REQUEST FOR PROPOSALS

PART 3 TERMS AND CONDITIONS

Section 100 of the RHODE ISLAND DEPARTMENT OF TRANSPORTATION Standard Specifications for Road and Bridge Construction as AMENDED March 2018 is hereby deleted in its entirety and replaced with the following:

TABLE OF CONTENTS

DIVISION I

PART 100 GENERAL REQUIREMENTS AND COVENANTS **Page**

Section 101 Definitions and Terms 1
Section 102 Bidding Requirements and Conditions 2
102.1 Prequalification of Bidders 2
102.2 Contents of Proposal Forms 2
102.3 Interpretation of Quantities in Bid Schedule 2
102.4 Examination of Plans, Specifications, Special Provisions and Site of Work 2
102.5 Preparation of Proposal 4
102.6 Proposal Guaranty 4
102.7 Irregular Proposals 5
102.8 Delivery of Proposals 6
102.9 Withdrawal or Revisions of Proposals 6
102.10 Combination or Conditional Proposals 6
102.11 Opening of Proposals 6
102.12 Disqualification of Bidders and Rejection of Proposals 6
102.13 Material Guaranty 7
102.14 Bidding Certifications 7
Section 103 Award and Execution of the Contract 10
103.1 Consideration of Proposals 10
103.2 Post Qualification Requirements and Award of Contract 10
103.3 Cancellation of Award 10
103.4 Return of Proposal Guaranty 11
103.5 Contract Bond 11
103.6 Execution and Approval of the Contract 11
103.7 Failure to Execute Contract 11
103.8 Escrow of Bid Documentation 12
Section 104 Scope of Work 14
104.1 Intent of Contract 14
104.2 Changes in the Contract 14
104.3 Differing Site Conditions 18
104.4 Alterations in the Plans or Details 19
104.5 Extra Work 19
104.6 Suspension of Work Ordered by the Engineer 20
104.7 Significant Changes in the Character of the Work 21
104.8 Maintenance of Traffic 21

104.9 Maintenance of Public Access 22
104.10 Rights in and Use of Materials Found on the Project..... 22
104.11 Final Cleaning-Up 22
104.12 Railway – Highway Provisions 23
104.13 Construction Over or Adjacent to Navigable Waters 23
104.14 Contractor's Responsibility for the Work..... 23
104.15 Environmental Protection..... 24
104.16 Removal and Disposal of Structures on the Site 25
Section 105 Control of Work.....26
105.1 Authority of the Engineer.....26
105.2 Plans, Working Drawings and Shop Drawings.....27
105.3 Conformity with Plans and Specifications 31
105.4 Coordination of Plans, Specifications, Supplemental Specifications and Special Provisions 32
105.5 Cooperation by Contractor 33
105.6 Cooperation with Utilities (including Rail Road) 34
105.7 Cooperation Between Contractors 37
105.8 Construction Stakes, Lines and Grades.....37
105.9 Project Quality Assurance 37
105.10 Authority and Duties of Resident Engineer 39
105.11 Inspection of Work.....39
105.12 Removal of Unacceptable and Unauthorized Work 40
105.13 Load Restrictions.....40
105.14 Maintenance During Construction 40
105.15 Opening Sections of Project to Traffic.....41
105.16 Furnishing Right-of-Way.....42
105.17 Failure to Maintain Roadway or Structure 42
105.18 Acceptance 42
105.19 Claims for Adjustments and Disputes 44
105.20 Procedures for Claims and Disputes.....45
105.21 Project Delays 46
105.22 Work Zone Training 47
105.23 Requests for Information 47
105.24 Welding.....48
Section 106 Control of Material 49
106.1 Source of Supply and Quality Requirements 49
106.2 Local Material Sources.....50
106.3 Samples, Tests, Cited Specifications 51
106.4 Certification of Compliance.....52
106.5 Plant Inspection 52
106.6 Storage of Materials 52
106.7 Handling of Materials.....53
106.8 Unacceptable Materials 53
106.9 Department-Furnished Materials.....534
106.10 Defective Materials.....53
106.11 Shipping Material.....53
106.12 Certified Test Reports and Material Certificates 54
106.13 Warranties, Guarantees and Instruction Sheets 54
Section 107 Legal Relations and Responsibility to Public.....56
107.1 Laws to be Observed.....56
107.2 Specific Statutes Required to be Inserted 56
107.3 Permits, Licenses and Taxes 58
107.4 Patented Devices, Materials and Processes.....58

107.5 Restoration of Surfaces Opened by Permit 59
107.6 Federal-Aid Participation 59
107.7 Sanitary, Health and Safety Provisions 59
107.8 Public Convenience and Safety 59
107.9 Barricades and Warning Signs 60
107.10 Use of Explosives 61
107.11 Protection and Restoration of Property and Landscape 63
107.12 Forest Protection 64
107.13 Responsibility for Damage Claims 64
107.14 Third Party Beneficiary Clause 67
107.15 Personal Liability of Department Employees 67
107.16 No Waiver of Legal Rights 67
107.17 Hazardous Materials 67
107.18 Civil Rights 67
Section 108 Prosecution and Progress 68
108.1 Subletting of Contract 68
108.2 Notice to Proceed 68
108.3 Prosecution and Progress 68
108.4 Limitation of Operations 80
108.5 Character of Workers 80
108.6 Methods and Equipment 80
108.7 Determination of Contract Time 81
108.8 Failure to Complete on Time 82
108.9 Default of Contract 83
108.10 Termination of Contract 84
Section 109 Measurement and Payment 87
109.1 Measurement of Quantities 87
109.2 Scope of Payment 89
109.3 Compensation for Altered Quantities 89
109.4 Differing Site Conditions, Changes, Extra Work And Force Account Work 89
109.5 Payment for Work Payments 92
109.6 Partial Payment of Lump Sum Items 93
109.7 Payment of Withheld Funds 93
109.8 Acceptance and Final Payment 94
109.9 Compensation for Project Delays 95
109.10 Prompt Payment Procedures 95
109.11 Subcontractor Prompt Payment 95
109.12 Payment of Cost Owed by the State 96
109.13 Eliminated Items 96
Section 110 Environmental Compliance 97
110.1 General 97
110.2 Compliance with Laws and Regulations 97
110.3 Water Pollution Control 98
110.4 Vacant 98
110.5 Construction Noise Pollution 98
110.6 Protection of Archaeological and Paleontological Remains and Materials ... 98
110.7 Control and Hazardous Materials 99

APPENDIX C:
APPENDIX C.01 – ABBREVIATIONS, DEFINITIONS AND TERMS

DIVISION I

PART 100

GENERAL REQUIREMENTS AND COVENANTS

SECTION 101

DEFINITIONS AND TERMS

101. ABBREVIATIONS, DEFINITIONS AND TERMS. As used in Sections 102 – 109, abbreviations, terms and definitions set forth in this Section shall have the following meanings:

101.1. ABBREVIATIONS.

For a list of Abbreviations used in the RFP see Appendix C.01.

101.2. Definitions:

For a list of Definitions for Terms used in the RFP see Appendix C.01.

SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

102. CONTRACT PROCUREMENT: The requirements and details of the Design-Build procurement process are described in Part 1 of the RFP. In order to be eligible for award of this Contract, a Proposer must meet the requirements of the RFP Parts One (1), Two (2), and Three (3), as well as any applicable laws and regulations of the State of Rhode Island.

102.01 KNOWLEDGE OF APPLICABLE LAWS: Proposers shall be deemed to know and understand all federal, state and local laws, ordinances and regulations and municipal bylaws that apply in any manner to Department projects for which they bid; such legal requirements shall include, but not necessarily be limited to, those that apply to the Contract work, the equipment and materials to be used on the Project, or the treatment of individuals or classes of individuals in relationship to their involvement with the Project. A Contractor's ignorance of such requirements shall not, in any internal Department proceeding or in any claims or other legal proceeding, constitute justification for the Contractor's failure to consider such requirements in formulating a bid proposal, or for the Contractor's failure to ensure that such legal requirements are met with regard to any Department project in which that Contractor participates.

The Contractor agrees that if it should be awarded the contract for any project supported at least in part by federal funding, the Contractor will not knowingly enter into any lower-tier transaction on that project with a person (including entities) who, by virtue of federal law or regulation, or by voluntary agreement, is currently ineligible to participate in such a project, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities.

102.02 CONTENTS OF PROPOSAL FORMS. The Proposal Form is furnished to the prospective bidder in Part 1 of the RFP.

The Proposal Form consists of the "Bid Schedule," which is that portion of the form where the various items of work are listed in a numbered sequence and includes the lump sum and unit prices entered by the bidder and total bid amounts of each item. The Proposal Form also contains a section of the form referred to as 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.

102.03 INTERPRETATION OF QUANTITIES IN PRICE PROPOSAL. The Estimated Quantities and Costs Items appearing in the RFP and on the Price Proposal Form 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 from Estimated Quantities and Costs Items only, 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 Department, or as hereinafter provided.

102.04 EXAMINATION OF RFP, PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND PROJECT SITE: The Proposer is required to examine carefully the Site, the RFP, the Proposal form, plans, BTC, the Rhode Island Standard Special Provisions for Road and Bridge Construction, special provisions, specifications, supplemental specifications, and other Contract documents for the Project, as well as any permits or permit applications that are likely to affect the Contract work. The Proposer

must judge for itself and satisfy itself as to the conditions to be encountered; the character, quality and quantities of the work to be performed; the materials to be furnished; and any other general requirements of the Project. 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. Unless otherwise specified in this Contract, the subsurface information furnished in the RFP is based on the Department's interpretation of investigations made at the specific locations indicated; and the Department gives no assurance that the conditions discovered are typical of the conditions at other Site locations or that those conditions will have remained unchanged since the field data were obtained. The Department also gives no assurance that the presence or absence of subsurface water at the time and locations of these investigations will be representative of actual conditions at the time of construction. Such subsurface information as was obtained by the Department for its use in the design of the Project will be available for inspection by Proposers through the Department of Transportation. Also, Proposers may arrange through the Department of Transportation to examine, in advance of bidding, at a location to be specified by the Department, any available samples of the materials encountered in the Department's subsurface explorations. The Contractor shall be solely responsible for all assumptions, deductions, or conclusions that it may make or derive from its examination of any Department information, document or sample relating to subsurface Site conditions. In furnishing or making available such information or materials, the Department makes no warranty or representation as to the actual conditions that may be encountered or as to the actual nature, quantities, or distributions of work that will be required from it in the course of the Project.

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. The Department does not intend or warrant that plan sheets furnished to the State by utility companies whose facilities may be affected by the proposed construction will show all proposed utility work that will be done by utility companies or municipal authorities or both before, during, or after the life of this Contract. In addition to the work indicated on such plan sheets, the utility companies and authorities may adjust or remove certain of their installations on or adjacent to the Site other than those indicated on the plans, or they may install facilities not so indicated.

Proposers must inform the Department in writing, at the earliest opportunity, of any and all omissions, errors, or discrepancies that the Proposer discovers in the RFP, (including the BTC plans, specifications, and other supplied or referenced documents.) Information and inquiries concerning such matters, and any other information or inquiry concerning the interpretation of the RFP or Contract, must be transmitted to the Rhode Island Department of Administration, Division of Purchases, 1 Capitol Hill, Providence, Rhode Island, 02908 using the process outlined in Part 1 of the RFP for posting questions regarding the RFP. The Department cannot ensure a response to inquiries received later than ten (10) days prior to the original scheduled Proposal Due Date. When the Department deems it warranted, responses to such inquiries relating to changes in or interpretations of the RFP (including the BTC plans, specifications, and other documents) will be issued to all Proposers in the form of addenda and made a part of the RFP and, subsequently, the Contract. Proposers are responsible for ensuring that they are aware of all addenda. Failure by the Department or postal or other courier

services to deliver addenda or other information regarding an RFP does not release the Proposer from any obligations under said addenda or the RFP.

102.05 PREPARATION OF PROPOSAL. The bidder's attention is directed to the fact that all Proposals 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 provided along with the RFP.

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 Department 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 103.1;** 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 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 RFP. By submitting a Bid, 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.

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.

102.07 IRREGULAR PROPOSALS.

a. Mandatory Reasons for Disqualification in Addition to Others as Set Forth in Those Regulations. 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 provided by the State as part of Part 1 of the RFP; 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 complete;

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 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 as provided in Part 1 of the RFP have been altered in any way.

b. Other Reasons for Disqualification in Addition to Other Reasons Set Forth in Those Regulations. The Department 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 102.5; 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 States software.

102.08 DELIVERY OF PROPOSALS. Price and Technical Proposals shall be submitted in sealed envelopes. The envelope shall be labeled to clearly indicate its contents. When sent by mail, the sealed Proposals 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.

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 RFP, 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.ri.gov.**

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.

102.11 OPENING OF PROPOSALS. Price Proposals will be opened by the State as indicated in the Part 1 Instructions to Proposers or as amended by duly authorized Contract Addenda.

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 102.1**;

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 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.

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 and Iron Products. The bidder is advised of the "Buy American" requirements that apply to domestic steel and iron products as set forth in **Subsection 106.1a** of these Specifications.

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 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. Prospective bidder must certify that he or she 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 pubic 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 the 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 load, 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 **Parts. 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.

SECTION 103

AWARD AND EXECUTION OF THE CONTRACT

103.1 CONSIDERATION OF PROPOSALS. After the Price Proposals are opened and read, they will be compared on the basis of the summation of the products of the lump sum bid price shown in the Proposal by the estimated schedule of values. The Price Proposal and Technical Proposal Evaluation Score will be combined into a Best Value Score. The results of such comparisons will be made available to the public.

The State reserves the right to correct arithmetic errors in the Price Proposals prior to calculation of a Best Value Score and comparison of said Best Value Scores. In the event of a discrepancy between Lump Sum bid price and the Schedule of Values, the Lump Sum bid price shall govern.

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

103.2 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.

103.3 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.

103.4 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.

103.5 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.

103.6 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.

103.7 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 best value designated responsible bidder, the Department may either award the Contract to the next best value responsible bidder or reject all bids and re-advertise the Project for the purpose of soliciting new Proposals.

103.8 ESCROW OF BID DOCUMENTATION. The placing in escrow of bid documentation in accordance with this Section shall be required.

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 ensure 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 Contractor. 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.

SECTION 104

SCOPE OF WORK

104.1 INTENT OF CONTRACT. The intent of the Contract is to prescribe the scope and details of the design and construction work for which the Contractor has taken responsibility by executing the Contract. The Contractor is required to perform the Project work in full compliance with the Specifications, BTC plans, approved ATCs, Special Provisions, Proposal, and other Contract documents, including any Change (construction) Orders by which the Contract work is supplemented or modified subsequent to the date of the Contract. Said work includes the furnishing of the completed Project design, all materials, implements, machinery, equipment, tools, supplies, transportation, labor, and all other things necessary for the satisfactory prosecution and completion of the Project.

The Contractor shall design the Project and construct the Project in accordance with all professional engineering principles and construction practices, and in accordance with all standards identified in the Contract, in a good and workmanlike manner, free from defects. Except as otherwise specifically provided in the Contract, all materials, services and efforts necessary in order to achieve Substantial Completion and Final Acceptance on or before the respective deadlines provide herein shall be the Contractor's responsibility, and the cost of all such materials, services and efforts shall be included in the Price Proposal.

104.2 CHANGES IN THE CONTRACT.

a. Right to Change: The Department 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 or release the Surety. The Contractor agrees to perform the work as directed by the Department. Any costs applicable to such changes will be paid for by the execution of an appropriate Contract Modification.

b. Change Orders: This Section sets forth the requirements for Change Orders under this Contract. The Contractor hereby acknowledges and agrees that the aggregate price proposed in the Contractor's Price Proposal (sometimes referred to herein as the "D-B Price" and any additional items listed on the bid proposal) and accepted by the Department constitutes full compensation to the Contractor for performance of the Project work, subject only to those exceptions specified in provisions of the Contract.

Change Orders may be requested by the Contractor only for the reasons outlined in the Contract. A Change Order shall not be effective for any purpose unless executed by the Department as specified herein.

Change Orders may be issued only for one or more of the following purposes:

1. to modify the BTC or Proposal following award of the contract;
2. to modify the scope of the Project;
3. to revise a milestone or the Contract completion date;
4. to revise the D-B Price; or
5. to revise other terms or conditions of the Contract.

The Contractor must follow the process outlined herein prior to making any revisions to the RFP, BTC, Proposal or contract or performing any work not in the original scope of the contractor or that may require increased cost to the Department

The Contractor agrees that prior to proceeding with work that alters the RFP, BTC, Proposal, or Contract in any way they shall notify the Department by submitting a Request for Change ("RFC").

The Contractor also agrees that if the Department believes that a change is necessary or is proposed through alterations of the design, design submittals, construction submittals or performance, the Department may direct, and the Contractor will submit an RFC.

All correspondence relating to Contract changes shall be in writing (except in the event of an emergency requiring immediate action).

The Department may issue a Change Order of its own accord or require the Contractor to request a Change Order at any time without notice to any Surety or Guarantor, authorizing or requiring changes in work within the general scope of the Contract. All additions to, deletions from, or changes in the Project, as directed by Change Orders, shall be implemented under the conditions of the original Contract.

Prior to proceeding with such implementation, the parties should make every effort to agree to the terms of the subject Change Order in conformity with the provisions of the applicable Contract section, regarding, for example, the matter of whether or not additional Contract time or compensation, or the granting of a credit is warranted. If an agreement related to compensation cannot be reached prior to the need for the affected work to commence, the Department, at its sole discretion, may direct the work to proceed, and will determine the amounts of progress payments, if any, that it will make for the changes in Project work.

The Contractor shall not delay Change Order work because of a dispute over the payment for it. The Contractor will proceed with the work as directed but shall have the right to seek relief related to disputed contractual issues, such as the amount of payment or Contract time given to it in connection with a Change Order, as specified in Section 105.1 of this Contract. If the Contractor wishes to pursue a contention that it should have been granted more Contract time than it was given in connection with a Change Order, it must fulfill the requirements in Section 108.8 for requesting a time extension, as well as any other applicable Contract requirements with regard to Project scheduling.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay(s) resulting from the Contractor’s failure to provide the information required by this provision.

c. Request for Change: If the Contractor initiates or is directed by the Department to submit an RFC, the following requirements shall apply.

All RFCs shall be delivered to the Department's Project Manager in a form acceptable to the Department. Failure to promptly notify the Department of such a situation is a cause of forfeiture of the Contractor's entitlement to requested changes or additional payments, as outlined in the Contract. If the Contractor refuses to submit an RFC and the Department determines a monetary adjustment of the contract is warranted, the Department may make an adjustment to the contract which it determines to be fair and equitable. The adjustment shall be final unless the Contractor supplies documentation satisfactory to the Department to warrant further adjustment.

In all circumstances, the Contractor must meet the following requirements before it will be entitled to revise the BTC, requirements of the RFP, the proposal, or request a Change Order.

The Contractor agrees that the filing of an RFC and if necessary the subsequent filing of a related Request for Change Order with the Department pursuant to this Section are necessary in order to begin the administrative process for the resolution of the subject issue(s). The Contractor must be deemed to understand that it shall be required to give notice of any act, or failure to act, by the Department, or the happening of any event, thing or occurrence that it contends would give rise to a proper RFC, and it must thereafter comply with the remaining requirements of this Section.

1. **RFC:** The Contractor shall deliver to the Department an RFC stating that an event or situation has occurred within the scope of this Section. The first notice shall be labeled "RFC No. 1," and subsequent notices shall be numbered sequentially.

Each RFC shall be delivered as promptly as possible after the occurrence of the relevant event or situation. Timeframes for certain Notices are detailed in the applicable provisions of the Contract, such as Sections 104.4 and 108.8.

The RFC shall include the following information:

a. the facts underlying the issue;

b. the proposed resolution;

c. reasons why the Contractor believes that the requested change is necessary;

d. whether the Contractor feels that the requested change ought to be a no-cost change or, one for which additional payment should be made;

e. details of anticipated or potential schedule impacts, and a statement of whether or not the event or situation warranting the requested change has caused, is causing, or will cause a delay on the critical path of the Project;

f. the dates of the underlying occurrence or circumstance;

g. an estimate of the time within which a response to the Notice is required in order to minimize cost, delay, or disruption of Project performance;

h. a grouping together or related requested changes, if more than one is being requested, it being understood that the Department will decide which of them will be included in a single Change Order.

Upon the Department's evaluation of the matters set forth in an RFC (whether it is initiated by the Department or the Contractor), the Department will inform the contractor of its position related to the RFC and if a Change Order Request is required. Within fourteen (14) calendar days after receipt of an RFC Notice, the Department will respond in writing to the Contractor:

a. that the Department approves or disapproves the request for a no cost change; or

b. that the Department believes the request requires further information, a monetary change, or change to the contract time and the contractor must proceed to submit a COR and/or time extension request; or

c. denying that a change has occurred; or

d. advising the Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicating the needed information and date by which it must be received for further review; or

e. Advising the Contractor that other provisions of the contract apply and the process to be followed.

f. Failure of the Department to respond to an RFC notice within the prescribed timeframe shall not affect the Contractor’s obligation to provide a COR within the time periods specified. Any adjustments made to the Contract shall not include increased costs or time extensions for delay(s) resulting from the Contractor’s failure to provide the requested additional information.

2. **Change Order Request:** When it has been established that a change of the Project is necessary, the Contractor shall promptly deliver a COR to the Department.

The COR(s) shall:

a. State in detail the facts underlying the issue, the reasons why the Contractor believes that additional compensation or time will or may be due to it, and the date(s) of relevant events;

b. Identify any documents and the substance of any oral communication relevant to the alleged change;

c. State in detail the bases for the position that the work is not required by the Contract, with citations of the applicable Contract provision;

d. Identify particular elements of the Contract performance for which the Contractor may seek additional compensation;

e. Provide the data and documents that establish the necessity for and costs of the proposed change;

f. Provide a proposed revised cost-loaded CPM showing the changes in Project time and costs that would result from implementation of the Change Order. Also provide a narrative step-by-step account and explanation of the schedule revisions that would occur if the Change Order were implemented;

g. State in detail, consistent with Section 108.8, the bases for any request for a Contract time extension or for an accelerated performance schedule, ostensibly necessitated by implementation of the Change Order, ;

h. Provide any other details and supporting information requested by the Department.

The Department may require design and construction costs to be covered by separate CORs.

Each COR shall be prepared in a form acceptable to the Department and shall meet all applicable Contract requirements. Should the Contractor not be able to meet any such requirement due to the contents of the proposed Change Order, the Contractor shall state which requirements it cannot meet and the reasons why it cannot meet them. The Contractor shall furnish, when requested by the Department, such further information and details as may be required for evaluating the relevant facts and contentions. The Contractor agrees that it shall give the Department access to the Contractor's books, records and other materials relating to its Proposal or to the D-B Project, and it shall cause its Subcontractors to do the same, so that the Department can investigate the basis for any such proposed COR. The Contractor shall provide the Department with a monthly update to each outstanding, incomplete COR, describing (1) the status of its attempts to meet any previously unfulfilled requirements related to the COR; (2) any changes in the schedule or cost projections that the Contractor previously delivered to the Department, and (3) time expended to date on activities related to the proposed COR work; and (4) the amount of time that the Contractor anticipates will be necessary for its completion of the COR-related activities for which it has requested a time extension.

If the Contractor submits a request for an extension of time as part of a COR, either for a milestone or the completion date, in accordance with Section 108.8 of the Contract, the Department may require the Contractor to submit an alternative COR, including a Recovery Schedule in accordance with the Contract Project Schedule Requirements set forth in the Contract.

The Department may reject CORs at any point in the review process. Once the Contractor has provided a complete COR to the Department, the Department's failure to respond thereto within twenty- one (21) calendar days of delivery of the COR shall be deemed a rejection of the COR. The Department shall have no obligation to review the back-up materials associated with any COR until the Contractor has provided it with a complete COR.

Prior to submission by the Contractor of any COR based in whole or in part on facts alleged in a submittal by any Subcontractor to the Contractor, the Contractor must have reviewed all such Subcontractor requests and determined in good faith whether or not the requests are justified as to both entitlement and amount, and the Contractor's COR shall include only those items which the

Contractor certifies are justified and which meet all Contract requirements for Contractor-Initiated Change Orders. The Contractor shall include with such COR a summary of its analysis of all Subcontractor request components.

Each COR shall contain a written representation by the Contractor that the amount of time and/or compensation requested includes and takes into account all known and anticipated impacts or amounts, direct, indirect and consequential, that it may incur as a result of the events or matters giving rise to the proposed change(s).

Upon review and approval of the COR by the Department, a corresponding Change Order will be issued by the Department, incorporating the revised terms into the Contract. Except as directed by the Department, and as added by Change Order to the Contract, work that is not part of the original Project work shall be deemed to have been performed voluntarily, and the Contractor shall not be entitled to a Change Order in connection therewith.

The Contractor shall contemporaneously collect, record in writing, segregate and preserve:

a. all data necessary to determine the costs of D-B Work that is the subject of a COR or a PCO, including specific costs associated with Design and Construction, and

b. all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to any D-B work that is the subject of a Change Order or PCO, if the impact on the Project Schedule is in dispute between the Contractor and the Department.

The Department is relying on the Contractor to evaluate promptly, upon the occurrence of any event or situation, its potential effects on the Critical Path, whether or not the Contractor believes that additional compensation or a time extension because of that event is appropriate. If an event or situation occurs that may affect the D-B Price or the Critical Path, the Department will evaluate the situation and determine whether or not changes of the Project are necessary in order to bring it within the Department's funding and time restraints. The following matters (among others) shall be considered in determining whether or not or how the Department has been prejudiced by the Contractor's failure to provide it with timely notice of such an event or situation: the effect of the delay on alternatives available to the Department (that is, a comparison of alternatives available at the time when notice was actually given with alternatives that would have been available had notice been given within ten [10] days after occurrence of the event, or when such occurrence should have been discovered in the exercise of reasonable prudence), and the impact of any delay in the giving of such notice by the Contractor on the Department's ability to obtain and review objective information contemporaneously with the event. The creation of such prejudice by the Contractor's failure to give timely, appropriate notice of the relevant event or situation may result in denial of the COR.

104.3 DIFFERING SITE CONDITIONS: Differing Site Conditions" shall mean (a) subsurface physical conditions encountered at the Site differing materially from those indicated in the historical subsurface investigations results and supplementary geotechnical investigations performed by the Design-Builder and which are not discoverable from a reasonable investigation and analysis of the site including subsurface conditions, or latent physical conditions of a non-geotechnical nature which are not discoverable from a reasonable investigation and analysis of the site, (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of work provided for in the Contract and the work site characteristics, provided in all cases that Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Date.

a. If during the progress of the work, differing site conditions as defined above are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is

performed.

b. Upon written notification by RFC, the Department will investigate the conditions, and if the Department determines 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 loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Department will notify the Contractor of the determination of whether or not an adjustment of the Contract is warranted.

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

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

e. No Contract adjustment will be allowed for subsurface or latent physical conditions differing materially from those indicated in the BTC and Contract that result from the employment of an approved ATC. The contractor will be responsible to investigate and satisfy itself of the subsurface soil conditions for all ATCs.

f. The Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each RFC shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

104.4 ALTERATIONS IN THE PLANS OR DETAILS. The Department may order changes in the RFP, 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 104.7; 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 Department 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 Department for subsequent use by the State on other work. Payment for such material will be made in accordance with **Subsection 109.6; Partial Payments**.

104.5 EXTRA WORK. Extra work is work made necessary by unforeseen conditions or circumstances, or by the Department's changes of the Contract, which work is necessary for completion of the Project, but was not included in the original scope of the Project. Such extra work shall be done in accordance with applicable Contract requirements, any relevant specifications and directions given by the Department. Regardless of the party that initially identified and notified the other that such work might be necessary, the Department shall make the final determination of the necessity for such extra work (based in essential part on information provided by the Contractor

through the Change Order process), and shall notify the Contractor as to whether or not the Department wants the Contractor to propose a price to perform the work. Such a proposed price shall be accompanied by a detailed breakdown of anticipated costs, as further described below.

Within the time limits set forth in this chapter and other applicable chapters of the Contract, and if requested by the Department to do so, the Contractor shall advise the Department, in writing, of the compensation that the Contractor requests for the required extra work. The Contractor's request shall be itemized and reasonably detailed and shall provide all known or anticipated direct and indirect costs of the extra work, including, but not limited to, the costs of all safety and other equipment, engineering, small tools, labor, subcontractor work, consumables, field office overhead, home office overhead, insurance, bonding, and profit. The Contractor shall also, as part of its proposed price, submit a revised Contract schedule, taking into account the anticipated effects of the extra work. If the proposed schedule provides evidence that the extra work would warrant an extension of Contract time, the Contractor shall also submit a request for a time extension, in accordance with Section 108.8 and any other applicable section of the Contract. A negotiated Change Order shall specify scheduling requirements, time extensions and all costs of any nature arising out of the extra work covered by the Change Order.

Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process of price negotiation, involving issuance of a Change Order that includes an estimated construction cost and provides for a revised Project to be issued after a certain design level has been reached with respect to the extra work, thus allowing a refinement and further definition of the estimated construction cost and schedule impact.

The approved Change Order, when signed by the Department, shall become a part of the Contract and shall describe the character and extent of the extra work, together with the bases for granting the Contractor any additional compensation or Contract time. If the Contractor objects to any portion of a Project submitted to it by the Department for signing, and if the Contractor is not willing to sign that Order or some portion of that Order, the Contractor must, within fifteen (15) days of its receipt of said Order, return the Order with a letter to the Engineer administering the Contract, describing specifically what portions of the Order the Contractor finds objectionable, the nature of its objections, and the bases for its objections. If the Contractor does not do so, it shall be deemed to have accepted the terms of the Change Order. If the Contractor believes that direction given by the Department changes the scope of Contract work, the Contractor shall submit a PCO with a revised schedule and a cost revision proposal in accordance with Section 104.2 hereof and other applicable sections of the Contract, taking all such changes into account. If the schedule is to be revised, it will be revised in accordance with Section 108.8 and other applicable Contract provisions.

104.6 SUSPENSIONS OF WORK ORDERED BY THE DEPARTMENT. If the performance of all or any portion of the work is suspended or delayed by the Department 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 Department 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 Department will evaluate the Contractor's request. If the Department 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 Department will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified of the Department'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.

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

If the alterations in the work 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 profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to 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 Department may determine to be fair and equitable.

If the alterations 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.

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. If the Contract contains major items and if a major item of work, as defined elsewhere in the Contract, is increased in excess of 125% or decreased below 75% of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original Contract item quantity.

104.8 MAINTENANCE OF TRAFFIC. Unless otherwise provided, the Contractor shall maintain the roads 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 Department. 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 roads 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," there shall be no direct payment for such items and all costs associated with constructing and maintaining said detour or detours, including the construction of temporary bridges and accessory features and the subsequent legal removal of the same, shall be included in the Design Build Lump Sum Price. 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 Department, 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 Department 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 109.4; Differing Site Conditions, Changes, Extra Work and Force Account Work**.

c. Maintenance Directed by the Department. If the Department 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 104.5; Extra Work**. The Department 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 Department'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 these Standard Specifications.

104.9 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 Department.

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

If the Department 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 Department.

104.10 Rights in and Use of Materials Found on the Site: Upon written request of the Contractor and with the written approval of the Department, subject to limitations that may be set forth within such approval, any stone, gravel, sand, topsoil or any material from existing excavations, bridge substructures, bridge superstructures, buildings, retaining walls or other structures, found within the limits of the Project may be excavated or removed and used by the Contractor on the Project, provided that said materials meet the requirements of the applicable Specifications for such materials. Any materials excavated or removed shall not be taken off the Site until and unless the Department has specifically authorized such action in writing. The following conditions shall govern these matters:

a. The Department will make no additional payment for excavation or removal of materials that would be necessarily be excavated or removed in performing work called for by the BTC The Contractor will not be charged for such materials. Unless otherwise directed by the Department, the Contractor shall, without additional compensation therefor, place in the embankment or elsewhere, as appropriate, sufficient suitable material to fill empty spaces left by said excavation or removal of materials.

b. The Department will make no additional payment for excavation or removal of materials that had to be done in order to perform Project work in accordance with the BTC; and the Contractor will be charged for such materials at a price to be negotiated with the Department. A credit in the amount of the total negotiated price shall be applied to the original D-B Price. The Contractor shall also, without additional compensation, backfill with accepted material the space that such excavated or removed materials had occupied, to the satisfaction of the Department, unless otherwise directed by the Department.

Surplus material shall not be removed from the Project until and unless the Department has specifically authorized such action in writing The Department may determine that such material is not surplus and may order that it be incorporated into the Project.

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 the lump sum bid price.

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.

104.12 RAILWAY-HIGHWAY PROVISIONS. The Department has not arranged with any railway for the provision of any railway crossings. If the Contract requires that materials be hauled across the tracks of any railway, the Contractor shall make arrangements with the owners of the railway(s) for new crossings or for the use of any existing crossings. The Contractor shall inform the Department of any requests made to any railway owners for provisions for railway 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.

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.

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 whatsoever, the Contractor shall be responsible for the project and shall take such precaution as may be necessary to prevent damage to the project, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at its expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and sidings furnished under his Contract, and shall take adequate precautions to 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 104.3; Differing Site Conditions.

104.15 ENVIRONMENTAL PROTECTION. The Contractor shall comply with any and all Federal, State and Local laws, rules, regulations, permits, approvals and Contract Provisions controlling pollution and protection of the environment, such that the Contractor does not pollute Freshwater and or Coastal Wetlands, (including but not limited to surface water features such as rivers, streams, lakes, ponds, reservoirs, tidal waters, etc.) and all other regulated natural resource areas, (including but not limited to, waters of the state and or federal jurisdiction, wellhead protections areas, groundwater recharge/discharge areas, critical habitats, natural heritage areas, forestland, cultural/historic resources etc.) with sediment, fuels, oils, bitumens, chemicals, solid and or liquid waste or other harmful or hazardous or foreign materials, and the atmosphere with particulate and gaseous matter.

The Contractor shall read, become familiar with and aggressively and expeditiously adhere to environmental permits and approvals, contract provisions, Standard Specifications controlling pollution and protection of the environment. The contractor shall ensure that all employees, and all employees of each sub-contractor, avoid pollution of the environment. The contractor shall be responsible to ensure that all employees, and all employees of each sub-contractor, aggressively and expeditiously comply with any and all Federal, State and Local laws, rules, regulations, permits, approvals and Contract Provisions controlling pollution and protection of the environment.

When work areas or pits in or adjacent to any drainage system components, flowing body of water, surface water, tidal water or State or Federally regulated waters, such work areas shall be separated from the main water body by a dike or barrier to keep sediment and or pollutants from exiting the work area.

Water from aggregate washing or other operations containing sediment and or other pollutants shall be treated by filtration, settling basins or other means sufficient to reduce the sediment /pollutant content to levels which do not exceed that of the receiving waters/areas, and or levels allowed by specific permit, law and/or regulation.

Other requirements relating to temporary and permanent erosion and pollution controls are set forth

in **SECTIONS 206** through **212** and **SECTION 214** respectively, of these specifications, and shall be in full effect.

The Contractor, at his own expense, shall be responsible for any fines and penalties resulting from non-compliance and or enforcement actions administered by Federal, State or Local Regulatory Authorities or by the Engineer for non-compliance with any and all Federal, State and Local laws, rules, regulations, permits, approvals and Contract Provisions controlling pollution and protection of the environment. The requirements set forth in **SECTION 107, LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**, of these specifications, shall be in full effect.

Delay claims and compensation due to non-compliance of this specification, Federal, State or Local laws, Regulations and or Contract Provisions, will not be allowed. All time and/or delays resulting from non-compliance, including corrective work, will be considered non-excusable delays.

Failure to comply with this subsection and or contract provisions permits and approvals, if in the opinion of the Department, will result in a failure to comply charge, as set forth within Contact Special Provision Codes and will be deducted from monies due the contractor. The Department will determine if multiple violations of the contract permits and approvals exist and that the charge be deducted per violation. This charge shall be separate from any penalties, fines or corrective actions resulting from regulatory agency enforcement actions. This charge will be deducted along with any penalties, fines or corrective actions resulting from regulatory agency enforcement actions.

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.

104.16 Removal and Disposal of Structures on the Site: Any structure on the Site that is not to remain on the Site after completion of the Project shall be removed from the Site and disposed of by the Contractor once it is no longer needed for the Project, and any such structure shall then become the property of the Contractor, except as otherwise provided by the Contract.

SECTION 105

CONTROL OF WORK

105.01 AUTHORITY OF THE DEPARTMENT. The Department will decide all questions related to the quality and acceptability of materials furnished.

The Department 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.

The Department shall decide all questions as to interpretation of the Contract requirements. The Department shall decide on an acceptable rate of progress, on the manner of performance, and on what shall be deemed acceptable fulfillment of the Contract obligations. The Department shall have the right to determine the points at which the Contractor may begin Project work and the order in which the work shall be prosecuted in the best interests of the State within the intent of the Contract provisions.

The Department may, at any time, issue direction to the Contractor regarding a change in the Contract, clarification of a Contract provision, provisional resolution of a dispute concerning the Project, or any other Contractual or Project issue that may arise. Such direction will be given in writing (except in emergency situations in which expeditious, spoken directions may be necessary) and such directions will describe the matter in question as well as the applicable provisions of the Contract and, if pertinent, the Department’s position concerning the granting of additional compensation or Contract time.

The Contractor shall immediately review any such direction and within two (2) working days of its issuance must notify the Engineer administering the Contract, in writing, that it either accepts or objects to the Department's direction. Failure to respond within the time allowed shall constitute binding acceptance of the direction given.

If an agreement related to compensation cannot be reached prior to the need for directed work to commence, the Department, in its sole discretion, may direct the work to proceed, and it will determine the amounts of progress payments, if any, to be made for the work.

All Project work shall be subject to oversight and review by the Department’s representatives. If a Project-related dispute arises between the Contractor and Department representatives assigned to the Project that those parties prove unable to resolve, the Contractor may submit a detailed written description of the dispute to the Engineer administering the Contract for further consideration.

It must be understood, though, that at no time may the Contractor, because of its disagreement with the Department, either disregard the orders of the Department or halt Project construction unless it is ordered to do so by the Department. If the Contractor cannot resolve a Project work or pricing dispute with the Department, the Contractor’s proper remedy, if any, may be a claim under state statutes, provided that the Contractor can satisfy all jurisdictional requirements of the applicable state statutes. A Contractor that disregards the orders of the Department with regard to the prosecution of Project work, or who refuses to continue Project work because of a disagreement with the Department, may be subject to (1) termination of its Contract, (2) a subsequent finding that it is no responsible as an apparent low bidder or successful proposer for a Department contract, (3) the assessment of liquidated damages, and (4) to other adverse legal or administrative action by the Department.

If the Contractor breaches any of its obligations under this Article, or deviates from any procedure prescribed in this Article, any costs that result therefrom will not be reimbursed by the Department.

105.02 PLANS, WORKING DRAWINGS AND SHOP DRAWINGS.

The Contractors Final Design Plans shall show details of all structures, lines, grades, typical cross sections of the roadway, location and design of all structures and a summary of items required to complete the Project. 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 Department will make every effort to review and respond to complete design submittals within the timeframe outlined in Part 2 of the Contract. The Contractor shall submit all design submittals in a timely fashion such that the Contractor's approved schedule will not be adversely impacted by the submittal process. All submissions from the Contractor must be complete and contain sufficient and required information so that the review can be completed and, as appropriate, the submission made to the environmental agencies on a timely basis. All submittals shall be in accordance with the Contractor's design Quality Management / Quality Control procedures as approved by the Department. Both initial submittals and resubmittals will be returned without review if the required Quality Control procedures have not been performed and the information is not provided in accordance with the approved Quality Management Plan, Quality Control Plan, and Contract requirements. With its initial baseline schedule, the Contractor shall submit to the Department a schedule for the making of required submissions. The Contractor shall avoid crowding multiple submittals into a relatively short timeframe.

Plans submittals shall be created, signed and delivered by the Contractor and it's Designers in accordance with RFP Part 2 Section 3.4, this specification, the Special Provision for Document Control Specialist, the Electronic Document Control System provided by the Contactor and the Department's Design Policy Memos. The Shop drawings, working drawings and product data submittals shall be created, signed and delivered by the Contractor in accordance with this specification and the Electronic Document Control System. The Department and the Contractor shall use SharePoint Software to deliver and track such submittals. 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 Department to review the revised shop drawings does not constitute justification for additional Contract time.

The approval of plans by the Engineer of Record and Contractors Lead Design Engineer must be in accordance with the Department's policies and procedures, and this RFP.

The approval of plans, working drawings, shop drawings and product data or catalog cuts by the Superintendent, Project Manager, Quality Control Manager for Design, and Quality Control Manager for Construction may be documented by signatures on a transmittal (incorporated into the submission) in a form acceptable to the Department.

There will be no direct payment for developing and delivering any Project plans, including supporting calculations and documents, working drawings, procedures or supporting calculations, shop drawings or supporting calculations, or product data, and making them available in the specified format through SharePoint, printing or delivery, but the cost thereof shall be considered as included in the general cost of the work.

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

a. Plans:

1. BTC Plans

The BTC plans and the Contract specifications set forth in some detail the scope of the design

and construction work required under the Contract. The BTC plans will show location, character, dimensions, and details necessary to communicate the intent and scope of the Project. If the BTC plans do not show complete details, they will show the necessary dimensions and details which, when used along with the other Contract documents, should enable the Contractor to prepare a completed design for the Project. Part 2 of the Contract describes the review and submittal process for the Project design plans.

2. Design Plans

Design plans shall be developed for the final design of the project by the Contractor in accordance with the requirements of the RFP and Contract.

b. Shop and Working Drawings:

1. General Requirements:

Shop drawings shall consist of such detailed plans required to control the work that are not included in the Plans furnished by the Contractors Engineer. They shall include, but not be limited to, stress sheets, erection plans, falsework 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 shop drawings to the Contractors Design Engineer and one set to the design consultant of record. Shop drawings shall be accompanied by design computations, cuts from manufacturers' catalogs, and/or supporting technical bulletins.

All shop and working drawings shall be reviewed and approved by the Contractor's Designer of Record, Contractor's Lead Designer, Project Manager, Superintendent, Quality Control Manager for Construction, and Quality Control Manager for Design. Upon completion of such review and approval, all shop and working drawings shall be submitted to the Department for review as outlined below. The Contractor shall submit all shop drawings in a timely fashion such that the Contractor's approved schedule will not be adversely impacted by the submittal process.

The Contractor shall consult with the Department in order to determine all other applicable local agencies, railroads and utilities that may need to review shop and working drawings, and the Contractor shall coordinate the preparation, submittal, and review of all such shop and working drawings to said entities. When permits are required from utilities, or other local agencies, shop and working drawings shall be submitted to them for review and approval in accordance with their requirements.

No work or fabrication covered by these shops or working drawings shall be done until the drawings have been submitted to the Department for review and any comments by the Department have been addressed to the satisfaction of the Department and the record set of drawings has been provided to the Department and applicable subcontractors and suppliers. Such review by the Department shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work.

Contractor shall notify the Department of any intent to begin fabrication a minimum of thirty (30) days prior to starting such fabrication, in order to allow the Department to schedule inspection of the work. In the case of work involving a structure carrying utilities (including rail facilities), or in the case of another affected party or authority, the Contractor shall submit to the Department one additional copy of relevant working drawings for each such third party, and the Contractor must allow additional time for review and comment on said drawings by the involved third parties. Unless specified otherwise in the Contract, the Department shall be allowed at least thirty (30) calendar days for review of working drawings. Any submittal requiring Amtrak's review shall be allowed Sixty (60) working days for their review.

The Department will make no direct payment to the Contractor for furnishing any shop or working drawings, but the cost thereof shall be considered to be included in the general Project costs.

When any shop or working drawing is reviewed by the Department or an affected third party or involved authority, such review shall not relieve the Contractor from responsibility for omissions; or for errors in dimensions, shop fits, field connections, etc.; or for providing the proper quantity of materials; or for compliance with applicable provisions of the Contract; or for the successful completion of the Project. Any comments or suggestions by the Department or outside party concerning shop drawings prepared by the Contractor shall not relieve the Contractor of any of the Contractor's responsibilities for claims by the State or by third parties, as per Section 107.10.

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.

The Designer that prepares working drawings and is the Engineer of Record for the working drawings (Contractor's Designer), shall secure and maintain at no direct cost to the State a Professional Liability Insurance Policy for errors and omissions in the minimum coverage amount of one million dollars ($1,000,000). The Contractor's Designer may, at its election, obtain a policy containing a maximum two-hundred-and-fifty-thousand-dollar ($250,000) deductible clause, but if the Contractor's Designer should obtain a policy containing such a clause, they shall be liable to the Department to the extent of at least the deductible amount. The Contractor's Designer shall obtain a proper endorsement of its Professional Liability Policy to cover the indemnification clause in this Contract, as the same relates to negligent acts, errors or omissions in the Project work performed by them. The Contractor's Designer shall continue this liability insurance coverage, subject to the continued commercial availability of such insurance, until whichever of the following occurs or concludes on the latest date: (1) a period three (3) years from the date of acceptance of the work by the Commissioner, as evidenced by a Certificate of Acceptance of the Work issued to the Contractor; (2) three years after the termination of the Contract; (3) until the expiration of all limitations periods governing claims that might be filed in connection with the Contract or Project; or (4) until any claims proceeding or other formal dispute proceeding in such connection has been resolved, or concluded finally, with prejudice, including all possible related appeals or appeal periods, whichever is later.

The Contractor shall supply to the Department a certificate of insurance in accordance with **Section 103.7** prior to or at the time that it first submits working drawings for the Project.

c. Shop and Working Drawings for Permanent Work:

1. Shop Drawings additional requirements: When required to do so by the Contract or the Department, the Contractor shall prepare and submit to the Department for review its shop drawings approved by the Engineer of Record, and Lead Designer, Project Manager, Superintendent, Quality Control Manager for Construction, and Quality Control Manager for Design, a minimum of thirty (30) business days before starting any fabrication based upon them. Within those days, the Department shall be allowed a minimum of fourteen (14) business days for review and comment on the drawings from the time it receives them. Before it may begin fabrication based on the drawings, the Contractor must address all comments on them by the Department to the satisfaction of the Department and transmit in accordance with the Contract. The purpose of the full thirty-day period is to allow the Department to arrange for inspection of fabrication based on the drawings once that work begins. If and when requested to do so by the Department, the Contractor shall also furnish the Department with a complete set of the working drawings in a format acceptable to the Department. Drawings shall be formatted for twenty-two (22) inch x thirty-four (34) inch sheets with an appropriate border and with a title block in the lower right-hand corner of each sheet. Procedures and other supporting data may be formatted for eight-and-a-half (8½) inch x eleven-(11) inch sheets.

2. The Engineer of Record shall be required to review the drawings and stamp each drawing as "Approved," "Approved as Noted," or "Revise and Resubmit." Each drawing stamped as "Approved" or "Approved as Noted" shall be transmitted to the Contractor for review and approval in

advance of their being forwarded to the Department. Each drawing stamped as “Approved” or “Approved as noted” and Lead Designer, Project Manager, Superintendent, Quality Control Manager for Construction, and Quality Control Manager for Design, shall be forwarded to the Department for review in advance of fabrication as outlined above. Drawings stamped "Approved as Noted," if the Department does not take exception to them, need not be resubmitted for review, but the Engineer of Record’s notes must be appropriately taken into account and implemented by the Contractor. In the case of a drawing that is reviewed and stamped "Revise and Resubmit," the Engineer of Record shall transmit copies of it to the Department for the record and two of it to the Contractor. The latter shall take into account and implement all comments on those drawings and shall then resubmit the required number of copies of the revised drawings for review and approval to the Engineer of Record and shall copy the Department on that transmittal. The review and transmittal requirements related to resubmissions will be the same as described above for an initial submission.

If the Contractor proposes a revision of a previously-submitted shop drawing that has been stamped "Approved" or "Approved as Noted," the Contractor shall submit the revised drawing to the Engineer of Record for its review and approval as well as approval of the Lead Designer, Project Manager, Superintendent, Quality Control Manager for Construction, and Quality Control Manager for Design. Any such resubmitted shop drawing shall clearly indicate, in a revision block, the date and precise nature of each revision, as well as its location on the revised drawing. The Department and involved third parties shall be allowed the same timeframe for review and comment on the revised drawings as those for initial submissions, as outlined above.

Structural steel shop drawings shall include complete details for fabrication, camber, erection, and shop assembly of members and details, schedules, procedures, special erection equipment, and diagrams showing the sequence of erection. They shall include details of cuts, connections, camber, Charpy values, FCM designations, holes, and other pertinent data. Welds shall be indicated by standard AWS symbols; and the size, length, type, and testing of each weld shall be shown. Structural steel shop drawings shall be coordinated and detailed with respect to architectural shop drawings, which require interfacing with various components.

3. **Working Drawings Additional Requirements**: The working drawings shall be signed, sealed and dated by a qualified Professional Engineer licensed to practice in the State of Rhode Island. When required by the Contract or when ordered to do so by the Department, the Contractor shall prepare and submit the working drawings to the Department for review after they have been received and approved by the Contractor's Design Engineer, Superintendent, Project Manager, Quality Control Manager for Design, and Quality Control Manager for Construction.

These drawings shall be submitted to the Department and other involved parties sufficiently in advance of the drawings' proposed use to allow for their review, and for any necessary revisions, without delay of the Project. If the Contractor does not submit the drawings sooner, a minimum of fourteen (14) business days from the time of their receipt by the Department shall be allowed for the Department to review and comment on the working drawings. The Contractor must address all comments to the satisfaction of the Department and transmit in accordance with the Contract before starting any fabrication or work based on the drawings.

d. Shop and Working Drawings for the Project shall include, but not be limited to the following:

- Structural steel fabrication plans.
- Anchor bolt layouts, shop details, assembly plans, equipment lists, and any other information required by the Contract.
- Traffic controls and equipment.
- Drainage and utilities materials with unique details, whether or not in conformance with

Department Standards.

- Lighting equipment and controls.
- Construction phasing and traffic management plans.
- Reinforcing steel fabrication plans.
- Precast concrete bridge substructure element fabrication drawings.
- Precast concrete wall layout and fabrication plans.
- Other information specifically required by the Contract.

e. Working Drawings for Temporary Works: Working drawings, demolition plans, and erection drawings shall be stamped by a Registered Professional Engineer licensed in the State of Rhode Island. Upon their approval by the Contractor's personnel, these drawings along with any necessary supporting documentation shall be submitted sufficiently (unless specified otherwise in the Contract, at least thirty [30] calendar days) in advance of their proposed use, in order to allow for their review by the Department and for the Contractor to address all comments to the satisfaction of the Department without delay of the Project. The Contractor must produce and transmit final paper copies (of the format size specified herein), if required by the Engineer in accordance with the Contract before starting any fabrication or work based on the drawings.

Unless otherwise specified, drawings shall be formatted for twenty-two (22) inch x thirty-four (34) inch sheets with an appropriate border and with a title block in the lower right-hand corner of each sheet. Procedures and other supporting data may be formatted for eight-and-a-half (8½) inch x eleven (11) inch sheets.

1. Working drawings for temporary works shall include, but not be limited to, the following:

- Structural steel erection plans.
- Demolition plans.
- Design and working drawings for support of excavation structures.
- Layout plans.
- Traffic control plans.
- Means and methods submittals.
- Erosion and Sedimentation Control Plans, and other submittals required by Environmental Permits or Permit applications.
- Other information specifically required by the Contract.

2. Ownership and Management of Documents:

Provided the Department has made required Contract payment to the Contractor, the ownership and management of the Project documents produced by the Contractor shall be as follows:

a. Design document shall become the property of the Department once they have been prepared.

b. Construction documents shall become the property of the Department upon their delivery to the Department

c. Information obtained or produced by the Contractor in connection with the performance of its design obligations under this Contract, including studies, technical and other reports and like shall become the property of the Department upon the Contractor's preparation or receipt thereof.

d. Permit Applications for Environmental Permit and Clearance documents issued by local, state or federal agencies shall become the property of the Department upon their delivery to the Department.

3. As-Build Drawings: The Contractor shall maintain a set of the Project's record

drawings. These as-built plans shall be updated by the Contractor each time a change is made in the Project work and when each element of the work is completed, so as to maintain a current, accurate as-built set of plans. If a change is made in the record drawings, accordingly-revised plan sets must be distributed to the Department far enough in advance of the work based upon said drawings to allow for the Department's review, comment and acceptance activities described elsewhere in the Contract. In the case of updating the plan set to reflect installed work, such plans shall be updated within seven (7) days after its installation. The as-built drawings shall be available for the Department's review and use at all times.

As a condition of Final Acceptance of the Project, the Contractor shall submit to the Department: The Project as-built record drawings depicting the final completed Project, reflecting all changes, with all of the relevant data, including, but not limited to, drainage systems, underground utilities, traffic controls, signing placement, highway alignment, grade revisions, and bridge details. The record drawings and documents shall comply with the current RIDOT policies and shall be approved by the QC Manager(s), the QC Administrator, and the Designer of Record prior to their submission to the Department for acceptance.

The Contractor shall also provide other relevant Project data such as bridge shop plans, boring logs and pile-driving records for archiving, in hard copy sets as well as in electronic PDF files.

After the Department reviews and accepts the documents, the Contractor shall submit to the Department a final set of Project documents, free of markups.

105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS. All work performed and all materials furnished by the Contractor must, in the opinion of the Department, conform to the lines, grades, cross-sections, dimensions and material requirements, including tolerances, shown on the plans and in the Specifications approved by the Department. The exception to this is a conflict between documents making up the Contract, in which case the Contractor shall seek a resolution from the Department based on the order of precedence stated in Section 105.4 hereof. If the Department believes that the materials or the finished product in which the materials were used do not conform to the plans and Specifications, but believes nonetheless that the finished product is acceptable, it will then determine whether or not the work will be accepted and remain in place. If the Department believes that the work should be accepted, it will issue a Change Order confirming its determination, and may provide therein for any equitable adjustment of the basis of payment that it deems appropriate.

If, in the opinion of the Department, any material provided by the Contractor, any finished product in which the materials were used, or any work performed does not comply with the plans and specifications and has resulted in an unacceptable product, the Contractor shall, at its own expense, either cure or remove and replace the unaccepted work and material, as the Department directs.

105.04 COORDINATION OF CONTRACT PLANS, SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS. Each of the Contract Documents is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete set of documents necessary to complete the Project.

In the event of conflict or discrepancy among the Contract Documents, 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 order of precedence shall be as follows:

For Design Related Issues:

1. Environmental Permits
2. Environmental Permit Applications

3. Contract Change Orders
4. Part 2 – Technical Provisions
5. Part 3 –Terms and Conditions
6. Part 1- Instructions to Proposers
7. Proposal Documents

For Construction Related Issues:

1. Environmental Permits
2. Environmental Permit Applications
3. Contract Change Orders
4. Design Documents, with Special Provisions contained therein having precedence over Plans, plans having precedence over Supplemental Specifications, and Supplemental Specifications having precedence over Standard Specifications.
5. Part 2 – Technical Provisions
6. Part 3 –Terms and Conditions
7. Part 1 - Instructions to Proposers
8. Proposal Documents

Notwithstanding the foregoing, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including documents referenced therein), or in the event of a conflict pertaining to the order of precedence or other conflict with Contract Documents, the Department shall have the right to reasonably determine which provision applies, and if the Department makes such determination, it shall do so promptly. Dimensions calculated by applying a scale to graphic representations shall not be considered reliable for the purposes of ordering materials or construction project elements. The Contractor shall request the Department's determination promptly upon becoming aware of such conflict.

Numerical designations of dimensions shall take precedence over dimensions calculated by applying a scale to graphic representations. Neither party to the Contract may take advantage of any obvious error or omission in the Contract. Should either party to the Contract discover such an error or omission, that party shall notify the other party of same immediately in writing. The Department will make or require of the Engineer of Record, such corrections and interpretations of the Contract as are necessary, in its judgment, to fulfill the purposes of the Contract that are evident from examining the Contract as a whole.

If the Contract includes work that does not contain an applicable standard, the Contractor shall notify the Department of that fact in writing, If the Department's documents do not contain such a standard, the Engineer of Record shall, if possible, derive an appropriate specification from applicable AASHTO Specifications or, if necessary, ASTM Specifications. If neither of those sources provides a suitable specification, the Contractor shall seek guidance from the Department with regard to the item, and the Department will formulate a reasonable specification for the item. When compliance with 2 or more standards is specified, and the standards may establish different or conflicting requirements for minimum quality levels, the Contractor shall refer such issues to the Department for a decision before proceeding with the pertinent work.

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

105.05 COOPERATION BY CONTRACTOR. The Department will supply the Contractor with all documents contained in Appendix B of the RFP on a compact disk (CD), this will include BTC plans, existing plans, inspection reports, specifications, contract addenda and other contract documents may be printed. The Contractor shall have available on the Site at all times during the prosecution of the

Project, one printed copy of the Contract Documents, including current versions of the plans and Specifications.

The Contractor shall give the Project constant attention in order to facilitate the progress thereof, shall cooperate fully with the Department, the Department's representatives, the Departments inspectors and other Contractors. The Contractor shall promptly comply with all orders and directions of the Department.

The Contractor shall cooperate with Department in all matters relating to the Project, including review of the design of the Project and conducting of inspections during Project construction. 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.

The Contractor shall at all times during Project construction have on the Site one of its employees who is thoroughly experienced in the type of work being performed, in order to supervise the work and accept directions from the Department in that regard. The Contractor shall always notify the Department of the identity of said employee representative in advance of the employee's assignment to that position. The Contractors representative shall receive orders or instructions from the Department. The Contractor's representative must have full authority to promptly execute and carry out the orders and directions of the Department within the terms of the Contract, and to supply such materials, equipment, tools, labor and incidentals as may be required by the Contract or by the Department.

a. Causes for Removal. The Department may remove the said employee representative 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 Department.

105.06 COOPERATION WITH UTILITIES (INCLUDING RAILROAD). The Department anticipates that Project construction activities will require the removal, repair, replacement or relocation of a utility appurtenance. In such instances, The Contractor shall notify the Department, all utility companies, all pipe line owners, or other parties affected, in advance of the commencement of such activity, of the anticipated nature and timing of said activity 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.

Temporary and permanent changes to water lines, gas lines, sewer lines, wire lines, service connections, water or gas meter boxes, water or gas valve boxes, light standards, cableways, signals and all other utility (including railroad) appurtenances within the Site, are to be made by others at no expense to the Department, except as otherwise provided for in the Contract.

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 104.3; Differing Site Conditions**.

If the Contractor, for its convenience or for any other reason, desires a change in the location

of a water line, gas line, sewer line, wire line, service connection, water or gas meter box, valve box, light standard, cableway, signal or any other utility (including railroad) appurtenances, the Contractor shall satisfy the Department that the proposed relocation will not interfere with the Contractor's or other contractors' Project operations or their ability to perform in accordance with the Project plans, and that said change will not create an obstruction or hazard to traffic. If the requested change of location is acceptable to the Department, the Contractor shall make its own request for such relocation work to the utility companies, pipe owners or other parties likely to be involved in or affected by said work. Such relocation work shall be done at the Contractor's expense.

In general, the BTC Plans indicate the approximate locations of the various existing utility items which may require relocation or adjustment. 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 Department 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 sixty (60) days 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.

The Contractor shall schedule its operations in such a manner as to minimize interference with the operations of the utility companies or local governments in effecting the installation of new facilities, as shown on the plans, or the relocation of their existing facilities. The Contractor shall consider in its bid all permanent and temporary utility appurtenances in their present or relocated positions and any installation of new facilities required for the Project. The Department will not pay any additional compensation to the Contractor for delays, inconvenience or damage sustained by the Contractor due to (i) interference with Project construction caused by the location, condition or operation of utility (including railroad) appurtenances or (ii) the installation, removal, or relocation of such appurtenances; and the Contractor may not make a claim for any such compensation.

Whenever the Department determines that the relocation or adjustment of poles or the overhead plant of public or private utilities (including railroad facilities) is dependent upon the completion of certain required Contract activities, the Contractor shall complete those activities within

a reasonable length of time.

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 Department determines that adjustment or relocation of utilities is necessary to accommodate construction, the Department will make necessary arrangements with the owner if the work is not otherwise provided for in the Contract.

If the Department 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 109.4; Differing Site Conditions, Changes, Extra Work, and Force Account Work**. When the Contractor is required by the Department to relocate utility appurtenances, such work will be paid for as extra work unless specific bid items for such work appear in the Contract.

Coordination with Work by Other Parties: The Contractor shall make every effort to perform its Project work so as not to interfere with other work for the State or other parties. In the case of a dispute with another contractor working for the Department concerning their work for the State, or in the case of a conflict between their planned operations or the needs of their work or projects, the Contractor shall bring that dispute or conflict to the Department's attention, and the Department shall decide how it shall be resolved. The Department's decision shall be binding upon all of the contractors working for the Department who are involved in the matter.

The Contractor shall, as far as possible, schedule and otherwise plan and arrange its work, and place and dispose of its Project materials, so as not to interfere with the operations of other contractors working for the State. The Contractor shall, as necessary to accomplish this goal, coordinate and schedule its work in the way that will interfere least with the work of other parties.

If the Contractor's work or activities under the Contract come into conflict with other activities or work for the State, any financial or other liability arising from such conflicts shall be the Contractor's; and the Contractor shall protect and save harmless the State from any and all damages or claims, and the costs of defending same, which may arise because of inconvenience, delay, financial hardship, or injuries caused to the Contractor or to other contractors as a result of such conflicts, unless:

(a) The Contractor notifies the Department of such conflicts as soon as the likelihood of such a conflict becomes apparent; or, if such likelihood could not have been foreseen earlier, then as soon as the conflict becomes apparent.

(b) The Contractor waits for direction from the Department as to how the conflict should be avoided or resolved, and the Contractor does not proceed with the work affected by the conflict until the Department has provided the Contractor with such direction.

(c) The Contractor follows the directions given by the Department for avoiding, resolving, or minimizing the conflict.

The Contractor shall be responsible for the completion of its Contract work, regardless of any interference with, or delay of, that work that may be caused by the presence or activities of other contractors working for the State.

b. 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.

c. 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.

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 Department.

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 104.3; 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.

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.**

105.09 PROJECT QUALITY ASSURANCE:

1. **Quality Assurance Program Elements:** Quality Assurance ("QA") is an umbrella term that includes all activities performed to ensure that the quality of a product is good and sufficient

for its purpose. QA is the responsibility of both the Contractor and the Department. To ensure that goals for Project quality will be met, the Department has established overall Quality Assurance requirements for D-B projects. This includes a Design QA Program to address quality in the design process and a Construction QA Program to ensure the quality of construction, comprised of the elements below.

A. Design QA Program: The Design QA Program for D-B projects includes the following elements:

- Design Quality Control ("QC") system
- Design Acceptance/Approval system

B. Construction QA Program: The Construction QA Program for D-B projects includes the following core elements:

- Construction Quality Control ("QC") system
- Construction Acceptance system
- Independent Assurance ("IA")
- Qualified/Accredited Laboratories
- Qualified/Certified Inspection & Testing Personnel

2. Quality Assurance Program Responsibilities

A. Contractor Responsibilities: The Contractor shall establish and implement a QC System consisting of a Quality Management Plan ("QMP") and Quality Control Plans ("QC Plans"), in order to ensure that the Project work fulfills the Contract design and construction requirements. The QMP shall provide a comprehensive description of the planning, monitoring and reporting program that the Contractor will implement to ensure and document the quality of its work. The QCPs, if required, shall supplement the QMP in addressing specific activities, as outlined in the QC Plan specifications. They shall at a minimum provide additional information concerning Design & Construction QC activities, qualified /accredited laboratories, and qualified/certified inspection & testing personnel, inspections, sampling and testing, and other specific requirements for ensuring that Project work meets Contract requirements. Refer to Part 2 Appendix A.01 of the RFP for the requirements regarding QMP and QC Plans.

B. Department Responsibilities: The Department will be responsible for Design Acceptance and Approval actions, Construction Acceptance actions, and IA evaluations. One of the Department's roles in the Project is to provide verification of the quality of materials and workmanship through Acceptance inspection, sampling and testing. The Department is also responsible for IA inspection, sampling and testing in order to periodically evaluate the reliability of the Department's Acceptance personnel and equipment and the Contractor's QC personnel and equipment.

The Department has an interest in performing, and a duty to perform, due diligence on behalf of the public in auditing the processes and selected elements of the Project. The Contractor and its agents shall aid the Department as much as is practicable in its Acceptance inspection and testing, monitoring of the Contractor's Quality Control activities, and periodic IA evaluations. While the Department will be performing Acceptance inspection and testing of the work, independent of the Contractor's QC System, the Contractor maintains sole responsibility for quality, safety, compliance of the Project and Project work.

The Department intends to work cooperatively with the Contractor to establish procedures for resolving issues in a timely manner consistent with Sections 105.1 and 105.5 of the general provisions of this Contract. This topic will be discussed in detail at the Preconstruction Meeting. At each point in

the course of the Project at which specific reviews, inspections or approvals by the Department are required, the Contractor shall not proceed beyond that point until the Department has completed such review, inspection or approval or waived in writing its right to review, inspect or approve the subject work or component.

The Department reserves the right to check QC laboratory testing equipment, personnel procedures and compliance assurance techniques against specified standards under the IA program. The Department also reserves the right to access the QC laboratory facilities, at no additional cost to the Department, for the purpose of observing QC testing, and to verify compliance of the testing procedures, testing techniques, and test results with the requirements of the Contractor's approved QC System. The QMP will take into account and comply with the requirements of the applicable version of the Standard Specifications relating to testing facility requirements for Department inspectors and technicians.

105.10 AUTHORITY AND DUTITES OF RESIDENT ENGINEER As the representative of the Department, 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.

Authority of Department Inspectors: Inspectors employed by the Department are authorized to inspect all work done and all materials furnished for Project construction. Such inspection may extend to any part of the Project work, and to the preparation or manufacture of the materials to be used for same. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner of performing work, the inspector has the authority to reject material or stop the work until the dispute can be referred to and decided by the Department. The inspector is not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract, nor to approve nor accept any portion of the Contract work, nor to issue instructions contrary to the Contract. The inspector shall in no case act as a foreman or fulfill other duties for the Contractor. Any advice that the inspector may give to the Contractor shall not be construed as binding the Department in any way, nor as releasing the Contractor from its obligation to fulfill the terms of the Contract.

The conducting, failure to conduct, sufficiency, or accuracy of any inspection does not relieve the Contractor of its responsibility to perform the Project work properly, to monitor its work and the work of its subcontractors, and to institute and maintain Quality Control procedures appropriate for the proper execution of Project work.

105.11 INSPECTION OF WORK. All materials and each part or detail of the work shall be subject to inspection by the Department. Such inspection may include mill, plant, shop or other types of inspection; and any material furnished under the Contract is subject to such inspection. The Department 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.

The Contractor shall always notify the Department in writing of its intention to perform work (including fabrication) on the Project, including the nature of the particular work it intends to perform, at least five (5) days before the Contractor commences that work. If, after receiving such notice, the Department decides that it needs more than five(5) days to arrange for and conduct inspection related to that work, it shall so notify the Contractor, and the Contractor shall refrain from commencing the work until the Department has arranged for such inspection. The Contractor may not commence any portion

of its work without prior related inspection by the Department unless the Department agrees otherwise. In the absence of such advance agreement by the Department, any work done, or material used without inspection by a Department representative may be ordered exposed for examination and testing, and then corrected or restored, all at the Contractor's expense. In addition, the Contractor shall notify the Department in writing by 12:00 PM (noon) each Friday of all scheduled construction activities for the following week. Scheduling is to be consistent with the critical path and milestones established by the Contract.

If requested by the Department, 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 Department 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.

105.12 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 105.3; 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.

No work shall be done without appropriate lines and grades having been established in the field. Work performed contrary to the instructions of the Department; 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 Department made under the provisions of this Subsection, the Department 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.

105.13 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 for 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 Department 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 Department.

(a) Vehicle Weights: This sub-Section will apply to travel both on existing pavements and pavements under construction. The Contractor shall comply with all legal load restrictions as to vehicle size, the gross weight of vehicles, and the axle weight of vehicles while hauling materials. Throughout the duration of the Contract, the Contractor shall take precautions to ensure existing and newly-installed roadway structures and appurtenances are not damaged by construction vehicles or operations.

Unless otherwise noted in the Contract, on- and off-road equipment of the Contractor, either loaded or unloaded, will not be allowed to travel on any bridge or highway when such a vehicle exceeds the statutory limit or posted load limit of such bridge or highway. Should such movement of equipment become necessary, the Contractor shall apply for a permit from the State for such travel in conformance with state regulations. A detailed description of the movement of any such vehicles within the Project limits or on detour routes shall be submitted to the Department for Project records. Such permit or submittal will not excuse the Contractor from liability for damage to a bridge or highway caused by its equipment.

The Contractor is subject to fines, assessments and other penalties that may be levied as a result of violations by its employees or agents of the legal restrictions as to vehicle size and weight.

(b) Storage of Construction Materials or Equipment on Structures: Equipment when not operating and material when not in the process or being installed is deemed to be storage or in storage. The Contractor shall not exceed the statutory limit or posted limit for either an existing or new structure when storing materials or construction equipment. When such restrictions are not posted on a structure, then the maximum weight of equipment or material stored in each twelve-(12-) foot-wide travel lane of any given span shall be limited to seven hundred and fifty (750) pounds per linear foot combined with a twenty-thousand- (20,000-) pound, concentrated load located anywhere within the subject lane. If anticipated storage of equipment or material exceeds the above limits, then the Contractor shall submit his proposal of storage, supported by calculations stamped by a Professional Engineer registered in the State of Rhode Island, to the Department for approval at least fourteen (14) days prior to the storage operation. Operations related to structural steel demolition or erection shall follow the guidelines in the Rhode Island Department of Transportation Standard Specifications as amended under this Contract. All other such submittals shall include a detailed description of the material and equipment to be stored, the quantity of storage (if it is stockpiled materials), the storage location, the gross weight (with supporting calculations if applicable), the anticipated duration of storage, and any environmental safety, or traffic protection that may be required. Storage location on the structure shall be clearly defined in the field. If structures are in a state of staged construction or demolition, additional structural analysis may be required prior to authorization of storage.

105.14 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 is contained within the Contract unit prices of the various pay items and the Contractor will not be paid an additional amount.

105.15 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 Department. 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 Department, 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 109.4; 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 Department 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 Department 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 Department 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 Department 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.

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

105.17 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE. If the Contractor fails to comply with the provisions of Subsection 105.13; Maintenance During Construction, the Department 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 Department 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.

105.18 ACCEPTANCE.

a. Partial Acceptance. When the Contractor substantially completes a unit or portion of the work in accordance with the definition of **Substantial Completion**, the Contractor may request an inspection of that unit or portion of the project. The Department'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 Department 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 Department finds that the unit or portion of the work has been satisfactorily completed in compliance with the Contract, the Department 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 Department 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 Department on behalf of the State when the Contractor has completed the project in full accordance with the definition for “Completion” contained in **Section 101**. 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 “Substantial Completion” contained in **Section 101**, the Contractor shall notify the Department of this fact.

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

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

4. Within 60 calendar days of the inspection, the Department 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 Department'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 Department's "punch list" within 60 calendar days of the date of the Department'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 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 Department shall make another inspection of the work. If the Department determines that the work of the Contract has been satisfactorily completed in full accordance with “Completion” as defined under **Section 101**, such inspection shall constitute the Final Inspection. In such event, the Department 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 108.8; Failure to Complete on Time**.

105.19 CLAIMS FOR ADJUSTMENTS AND DISPUTES.

a. **Notification**. The Contractor is not entitled to file a claim in accordance with this section unless it has complied with the notice provisions of subsection 104.2, "Request for Change" (RFC).

b. **Submission**. Claims must be submitted in writing to the Engineer within 30 calendar days of receipt of the Engineer's denial of the Contractor's request for a Contract change. Failure to submit a claim as provided above shall constitute a waiver of entitlement to compensation and/or time adjustment.

c. **Documentation of Claim**. A claim shall be in sufficient details to enable the Engineer to determine the basis for entitlement and the compensation and time extension due, if applicable. The following information shall be included in the claim submitted:

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

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

3. A copy of the Contractor's notification submission under subsection 104.2 RFC.

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 or employee knowledgeable about facts that gave rise to such 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 accepted construction schedule.

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

11. A copy of the Contractor's Time Extension Request under Section 108.7 and supporting documents, if the claim includes delay.

d. **Certification.** In addition to the information required in 105.19 (3), the Contractor's claim must be accompanied by the following signed certification. The Contractor's failure to provide this certification will constitute a waiver of the Contractor's entitlement to compensation or a time extension for each claim.

CERTIFICATE OF CLAIM

The undersigned (Name and Title of Officer of the Contractor) certifies that the documentation is submitted in good faith, that the information provided is accurate and complete to the best of (the Contractor's) knowledge and belief, and that the compensation and time extension requested are

accurately reflected in the subject claim.

Name and Title

Company

Date Signature

Notarized

e. **Review of Claims**. The Engineer will acknowledge in writing receipt of the claim to the Contractor and will initiate the claim review process. During the4 claim review process, the Contractor shall provide the Engineer access to and, if requested, copies of any supporting documentation, including but not limited to the following documents:

1. Daily time
2. sheets and foreman's daily reports.
3. Union agreements, if any.
4. Insurance, welfare, and benefits records,
5. Certified Payroll register
6. Earnings records.
7. Material invoices, purchase orders, and material and supply acquisition Contracts.
8. Material cost distribution worksheets.
9. Equipment records (list of company equipment, rates, etc.) Vendor rental agreements
10. Subcontractor payment certificates and invoices.
11. Canceled checks, receipts of electronic payments, and other supporting documentation to verify payroll payments and payments to vendors, suppliers, or subcontractors.
12. Job cost report
13. Job payroll ledger.

The Contractor's failure to provide this access or copies as requested will constitute a waiver of the Contractor's entitlement to compensation or a time extension for the claim.

105.20 PROCEDURE FOR CLAIMS AND DISPUTES.

No claim shall be allowed against the State unless the Contractor met the notification procedures in Subsection 104.2.

1. The Contractor and the Department mutually agree that conditions precedent to the filing of a lawsuit include:

a. Participation in the Department's internal claim resolution process; and, if unresolved at the conclusion of the Department's internal claim resolution process,

b. Mediation or other mutually acceptable Alternative Dispute Resolution (ADR) procedures.

c. The Mediator's costs and expenses associated with these ADR methods shall be borne by all parties equally.

d. Each party shall bear its own costs in preparation and participation of these conditions precedent to the filing of a lawsuit.

2. If such efforts are unsuccessful, claims may be adjudicated either through binding arbitration or litigation in accordance with State Law. Any party bringing an action under this section shall be entitled to an award of prejudgment interest beginning with the filling date of such court action

or date of demand for arbitration. Said interest shall be computed daily to the date of payment and shall be compounded annually. Pre judgement and post judgement interest shall be calculated in accordance with RI Gen. Laws §37-13.1-1, et seq.

105.21 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 Department 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 Department 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 Department 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 Department 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 Department 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 109.10; Compensation for Project Delays**.

105.22 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.

105.23 REQUEST FOR INFORMATION (RFI). An RFI is a document submitted by the Contractor requesting clarification of a portion of the Contract Documents or a field condition. All such requests shall include a detailed written statement indicating the specific Drawings or Specifications to be clarified and the clarification requested. In addition, the Contractor shall:

1. Clearly state the item to be clarified, provide background information as appropriate, and explain why a response is needed.

2. Identify Drawings by Drawing number and location on the sheet.

3. Identify Specifications by Section number, page and paragraph.

4. Provide description of the field condition requiring clarification.

5. Present Contractor's interpretation or understanding of the requirement.

6. Include possible solution by text and/or drawings.

Improper RFIs are defined as:

1. RFIs that are not complete.

2. RFIs that request information that is clearly shown on the Contract Documents.

3. RFIs that do not comply with the definition of an RFI as indicated above.

Improper RFIs will be returned unanswered.

Delays caused by improper RFIs are the sole responsibility of the Contractor. The Contractor is not entitled to additional time or monetary compensation as a result of such delays.

a. RFI Submission. RFIs are to be entered by the Contractor into the electronic system as described for the project. The Contractor shall ensure all attachments are fully legible after download. Each page of attachments to RFIs shall bear the RFI number.

RFIs shall be originated by the Contractor. RFIs from subcontractors or material suppliers shall be submitted through, reviewed by, commented on, numbered, logged, and signed by the Contractor prior to submission to the Department.

The Contractor shall carefully study the Contract Documents to determine that the requested information is not available therein. RFIs which request information available in the Contract Documents will be deemed improper, as defined above.

RFIs shall be identified and submitted by the Contractor in a timely fashion in order to not cause delay to the Project. Any delays due to the untimely submission of RFIs will be the responsibility of the Contractor.

RFIs shall not be used for the following purposes:

1. To request approval of submittals.

2. To request approval of substitutions.
3. To request different methods of performing work than those drawn and specified.
4. To request changes to the Contract Documents.
5. To request additional cost or credit.
6. As routine written communications between the Department and the Contractor.
7. To reply to notices issued by the Department.
8. To clarify subcontract bid questions.
9. For any other purpose not listed in this Specification.

b. RFI Response. RFIs do not automatically justify a cost increase in the work or a change in the Project Schedule. Answered RFIs shall not be construed as approval to perform extra work.

Responses from the Department will not change any requirement of the Contract Documents. If the Contractor believes that a response to an RFI will cause a change to the requirements of the Contract Documents, the Contractor shall immediately give written notice to the Department stating that the Contractor considers the response to require a Change Order. Failure to give such written notice immediately shall waive the Contractor's right to seek additional time or compensation.

The Contractor shall allow the Department 14 days review and response time for RFIs.

105.24 Welding: The Contractor shall ensure that all welding of materials permanently incorporated into the Project, and welding of materials used temporarily during Project construction, is performed in accordance with the following codes as applicable to the type of construction. Where two or more codes govern, the more stringent shall control:

1. American Welding Society (AWS) Structural Welding Code – Steel – ANSI/AWS D1.1: Miscellaneous steel items statically-loaded, including, but not limited to: railings; sign supports; cofferdams; tubular items; and modifications of existing statically-loaded structures.

2. AWS Structural Welding Code – Aluminum – AWS D1.2/D1.2M: Any aluminum structure or member, including, but not limited to, brackets, light standards, and poles.

3. AWS Structural Welding Code – Sheet Steel – AWS D1.3/D1.3M: Sheet steel and cold-formed members 0.18 in.(4.6 mm) or less in thickness used, for instance, as decking and stay-in-place forms.

4. AWS Structural Welding Code – Reinforcing Steel – AWS D1.4/D1.4M: Steel material used in the reinforcement of cast-in-place or pre-cast Portland cement concrete elements, including, but not limited to, bridge decks, catch basin components, walls, beams, deck units, and girders.

5. AASHTO/AWS – Bridge Welding Code, AASHTO/AWS D1.5/D1.5M: Steel highway bridges and other dynamically-loaded steel structures, including, but not limited to, sign supports and any other fracture-critical structures.

The edition governing the Project shall be the one that was in effect on the date that the Contract was advertised for solicitation of Proposals.

The Contractor is responsible to provide a Certified Welding Inspector in accordance with the above-noted codes. The cost for this service is to be deemed included in the general costs of the Project.

All welders must be certified by the Department in conformance with Section 824 of the Standard Specifications as amended.

SECTION 106

CONTROL OF MATERIAL

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 Department of the proposed sources of materials prior to delivery. At the option of the Department, 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 and shall use such approved materials to replace any previously-furnished materials rejected by the Department. 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 meet the requirements of these Specifications, or those established for the specific project.

a. Buy American Requirements for Domestic Steel and Iron Products. In accordance with the US Code of Federal Regulations Title 23, only such permanently incorporated steel materials as have been manufactured in the United States will be used on all projects.

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. The Contractor shall submit copies of paid invoices for the foreign steel and iron products.

Additionally, the FHWA has granted a nationwide waiver of the requirements of 23 CFR 635.410, Buy America requirements, for the production of pig iron and processed, pelletized, and reduced iron ore. Items not specifically included in the waiver remain subject to the Buy America requirements. The Contractor may request the Department to seek from the FHWA a further waiver of said requirements, but it shall be at the sole discretion of the Department whether or not to seek such a waiver.

The Department will not pay the Contractor for additional costs incurred for of its proposed design or construction due to measures that the Contractor takes to meet Buy America requirements. Materials not meeting the Buy America requirements may not be incorporated into the Project unless a related waiver has been obtained. The Contractor shall submit all requests for such waivers to the Department. If the Department determines that a waiver or pursuit of a waiver is counterproductive to the Project, the Department may unilaterally reject the request without forwarding it to the FHWA. Any

time or cost expended due to pursuit of such a waiver is the sole responsibility of the Contractor. The Contractor should not assume in formulating its Price Proposal that any such waiver will be granted for the Project.

When the Contractor proposes to use materials from a source not currently approved by the Department, the Contractor shall submit as a prerequisite to consideration of source approval such evidence as the Department may request, showing that the materials from the proposed source meet the Contract requirements and will be available to the Contractor in sufficient quantity to ensure continuous and satisfactory progress of the Project.

Should it become necessary after award of the Contract for the Contractor to obtain material from sources other than those indicated in the statement on materials sources that is furnished by the Contractor prior to award, the Contractor shall furnish a supplementary statement and required samples of said proposed materials to the Department not less than ten (10) calendar days prior to placing an order for any such material.

For any material that requires more than one month for delivery, the Contractor shall provide the Department with documentary proof that said material has been ordered in sufficient time for the Contractor to complete the Project as planned. Failure to produce such documentary proof will result in a denial of any claim for a time extension based on late delivery of such material.

When one manufacturer's product is specified in the Contract, it shall be understood that this represents the standard required, but that a comparable product of another manufacturer might be considered as an equal if the Department judges it to be one, and may be approved as such by the Department, unless the plans or Special Provisions indicate that no equal shall be allowed. Should a Contractor desire to use a product that it considers equal or superior to the material specified, the Contractor shall submit to the Department a complete description of the proposed product, together with seven (7) copies of shop drawings, cuts and other descriptive literature that will inform the Department completely of the nature of such product before the Department decides whether or not to approve its use. Such approval shall not change any Contract requirement for a related Certified Test Report and Materials Certificate.

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 Department 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 Department 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 Department.

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.

106.03 SAMPLES, TESTS, CITED SPECIFICATIONS. Materials will be inspected, tested and accepted by the Department before incorporation in the work. Work in which untested and unaccepted materials are used without approval of the Department 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.

The Contractor must obtain the Department's approval of any materials to be incorporated into the Project before beginning to use them for the Project. Approval of materials may be by certification accepted by the Department, written permission of the Department, or prior approval after documented test or inspection by the Department. The Department may decline to pay the Contractor for any Project work in which materials not approved in one of these three (3) ways outlined above has been used. Material tests or inspection for acceptance, when required, will be made by and at the expense of the Department, unless otherwise noted in these Specifications.

Department certification will be used as the basis for approval of such materials, as the Contract may specify, or the Department may require. With regard to such materials, the Contractor shall furnish the Department a Certified Test Report and Materials Certificate, complying with Section 106.7, as may be required for each type of material. The Contractor shall bear any costs involved in furnishing the Test Report and Certificate.

If the Contractor has purchased materials for use on a previous Department project, and if they comply with the requirements of this Contract, then those materials, with the approval of the Department, may be used for the Project, provided that the Contractor, acting as the materials supplier, submits a related Materials Certificate complying with Section 106.7 hereof. This Materials Certificate shall further identify the project for which the material was originally purchased and shall be accompanied by a copy of the original Certificate.

The Department will also maintain a current list of approved products and plants.

Samplings made by the Department will be as shown in the latest edition of the "Master Schedule of Testing" and tests will be made in accordance with the latest revision of the standard method of AASHTO or ASTM, or in accordance with other standards accepted by the Department that are in effect at the time of Proposal submissions, unless otherwise specified on the plans or in the Special Provisions. Any items not covered in the "Master Schedule of Testing" Special Provisions, or plans shall be sampled and tested or certified, as directed by the Department.

The Contractor shall submit to the Department's representative preliminary samples of any materials proposed for Project use, without charge by the Contractor or the producer of the materials. Samples submitted shall be taken by a representative of the Department or a commercial laboratory

approved by the Department. All such materials shall be subject to inspection, testing or re-testing at the Department's direction at any time during their manufacturing, fabrication or use.

The Contractor shall furnish all required samples without charge and provide secure facilities for their storage. The Contractor shall provide means for and shall assist in the verification of all scales and other such measuring devices that it operates or uses in connection with the Project.

Materials will be rejected by the Department whenever, in its judgment, they fail to meet Contract requirements. The Department may accept material or a combination of materials and thereby waive noncomplying test results, provided that the following conditions are met:

1. The Department finds results of prior and subsequent series of tests of the material or materials from the same source or sources to be satisfactory.

2. The incidence and degree of nonconformance with Contract requirements are, in the Department's judgment, within reasonable limits.

3. The Contractor, in the Department's judgment, had diligently exercised material controls consistent with good practices.

4. No adverse effect on the value or serviceability of the completed work could result from said degree of nonconformance.

The Department may, in its discretion, waive testing of minor quantities of a particular material if said material was obtained from sources that have furnished supplies of the material consistently meeting Department testing standards.

106.04 CERTIFICATION OF COMPLIANCE. The Department 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 Department. The Department 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.

106.05 PLANT INSPECTION. The Department 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.

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

1. The Department shall have the cooperation and assistance of the Contractor and the producer with whom it has contracted for materials.

2. The Department 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.

106.06 STORAGE OF MATERIALS. Materials shall be stored to ensure the preservation of their quality and fitness for the work according to the requirements of the Contract, including but not limited to the manufacturer's recommendations. 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**. Materials and/or equipment shall not be stored within existing and/or newly constructed travel lanes, designated parking areas, paved shoulders or adjacent areas other than as noted below. Materials and equipment may be stored within specified areas provided prior written approval has been granted by the Department. Materials stored in these locations must be removed within fourteen (14) calendar days. Equipment storage shall be on a day by day basis and must be removed during the subsequent days' construction operations. Extended storage of equipment will not be allowed. Storage areas must exceed the following distances from the travel lane:

Posted Speed	Clear Distance from Edge of Travel Lane
35 mph or less	12 feet
40-45 mph	16 feet
50 mph	20 feet
55 mph or greater	35 feet

Storage of equipment and/or materials not utilized in the daily operations will not be allowed.

All portions of an area used for storage of construction material and/or equipment must be clearly delineated with appropriate traffic control devices, as directed by the Department. The cost of these traffic control devices shall be at the sole expense of the Contractor.

Storage sites shall be restored to their original condition at the sole expense of the Contractor, and as directed by the Department.

Any 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. Copies of such written permission, outlining any and all pertinent agreements between the property owner and the Contractor, shall be furnished to the Department 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**. Construction materials and/or equipment shall not be stored within existing or newly constructed travel lanes, paved shoulders, or designated parking lanes. No portion of the sidewalks may be used for storage of construction equipment and/or material.

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.

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 Department. Rejected material, the defects of which have been corrected, shall not be used again until approval by the Department has been granted.

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.

106.10 Defective Materials: Unless otherwise permitted by the Department, all materials not conforming to Contract requirements shall be considered defective, shall be rejected, and shall be removed immediately from the Site.

If deemed necessary by the Department, the Department may require the retesting of materials previously tested, approved and incorporated into the Project. If, after such retesting, the materials are found not to comply with Contract requirements, the Department may, however, allow the Contractor to leave the materials in place, provided that an equitable reduction of the payment for the materials shall be made. No rejected material, the defects of which have been subsequently corrected, shall be used until written approval for such use has been given by the Department. Should the Contractor fail to comply with any order of the Department made under the provisions of this Section, the Department shall have authority to remove and replace defective material, and to deduct the cost of such removal and replacement from any money due or to become due to the Contractor under this or any other contract that the Contractor has with the State.

When a material is fabricated or treated with another material, or when any combination of materials is assembled to form a product, any or all of which are covered by the Contract, the failure of any components of the product to comply with the Contract may be sufficient cause for the rejection of the whole combination or product.

Materials that have been shipped from approved deposits or sources of supply, but which are found to be defective upon their delivery to the Department, to the Site, or to any testing or storage site approved by the Department, shall not be used for the Project.

106.11 Shipping Material: Any conveyance used for transporting materials must be clean when used, be in proper working condition, have a strong and substantial body that will prevent the loss of materials during transportation, and have been approved by the Department.

106.12 Certified Test Reports and Materials Certificates: The Contractor shall furnish the Department with any Certified Test Report and Materials Certificate required by the Contract, the Engineer of Record, or the Department.

The Contractor shall forward the Certified Test Report and Materials Certificate to the Department and, in addition, shall deliver a copy of same to the Department's inspector at the Site. Materials for which such documentation is required may be conditionally incorporated into the Project prior to receipt by the Department of a Certified Test Report and a Materials Certificate; however, payment for such incorporated material will not be made prior to receipt of a Certified Test Report and Materials Certificate indicating that the materials meet the Contract requirements.

The Certified Test Report is a document containing a list of the dimensional, chemical, metallurgical, electrical and physical results obtained from a physical test of the subject materials and shall certify that the materials meet the Contract requirements. Such Report shall also include the following information:

1. Item number and description of materials.
2. Date of manufacture.
3. Date of testing.
4. Name of organization to which the material has been consigned.
5. Quantity of material represented, such as batch, lot, group, etc.
6. Means of identifying the consignment, such as label, marking, lot number, etc.
7. Date and method of shipment.
8. Name of organization performing tests.

The Certified Test Report shall be signed by a duly-authorized and responsible agent for the organization manufacturing the materials, and the signature must be notarized.

A Materials Certificate is a document certifying that the materials, components and equipment furnished comply with all requirements of the Contract plans and Specifications. Such Certificate shall also include the following information:

1. Project for which the material has been consigned.
2. Name of Contractor to which material has been supplied.
3. Item number and description of material.
4. Quantity of material identified in the certificate.
5. Means of identifying the consignment, such as label, marking, lot numbers, etc.
6. Date and method of shipment.

The Materials Certificate shall be signed by a duly-authorized and responsible agent for the organization supplying the material, and the signature must be notarized.

The Contractor shall be responsible for any testing, Materials Certificates, and inspections required under the Contract or as directed by the Department.

106.13 Warranties, Guarantees and Instruction Sheets: Manufacturers' warranties and guarantees furnished for materials used for the Project, as well as instruction sheets and parts lists supplied with Project materials, shall be delivered to the Department prior to acceptance of the Project. Each warranty or guaranty so furnished shall indicate its commencement and expiration dates.

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

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 at all times shall observe and comply with all such laws, ordinances, permits, regulations, orders, and decrees; and shall protect and indemnify the State and its officers, employees, agents, and representatives against any claim, fine or other liability arising from or based on the violation of any such law, ordinance, permits, 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 Department in writing. See also the last paragraph in Section 102.13, however, regarding conflicts between municipal law or authorities and the requirements of Project construction.

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.

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.

107.03 PERMITS, LICENSES AND TAXES. Except as may be provided otherwise in a specific Contract provision or a written direction from the Department, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices required by government authorities in connection with the prosecution of the Project. This includes any permits required for the transportation of equipment, supplies and materials to and from the project site, and the satisfaction of all requirements necessary to acquire such permits.

107.04 PATENTED DEVICES, MATERIALS, AND PROCESSES. If the Contractor is required or desires to use or employ any design, device, material or process covered by another party's license, patent, copyright, trademark or other intellectual property or legal right or interest, the Contractor shall provide for such use by suitable legal agreement with the holder of such right or interest.

The Contractor shall provide a copy of any and all such agreements to the Department.

If the Contractor is allowed, but not specifically required by the Department, to use any particular proprietor's design, device, material or process covered by such a right or interest, the Contractor and its surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims that may be brought against the State, and any and all costs, expenses, and damages that the State may be obligated to pay by reason of any infringement

or alleged infringement relating to the use of such right, interest, design, device, material or process at any time during the prosecution or after completion of the Project.

107.05 RESTORATION OF SURFACES OPENED PURSUANT TO PERMIT OR CONTRACT. 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 104.3; 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 Department, 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.

Contractor shall not make and shall not allow any other person to make an opening in a highway unless written and duly-authorized permission to do so has been obtained from the Department. If at any time prior to the completion of the Project, the Contractor should make such an opening without such permission, the Contractor shall perform all restoration necessary to close said opening, at its own expense, if and as the Department directs it to do so.

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.

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.

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary in order to comply with the regulations and other requirements of the State Department of Public Health or of other bodies or tribunals having jurisdiction over such matters.

107.08 PUBLIC CONVENIENCE AND SAFETY.

Public Convenience and Safety: The Contractor shall conduct the Project work at all times in such a manner as to ensure the least possible obstruction to traffic. In a manner acceptable to the Department, the Contractor shall provide for the safety, convenience and interests of the general public; the traveling public; parties residing along or adjacent to the highway, streets or Site; and parties owning, occupying or using property adjacent to the Site, such as commuters, workers, tenants, lessors and operating agencies.

Notwithstanding any other Contract provision, the Contractor shall not close to normal

pedestrian or vehicular traffic any section of road, access drive, parking lot, sidewalk, station platform, railroad track, bus stop, runway, taxiway, occupied space within a site, or occupied space within a building, except with the written permission of the Department.

All equipment, materials, equipment or material storage areas, and work areas must be placed, located, and used in ways that do not create a hazard to people or property, especially in areas open to public pedestrian or vehicular traffic. All equipment and materials shall be placed or stored in such a way and in such locations as will not create a hazard to the traveling public. In any area unprotected by barriers or other means, equipment and materials must not be stored within thirty (30) feet (9.15 meters) of any traveled way.

The Contractor must always erect barriers and warning signs between any of its work or storage areas and any area open to public pedestrian or vehicular traffic. Such barriers and signs must comply with all laws and regulations, including any applicable codes.

The Contractor must arrange for temporary lighting, snow and ice removal, security against vandalism and theft, and protection against excessive precipitation runoff within its Project work and storage areas, and within other areas specifically designated in the Contract.

In addition to meeting other specific Contract requirements, the Contractor shall take all precautions necessary and reasonable for the protection of all persons, including, but not limited to, employees of the Contractor or the Department, and for the protection of property, until the Department notifies the Contractor in writing that the Project or the pertinent portion of the Project has been completed to the Department's satisfaction. The Contractor shall comply with the safety provisions of applicable laws, including building and construction codes, and the latest edition of the CFR. The Contractor must make available for reference in its field office, throughout the duration of the Project, a copy of the latest edition and all supplements of the CFR pertaining to OSHA.

The Contractor shall furnish to the Department's representative supervising the Project a report on any accident that occurs on the Site with regard to which the Contractor is required to report under OSHA or any other legal requirement. The Contractor shall also furnish to the Department a report regarding any other accident involving personal injury, property damage, or public liability in connection with the Project. The form and detail of such reports must be acceptable to the Department.

The Contractor shall designate a competent representative with authority to act in cooperation with the Department in the enforcement of safety provisions and promotion of safe practices on and related to the Project throughout the duration of the Project.

Under **Section 108.6** hereof, the Department may suspend the work of the Contractor if and when the latter does not take the safety precautions required in this Section. Nothing herein shall be construed, however, to relieve the Contractor from responsibility for the prosecution of the Project as otherwise required by the Contract.

a. **Accident Reports**. The Contractor shall furnish the Department 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 Department.

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.

107.10 USE OF EXPLOSIVES. The Contractor shall, to the greatest extent possible, avoid using explosives in proximity to existing structures. When explosives are necessary for the prosecution of the work, the Contractor shall not endanger life, property or new work. The Contractor shall take adequate protective measures when engaging in blasting operations and shall be responsible for any damage resulting from such operations. The Contractor shall be responsible for damage resulting from the use of explosives.

The Contractor shall notify each utility with facilities in proximity to the site of such blasting operations, and any other individuals and entities that may be affected thereby, of the Contractor's intention to use explosives; and such notice shall be given sufficiently in advance of any blasting to enable such affected parties to take steps to prevent such blasting from injuring persons or property. Such notice shall not, however, relieve the Contractor from responsibility for damage resulting from its blasting operations.

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 Department 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 Department. The Contractor shall furnish to the Department 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 Department 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 Department**. The approval of the Department shall first be obtained before blasting is permitted. If, in the opinion of the Department, 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 Department 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 Department 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 Department 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.

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 Department 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 Department will contact archaeological authorities to determine the disposition thereof. When directed by the Department, 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 109.4; 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 Department. If the Contractor fails to restore such property or make good such damage in a way acceptable to the Department, the Department may, upon 48 hours' notice, proceed to have such property repaired, rebuilt or restored as it may deem necessary; and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract or under any other contract(s) that the Contractor may have with the State.

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 Department for approval.

The Contractor shall not enter upon private property for any purpose without having obtained written permission to do so from the owner of such property and having provided the Department with a copy of same. The Contractor shall use every reasonable precaution to avoid disturbing or damaging public or private property, including, but not limited to, trees and monuments. The Contractor shall use suitable precautions to avoid disturbing or damaging underground or overhead structures or facilities, whether or not they are shown on the plans.

If the Project requires the moving or removal of a land monument or property marker, the Contractor shall not disturb it until a duly-authorized agent of the public or private property's owner has witnessed or recorded the monument or marker's location. The Contractor shall not move or remove such property until and unless directed to do so by the Department.

The Contractor shall not remove, cut, injure or destroy trees or shrubs until and unless the Department has given it specific written approval to do so.

The Contractor shall be responsible for all damage to property resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of executing its work, or due to its defective work or materials. When or where any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Project work, the Contractor shall restore, at its own expense, such property to a condition as close as possible to that which existed before such damage was done, by repairing, rebuilding or otherwise restoring the property, as may be directed by the Department; or the Contractor shall make good such damage in another manner acceptable to the Department.

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.

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 109.9**. 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.

d. Railroad Protective Liability Insurance: When the Contract involves work within fifty (50) feet of a railroad right-of-way or State-owned rail property, the Contractor shall carry, and require each subcontractor to carry, with respect to Project operations and also those of its subcontractors, Railroad Protective Liability Insurance providing coverage of at least two million dollars ($2,000,000) for each accident or occurrence resulting in (1) bodily injury to or death of persons and/or (2) injury to or destruction of property, and, subject to that limit per accident or occurrence, an aggregate coverage of at least six million dollars ($6,000,000) for all damages incurred during the policy period, and having all entities falling within any of the following listed categories named as insured parties: (i) the owner of the railroad right-of-way, (ii) the owner of any railcar licensed or permitted to operate within that affected portion of railroad right-of-way, and (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way, and (iv) the State.

e. Blasting: When explosives are to be used in the Project, the Commercial General Liability insurance policy shall include XCU coverage, in limits the same as the per-occurrence policy limits.

f. Professional Liability Insurance: The Contractor shall secure and maintain at no direct cost to the State a Professional Liability Insurance policy, with a company authorized to do business in the State of Rhode Island, for errors and omissions, in the minimum amount of five million dollars ($5,000,000) per occurrence. The Contractor shall obtain Professional Liability Insurance that covers claims and damages arising out of the rendering or failure to render professional services by the Contractor and all parties for which the Contractor is legally responsible, and further liability included in the Indemnification clause is the responsibility of the Contractor but not covered by the Professional Liability policy. The Contractor may, at their election, obtain a policy containing a maximum two hundred and fifty thousand dollars ($250,000.00) deductible clause, but if they should obtain a policy containing such a clause, the Contractor shall be liable, as stated above herein, to the extent of the deductible amount. The Contractor shall maintain this Professional Liability Insurance coverage for a period ending at the date of the Department's acceptance of the completed project with an Extended Reporting Period of at least three (3) years from the date of the Department's acceptance of the completed Project, subject to the continued commercial availability of such insurance. The retroactive date for the term of Profession Liability Insurance shall be the date professional services related to the project were first rendered by the Contractor or the date the Contract was executed, which ever occurred first.

It is understood that the above insurance may not include standard liability coverage for pollution or environmental impairment. The Contractor agrees, however, to acquire and maintain pollution and environmental impairment coverage as part of this Professional Liability Insurance, if such insurance is applicable to the Contractor's Project work.

Failure of the Contractor to maintain all insurance coverage required by this Contract shall constitute a material breach of the Contract and shall subject the Contractor to liquidated damages in the amount of ten percent (10%) of the total (adjusted) Contract price, subject to the continued commercial availability of such insurance. The Contractor shall also require subcontractors and any other firm providing professional services related to this Contract to acquire and maintain the same levels of insurance for the same timeframes as required above, by making it a requirement of the subcontracts and other Project agreements.

g. VALUABLE PAPERS AND RECORDS: The Contractor shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to the State, until the complete Project design has been accepted by the State and all original tracings, highway and bridge design computations, survey data, documents or data have been returned to the State. This will assure the State that all records, papers, maps, statistics, survey notes, all tracings, highway and bridge design and other data or documents will capable of being reestablished, recreated or restored if made unavailable by fire, theft, or other cause. When survey data is furnished by the State it shall retain in its possession duplications of all survey plans and field notes. The Contractor shall retain in its possession duplicates of all products of its work under this Contract, if and when it is necessary for the originals to be removed from its possession during the time that this Valuable Papers Insurance Policy is in force. This policy shall provide coverage in the amount of One Hundred and Fifty Thousand Dollars ($150,000) when the insured items are in its possession and in the amount of Fifty Thousand Dollars ($50,000) regardless of the physical location of the insured items.

h. Duration of Coverage. The Contractor shall keep all the required insurance in continuous effect until the date that the Department designates for the termination of the Contractor's responsibility, as defined by Section 105.18 (b).

i. Compensation: There shall be no direct compensation allowed the Contractor on account of any premium or other charge necessary in order to obtain and keep in effect any insurance or bonds in connection with the Project, but the cost thereof shall be considered included in the general Project costs.

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.

107.15 PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES. The Director, Department, RIDOT employees 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.

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.

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 Department. The Contractor's operation in this area shall not resume until so directed by the Department; however, the Contractor shall continue working in other areas of the project, unless otherwise directed by the Department.

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.

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.

SECTION 108

PROSECUTION AND PROGRESS

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 Department. 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 **Section 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 Department, before allowing any subcontractor to sublet any portion of its work to a lower-tier contractor.

Payment for work that has been performed by a subcontractor does not release the subcontractor from its responsibility for maintenance and other types of subcontractor responsibility specified for the subcontractor's items of work. Failure of a subcontractor to meet its maintenance or warranty or responsibilities, or its responsibilities to repair, replace, or remove defective work or materials, may result in administrative action against it in connection with future Department awards or contracts.

The above requirements are also applicable to all sub-tier subcontractors, and the above provisions shall be made a part of all sub-tier subcontract agreements.

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

The Contractor shall not begin Project Design work or physical Project construction prior to the date specified for same by the Department in a Notice to Proceed, except as may be otherwise authorized by the Department in writing.

a. Establishment of Construction Field Office: Within ten (10) calendar days after the signing of the Contract by the parties, the Contractor shall propose in writing to the Department a field office location within one (1) mile of the Site. The proposal shall include the office telephone number to be used, the nearest utility pole number, and the distance from that pole to the proposed field office. The office shall be made acceptable to the Department and available for use, arranging for all required utility hookups, local permits and inspections, within thirty (30) days of the Department's order to establish the office. Such order shall not be deemed the "Notice to Proceed."

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 Best Value 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 Department 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 Department to track and prioritize the review of Shop Drawings and Submittals. To evaluate resource requirements of the Contractor and the Department (Level A).
- To coordinate the work of 3rd party contractors into the sequencing of the Contractor's work where necessary.

Having a timely Schedule/Schedule Update affects the Department'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 Department 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 Department. 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 Department: 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 Best Value 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			DEPARTMENT 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	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		***All days are calendar days***			

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 Department 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 Department.

2. Review and Acceptance of Project Schedule Submittals

The Department 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 Department 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 Department at the Schedule Development Meeting.

Schedule Update Submittals shall be submitted to the Department 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 Department's review period for the Schedule Update Submittal is five (5) working days. Three copies of the Schedule Updates shall be submitted to the Department 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 Department.

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 Department 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 Department. Any acceptance or approval of the Schedule Update Submittal by the Department, 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 Department 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 Department'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 Department.

1. Basic Structure for WBS:

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

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 Department: "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 Department'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 Department. The Contractor shall reserve three (3) code classifications (fields) and a minimum of six (6) characters for the Department'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 Department to assign durations greater than twelve (12) working days. If the Department 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:

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

(a) 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.

(b) 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 Department.

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 Department to create additional calendars, however, use of these calendars is by Department'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 Department 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 Department 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 Department 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 Department 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 Department.
- 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.

(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 Department 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 Department 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 Department.

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 108.3, 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 Department 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 Department.

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 Department.

1. Baseline Schedule Revisions.

In the event of a significant delay, or changes to the Project's Schedule as determined by the Department, 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 Department.
- 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 Department prior to incorporation into the Revised Schedule. Any proposed changes and/or revisions to the Current Baseline Schedule accepted by the Department

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 Department'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 Department.

Once a Baseline Schedule Revision Submittal is accepted by the Department 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 Department.

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 Department 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 104.4; Alterations in the Plans or Details**.

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 Department, 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 Department.

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 Department 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.

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 Department. 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 Department 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 Department 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 Department 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.

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 102.3; 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 Department 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 15th 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 Department. 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 105.21 Project Delays.** Such notification shall be a precondition to consideration of an extension of time.

If the Department 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. Department 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.

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 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 108.1000; Prosecution and Progress**.

An adjustment of the contract time for completion of the work granted under the provisions of

Subsection 108.7 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 15th through the following April 15th .

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 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 108.7** 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 accrue during the winter shutdown period, i.e., December 15th through the following April 15th.

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 Original

Contract Amount		Daily Charge	
From More Than	**To and Including**	**Calendar Day or Fixed Date**	**Work Day**
$ 0	25,000	$ 200.00	$ 300.00
25,000	50,000	350.00	500.00
50,000	100,000	450.00	600.00
100,000	500,000	900.00	1,200.00
500,000	1,000,000	1,200.00	1,700.00
1,000,000	2,000,000	1,500.00	2,050.00
2,000,000	6,000,000	1,950.00	2,700.00
6,000,000	10,000,000	2,350.00	3,250.00
10,000,000	No Limit	12,000.00	12,000.00

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 Department 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 Department 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 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 108.10; Termination of Contract**.

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 Department 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 Department, 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 Department, 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 Department, 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 competed 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 Department 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 Department, 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 109.13; 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 proceeds 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 Department.

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.

SECTION 109

MEASUREMENT AND PAYMENT

109.01 MEASUREMENT OF QUANTITIES. Work completed under the Contract will be measured by the Department 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 Department. 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 Department 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 Department, 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 Department.

When requested by the Contractor and approved in writing by the Department, 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 Department 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°F or will be corrected to the volume at 60°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 Department 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 Department, 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 ½ 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 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 Department. 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.

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 104.3; Differing Site Conditions** and **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.

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 lump sum breakdown prices for the accepted quantities of work performed. No allowance will be made for any reason except as provided for in **Subsections 104.3; 104.5; and 104.7; Differing Site Conditions, Extra Work, and Significant Changes in the Character of the Work**, respectively.

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 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 Department 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. For Worker's Compensation Insurance Premiums, the Contractor shall receive the actual cost of the Worker's Compensation costs incurred, which shall be calculated net of all applicable credits, rebates, refunds and allowances. A surcharge will be added to the actual costs incurred. The surcharge amount is calculated from the Experience Modification Factor (MOD Factor) as follow:

1. For MOD factors greater than 1.0 the surcharge is 6%
2. For MOD factors greater than 0.80 and less than or equal to 1.0 the surcharge is 8%
3. For MOD factors less than or equal to .80 the surcharge is 10%

The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bonds, insurances and taxes. In addition, the Contractor shall submit a copy of their Worker's Compensation policy showing the current MOD factors.

(c) Materials. For materials accepted by the Department 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 Department, 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 Department 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 Department.

All equipment, including trucks, shall, in the judgment of the Department, be in good working condition and suitable for the purpose intended. The Department 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) Subcontracting. For work performed by a subcontractor, the Contractor shall accept as full payment an amount equal to the actual cost to the Contractor of such work performed by the subcontractor, as determine by the Engineer, plus 10 percent of said cost.

(f) 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.

(g) Compensation. The Contractor's representative and the Department shall daily compare records of work completed on a force account basis. The Department 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.

(h) Statements. No payment will be made for work performed on a force account basis until the Contractor has furnished the Department 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.

109.05 PAYMENT FOR WORK .

a. General. The Department will make payment for Work before the Project is accepted and final payment is made. These payments for Work will be processed via progress payments. In order to receive a payment of Work, the Contractor shall prepare an invoice in accordance with **Subsection 109.5** paragraph (c.) Invoice for Payment of Work. The Department may suspend progress payments if the Contractor does not comply with the Engineer's directions or written orders. The Department will notify the Contractor, whenever progress payments will be suspended.

Processing of progress payments for Work prior to the Department's acceptance and final payment of the Work does not constitute the Department's acceptance of the Work, and does not relived the Contractor of responsibility for the Work which includes but is not limited to:

1. Protecting, repairing, correcting, maintaining, or renewing the Work where necessary to meet Contract requirements before acceptance.
2. Replacing or repairing all defective Work or materials used in the construction of the Work and repairing all damage to other work or materials whose damage is attributable to such defective Work or materials.
3. Correcting all defects or damage that the Engineer may discover on or before the engineer's acceptance and final payment of the Work. The Engineer is the sole judge of these defects or damage.

b. Frequency. The Department will make monthly progress payments in accordance with established Department procedures. Progress payments will be subject to a 5 percent retainage.

Retainage will be released incrementally in accordance with **Section 105.17** and the Department's Release of Retainage Procedures.

c. Invoice for Payment for Work. The Contractor shall submit a detailed weekly accounting of Work completed. The Contractor shall submit a monthly invoice for payment of Work completed. The Contractor shall utilize and complete the forms supplied by the Department including a certification for payment in accordance with the instructions contained thereon.

d. Invoice for Partial Payment for Materials, Supplies, and Equipment. The Engineer may allow invoicing as provided above and permit partial payments for those materials, supplies, and equipment delivered to an approved location but not yet incorporated into the Work.

Payment for materials, supplies and equipment furnished at an approved site but not yet incorporated into the Work will not exceed the lesser of the following amounts.

1. 100 percent of the cost incurred by the Contractor, or

2. 80 percent of the value calculated by multiplying the quantity of the item delivered by the unit price for the corresponding item in the approved Lump sum breakdown Schedule.

For verification of costs, the Contractor shall provide the Engineer with an original 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.

The Engineer will not approve any payment for perishable plant materials until such plant materials are planted as specified in the Contract.

e. Engineer's Review of Contractor's Request for Payment for Work and Request for Partial Payment for Materials, Supplies, and Equipment. Upon receipt of the Contractor's invoice, the Engineer will review the invoice and may approve or reject payment or portions thereof. The Engineer will notify the Contractor in writing of any modifications and/or rejection of the invoice. Modifications and reasons for the change will be made to the Excel spreadsheet in the columns

provided. In the case of a rejection, the Engineer may request that the invoice be resubmitted. The Contractor and the Engineer shall take reasonable measures to avoid the need for resubmission.

f. Release of Retainage. The Contractor shall notify RIDOT within 7 days upon the Contractor's assessment that the subcontractor's work is complete and ready for inspection for partial acceptance by RIDOT. The Contractor shall make progress payments to the subcontractor incrementally as the Contractor is paid progress payments by RIDOT, with each progress payment made no more than 30 days from when so paid by RIDOT. The work of a subcontractor will be inspected by RIDOT within 14 days of the date of Contractor's notification for partial acceptance. Within 30 days of partial acceptance of the completed subcontract work, the Department will pay the Contractor for all work covered by the acceptance including the relevant portion of retainage due the subcontractor. Within 30 days of receipt of such payment, the Contractor shall pay the subcontractor for all accepted subcontract work including all retainage owed. The Contractor must obtain RIDOT's prior written consent for good cause delays in or postponement of payment to the subcontractor.

109.06 PARTIAL PAYMENT OF LUMP SUM ITEMS.

Each monthly 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 such work will be made to the Contractor based on the Engineer's estimate of the value of said work.

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) within thirty (30) calendar days after the date of the Notice to Proceed. The breakdown of Lump-Sum items shall consist of the Contractor's quantities using standard item codes and Job Specific item codes with the unit prices and the units of measurement used in preparing the bid. All other additional costs (such as engineering, shop drawings, formwork, equipment, etc.) to complete those items of work shall be included in the breakdown of those listed Lump Sum items. For other lump sum items, the Contractor shall provide a breakdown of the various items that constitute the respective lump sum work items.

The Engineer will use 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.

For tracking and Payment purposes, it is acceptable to bundle item codes (example: Remove & Replace Sidewalk might include R&D Concrete, Earth excavation, Trimming and Fine Grading, Gravel Borrow and Concrete)

109.07 PAYMENT OF WITHHELD FUNDS.

1. **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:

2. The Contractor shall bear the expenses of the Department and the State Treasurer in connection with the escrow deposit made.

3. 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.

4. The Contractor shall enter into an escrow agreement satisfactory to the Department.

5. The Contractor shall obtain the written consent of the Surety to the agreement.

109.08 ACCEPTANCE AND FINAL PAYMENT. When the project has been accepted as provided in **Subsection 105.17**, the Department 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 Department 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.

109.09 COMPENSATION FOR PROJECT DELAYS.

109.09.1.1 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.

109.09.1.2 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.

109.09.1.3 Documented and substantiated additional or escalated job site non-salaried labor expenses.

109.09.1.4 Documented and substantiated additional or escalated costs for materials.

109.09.1.5 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.

109.09.1.6 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.

109.09.1.7 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 109.4** of these Specifications. Payment for costs submitted for reimbursement will be made only to the extent that the requirements of **Section 109.4** are met to the satisfaction of the Department.

109.09.1.8 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:

Profit in excess of that provided herein;

Loss of profit;

Labor inefficiencies;

Home office overhead in excess of that provided herein;

Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency;

Indirect costs or expenses of any nature;

Attorney's fees, claims preparation expenses or costs of litigation.

109.10 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.

109.11 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 under Section 101.

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.

109.12 Payment of Costs Owed to the State: The State shall have the right to set off against amounts otherwise due to the Contractor under this Contract (a) any costs that the State has incurred due to the Contractor's noncompliance with this Contract and (b) any other amounts that are due and payable from the Contractor to the State. Any sum taken in setoff from the Contractor shall be deemed to have been paid to the Contractor for purposes of payment obligations under Section 103.4 hereof.

109.13 Eliminated Items: Should the Department deem any Contract items, or portion of Project work contained in a lump sum item, to be unnecessary for completion of the Project, the Department may eliminate such items or portion of work from the Contract. Such action shall in no way invalidate the Contract, and no allowance for any items or portion of work contained in a lump sum item so eliminated will be made by the Department in making final payment to the Contractor, except for (a) such actual work as may have been done on the items, or portion of work contained in a lump sum item, prior to the Department's notice to the Contractor that the items or work had been eliminated; and (b) such related material as may have been purchased for the Project prior to said notice. This provision shall apply unless the Department determines that an elimination of a given item, or portion of work contained in a lump sum item, constitutes a "significant change" in the character of the Contract work, as defined under Section 104.3 hereof. In such a case, the terms of Section 104.3 shall be applied to the payment issues related to the eliminated item or work.

SECTION 110

ENVIRONMENTAL COMPLIANCE

110.01 General: During and following Project construction, the Contractor shall exercise precaution and care to prevent or minimize negative effects on the environment, including all State and Federal waters, wetlands, and other natural resources.

The Contractor shall comply with all Project permits and permit applications as though the Contractor were the permittee.

The Contractor must comply with the environmental provisions specified in the Contract, and any Federal, State or municipal laws or regulations. If the Contractor fails to comply with these environmental provisions, the Contractor shall be penalized as specified in this Section and elsewhere in the Contract.

In addition to the requirements outlined in this Chapter, additional requirements of a similar kind are detailed in Part 2 of the Contract.

110.02 Compliance with Laws and Regulations: The Contractor shall conduct its operations in conformance with the permit requirements established by Federal, State and municipal laws and regulations.

The Contractor shall conduct its operations in compliance with federal and state permit requirements concerning water, air and noise pollution, and the disposal of controlled or hazardous materials. Said permit requirements include, but are not limited to, those established by Federal regulations administered by the United States Coast Guard, Army Corps of Engineers, or the Environmental Protection Agency ("EPA").

Appropriate permits shall be required for all activities associated with or incidental to the Contractor's operations, including, but not limited to, those regarding the Site or adjacent areas, waste and disposal areas, borrow and gravel banks, storage areas, haul roads, access roads, detours, field offices, or any other temporary staging areas. The Contractor shall be responsible for, and hold the State harmless from, any penalties or fines assessed by any authority due to the Contractor's failure to comply with any term of an applicable permit.

The Department has not obtained any determinations regarding for the need or lack of need for certain permits related to the BTC. The responsibility for obtaining all environmental permits required for all Contract work is explained in Part 2 of the Contract.

The Contractor shall be responsible for, and hold the State harmless from, any penalties or fines assessed by any authority due to the Contractor's failure to comply with any term of an applicable environmental permit.

Any request by the Contractor for authorization of activities or methods not specifically called for or allowed by the applicable permits issued for the Project must be submitted by the Contractor in writing to the Department. Such a request must include a detailed description of the proposed activities or methods, and must include justifications for same, along with supporting documentation, showing that the proposed activity or method will not create a risk of damage to the environment. If such request is granted by the Department, the Department will process an application to the appropriate regulatory agency or agencies for any permit amendment, modification, revision or new permit required for the Contractor to carry out the changed activities or use the methods in question. The Department does not, however, guarantee that it will be able to obtain the desired permit amendment, modification or revision; and the Department will not be liable for the effects of any inability to do so.

The Contractor will not be entitled to any extension of Contract time as a result of the Department's granting of such a request from the Contractor. If the amendment, modification, or revision of the permit is not necessary except to make possible the changes requested by the

Contractor, then no claim may be made by the Contractor based on the amount of time taken by the Department to review the Contractor's request, or to apply for or secure the permit amendment, modification or revision. No such proposed additional activity shall commence, nor shall such a changed method be used, until and unless the Department approves in writing the Contractor's request.

In case of a failure by the Contractor to perform pollution control work as required by the Department, the Department may, after having given the Contractor twenty-four (24) hours advance written notice of its intention to do so, arrange for said work to be performed by other forces, and will deduct the cost from any monies due or that may become due to the Contractor under the Contract or under any other State contract.

110.03 Water Pollution Control: The Contractor shall, throughout the duration of the Contract, control and abate siltation, sedimentation and pollution of all waters, including but not limited to under-ground water systems, inland wetlands, tidal wetlands, and coastal or navigable waters.

Construction methods proposed by the Contractor must comply with the approved permit requirements and permit applications. The Contractor shall be responsible for all obligations and costs incurred as a result of the Contractor's failure to comply with the terms and conditions of such permits or permit applications.

110.04 Vacant

110.05 Construction Noise Pollution: The Contractor shall take measures to minimize the noise caused by its construction operations, including, but not limited to noise generated by equipment used for drilling, pile-driving, blasting, excavation, or hauling.

All methods and devices employed to minimize noise shall be subject to the continuing approval of the Department. The maximum allowable level of noise at the residence or occupied building nearest to the Site shall be ninety (90) decibels on the "A" weighted scale ("dBA"). The Contractor shall halt any Project operation that violates this standard at any time until the Contractor develops and implements a methodology that enables it to keep noise from its Project operations below the 90-dBA limit.

110.06 Protection of Archaeological and Paleontological Remains and Materials: The Contractor shall be alert to the possibility that, Project operations may disturb or uncover significant archaeological or paleontological resources or other such remains which in many cases are protected by Federal laws, State laws or both. Archaeological resources are minimally defined by Federal regulations as materials 50 years of age or older. They typically consist of subsurface concentrations of metal, bone, ceramic, or flaked or other shaped stone artifacts. They might also consist of features such as buried building foundations, linear or circular walls made of individual stones rather than concrete or cement, trash-filled pits, patches of burned earth, or distinct patterns of nearly-circular, elliptical, or squared discolorations in newly-exposed soil, accompanied by the types of artifacts described above.

Paleontological resources are defined as any fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust. These typically include fossilized bones, teeth, shells, eggs, or distinct impressions made in bedrock.

When archaeological or paleontological materials are inadvertently encountered, the Contractor shall immediately halt operations in the location of same and shall notify the Department of said discovery. The Contractor shall make every effort to preserve archaeological or paleontological materials intact in their original positions, in order to preserve the geological context and information content of the remains in relation to one another and to the enclosing soil.

The Department shall have the authority to suspend Project work in the area of such discovery for the purpose of preserving or recovering and documenting the archaeological or paleontological materials. The Contractor shall carry out all instructions of the Department for the protection of such

materials, including steps to protect the site from vandalism, unauthorized investigations, accidental damage, and damage from such causes as heavy rainfall or runoff. The Contractor shall reschedule its work to minimize any loss of the time needed to complete the Project while the State evaluates, records and salvages the archaeological or paleontological materials.

Extra work ordered by the Department in this connection will be paid for in accordance with Articles 104.5 and 109.4. Delays caused by archaeological or paleontological preservation and protection, which the Contractor demonstrates have delayed completion of the Project, will be treated under the provisions for extension of time, Article 108.8.

110.07 Controlled and Hazardous Materials: The Department will acquire any "Hazardous Waste Generator Permit(s)" required under the Resource Conservation and Recovery Act, for the management and disposal of hazardous materials on the Site, provided that;

1. such material is within the construction limits defined in the Contract, and
2. such material is not comprised of waste materials generated by the Contractor.

If the Department has designated in the Contract an area of known or suspected contamination within the Project limits, the Contractor shall dispose of all contaminated material in accordance with the relevant Special Provisions.

In the event that the Contractor encounters or exposes any material, not previously known or suspected to be contaminated, but which exhibits properties that may indicate the presence of controlled or hazardous material, the Contractor shall cease all operations in the material's vicinity and shall immediately notify the Department of the material's discovery. The presence of barrels, discolored earth, metal, wood, visible fumes or smoke, abnormal odors or excessively hot earth may indicate the presence of controlled or hazardous material and shall be treated with extreme caution.

If controlled or hazardous materials, other than those required for Contract operations, are discovered at the Site, the Department may engage a specialty contractor to handle and dispose of the materials.

When the Contractor performs support work incidental to the removal, treatment or disposal of controlled or hazardous material, the Department will pay for same at the applicable Contract unit prices. When the Contract does not include appropriate pay items for same, payment will be made in accordance with Section 104.5 hereof.

The Contractor shall observe all security precautions established pursuant to 29 CFR 1910.120 and 1926.65, including all revisions and amendments thereof, and shall not work in any area known to contain or suspected of containing controlled or hazardous material without prior written approval from the Department to do so.

The Contractor shall assume sole responsibility for the proper storage, handling, management, and disposal of all regulated materials and wastes associated with its operations, including, but not limited to, lubricants, antifreeze, engine fluids, paints, and solvents. All costs associated with any failure by the Contractor to properly manage such materials in accordance with federal and state regulations, and all remedial and punitive costs incurred by the Department as a result of such failure, shall be borne by the Contractor.

This Article does not apply to coatings removed by the Contractor.

END OF PART 3
TERMS AND CONDITIONS

APPENDIX C