

## DIVISION 100 - GENERAL CONDITIONS

100.1 Replacement of Former Standard Specifications and Standard Details This 2020 edition of the Maine Department of Transportation's Standard Specifications and Standard Details for Construction ("Standard Specifications") was drafted and adopted by the Department pursuant to the authority granted to it by 23 MRSA § 4243. These Standard Specifications replace and supersede all previous Standard Specifications and Standard Details. The Standard Specifications are Contract provisions issued by the Department that govern the relationship between the Department and the Department's Contractors. By virtue of submitting a Bid on a project, each Bidder is bound by the terms of these Standard Specifications.

### SECTION 101 - CONTRACT INTERPRETATION

Scope of Section This Section consists of abbreviations, definitions, and general rules of interpretation.

101.1 Abbreviations Abbreviations are defined in the following list. Abbreviations not defined in this Section or otherwise in the Contract shall have the meaning that is commonly accepted in the engineering and construction industry.

AAN	American Association of Nurserymen, Incorporated
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
ANLA	American Nursery & Landscape Association
ANSI	American National Standards Institute
ARA	American Railway Association
AREMA	American Railway Engineering and Maintenance-of-way Association
ARTBA	American Road & Transportation Builders Association
ASCE	American Society of Civil Engineers
ASD	Allowable Stress Design
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWWA	American Water Works Association
AWPA	American Wood Protection Association
AWS	American Welding Society

BMP	The Department's "Best Management Practices for Erosion and Sediment Control"
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DREW	Daily Reports of Extra Work
DRB	Dispute Review Board
EIA	Electronic Industries Association
EEO	Equal Employment Opportunity
EMS	Emergency Medical Service
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FSS	Federal Specifications and Standards, General Services Administration
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ISEE	International Society of Explosives Engineers
ISO	Insurance Services Office
ITE	Institute of Transportation Engineers
LFD	Load Factor Design
LRFD	Load and Resistance Factor Design
LUPC	Land Use Planning Commission - Maine
MCTCB	Maine Concrete Technician Certification Board
MDEP	Maine Department of Environmental Protection
MaineDOT	Maine Department of Transportation
MIL	Military Specifications
MRSA	Maine Revised Statutes Annotated
MUTCD	Manual on Uniform Traffic Control Devices
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPCOAT	Northeast Protective Coating Committee
NESC	National Electric Safety Code
NETTCP	New England Transportation Technician Certification Program
NHS	National Highway System
NICET	National Institute for Certification in Engineering Technologies
OJT	On-The-Job Training
OSHA	Occupational Safety and Health Administration
PCI	Precast/Prestressed Concrete Institute
PIN	Project Identification Numbers
QA	Quality Assurance
QC	Quality Control
QCP	Quality Control Plan
QPL	Qualified Products List
RFI	Request for Information
SAE	Society of Automotive Engineers

SEWPCP	Soil Erosion and Water Pollution Control Plan
SHA	State Highway Agency (as used by FHWA, referring to the Department)
SPCCP	Spill Prevention Control and Countermeasure Plan
SSPC	The Society for Protective Coatings
TAPPI	Technical Association of Pulp and Paper Industry
TCP	Traffic Control Plan
USC	United States Code
USDA	United States Department of Agriculture
UL	Underwriter's Laboratory
VECP	Value Engineering Change Proposal

101.2 Definitions Certain words, terms, and phrases are defined below. Capitalized words in this Standard Specifications book are defined under this Section. Words, terms, or phrases that are not defined in this Section 101.2 or otherwise in the Contract shall have the meaning commonly accepted in the engineering and construction industry.

Acceptable Work Work that Conforms or Substantially Conforms to the Contract and is satisfactory to the Department.

Acceptance Consideration of operations, inspections, samples, tests, certifications, proper QCP implementation, and end product properties to determine whether the product will be accepted for payment, including any adjustments to compensation as provided in the Contract.

Acceptance Test Test utilized by the Department to evaluate the quality of a Material or product.

Actual Costs Direct, Project-specific, costs actually incurred by the Contractor in the performance of Work. Actual Costs consist of labor, Material, Equipment, and administrative overhead. For related provisions, see Section 109.7, Equitable Adjustments to Compensation and Time and Section 109.7.2 – Basis of Payment.

Addendum See Bid Amendment.

Aggregate Inert Material such as sand, gravel, broken stone, crushed stone, or a combination of any of these Materials.

Agreement Agreement means Contract Agreement.

Apparent Low Bidder A Bidder that submits the lowest apparently responsive Bid. The Apparent Low Bidder may not be Awarded the Contract if a) the Bid is later found to be non-responsive in accordance with Section 102.11, b) the Bidder is found to be not responsible, c) the Bidder fails to comply with all applicable pre-Award Conditions or other pre-execution requirements of the Contract, or d) the Department chooses not to Award a Contract.

Apparent Successful Bidder The Bidder with the lowest responsive Bid as determined by the Department. A responsive responsible Bidder, usually the Apparent Low Bidder, that is Awarded the Contract. The Department may not execute the Contract with the Apparent Successful Bidder if a) the Apparent Successful Bidder fails to comply with all applicable pre-Award conditions or other pre-execution requirements of the Contract or b) if the Department chooses not to Award a Contract.

Award The execution of the Contract by the Department, conditioned upon the Successful Bidder's performance of all pre-execution requirements of the Bid Documents.

Award Conditions Pre-Award or pre-execution requirements that the Contractor must meet before Contract Execution, including bonding and insurance. For a related provision, see Section 103.5 - Award Conditions.

Best Value Procurement Process Using a Request for Proposals A process for procuring contractual services in which price is only one of several factors used in determining the successful Proposer. See Proposer, Request for Proposals, and Design-Build Contract.

Bid The offer by a Bidder on forms prescribed by the Department to perform the Work in Conformity with all provisions of the Bid Documents for the price(s) set forth.

Bid Amendment A written change to the Bid Documents issued by the Department after advertisement and before the Bid Opening.

Bid Bond A bond furnished with a Bid by a Bidder and its Surety in the amount set forth in the Notice to Contractors or elsewhere in the Bid Documents. The Bid Bond is forfeited if the Apparent Low Bidder refuses to enter into a Contract with the Department.

Bid Contact Person The person identified in the advertised Notice to Contractors, usually the Project Manager, as the person to whom the Bidder must refer technical or Engineering questions from the time of advertisement through Contract Execution, said person being duly authorized by the Commissioner. The Contracts Engineer may be contacted regarding Bidding and contracting procedures. If no one is so identified, the Bidder must refer questions to the Contracts Engineer. All technical or project specific questions must be submitted as described in the Notice to Contractors.

Bidder An individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or other entity that submits a Bid. Upon Contract Execution, the successful Bidder becomes the Contractor.

Bid Documents Documents issued by the Department to solicit Bids from Contractors. Bid Documents generally include the Project Specific Bid Book, Notice to Contractors, Plans and Specifications (including these Standard Specifications), Standard Details, Special Provisions, Bidding instructions, and any Bid Amendments issued by the Department. Documents attached to or referenced in the Bid Documents are part of the Bid Documents.

Contrast “Bid Documents” with “Bid Escrow Documentation” as may be defined by Special Provision.

Bid Escrow Documentation All writings, working papers, computer printouts, charts, schedules of prices, and data compilation that contain or reflect information, quantities, unit costs, data, or calculations used by the Bidder to determine the Bid price, or technical and price proposal in the case of a Design-Build or Best Value Procurement type of Contract, shall be submitted, including but not limited to material relating to the determination and application of:

- Design Costs
- Equipment rates
- Overhead rates and related time schedules
- Labor rates
- Arithmetic extensions
- Subcontractor and Material Supplier Quotations

Any manuals standard to the industry used by the Bidder in determining the Bid are also considered Bid Escrow Documentation. These manuals may be included in the Bid Escrow Documentation by reference and shall show the name and date of the publication and the publisher. Bid Escrow Documentation need not include Bid Documents provided by the Department to all Bidders.

Bid Guaranty A bond or other acceptable security specified in the Notice to Contractors or elsewhere in the Bid Documents that is forfeited if the Apparent Low Bidder refuses to enter into a Contract with the Department. For a related provision, see Section 102.6 - Bid Guaranty.

Bid Opening The date and precise time by which the Bidder must Deliver its Bid to be publicly opened and read as specified in the Notice to Contractors or any applicable Bid Amendment. For related provisions, see Sections 102.7 - Delivery of Bids and 102.9 - Bid Opening.

Blue Book The edition of publications entitled “Rental Rate Blue Book for Construction Equipment” or “Rental Rate Blue Book for Older Construction Equipment,” as applicable, published by Primedia Information Inc., that was current when the Work being priced was performed.

Bridge A structure that is erected over a depression or an obstruction, such as water, a highway or a railway, and has an opening measured along the centerline of the Roadway of more than 20 feet between: the faces of abutments; spring line of arches; extreme ends of openings of box culverts, pipes or pipe arches; or the extreme ends of openings for multiple box culverts, pipes, or pipe arches.

A. Length The length of a Bridge structure is the overall length measured along the construction centerline back to back of backwalls of abutments, if present; otherwise end to end of the Bridge floor; but in no case less than the total opening of the structure.

B. Roadway Width The width measured at right angles to the longitudinal centerline of the Bridge between the bottom of curbs or guard timbers or in case of multiple heights of curbs, between the bottoms of the lower risers.

Business Day Every Calendar Day other than Saturdays, Sundays, and Holidays.

Calendar Day Every day shown on the calendar, beginning at 12:01 a.m. and ending at midnight.

Change Order See Contract Modification

Chief Engineer The Chief Engineer of the Department.

Closeout Documentation All documentation required by the Department to finish the Project in accordance with State, federal, and other requirements. These documents include:

- Letter "All Bills Paid" on Contractor's letterhead
- Request for Final Payment on Contractor's letterhead
- "Buy America" Statement
- Certificate of Materials
- DBE Goal Attainment Verification Form
- Agreement with Final Quantities on Contractor's letterhead
- Testing Compliance Letter

The Department reserves the right to amend this list of required Closeout Documentation

Commissioner The Commissioner of Transportation established by 23 MRSA § 4205.

Compensable Delay See Section 109.5.1 - Definitions - Types of Delays.

Completion Completion occurs when the Contractor has finished all Work pursuant to the Contract, including Delivery of all Closeout Documentation. Completion does not mean substantial Completion. Unless the context indicates otherwise, Completion also does not mean Completion of Physical Work.

Completion of Physical Work Completion of Physical Work occurs when the Work is complete and has undergone a successful final inspection.

Conduit A pipe used for receiving and protecting wires or cable.

Conform or Conformity The performance of an item of Work in strict compliance with all applicable provisions of the Contract. For a related definition, see Substantially Conform.

Construction Easement A right acquired by the Department to use or control property, outside of the established Right-of-Way.

Construction Limit Line A line, usually outside of the Right-of-Way, within which the Contractor may Work and outside of which Work may not be performed without authorization by the Department.

Contract All documents affecting the respective rights and responsibilities of the Department and the Contractor. These documents include, but are not limited to, the Contract Agreement, Project Specific Bid Book, the Notice to Contractors, Plans, the Department's Standard Specifications and Standard Details, Special Provisions, Bid Amendments, Contract Modifications, Geotechnical Information, Permits, Bid Escrow Documentation (if any), the Contractor's Bid prices (as corrected mathematically pursuant to Section 103.1.1 - Unit Prices Govern, if necessary), and all documents incorporated by reference.

Contract Bonds The forms of security approved by the Department, executed by the Contractor and its Surety or Sureties, guaranteeing performance of the Work, and the payment of all obligations pertaining to the Work. For related provisions, see the definitions of Bid Guaranty, Performance Bond, and Payment Bond.

Contract Completion Time Length of time allowed under the Contract to complete the Work pursuant to the terms of the Contract.

Contract Completion Date The required completion date of all Work pursuant to the Contract, except the landscape establishment period and warranty work. The Contract Completion Date is usually included in Special Provision 107 and on the Contract Agreement, Offer, & Award form.

Contract Documents Contract Documents are all documents, whether physically attached or incorporated by reference, which make up the Contract.

Contract Execution Execution of the Contract by the Commissioner or his or her authorized agent by signing the Contract Agreement, Offer, & Award form, which action, upon written notification to the Contractor, forms a Contract as provided in Section 103.8 - Execution of Contract by Department.

Contract Modification A general term describing a formal change to a Contract. Types of Contract Modifications include; change orders, extra work orders, resident work orders, and supplemental agreements. For a related provision, see Section 109.8 - Contract Modification

Contract Time See Contract Completion Time and Section 107.1 - Contract Time and Completion Date.

Contractor After the Department has executed the Contract by cosigning the Contract Agreement, Offer, & Award form provided in the Bid Documents, previously signed by the successful bidder, the Successful Bidder in a low Bid process or the successful Proposer in a best value type of Contract becomes the Contractor. The Contractor will be the single point of responsibility for all Contract obligations to the Department. The Contractor shall be an independent Contractor with respect to the Department and shall not be an employee, agent, or representative of the Department. Alternatively, “contractor,” with a lower case “c,” may mean a firm engaged in construction Work.

Critical Path The sequence of activities from the Project start to its Completion having the greatest cumulative elapsed time, thereby determining the minimum time duration of the entire Project. The Critical Path is identified by the sequence of those activities with the least float.

Critical Rock Slopes Critical rock slopes shall be rock slopes higher than 6 feet with an overburden slope steeper than 3H:1V and all rock slopes greater than 10 feet high.

Culvert Any structure not defined as a Large Culvert, Bridge, or Minor Span that provides a Drainage opening less than 5 feet, under the Roadway or approaches to the Roadway.

Days Calendar Days.

Default See Section 112.1 - Default.

Defects or Defective Work Work that is unsatisfactory, faulty, or deficient in that it is not in Conformity with the Contract or with prevailing industry standards applicable to the Work at the time of submission of the Bid as determined by the Department or its agents. For related provisions, see the definition of Acceptable Work and Section - 101.3.1 Meaning of “Approved,” Etc.

Delay To cause to be late. See Section 109.5 - Adjustments for Delay.

Deliver To cause Receipt by a means set forth in the definition of Received or Receipt.

Department The Department of Transportation of the State of Maine, as established by 23 MRSA § 4205, et seq., for the administration of Highway, Bridge, and other public Works, acting through the Commissioner and his/her duly authorized representatives. For related provisions, see definitions of Project Manager and Resident.

Design-Build Contract A contract in which the Contractor is responsible for both design and construction requirements under the contract. In a Design-Build Contract, the Contractor maybe procured through a Best-Value Procurement process using a Request for

Proposals and evaluation of submitted Proposals using price as one of several evaluation factors as outlined in 23 MRSA § 4244.

Differing Site Conditions See Section 109.4 - Differing Site Conditions.

Disadvantaged Business Enterprise A business that is at least 51% owned and controlled by a woman, minority, or economically disadvantaged person and certified as such by the Department.

Disputes Disagreements, claims, counterclaims, matters in question, and differences of opinion between the Department and the Contractor and those Working for or through the Contractor regarding matters related to the Work that arise after Contract Execution. These include, but are not limited to, interpretation of the Contract, compensation and costs, time for performance, and quality.

Drainage The system of pipes, Drainage ways, ditches, and Structures by which surface or subsurface waters are collected and conducted from the Highway area.

Drawings See Plans.

Dredge Material (Dredge Spoils) Sand, silt, mud, gravel, rock or other sediment or material removed from beneath any surface water. The term, "beneath any surface water," has been interpreted by the MDEP to mean that area that falls beneath the plane bounded by the normal high water line of any stream, river, brook, pond, lake, vernal pool, etc. Note that the entire area of Dredge Material removal could be dry at the time of excavation.

Environmental Information Hazardous waste assessments, dredge material test results, boring logs, geophysical studies, and other records and reports of the environmental conditions. For a related provision, see Section 104.3.14 - Interpretation and Interpolation.

Equipment All machinery, supplies for repair and maintenance of such machinery, tools, and other apparatus necessary or appropriate for Completion of the Work in Conformity with the Contract.

Equitable Adjustment An adjustment to compensation and time due to a change in the nature or scope of the Work made a part of a Contract by a formal Contract Modification. For a related provision, see Section 109.7 - Equitable Adjustments to Compensation and Time.

Excusable Delay See Section 109.5.1 - Definitions - Types of Delays.

Extra Work Work that is outside the scope of the Contract and that the Department determines is necessary.

Extra Work Order See Contract Modification.

Fabrication Engineer The Department's representative responsible for Quality Assurance of pre-fabricated products that are produced off-site.

Federal Contract Provisions Supplement Appendix A of the Standard Specifications and the Project Specific Bid Book, which sets forth additional provisions that apply to federally funded Contracts.

Final Acceptance Acceptance by the Department for all Work and responsibility for the Project from the Contractor, except for any Contractor warranty obligations.

Force Account Work Prescribed Work paid on the basis of Actual Costs and additives as set forth in Section 109.7.5 - Force Account Work.

Geometrics The physical location (horizontally and vertically) and shape of the object under consideration.

Geotechnical Information Boring logs, soil reports, geotechnical design reports, ground penetrating radar evaluations, seismic refraction studies, and other records of subsurface conditions. For a related provision, see Section 104.3.14 - Interpretation and Interpolation.

Haul Road A private way leading to a public way that is used by the Contractor to move Equipment and Materials related to the Work.

Hearing Unless otherwise specified by the Department in writing, a Hearing is a review of a decision that includes a review of existing documentation on file with the Department and any additional documentation, including written arguments and supporting exhibits that may be submitted by any interested party. Unless the context clearly indicates otherwise, a Hearing need not include an evidentiary Hearing for the oral presentation of evidence if such an evidentiary Hearing is not requested or if the Department reasonably determines that such an evidentiary Hearing is not necessary to adequately review the matter at issue. Unless the context clearly indicates otherwise, a Hearing shall not be construed as an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act.

Highway A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Holidays New Years Day, Martin Luther King Day, Presidents Day, Patriots Day, Memorial Day, Independence Day, Labor Day, Indigenous Peoples Day, Veterans Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. For a related provision, see Section 107.3.3 - Sundays and Holidays.

Incentive/Disincentive Payment An adjustment to the contract price of a predetermined amount for each day the Work is completed ahead of or behind the Contract Time, Contract Completion Date, or some specified intermediary milestone. A disincentive is not a penalty, but an estimate of user and other costs incurred by the people of the State of Maine.

Incidentals The terms “Incidentals” and “Incidental to the Contract” mean items that are accessory to or incorporated into the Work and that have no separate Pay Item. Unless otherwise provided in the Contract, the cost of Incidentals shall be included in the Contractor’s prices for the Pay Items. There will be no separate payment for Incidentals.

Incomplete Not complete, as defined above by Completion.

Independent Assurance (IA) Independent assessment of the reliability of test results obtained from Acceptance Testing.

Inexcusable Delay See Section 109.5.1 - Definitions - Types of Delays.

Inspector An authorized representative of the Resident assigned to make detailed inspections of the Work to determine compliance with the Contract.

In Stream Work Any activities conducted in the water (see permits in individual contract documents.)

Laboratory Unless the context indicates otherwise, the testing laboratory of the Department or its designee.

Landscape Establishment Period The period of time commencing at initial Acceptance of each planting and extending for two years, unless otherwise provided in the Contract. For a related provision, see Section 621 - Landscaping.

Landscape Establishment Period Obligations The obligations of the Landscape Subcontractor during the Landscape Establishment Period. Unless otherwise provided in the Contract, these obligations consist of monthly inspection and reporting from March through November of the condition of all plants installed and replacing plants that are not in a healthy, vigorous growing condition. For a related provision, see Section 621 - Landscaping.

Landscape Items Items starting with the number “621” in the Schedule of Items.

Landscape Subcontractor The individual or firm performing Landscape Items, generally a Subcontractor.

Lane A strip of Roadway intended to accommodate a single line of vehicles.

Large Culvert Any structure not defined as a Culvert or Bridge that provides a drainage or non-drainage opening under the Roadway or Approaches to the Roadway, with an opening that is at least 5 feet but less than 10 feet.

Liquidated Damages An amount due and payable to the Department by the Contractor, normally realized through a reduction of amounts to be paid to the Contractor. Liquidated Damages are calculated by multiplying a daily amount set forth in the Contract by the

number of Days the Work remains Incomplete after the Contract Completion Time has expired.

Major Item An individual Pay Item that constitutes 10% or more of the amount of the Awarded Contract, calculated using the Contractor's Bid prices and the estimated quantities contained in the Bid Documents.

Material Any substance specified for use in the construction of the Project and related approaches.

Minor Item All Pay Items that are not Major Items.

Minor Span Same definition as Bridge, except having an opening of between 10 feet and 20 feet, inclusive.

Modification See Contract Modification.

National Highway System (NHS) A system of Interstate Highways and major collectors specifically designated by the Federal Highway Administration. It includes the Interstate System, other urban and rural principal arterials, highways that provide motor vehicle access between the NHS and major intermodal transportation facilities, the defense strategic highway network, and strategic highway network connectors.

Non-conforming Work All Defective, Unauthorized, or Uninspected Work.

Notice of Award A written notice to the Contractor stating that the Contract has been executed.

Notice of Intent to Award A written notice to the Successful Bidder stating that the Department has conditionally accepted its offer and upon receipt of a payment bond, performance bond, insurance certificate and the fulfillment of any other pre-award conditions, the contract will be signed (executed) by the Department. For a related provision, see Section 103.4 - Notice of Award.

Notice to Contractors The advertisement or invitation for Bids published in accordance with Maine law, including electronic advertising, applicable to the Department.

Offer A response to a solicitation that, if accepted, would bind the offeror to perform the resultant Contract. Submission of a Bid constitutes an Offer by the Bidder.

Order A directive from the Department requiring compliance by the Contractor.

Owner The legal or record Owner of the building or Premises on which the Project is to be constructed, generally the State of Maine acting by and through the Department.

Partnering See Section 104.4.1 - Partnering.

Pavement Structure The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

A. Base Course One or more layers of specified Material thickness placed on a subbase or a subgrade to support a surface course.

B. Subbase Layers of specified Material thickness placed on a subgrade to support a base course.

C. Surface Course The top layer(s) of a Pavement Structure designed to accommodate the traffic load, resist skidding, traffic abrasion, and the disintegrating effects of climate. This layer is sometimes called the “Wearing Course.”

Pay Item An item of Work set forth in the Schedule of Items for which the Contractor must provide a price.

Payment Bond The security furnished by the Contractor and its Surety to guarantee payment of all obligations incurred by the Contractor related to the Contract. For a related provision, see Section 110.2.1 - Bonds.

Performance Bond The security furnished by the Contractor and its Surety to guarantee performance of the Work in Conformity with the Contract. For a related provision, see Section 110.2.1 - Bonds.

Permits Permits granted to the Department for the Project. Permits often required include (a) environmental Permits, including Natural Resources Protection Act (NRPA) Permits from MDEP and the Army Corps of Engineers and (b) a U.S. Coast Guard Permit.

Physical Work All Work specified in the Contract that affects the physical environment, including all Work within the Project Limits, final cleaning up and finishing, and Completion of Punch List Items as provided in Section 107.9 - Project Closeout, and removal of traffic control devices.

Plans When the context so indicates, “Plans” mean applicable construction drawings, including plan, profile, typical cross sections, Working Drawings, Standard Details, Supplemental Standard Details, and supplemental Drawings or exact reproductions thereof or electronically displayed equivalents, that show the location, character, dimensions, and details of the Work. Where the context so indicates, “Plan” may also mean a detailed process, program, or method worked out beforehand for the accomplishment of an objective. Examples include QCP, the SEWPCP, the TCP, Safety Plan, and Project specific emergency planning.

Premises Land of the Owner on which the building or buildings now stand or to which they are to be moved.

Prequalification Application The Contractor's Prequalification Application form submitted by the Contractor, which is to be used to request prequalification and provide information that the Department will rely upon to determine the responsibility and qualifications of a Contractor. Said form is available through the Department's Contracts Section and the Departmental webpage.

Prequalification Procedure The current procedure and requirements contained in the Contractor's Prequalification Procedure first adopted by the Department in April 1998 and administered through the Department's Contracts Section.

Process Control Test Test performed at the source of supply of Material to determine whether the Material meets the Specification prior to Delivery.

Profile Grade The trace of a vertical plane intersecting the top of the wearing surface, usually along the longitudinal centerline of the roadbed. Profile Grade means either elevation or gradient of such trace, according to the context.

Program The specific working unit within the Department's Bureaus of Project Development and Maintenance & Operations within which a particular Department project is developed, designed, constructed and administered. Such Programs include the Highway Program, Bridge Program, Multimodal Program and other similar Units.

Progress Meeting See Section 104.4.3 - Progress Meetings.

Project The Bridge, Highway, railroad, pier, airport, building, bike path, pedestrian path, or other infrastructure improvement being constructed, rehabilitated, or repaired, together with all appurtenances and Incidentals.

Project Limits Areas within the Right-of-Way or Construction Limit Lines shown on the Plans or otherwise indicated in the Contract. If no Project Limits are indicated in the Contract, the Project Limits shall be the area actually occupied by the Bridge, Highway, or other infrastructure before construction extending to and including (A) the area outside the Shoulders and ditch lines and within any landmarks or historic features such as fences, fence posts, tree rows, stone walls, corner stones, or other monuments indicating the boundary line, or (B) in the absence of any landmarks or historic features, Sidewalks, Shoulders, and ditch lines to the top of cuts or toe of fills. For a related Maine statute, see 23 MRSA § 653.

Project Manager The Department's duly authorized representative for overall coordination of the Project.

Project Records Records or data of any type on any media, including those produced by the Contractor or its consultants, Subcontractors, suppliers, or manufacturers that are related to the Project. Project Records include, but are not limited to, Plans, Working Drawings, Specifications, manufacturer's recommendations, catalog cuts, daily time reports, records of Force Account Work, schedules and scheduled updates or revisions, quality control Plans and related documentation, inspectors' reports, traffic control Plans and log, safety program and incident reports, soil erosion and water pollution control Plans and log, employment

records, payrolls, internal accounting records, equal opportunity and affirmative action records, on-the-job and Disadvantaged Business Enterprise reports, preconstruction conference records, Progress Meeting records, Partnering records, correspondence, e-mails, and any other documents related to the Work.

Proposal The response to a Request for Proposals. Proposals will normally be requested for anticipated Best Value procurements. See Design-Build, Request for Proposal and Best Value Procurement. In another context, sometimes the Department's solicitation for bids is called a Bid Proposal.

Proposer The entity submitting a Proposal.

Punch List See Sections 107.9.2 - Notice/Inspection/Punch List and 107.9.3 - Notices/ Final Inspections / Physical Work Completion.

Quality Assurance (QA) All planned and systematic operations to ensure that the operation, material, and/or end product meets Specifications. Quality Assurance includes (A) approval and oversight of the Contractor's Quality Control Plan, (B) review of inspector, sampler, tester, and Laboratory qualifications, (C) inspection for Conformity with Contract requirements, (D) Contractor Quality Control, (E) Acceptance Testing, and (F) Independent Assurance.

Quality Control (QC) Planned and specified actions or operations necessary to produce an end product that Conforms to the quality requirements of the Contract. Unless otherwise specified, QC includes inspection and testing for process control to the extent determined necessary by the Contractor. Quality Control is also referred to as Process Control.

Quality Control Plan (QCP) The program and documentation of that program, approved by the Department, which specify the actions, inspection, sampling, and testing necessary to keep production and placement operations within Specifications, including provisions to quickly determine when an operation becomes out of control and those actions that the Contractor will take to restore compliance.

Receipted Bill Written Evidence provided by the Contractor that the cost of materials has actually been paid by the Contractor. This could take the form of a copy of a cancelled check, a copy of an invoice with written verification from the Subcontractor that the bill has been paid, or a written declaration from the Subcontractor, on its letterhead, that the bill has been paid.

Received or Receipt When considering documents, unless the context indicates otherwise, Receipt by regular US mail, overnight courier, service in hand, or by fax or electronic transmission with confirmation of Receipt originating from the recipient (which may be a telephone confirmation). If Delivered by regular US mail, notices that are properly addressed will be deemed Received three Days after mailing, unless the recipient admits earlier Receipt, in which case Receipt will be the date admitted.

Reference Stake A stake set beyond the proposed grading areas for use as a control for the new construction.

Related Entities All general partners, joint venturers, parent firms, subsidiaries, or sister firms that are owned or controlled by the Bidder or other entity under consideration.

Request for Proposal The Department's solicitation in a Best Value Procurement Process for Proposals, such as when soliciting for an anticipated Design-Build Contract. See Proposal and Best Value Procurement Process.

Resident The Department's on-site representative.

Resident Work Order See Contract Modification.

Right-of-Way A general term denoting land, property, or interest therein, usually in the form of a strip, acquired for or devoted to the Project or other purposes.

Road A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Roadbed The graded portion of a Highway within top and side slopes, prepared as a foundation for the Pavement Structure and Shoulders.

Roadside A general term denoting the area adjoining the outer edge of the Roadway. Extensive areas between the Roadways of a divided Highway may also be considered Roadside.

Roadside Development Those items necessary to complete the Highway that provide for the preservation of landscape Materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers; and such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the Highway.

Roadway The portion of a Highway, including Shoulders, for vehicular use. A divided Highway has two or more Roadways.

Schedule of Items A document containing the list of items of Work provided in the Bid Documents on which the Contractor provides prices. The Schedule of Items is a Special Provision.

Schedule of Work A written Work schedule submitted and maintained by the Contractor by which the Contractor Plans and prosecutes the Work. The Schedule of Work contains dates of commencement and Completion of various items of Work within the Contract Time and all authorized extensions. For a related provision, see Section 107.4.2 - Schedule of Work Required.

Shop Drawings See Working Drawings.

Shoulder The portion of the Road or Roadway that is contiguous with the traveled Way and that is provided for accommodation of stopped vehicles, emergency use, and lateral support of base and surface courses.

Sidewalk A way constructed primarily for the use of pedestrians.

Skew or Skew Angle The acute angle formed by the intersection of the line normal to the centerline of the Roadway or the Working line of the Superstructure with a line parallel to the face of the Substructure or, in the case of structural plate units and Culverts, with the centerline of the structural plate units and Culverts.

Special Provision Revisions to the Standard and/or Supplemental Specifications applicable to an individual Project or Contract.

Specifications A written or electronic textual compilation of provisions and requirements for the performance of the Work, including incorporations by reference.

Standard Details Detailed Drawings published and approved by the Department for general application and repetitive use.

Standard Specifications Maine Department of Transportation Standard Specifications and Standard Details for Construction Revision of 2020, which were published and approved by the Department pursuant to 23 MRSA § 4243 for general application and repetitive use on Projects.

State The State of Maine acting through its authorized agencies and representatives.

Street A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Structures Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, services pipes, underdrains, foundation drains, and other manufactured features.

Strut See Large Culvert.

Subcontractor An individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or any other entity to whom the Contractor subcontracts a portion of the Work. A subcontracting arrangement shall be considered to exist when a person or firm assumes obligation through a written contract with the Contractor for performing part of the Work using its own Equipment and workers, procuring its own Materials and supplies, and furnishing its own supervision with only general overall supervision being exercised by the Contractor or higher tier Subcontractors. Unless the

context indicates otherwise, Subcontractors include suppliers, vendors, fabricators, and any other entities with which the Contractor contracts to perform any portion of the Work.

Subgrade The top surface of a Roadbed upon which the Pavement Structure, Shoulders, and curbs are constructed.

Subgrade Treatment Modification of Roadbed Material by stabilization.

Substantially Conform or Substantial Conformity Substantially Conform or Substantial Conformity means that the Work at issue, though not in strict accordance with the Plans, Specifications, or other Contract requirements, Conforms sufficiently to the applicable standard such that it may be acceptable to the Department (possibly with a credit to the Department) and not require removal, as determined by the Department. For a related definition, see Conformity. For a related provision, see Section 106.8.1 - Substantially Conforming Work.

Substructure All of that part of the Structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the backwalls, parapets, and wingwalls of abutments.

Successful Bidder The low, responsive, responsible bidder to whom the Department intends to award the Contract. This status is evidenced by a “Notice of Intent to Award” Letter sent to the Successful Bidder.

Superintendent The Contractor’s authorized on-site representative who is in charge of and responsible for the Work.

Superstructure Excluding backwalls, wingwalls, and wing protection railing, the portion of the Structure above the bearings of simple and continuous spans, the skewbacks of arches, and the top of footings of rigid frames.

Supplemental Liquidated Damages Liquidated Damages for additional costs resulting from Contractor’s failure to complete a specific Work item, phase, or milestone within the time specified in the Contract for that item. Supplemental Liquidated Damages are in addition to and separate and distinct from Liquidated Damages.

Supplemental Specifications Approved additions or modifications to the Standard Specifications.

Supplemental Standard Details Approved additions or modifications to the Standard Details.

Surety The corporation, limited liability company, partnership, or individual, or other entity, other than the Contractor, that executes or is obligated under a Contract Bond or Bid Bond.

Traveled Way The portion of the Roadway that is intended for the movement of vehicles, exclusive of Shoulders and auxiliary Lanes.

Unacceptable Work All Work that does not Substantially Conform to the Contract as determined by the Department.

Unauthorized Work Work performed without providing the Resident with reasonable notice of the date and time that the Work is to be performed, Work performed contrary to the instructions of the Department, or any Extra Work performed without written Contract Modification or Agreement. For a related provision, see Section 106.8.3 - Unauthorized Work.

Uncontrollable Events Events or acts that were unforeseeable at the time of Bid submission and that were beyond the Contractor's control in that the risk of the event or act could not have been prevented or managed by the Contractor with proper planning, coordination, Subcontractor management, insurance, bonding, maintenance, erosion control, traffic control, security precautions, workers or Equipment. Uncontrollable Events are of two types: (A) severe weather events that meet the requirements of the first sentence of this definition and/or (B) non-weather events that meet the requirements of the first sentence of this definition which might include acts by foreign enemy, quarantine restrictions, strikes not involving the Contractor, action or inaction by governmental authorities, action or inaction by Utility Companies or other third parties (not Subcontractors) working on Project related Work within the Project Limits, and freight embargoes. Uncontrollable Events specifically do not include: fires (unless caused by a weather event described in this definition above), acts by other third parties, including vandals and members of the traveling public, non-performance of Subcontractors (except in cases of unforeseeable, permanent, and complete cessation of all operations by the Subcontractor for reasons unrelated to the Contractor), and difficult, but foreseeable weather for the location and time of the Work, including but not limited to cold, snow, and ice in the winter, flooding caused by snow melt and rain in the spring, rain in the fall, and thunderstorms in the summer.

Uninspected Work Work that was performed without inspection by the Department.

Unit Price The price for one unit of Work submitted by the Bidder in its Bid.

Utility Companies All persons or entities set forth in 35-A MRSA § 2501(2).

Utility Facilities All Structures, facilities, Equipment, and all appurtenances thereto used by Utility Companies, including, but not limited to, poles, wires, support poles, guys, anchors, water pipelines, sewer pipelines, gas pipelines, all other pipelines, fire alarms, service connections, meter boxes, valve boxes, light standards, cableways, Conduits, signals, and manholes.

Value Engineering Change Proposal See Section 109.6 - Value Engineering.

Wetlands Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Winter Suspensions See Section 107.5.1 - Winter Suspensions.

Work All labor, services, personnel, Materials, Equipment, tools, supplies, and Incidentals required or indicated by the Contract in Conformity with the same. For a related provision, see Section 105.1 - Intent of the Contract.

Working Day:

Weather Event Any precipitation, such as rain, sleet, snow, or fog that causes wet pavement that prevents the contractor from completing work within the Construction Limits as determined by the Department. This excludes ambient air temperatures below Specification.

Weather Dependent Activities Contractor scheduled work that cannot be completed should a Weather Event occur. Paving or other activities as determined by the Department will be considered Weather Dependent Activities.

Working Day Any Calendar Day except:

- Identified non-work days in the Contract Special Provision 107
- Saturdays, Sundays and Holidays – as outlined in Section 107.3.3
- The period from November 15<sup>th</sup> to April 15<sup>th</sup>, inclusive
- Any day a Weather Event prevents the Contractor from performing at least seven hours of weather dependent activities, as determined by the Department. Up to a three-hour hold prior to the start of work may be required if weather conditions are uncertain.

The Contractor may request, in writing, a non-working day due to a Weather Event up to 16 hours in advance of the normal start time. The Department may approve this request depending on the certainty of the forecast.

If the Contractor elects to work a Saturday, an allowable holiday, or receives approval to work Sunday, the same process will be utilized to determine if it is a Working Day.

If the Contractor requests approval to work Saturday and does not cancel their request by Thursday at the end of shift, that Saturday will be considered a Working Day regardless of the actual weather conditions and whether work occurred.

Working Drawings Plans, sketches, or Drawings provided by the Contractor, or its Subcontractors, vendors, or fabricators for the purpose of supplementing the Plans provided in the Bid Documents and being necessary to demonstrate that the Work will comply with the Contract and meet the intent of the Contract. Working Drawings shall be of sufficient

detail to meet the purpose set forth in the preceding sentence. Examples include Shop drawings, erection Plans, falsework Plans, cofferdam Plans, and bending diagrams for reinforcing steel.

Work Order See Contract Modification.

### 101.3 General Rules of Interpretation

101.3.1 Meaning of “Approved,” Etc. Unless the Contract clearly indicates otherwise, whenever anything is to be done or is not to be done unless “approved,” “accepted,” “authorized,” “ordered,” “required,” “determined,” “directed,” “specified,” “designated,” “established,” “suitable,” “satisfactory,” “sufficient,” “unacceptable,” or a similar word or phrase, the word or phrase shall be interpreted as if it were followed by the words “by the Department” or “to the Department” as applicable.

101.3.2 Referenced Publications The Contractor is responsible for obtaining all manuals, Specifications, reference guides, or other publications referenced or indicated by the Contract and performing the Work in Conformity with the same. Unless a specific date or version is specified, the Contractor shall use the most recent version of such publication that existed at the time the Bid was submitted.

101.3.3 Cross References Cross-references are sometimes provided in the Contract. (Example: “For a related provision, see Section \_\_\_”). These cross-references are provided for convenience only and are not a comprehensive listing of related Sections. The lack of a cross- reference or an incorrect reference shall not be interpreted as indicating that there are no related provisions and does not relieve the parties of the obligation to read the Contract as a whole.

101.3.4 Headings and Tables of Contents All headings, indices, titles, and tables of contents are for convenience only. They do not control interpretation and do not relieve the parties of the obligation to read the Bid Documents or Contract as a whole.

101.3.5 Calculated Dimensions Control In the case of discrepancy between calculated dimensions and scaled dimensions, calculated dimensions shall control.

101.3.6 Priority of Conflicting Contract Documents If the Contractor discovers any ambiguity, error, omission, conflict, or discrepancy (“ambiguity, etc.”) related to the Contract Documents that may significantly affect the cost, quality, Conformity, or timeliness of the Work, The Contractor must comply with Section 104.3.3 - Duty to Notify Department If Ambiguities Discovered. In the case of ambiguity, etc., the following components of the Contract Documents shall control in the following descending order of priority:

- Bid Amendments (most recent to least recent)
- Project Specific Permit Requirements
- Special Provisions
- Notes on Plans

Plans  
Supplemental Specifications  
Supplemental Standard Details  
Standard Specifications  
Standard Details

101.3.7 Multiple Pay Items When there is more than one Pay Item for similar Work governed by one Specification, the item number in the Specification may be appended with additional digits to differentiate such multiple Pay Items. For example, Specification item 900.06 also covers Pay Items 900.061, 900.062, 900.0601, and 900.0602, etc. unless the context clearly indicates otherwise.

## SECTION 102 - BIDDING

Scope of Section This Section includes requirements related to eligibility to Bid and the Bidding process from advertisement for Bids, through Bid Opening, to the analysis of Bids.

### 102.1 Eligibility to Bid

102.1.1 Basic Requirements To be eligible to Bid, prospective Bidders must (A) not have been debarred or suspended from Bidding, and (B) not be in Default with respect to any outstanding Contract with the Department, unless the Department grants written permission to Bid despite such Default. For related provisions, see Sections 102.9 - Bid Opening and 103.3 - Post-Bid Qualification.

102.1.2 Suspension From Bidding The Department may suspend the right of a Contractor to submit Bids as the general Contractor on construction Projects being developed by the Department's Bureau of Project Development for up to two years pursuant to Department's "Rules Regarding Suspension From Bidding."

102.1.3 Debarment The Department may debar a Contractor from Bidding, subcontracting, or being employed in any capacity regarding any Project administered by the Department pursuant to "Rules Regarding Debarment of Contractors," Department Register 17-229, Chapter 102 (October 2, 1985).

102.2 Advertisement - Notice to Contractors A Notice to Contractors will provide a solicitation or an invitation to bid and be advertised in printed or electronic media pursuant to Maine law. Such Notice will contain a brief and general description of the nature and location of the Work and information about how to Bid and how to provide any prequalification requirements.

102.3 Examinations of Documents, Site and Other Information Before submitting a Bid, the Bidder is responsible for: (A) obtaining and examining the Plans, Specifications, all Bid Amendments, and all other Bid Documents; (B) examining the Geotechnical Information and all other information provided or referenced in the Bid Documents; (C)

examining the site(s) of Work and making other examinations and investigations that are needed to Make the Bidder fully aware of the conditions that would be encountered in performing the Work, and (D) communicating with the Department as provided in Section 102.5 - Communication Before Bid Opening. For a related provision, see Section 102.7.2 - Effects of Signing and Delivery of Bid.

102.3.1 Geotechnical Information Bidders and Contractors are obligated to examine and, if necessary, obtain any additional available geotechnical information. If one is available, the project geotechnical report may be accessed at the Department's web site.

The Department shall not be responsible for the Bidders' and Contractors' interpretations of or estimates or conclusions drawn from the Geotechnical Information. Data provided may not be representative of the subsurface conditions between the boring locations.

This section does not diminish the duties imposed upon parties in Section 102 or in any other sections.

102.4 Estimated Quantities Quantities shown in the Bid Documents are estimates, only to be used for the preparation and comparison of Bids. For related provisions, see Sections 109.1- Changes in Quantities and 109.2 - Elimination of Items.

#### 102.5 Communication Before Bid Opening

102.5.1 Questions From Bidders Bidders shall direct all technical or engineering questions, including requests for explanations or interpretation, in writing to the Bid Contact Person noted in the Notice to Contractors, typically the Project Manager. All questions must be transmitted as described in the Notice to Contractors and must be received by the Department at least 48 hours before Bid Opening. General questions relating to the Bidding process may be referred to the Department's Contracts Section. For a related provision, see Section 102.5.3 - Bid Amendments.

102.5.2 Bidder's Duty To Notify Department If Ambiguities Discovered Bidders shall not take advantage of any ambiguity, error, omission, conflict, or discrepancy ("ambiguity, etc.") relating to the Bid Documents, Geotechnical Information, site conditions, or any other information that may significantly affect the cost, quality, Conformity, or timeliness of the Work. If a Bidder discovers any such ambiguity, etc., it must notify the Bid Contact Person immediately in writing. Failure to provide such notice constitutes a waiver of any claim for entitlement for additional compensation or time related to such ambiguity, etc.

102.5.3 Bid Amendment The Department will interpret or modify the Bid Documents only by written Bid Amendment or other writing issued by the Department's Contracts Section. The Department is not bound by any other oral or written representations, including information exchanged verbally at pre-Bid meetings. The Department will issue written Bid Amendment in response to questions from Bidders when

the answers: (A) relate to ambiguous, incorrect, or missing information in the Bid Documents; (B) are not apparent to Contractors experienced in the type of Work covered by the potential Contract; and (C) could have a significant impact on the cost, quality, Conformity or timeliness of the Work. For a related provision, see Section 102.5.1 - Questions From Bidders.

102.6 Bid Guaranty Bids must be accompanied by a Bid Guaranty that complies with all the requirements of this Section, unless noted otherwise in the Notice to Contractors and the Bid Documents.

The Bid Guaranty must be: (A) in the amount specified in the Notice to Contractors and the Bid Documents; (B) made payable to the “Treasurer - State of Maine”; and (C) one of the following types: a Bid Bond Conforming to the next paragraph, a cashier's check, a certified check, or a United States Postal money order.

Bid Bonds must be: (A) issued by an insurance company licensed or approved by the State of Maine, Department of Business Regulation, Bureau of Insurance, to do business in the State of Maine; (B) properly signed by the Bidder (as Principal) and a duly authorized representative of the insurance company referenced above, and (C) on the Department’s Bid Bond form (or an exact copy thereof) OR must not contain any significant variations from said form as determined in the sole discretion of the Department.

Bid Bonds for electronic Bids must be delivered, received, or faxed to the number in the Notice to Contractors before the Bid Opening time. Original Bid Bonds must be received within 72 hours for faxed submittals. Electronic Bid Bonds that accompany electronic Bids are acceptable.

### 102.7 Delivery of Bids

102.7.1 Location and Time The Bidder must Deliver its Bid and Bid Guaranty in a sealed envelope to the exact location and before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment. The Bid and Bid Guaranty must be signed by duly authorized individuals. The sealed envelope must be labeled with the Bidder's name, the Project location, WIN, and the words “Bid Enclosed.” As a minimum, the Bidder will submit a Bid Package consisting of the Notice to Contractors, the completed Acknowledgement of Bid Amendments form, the completed Schedule of Items, 2 copies of the completed Agreement, Offer, & Award form, a Bid Bond or Bid Guarantee, and any other Certifications or Bid Requirements listed in the Project Specific Bid Book. For a related provision, see Section 102.11 – “Bid Responsiveness.”

Electronic Bids must be submitted to the appropriate electronic bid system before the precise time (as determined by the Department) specified in the Notice to Contractors or any applicable Bid Amendment.

### 102.7.2 Effects of Signing and Delivery of Bids

A. Offer and Agreement to Pre-execution Terms The signing and Delivery of a Bid represents: (1) an offer by the Bidder to perform the Work for the price(s) submitted within the time(s) specified and in Conformity with all provisions of the Bid Documents; and (2) the Bidder's Agreement to all the provisions of the Bid Documents governing requirements and procedures applicable before Contract Execution. The Bidder's offer shall be irrevocable until the expiration of the time for Contract Execution by the Department set forth in Section 103.8, except as provided in Sections 102.8 and 102.10 regarding withdrawal of Bids.

B. Bidder Representations By signing and Delivering a Bid, the Bidder represents that: (1) the Bidder has performed the examinations required by Section 102.3 - Examinations of Documents, Site and Other Information; (2) the Bidder has given the Department written notice of all ambiguities, etc. discovered by the Bidder as required by Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered; and (3) the Bidder has sufficient knowledge of the Bid Documents, Geotechnical Information, the site, and other conditions to properly price, schedule, plan, and perform the Work.

C. Certifications By signing and Delivering a Bid on federally funded or partially federally funded Contract, the Bidder certifies as provided in all federal certifications set forth in the Project Specific Bid Book, including those set forth in Section 1 thereof. By signing and Delivering a Bid, the Bidder further certifies as provided in Section 105.10.2(F) - Certification of Continuing EEO Efforts.

102.8 Withdrawal of Bids Before the Time Specified for Bid Opening A Bidder may withdraw a Bid after Delivery, provided the request for such withdrawal is made in writing or in person before the time set for Bid Opening in the Notice to Contractors. The Bidder may revise and resubmit a Bid so withdrawn before the time specified for Bid Opening.

102.9 Bid Opening Bids will be opened and publicly read at the time and place specified in the Notice to Contractors or any applicable Bid Amendments. The Department will normally read publicly only the total Bid Price of each Bid. Unit and lump sum prices are available for inspection by the Bidders immediately after the Bid Opening process.

The public reading of a Bid does not constitute a determination by the Department of whether the Bid is responsive or of whether the Bidder is responsible, though the Department may refuse to read Bids that are obviously non-responsive. Accordingly, the Department may reject a Bid as non-responsive and/or determine a Bidder is not responsible or ineligible to Bid even if that Bidder's Bid is read at Bid Opening.

102.10 Withdrawal of Bids in Multiple Bid Context Bids may not be withdrawn after the time of Bid Opening, except under the limited circumstance set forth in this Section 102.10.

If a Bidder has submitted Bids on multiple Projects that have the same Bid Opening time, and if after the reading of Bids the Bidder has submitted the apparent low Bid on one Project, then the Bidder may withdraw any Bids on other Projects for which no Bids have

yet been read. Such a request for withdrawal must be made in person or in writing. Bids withdrawn will not be considered. The Bidder assumes sole responsibility for the risk that the Bidder's apparent low Bid is rejected as non-responsive or that the Bidder is determined to be not responsible.

### 102.11 Bid Responsiveness

102.11.1 Non-curable Bid Defects The Department **WILL REJECT** Bids as non-responsive if ANY ONE of the following occurs:

The Bid and Bid Guaranty are not Delivered to the precise location and by the precise time set forth in the Notice to Contractors or any applicable Bid Amendment.

The Bidder is not eligible to Bid as set forth in Section 102.1 - Eligibility to Bid.

The Bid is not signed by a duly authorized representative of the Bidder.

A Bid Guaranty Conforming to Section 102.6 - Bid Guaranty is not submitted.

The unit price and bid amount is not provided or a lump sum price is not provided or is illegible as determined by the Department.

The Bidder fails to indicate the Bidder's choice where the Bid Documents clearly require a choice.

The Bid contains any conditional or alternate Bidding language, including the right to accept or reject an Award of the Contract.

The Bidder submits more than one Bid for the same Contract, or the Bidder and any Related Entity each submit a Bid for the same Contract.

The Department has substantial evidence of collusion by the Bidder.

The Bidder fails to comply with any provision in the Bid Documents that expressly indicates that such non-compliance will cause Bid rejection.

When A plus B bidding is specified, the bid does not contain the number of Calendar Days bid to complete the work

The Bid is not submitted on the most current forms provided by the Department or identical copies thereof.

The Bidder will have no opportunity to cure the above Non-curable Bid Defects.

102.11.2 Curable Bid Defects Unless the Department waives a curable Bid defect, the Bidder must cure, within the time stated in the written notice by the Department, but not

less than 24 hours, all other Bid Defects not listed in Section 102.11.1 - Non-curable Bid Defects that are identified by the Department. Failure to cure such Defects within said time may result in forfeiture of the Bidder's Bid Guaranty. Upon such failure, the Department may take any action in the best interests of the Department, including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

Such curable Bid Defects include, but are not limited to, the following.

The Bidder signs only one of the Contract Agreement Offer & Award forms.

Missing total sum of the items provided in the Schedule of Items.

The prices or signatures on the Bid or Bid Guaranty are not in ink or other non-erasable substance.

Failure to acknowledge Receipt and consideration of all Bid Amendments.

All other Defects that do not create a significant question as to the Bidder's total Bid amount or the Bidder's ability to complete the Work within the Contract Time or by the Contract Completion Date as determined by the Department.

Materially unbalanced Bids may create a significant question as to the Bidder's ability or will to complete the Work within the Contract Time in accordance with the requirements of the Contract; see Section 103.1.2 - Unbalanced Bids.

Contractors prequalified for the general category stated in the Notice to Contractors may be determined non-responsive by the Department based on recent or new data provided since the last determination of prequalification for that Contractor.

## SECTION 103 - AWARD AND CONTRACTING

Scope of Section This Section includes requirements related to the final determination of Bid responsiveness and Award and execution of the Contract.

### 103.1 Analysis of Bids

103.1a Tie Bids - In the case where two responsive bids from responsible bidders are equal monetarily, the Department shall determine the apparent low bidder by flipping a coin. The coin shall have sides clearly marked as heads and tails. The contractor whose first letter in its official company name that comes first in the alphabet shall be heads.

If there are three bids, each bidder will flip the coin and the bidder with the odd toss will be the winner. (i.e. if the results are two heads and a tails, the bidder who had tails is the winner). For a three way tie, bidders may flip their own coin or have the Contracts Engineer flip for them.

The coin flip will occur at the next bid opening by the Contracts and Specifications Engineer or a designee. The tied bidders may attend the coin flip in person or watch on the internet as they choose.

103.1.1 Unit Prices Govern After Bid Opening, the Department will review the mathematics of all apparently responsive Bids. In the event of a discrepancy between (A) unit and lump prices and (B) extensions and/or the total Bid Price, the unit and lumps sum prices shall govern and the total Bid Price will be adjusted accordingly.

#### 103.1.2 Unbalanced Bids

A. Definitions An Unbalanced Bid is a Bid that is Mathematically Unbalanced and that may also be Materially Unbalanced. Mathematically Unbalanced means a Bid containing lump sum or Unit Prices that do not reflect reasonable direct costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs. Materially Unbalanced means a Mathematically Unbalanced Bid that generates a reasonable doubt that said Bid will represent the lowest ultimate cost to the Department.

B. Comparison and Possible Bid Rejection The Department will compare the price of items contained in the Bid of the Apparent Successful Bidder with the estimate prepared by the Department. If the Bid is Mathematically Unbalanced, the Department may, in its discretion, notify the Apparent Successful Bidder and request an explanation. There shall be no negotiation or changes in prices. If the Bidder fails to provide a reasonable explanation, and if the Department finds the Bid is Materially Unbalanced, the Department may reject the Bid as non-responsive and may take any action that is in the best interests of the Department, including those set forth in Section 103.6 - Failure to Fulfill Award Conditions.

103.1.3 Waiver of Defects and Technicalities; Right to Reject Bids The Department reserves the right to reject any or all Bids and to advertise for new Bids if doing so is in the best interest of the Department. The Department reserves the right to waive curable Bid Defects and other technicalities without notice to any party. Refer to section 102.11.2 for Curable Bid Defects.

103.2 Return of Bid Guaranty Bid Bonds will not be returned unless so requested. Bid Guaranties other than bonds will be returned within 7 Days following Bid Opening, except that the Bid Guaranties from two lowest responsive Bids from responsible Bidders will be retained until Contract Execution or rejection of all Bids.

#### 103.3 Post-Bid Qualification

103.3.1 Pre-Qualification Requirement for Award If the Notice to Contractors lists a Pre-Qualification requirement, the Apparent Successful Bidder must successfully complete the prequalification process as a condition of Award.

103.3.1.1 Notice and Information Gathering After Bid Opening and as a condition for Award of a Contract, the Department may require an Apparent Successful Bidder to demonstrate to the Department's satisfaction that the Bidder is responsible and qualified to perform the Work.

If such qualification is required, the Department will provide the Bidder with written notice to that effect. Such notice will include a brief description of the reasons why such qualifications is required, and may require the Bidder to provide any information requested in the "Contractor's Prequalification Application" form adopted by the Department.

If requested by the Bidder, the Department shall provide an opportunity for the Bidder to present evidence of qualifications at a reasonable time and place.

103.3.2 Notice of Determination After the Bidder's presentation of evidence of qualifications (if required), the Department will notify the Bidder of its determination in writing. If a determination of "Not Qualified" is rendered, the Department's Chief Engineer will send the notice, which will set forth the specific reasons therefore to the extent practical. Such reasons include the following.

- (A) Default(s) or termination(s) on past or current Contracts.
- (B) Failure on past or current Contracts to pay or settle all bills for labor, Materials or services; to comply with directives of the Department, to fulfill warranty obligations, or to provide Closeout Documentation.
- (C) "Below Standard" performance as determined from the Department's Contractor's Performance Rating process.
- (D) Insufficient bonding capability or Inability of the Contractor to obtain or retain Performance or Payment Bonds meeting Department requirements, or a pattern of unsupported Claims.
- (E) Failure to accept an Award of a Contract made by the Department.
- (F) Failure to provide information requested by the Department in a timely manner.
- (G) Debarment, suspension or a denial of prequalification or "award of contract" by any federal, State, or local governmental procurement agency or the Contractor's Agreement to refrain from Bidding as part of the settlement with any such agencies or any of the reasons contained in Section 102.02 of the "Rules Regarding Debarment of Contractors," Maine Department of Transportation Register 17-229, Chapter 102 (October 2, 1985).
- (H) Failure to demonstrate ability to do work to the satisfaction and at the sole discretion of the Department.

- (I) Number of personnel working directly for the Contractor with applicable knowledge and experience is significantly below industry standards.
- (J) Safety Record, Environmental Record, Civil Rights, or Equal Opportunity Record significantly below industry standards.
- (K) Serious misconduct that the Department reasonably determines will substantially and adversely affect the cost, quality, or timeliness of Work, or the safety of workers or the public, any deceptive, evasive, or fraudulent statements or omissions contained in the Application, made or omitted at any interview or hearing, or otherwise made to or omitted from the Department; or any other substantial deficiencies in experience or conduct that are clearly below industry standards and that clearly demonstrate in the sole discretion of the Department that the Contractor is “Not Qualified.”

103.3.3 Appeal To appeal a “Not Qualified” determination, the Bidder must Deliver a written “Request for Appeal of Qualification Determination” to the Commissioner within 48 hours of Receipt of such determination. The Commissioner or the Commissioner's designee will grant such Requests for Appeal unless the Department reasonably determines that Delay of Award pending appeal is likely to cause substantial harm to the interests of the Department. If the Request for Appeal is denied, the determination of “Not Qualified” is upheld and the Award process will proceed without the unqualified Bidder.

If the Request for Appeal is granted, the Bidder and the Chief Engineer must Deliver to the Commissioner or the Commissioner’s designee any information or arguments that the parties want considered within 14 Days of Receipt of a “Not Qualified” determination.

Within 14 Days of Receipt of such information and arguments, the Commissioner or the Commissioner’s designee will notify the Bidder in writing as to whether: (A) the determination of “Not Qualified” is upheld, modified or reversed; or (B) the Commissioner or the Commissioner’s designee elects to submit the issue to binding or non-binding alternative Dispute resolution.

After a final determination of “Not Qualified,” the Bidder’s Bid Guaranty will be returned and the Bidder will be ineligible for Award of future Department Contracts until the Bidder is prequalified pursuant to the Department’s Prequalification Procedure.

103.4 Notice of Intent to Award The Department has 30 Days following Bid Opening to Deliver a written Notice of Intent to Award and request a Payment Bond, Performance Bond, insurance bond, special certifications, and other information from the Apparent Low Bidder. If a notice of Intent to Award is not sent within 30 days of receipt of the Bid Opening, the Apparent Successful Bidder may withdraw its Bid without forfeiture of its Bid Guaranty or Bidding eligibility. If the Department and the Apparent Successful Bidder agree, an extension beyond the 30 days of the Bid and Bid prices may occur and the Bid remains viable. For a related provision, see Section 103.5 - Award Conditions.

103.5 Award Conditions The Apparent Successful Bidder must provide and/or perform all of the items listed in this Section 103.5 within 14 Days of Receipt of the Notice of Intent to Award. Unless indicated otherwise, all items must be Delivered to the Department's Contracts Engineer.

103.5.1 Performance and Payment Bonds Performance and Payment Bonds complying with Section 110.2.1 - Bonds.

103.5.2 Insurance Certificates Certificates of Insurance complying with Section 110.3 - Insurance.

#### 103.5.3 Non-Resident Contractor Requirements

A. Definition A Non-Resident Contractor is defined as a Contractor that is: (A) any individual who is not a resident of the State of Maine, or (B) any firm, corporation, limited liability company, partnership, joint venture, sole proprietorship, or other entity that (i) is not licensed to do business within the State of Maine, or (ii) does not have a principal place of business within the State of Maine.

B. Requirements If a Non-Resident Contractor, the Apparent Successful Bidder must file with the Department a copy of a written appointment of an attorney admitted to practice in the State of Maine having a place of business within the State. The appointment must: (A) set forth the attorney's business and personal addresses, and business telephone and fax numbers, (B) name said attorney to be the true and lawful attorney of the Non-Resident Contractor, (C) set forth that the Contractor agrees that any lawful process that is served on said attorney shall have the same legal force and validity as if served on the Contractor, (D) set forth that the appointment shall continue in force as long as any potential liability in any way related to the Work or the Contract remains or until the Department receives written notice of a change of appointment Conforming to this paragraph, (E) provide that service of such process may be made by leaving a copy of the process in the hands or in the office of the Resident attorney and that such service will be effective upon the Non-Resident Contractor, as if service were made in accordance with Rule 4 of the Maine Rules of Civil Procedure, and (F) provide that the Contractor expressly waives any and all defenses regarding service of process under Rule 12 of said Civil Rules or otherwise. The appointment shall be filed in the office of the Maine Secretary of State.

103.5.4 Execution of Contract By Bidder The properly completed and signed Contract Agreement, Offer, & Award form provided with the Bid constitutes the Bidder's offer. Once the Department has received the bonds, insurance, and any other pre-award items required, the Department will sign the Contract Agreement, Offer, & Award form and execute the Contract. The point of Contract execution is when the Contractor receives the written Notice of Award.

103.5.5 Bid Escrow If required by Special Provision, the Apparent Successful Bidder must provide a legible copy of Bid Escrow Documentation and a related Affidavit Conforming to said Special Provision. Failure to provide Conforming Bid Escrow

Documentation or the Affidavit constitutes a refusal to enter into the Contract and will result in the Bidder's forfeiture of its Bid Guaranty.

103.5.6 Other Conditions The Apparent Successful Bidder must comply with all other conditions set forth or referenced in the Notice of Intent to Award.

103.6 Failure to Fulfill Award Conditions Failure of the Apparent Successful Bidder to fulfill all conditions of Award within the time provided or to otherwise accept Award will result in forfeiture of the Award to the Apparent Successful Bidder and the forfeiture of the Bid Guaranty. Such Bidder will be prohibited from submitting a Bid for the Work in the event that the Work is re-advertised. Further, the Department may refuse to accept any Bid from the Bidder on any Project for a period of two years from the date of such refusal.

The Department may then take any action that the Department determines is in the best interest of the Department, including Awarding the Contract to the responsible Bidder with the next lowest responsive Bid, rejecting all Bids, and/or re-advertising the Work.

103.7 Forfeiture of Award The Department reserves the right to stop the Award of any Contract at any time before the Contract Execution without liability if doing so is in the best interest of the Department. Any costs incurred by the Bidder before Contract Execution shall be the sole responsibility of the Bidder.

103.8 Award of Contract by Department Once the Contractor has met the requirements of the Notice of Intent to Award letter, the Department has 14 days to execute the Contract and notify the Contractor of the award with a written Notice of Award. If a Notice of Award is not sent within 14 days, the Apparent Successful Bidder may withdraw its Bid without forfeiture of its Bid Guaranty or Bidding eligibility. For a related provision, see Section 107.2 - Commencement of Contract Time.

103.9 Computation and Extension of Time In the event that a time period provided in this Section 103 concludes on a Holiday, Saturday, or Sunday, said time period shall be extended to the next Business Day.

The Department and Apparent Successful Bidder may extend the time for the Award process, fulfillment of Award Conditions, or execution of the Contract by mutual Agreement. Unless specifically and mutually agreed to in writing, such extensions shall not extend the Contract Time or the Contract Completion Date.

## SECTION 104 - GENERAL RIGHTS AND RESPONSIBILITIES

Scope of Section This Section sets forth certain rights and responsibilities of the Department and the Contractor that are generally applicable to all Contracts. This Section is not all inclusive, and additional rights and responsibilities are set forth elsewhere in the Contract.

### 104.1 General

104.1.1 Basic Roles of the Parties The Contractor has the authority and responsibility to perform all Work in Conformity with the Contract. The Department has the authority and responsibility to assure that the Contractor does so.

104.1.2 Joint Covenants of Good Faith and Fairness This Contract imposes an obligation of good faith and fair dealing on both parties in the execution, performance, interpretation, and enforcement of the Contract. With a positive commitment to honesty and integrity, the Contractor and the Department agree to do the following: function within all applicable laws, statutes, regulations, and Contract provisions; avoid hindering each other's performance; fulfill all Contract obligations diligently; and cooperate in achievement of the terms of the Contract. Nothing in this subsection nullifies or supersedes the express provisions of the Contract and the Standard Specifications.

#### 104.2 Department's General Authority and Responsibilities

104.2.1 Furnishing of Right-of-Way The Department will secure all necessary rights to real property within the Project Limits shown on the Right-of-Way Plans that are provided with the Bid Documents. For related provisions, see Sections 104.3.2 - Furnishing of Other Property Rights, Licenses and Permits and 105.4.5 - Special Detours.

104.2.2 Furnishing of Permits Except as provided otherwise in the Contract, the Department will furnish Permits required to perform the Work within the Project Limits. For related provisions, see Sections 101.2, Definition of Permits, 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits and 105.8.2 - Permit Requirements.

104.2.3 Authority of the Resident After Contract Execution, the Resident has the authority to take all actions needed to assure that the Contractor is performing the Work in Conformity with the Contract. Except as provided elsewhere in the Contract, the Resident will decide all questions regarding the quality and acceptability of Materials furnished, Work performed, suspension of Work, and the interpretation of the Contract. The Resident has the authority to reject Unacceptable or Unauthorized Work and refuse to approve Progress and Final Payments until the Unacceptable or Unauthorized Work is corrected. For related provisions, see Sections 106.8 - Non-conforming Work and 109.8 - Contract Modification.

104.2.4 Authority of Residents and Inspectors Residents, inspectors, and other Departmental employees or representatives working for the Department have the authority to make initial determinations regarding the Conformity of the Work. Unless authorized by the Program Manager, Residents or inspectors are not authorized to alter or waive the provisions of the Contract or to issue instructions contrary to the Contract. They may not act as a supervisor for the Contractor.

104.2.5 Right to Inspect Work The Department has the authority to inspect all Materials and every detail of the Work. For a related provision, see Section 104.3.5 - Duties Regarding Inspection of Work.

104.2.6 Right to Suspend Work The Department has the right to suspend any or all Work at any time for any reason. For related provisions, see Sections 105.4.4 - Maintenance During Suspension of Work and 107.5 - Suspension of Work.

104.2.7 Damage to Project Caused by Uncontrollable Events All repairs or temporary Structures that are required because of property damage that is directly caused by an Uncontrollable Event may entitle the Contractor to an Equitable Adjustment if the Contractor complies with the notification, documentation and procedural requirements set forth in the Contract. Delays resulting from an Uncontrollable Event will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For related provisions, see Sections 101.2 - Definition of Uncontrollable Event, 104.3.10 - Responsibility for Damage to Work, 109.3 - Extra Work, 109.5 - Adjustments for Delay, 109.7 - Equitable Adjustments to Compensation and Time, and 109.8 - Contract Modification.

104.2.8 No Personal Liability The Department's employees and other representatives act solely as representatives of the Department when conducting and exercising authority granted to them under the Contract. Such persons have no liability to the Contractor or any Subcontractor either personally or as Department employees.

### 104.3 Contractor's General Authority and Responsibilities

104.3.1 General Duty to Cooperate The Contractor shall cooperate with the Departmental personnel, Utility Companies, railroad personnel, marine traffic personnel, regulating agencies with jurisdiction, other Contractors, municipalities, and the public in every reasonable way possible. For a related provision, see Section 104.4 - Communication and Coordination.

104.3.2 Furnishing of Other Property Rights, Licenses, and Permits The Contractor shall acquire, at its sole expense, all property rights outside the Project Limits needed for construction staging, yarding, construction, waste disposal, or other Project-related purpose. The Contractor shall also acquire, at its sole expense, all licenses and Permits necessary to perform the Work that are not furnished by the Department. For related provisions, see Sections 104.2.1 - Furnishing of Right-of-Way, 104.2.2 - Furnishing of Permits, 104.3.11 - Responsibility for Property of Others, and 105.8.2(B) - Permit Requirements, All Other Permits.

104.3.3 Duty to Notify Department If Ambiguities Discovered The Contractor shall not take advantage of any ambiguity, error, omission, conflict, or discrepancy contained in the Contract. If the Contractor discovers any such ambiguity, etc. for which the Contractor may seek adjustments to compensation, time, or other Contract requirements, the Contractor shall provide a written notice within 48 hours and before performing any Work related to the ambiguity, etc., as provided in Section 104.4.5 - Early Negotiation. Failure to provide such notice in compliance with the Contract shall constitute a waiver of all claims related to the ambiguity, etc.

104.3.4 Workers and Equipment The Contractor shall at all times provide all superintendents, forepersons, laborers, inspectors, Subcontractors, subconsultants, Equipment, Materials, and Incidentals needed to perform the Work in Conformance with the Contractor's Schedule of Work and within the Contract Time.

Any person employed by the Contractor or by any Subcontractor or any officer or representative or agent of the Subcontractor, who, in the opinion of the Resident, is intemperate or disorderly, shall be removed immediately by the Contractor or Subcontractor employing such person. The employee shall not be employed again in any portion of the Work without prior approval from the Resident.

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 Resident may suspend the Work by written notice until such orders are complied with.

During all hours of on-site activity, the Contractor shall provide an on-site, competent, English-speaking Superintendent experienced in the type of Work being performed. The Superintendent shall be capable of reading and understanding the Plans and Specifications, providing and receiving communications, and scheduling and coordinating the Work. The Superintendent shall have full authority to manage the Work in accordance with the Contract. Such superintendence must be provided regardless of the amount of Work being done by the Contractor or any of its Subcontractors.

All persons employed by or through the Contractor, except for registered trainees, shall have sufficient skill and experience to perform the Work properly. The Department may require that the Contractor discharge any such person who the Department determines jeopardizes the safety of any person or the Project, without cost or liability to the Department. If the Department determines that such person's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding workers. Upon receipt of such notice, the Contractor shall take any action it determines necessary to fulfill its obligations under the Contract. For related provisions, see Sections 104.5.4 - Discharge of Subcontractors, 105.1 - Intent of the Contract, and 105.2 Health and Safety.

#### 104.3.5 Duties Regarding Inspection of Work

A. Safe Access The Contractor shall provide the Department with safe access to all portions of the Work in Conformity with all applicable OSHA requirements. The Contractor shall furnish the Department with all information and assistance required to make a detailed inspection. For a related provision, see Section 104.2.5 - Right to Inspect Work.

B. Inspection By Others If any other governmental entity, Utility Company, or railroad is to pay for a portion of the Work or is otherwise authorized to inspect Work, then the Contractor must provide its representatives with safe access that Conforms to this Section 104.3.5.

104.3.6 Project Records Upon request by the Department, the Contractor or any other person Working for the Contractor possessing Project Records must provide the Department with copies of Project Records at all reasonable times without cost or liability to the Department. Unless the context clearly indicates otherwise, Project Records are the property of the Department. The Contractor must retain Project Records for at least three years after Final Acceptance or for any applicable warranty period, whichever is longer. For related provisions, see Sections 101.2 - Definition of Project Records and 111.1.6 - Contractor's Obligation to Keep Records.

104.3.7 Laws To Be Observed The Contractor shall keep itself informed of and comply with all applicable laws, rules, regulations, orders, and decrees ("Law") affecting the Work, including all environmental, wage, labor, equal opportunity, safety, patent, copyright, or trademark laws. The Contractor agrees to indemnify, defend, and hold harmless the Department against any and all claims or liabilities arising from or based upon the violation or alleged violation of any such Law caused directly or indirectly by or through the Contractor.

#### 104.3.8 Wage Rates and Labor Laws

A. Federal Wage Rates and Labor Laws Federal wage rates apply, unless expressly stated otherwise by Special Provision. The classification of construction type and related wage rates by the U.S. Department of Labor will be provided by Special Provision. If not provided, the Contractor must contact the Department before Bidding to determine the applicable wage rates in accordance with Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered. The Contractor must pay according to said rates and must otherwise comply with all applicable federal and State labor laws, rules, and regulations. Persons registered with the Department as trainees must be paid at least at the prevailing wage for laborer, and upon completion of their program, trainees shall be paid the prevailing wage for the skill and classification trained.

B. State Wage Rates and Labor Laws Maine State wage rates apply only if provided expressly by Special Provision. If so provided, the classification of construction type and related wage rates established by the Maine Department of Labor will be set forth by Special Provision. If not so set forth, the Contractor shall contact the Department before Bidding to determine the applicable wage rates in accordance with Section 102.5.2 - Bidder's Duty to Notify Department if Ambiguities Discovered. The Contractor shall pay according to said rates and shall otherwise comply with all applicable federal and State labor laws, rules, and regulations. Title 26 MRSA § 1303 set forth various requirements about preference to Maine workers that apply to State funded Contracts. However, if a Contract is Federally funded or partially Federally funded, Federal law governs and Title 26 MRSA § 1303 does not apply. For a related provision, see 23 CFR § 635.117.

104.3.8.1 Electronic Payroll Submission On federally funded Projects the Contractor, all Subcontractors, and lower-tier Subcontractors will submit their certified payrolls electronically utilizing the Elations system. There is no charge to the contracting

community for the use of this service. The submission of paper payrolls will not be allowed or accepted. Additional information can be found at <http://www.maine.gov/mainedot/contractors/> under the “Bidder Info” go to “Electronic Payroll System.”

104.3.8.2 Payment Tracking On federally funded projects the Contractor and all Subcontractors and lower-tier Subcontractors will track and confirm the delivery and receipt of all payments through the Elation System

104.3.9 Patents and Copyrights The Contractor must provide proof of a legal Agreement with the holder of any patent, trademark, or copyright, or the Owner, if necessary, for use of any of the following: design(s), process(es), device(s), trademark(s), Material(s), and copyright(s). The Contractor agrees to indemnify, defend, and hold harmless the Department and any affected third party or political subdivision from all claims of infringement that arise from use of any item listed in this paragraph.

104.3.10 Responsibility for Damage to Work Except as provided in Section 104.2.7 - Damage to Project Caused by Uncontrollable Events, the Contractor shall bear all risk of loss relating to the Work until Final Acceptance, regardless of cause, including completed Work, temporary Structures, and all other items or Materials not yet incorporated into the Work. For a related provision, see Section 110.3.6 - Builders Risk.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged Work or otherwise make good any losses that arise from such damage (“rebuilding, etc.”). If the Contractor fails to promptly commence and continue such rebuilding, etc., the Department may, upon 48 hours advance written notice, commence rebuilding, etc. of the damaged property without liability to the Department with its own forces or with Contracted forces and all costs will be deducted from amounts otherwise due the Contractor. For the Contractor’s responsibilities for the Work after Final Acceptance, see Section 106.9 - Warranty Provisions.

104.3.11 Responsibility for Property of Others The Contractor and its Subcontractors shall not enter private property outside the Project Limits without first obtaining permission from the Owners.

The Contractor shall be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect, or misconduct of the Contractor and its Subcontractors. The preceding sentence includes damage to vehicles passing through the Work area.

The Contractor shall, at its sole expense, rebuild, repair, restore, or replace such damaged property and otherwise make good any losses that arise from such damage. If the Contractor fails to completely remedy the damage in a timely manner, the Department may, upon 48 hours advance written notice, rebuild, repair, restore or replace the damaged property without liability to the Department with its own forces or with contracted forces. All costs will be deducted from amounts otherwise due the Contractor.

104.3.12 Forest Protection and Laws The Contractor shall obey all laws and regulations that govern Work within or adjacent to State or National Forests, keep the Project site orderly and clean, obtain all required Permits, prevent and assist with the suppression of forest fires, and cooperate with authorized forestry officials.

Pursuant to State law, the sale of harvested forest products must be reported to the Maine Forest Service at the end of each year. The Contractor is hereby designated as the Department's agent for reporting of any such harvesting.

104.3.13 Materials and Items Found On the Project With the Department's approval, the Contractor may use suitable excavated Material in the Work and be paid for both the excavation and the placement of such Materials at the corresponding Contract Unit Prices. Except for Material used for riprap, stone ditch protection, and loam, the Contractor shall replace such excavated Material with other approved Material and properly compact it at no cost to the Department. The Contractor shall obtain written permission from the Department before performing any excavation outside the Project Limits.

Unless expressly provided otherwise, the Contractor shall remove and assume Ownership of all Incidental Structures and Materials to be removed such as guardrail, drainage pipe, culverts, curbing, bridges, and other manufactured Materials. Utility Facilities, traffic control devices, and lights, together with all supporting Structures, are excluded from the provisions of this Section 104.3.13. The cost of removal of such Structures and Materials is Incidental to the Contract unless expressly provided otherwise.

104.3.14 Interpretation and Interpolation The Contractor is responsible for all interpretations and interpolations made from information provided in the Bid Documents and Contract, including data and test results related to location, survey, hydrology, hydraulics, soils, ledge quality, existing Structures, Environmental Information, and Geotechnical Information. For related provisions, see Sections 102.3 - Examination of Documents, Site, and Other Information; 102.5.2 - Bidder's Duty To Notify Department If Ambiguities Discovered; 104.3.3 - Duty to Notify Department If Ambiguities Discovered; and 105.6 - Construction Surveying.

## 104.4 Communication and Coordination

### 104.4.1 Partnering

A. Definition, Purpose, and Applicability Partnering is a process of voluntary structured communication between the Department, the Contractor, its principal Subcontractors and suppliers, and other Project stakeholders for the purpose of improving efficiency and minimizing Disputes. Partnering, including the establishment of a partnership charter, does not in any way waive, alter, or otherwise affect any provision of the Contract. For a related provision, see Section 111.1.3 - Relationship to Partnering.

Participation in Partnering is voluntary; either party may elect to not participate in Partnering for any reason. The associated costs of Partnering will be agreed to mutually and shared equally.

B. Initial Partnering Workshop If the Contractor and the Department elect to participate in Partnering, representatives of both parties will arrange a facilitated initial Partnering Workshop, which should be held before the start of on-site construction. The Project Manager, Resident or both and the superintendent will determine Workshop attendees, the facilitator, agenda, duration, and location. Key Project level supervisory personnel, corporate/State level management personnel, and key Project personnel of the Contractor's principal Subcontractors and suppliers should attend. Project design Engineers, FHWA, local government representatives, environmental regulators, emergency service personnel, Utility Companies, impacted business and/or landowners, and other stakeholders may also be invited to attend. The product of the initial Partnering Workshop will be a partnership charter. This charter will include mutually agreed upon Project goals and communication escalation procedures.

C. Follow-Up Workshops The Contractor and the Department may agree to hold follow-up Partnering Workshops periodically throughout the duration of the Contract.

#### 104.4.2 Preconstruction Meeting

After the Contract has been executed and before the start of on-site construction by the Contractor, the Resident will schedule a Preconstruction Meeting that must be attended by the Contractor's Project Manager and Superintendent. Notification of the meeting shall be sent to the following personnel, agencies, and organizations as required by the Contract and deemed essential to the Work outlined in the Contract.

Project Manager, Program Manager, and Area Construction Manager  
Engineer of Record and Project Designer Engineers  
Utility Coordinator and Utility Companies  
Property Officer, Town Representatives, and Major Stakeholders  
Environmental Officer and Agencies  
Safety Officer, Fire Department, and Police Department  
Civil Rights Officer  
Communications Representative  
FHWA Representative  
Regional Office including Manager, Engineer, and Maintenance

The agenda of the Preconstruction Meeting, at a minimum, shall include the following items that pertain to the Contract.

Attendee List with contact information  
Project Description  
Contract

Bid Amendments  
Project Specific Permit Requirements  
Review of Special Provisions  
Contractor's General Authority and Responsibilities – 104.3  
Utility Coordination – 104.4.6  
Road/Bridge Closure/Restriction Notifications – 104.4.10  
Traffic Management – 105.3  
Environmental Requirements – 105.8  
Time – 107  
Additional Special Provisions as required by the Contract  
Review of Plans  
Review of Submittals  
Review of Requirements prior to Start of Work  
Communications

The Resident will prepare minutes of the Preconstruction Meeting and distribute them to all attendees and invitees. Any requests to revise the minutes must be made to the preparer within 7 Days of Receipt. These minutes will constitute the final record of the Preconstruction Meeting.

The Resident will prepare minutes of the Preconstruction Meeting and distribute them to all attendees and invitees. Any requests to revise the minutes must be made to the preparer within 7 Days of Receipt. These minutes will constitute the final record of the Preconstruction Meeting.

For related provisions, see Sections 104.4.6(A) - Preconstruction Utility Meeting; 652 - Implementation of Traffic Control Plan, Preconstruction Field Review (if required); 656.4.1 - Temporary Soil Erosion and Water Pollution Control, Preconstruction Field Review; and 106.4 - Quality Control.

#### 104.4.3 Progress Meetings

Except as provided otherwise in this Section 104.4.3 - Progress Meetings shall be held at regular intervals, but at least monthly, throughout the duration of the Contract. All personnel of the Department and the Contractor who have significant information relevant to agenda items shall attend. Additional personnel, as included in the invitee list of the Preconstruction Meeting and as merited, may be invited to attend.

The agenda for each Progress Meeting at a minimum, shall include the following items that pertain to the Contract:

Review and Approval of Previous Progress Meeting Minutes  
Review of Action Items from Previous Meeting  
Review of Progress from Last Progress Meeting  
Review of Work Planned to Prior to Next Progress Meeting  
Contractor's Schedule of Work  
Material Testing and Work Inspection Schedule

Progress Payments  
Civil Rights  
Contractor's Quality Control  
Contractor's Safety Practices  
Contractor's Environmental Control  
Contractor's Traffic Control  
Onsite Utility Coordination  
Review of Outstanding Submittals and Long Lead Items  
Request for Information  
Contract Modifications  
Material and Equipment Deliveries  
Issues, Disputes, Claims, and Resolutions  
Review of New Action Items

The Resident will prepare minutes of these meetings and distribute them to all attendees. Any requests to revise the minutes must be made to the Resident within 7 Days of Receipt. These minutes will constitute the final record of the Progress Meeting.

In lieu of a Progress Meeting, the Resident and the Superintendent may exchange written communication before or on the scheduled Progress Meeting date that indicates there is no need for the meeting because the Work is on schedule, compensation is current, communication is ongoing, and there are no significant outstanding or anticipated issues, Disputes or claims. The Superintendent's written communication shall also contain a description of (A) progress of the Project since the last Progress Meeting or communication in lieu thereof and (B) expected activities before the next scheduled Progress Meeting. All invitees to the Progress Meeting must be notified of canceled or postponed meetings.

104.4.4 Requests for Information Either the Department or the Contractor may request that the other party provide information that the requesting party needs to fulfill its Contract obligations by Delivering a written Request for Information (RFI). The Department may require that RFIs be on forms and media approved by the Department. The request must (A) be of reasonable scope, (B) explain why such information is necessary to fulfill Contract obligations, and (C) provide a requested response time, which must be reasonable in relation to its scope (at least 72 hours). The party receiving an RFI shall use its best effort to respond to the RFI within the time requested. The response shall be in writing. The status of outstanding RFIs shall be discussed at each Progress Meeting.

#### 104.4.5 Early Negotiation

A. Notice Required When the Contractor becomes aware of facts or circumstances that may cause the Contractor to seek additional compensation, time, or any other change in Contract requirements ("Issue"), then the Contractor shall notify the Resident within 48 hours and before commencing any part of the Work relating to the Issue. The notice must describe the basic nature and extent of the Issue.

Such notice may be verbal only if confirmed in writing in one of the two following ways: (A) if a Progress Meeting is held within 14 Days of the date that the Issue became known, such Notice may be confirmed with an entry in the Progress Meeting minutes. Such entry must describe the basic nature and extent of the Issue. (B) Otherwise, the Contractor shall confirm a verbal notice by Delivering to the Resident, within 14 Days of the date the Issue arose, a written notice that describes the basic nature and extent of the Issue.

The written notice or confirmation will be known as a “Notice of Issue for Consideration.” The Contractor will not be entitled to any additional compensation, time, or any other change to Contract requirements without a timely Notice of Issue for Consideration.

B. Negotiation When the Resident receives the Notice of an Issue for Consideration Conforming to Section 104.4.5(A) - Notice Required, the Resident and the Contractor will negotiate to attempt to resolve the Issue. Any resolution will be noted in the Progress Meeting minutes or confirmed otherwise in writing by the Department. Any changes to the Contract that affect compensation, time, quality, or other Contract requirements shall be by written Contract Modification as provided by Section 109.8 - Contract Modifications.

For related provisions, see Sections 109.5 - Adjustments for Delay and 109.7 - Equitable Adjustments to Compensation and Time.

C. Additional Consideration If negotiation fails to resolve the Issue within 45 Days of the date the Resident receives the Notice of Issue for Consideration, and if the Contractor desires additional consideration by the Department, then the Contractor must comply with Section 111.2 - Detailed Notice of Dispute and all other requirements of Section 111 - Resolution of Disputes.

#### 104.4.6 Utility Coordination

A. Pre-construction Utility Meeting A Pre-construction Utility Meeting will be held to coordinate the Work of the Contractor and the Work of affected Utility Companies. Usually this meeting will be held on the same day as and immediately before the Pre-construction Meeting provided by Section 104.4.2 - Pre-construction Meeting but, in any event, will be held before the start of on-site construction by the Contractor that affects Utility Facilities. The Department’s Utility Coordinator, the Project Manager, Resident, the Contractor’s Superintendent, and a representative of each affected Utility Company will attend. The Department’s Utility Coordinator will prepare minutes of the Pre-construction Utility meeting and distribute them to all attendees. Any requests to revise the minutes must be made to the Department’s Utility Coordinator within 7 Days of distribution. These minutes will constitute the final record of the meeting. For a related provision, see Section 104.4.2 - Pre-construction Meeting(s).

B. Utilities Within Right-of-Way Except as provided otherwise in the Contract, including subsection E - Temporary Relocations below, all Utility Facilities of all Utility Companies within the Right-of-Way will be relocated and adjusted as provided in the

Contract by and at the expense of the affected Utility Company, provided, however, that the Contractor is responsible for scheduling its Work in accordance with the time allowed for utility relocation as provided in the Contract. Utility relocation Work may not proceed without authorization from the Department.

### C. Contractor's Responsibilities

1) Utility Coordination - The Contractor has primary responsibility for coordinating its work with utilities after contract award. The Contractor shall communicate directly with the utilities regarding any utility work necessary to maintain the Contractor's schedule and prevent project construction delays. The Contractor shall notify the Resident of any issues. The Contractor shall plan and conduct its work accordingly.

2) The Contractor must exercise every reasonable precaution to prevent damage to Utility Facilities or interruption to utility services known to or discovered by the Contractor, whether or not shown on the Plans. Such precautions must include notice to Utility Companies before undertaking Work that could damage Utility Facilities. The Contractor must provide each Utility Company with notice at least three Business Days before the date a Utility Company will have to support any pole.

3) The Contractor must take all reasonable precautions to determine the presence of underground Utility Facilities before commencing any excavation Work and must provide all affected Utility Companies with at least 72-hour prior notice of the proposed excavation. The Contractor must comply with 23 MRSA § 3360-A, entitled "Protection of Underground Facilities," Maine's "Dig Safe" statute, and also contact the non-member underground facility operators in the Maine Public Utilities Commission's "**OK-TO-DIG**" directory.

4) The Contractor must maintain initial markings (spray paint, stakes, etc.) made by the authorized representative of a Utility Company to indicate the location of underground Utility Facilities and otherwise comply with 23 MRSA § 3360-A(4).

5) The Contractor must cooperate with Utility Companies in its relocation or operations so that these operations proceed in a logical sequence, minimize duplication of Work, and avoid unnecessary interruptions to utility service.

6) If utility services are interrupted as a result of the Contractor's Work, the Contractor must promptly notify the appropriate Utility Company and must cooperate fully in the restoration of service. If service is interrupted, repair Work will be continuous until the service is restored. No Work can be undertaken around fire hydrants until the local fire authority has approved provisions for continued services.

7) The Contractor must schedule its Work so as to provide for all Utility Company Work and to complete the Work within the Contract Time. The estimated number of workdays required by each Utility Company to perform its relocation Work contained in the Contract is provided by the Utility Companies and are estimates only. Such Utility Facility relocation times assume normal Working times (Monday through Friday, 8 hours per day), and are dependent upon normal weather, normal Working conditions, and freedom from emergencies. The Department is not responsible for the accuracy of these estimates. If a Utility Company fails to perform its Work within the time frames set forth in the Contract or in the minutes of the Pre-construction Utility Meeting, and such failure affects the Contractor's Critical Path, the Contractor may request a suspension of Work pursuant to

Section 107.5.2 and such Delay will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

8) Any clearing and tree removal that is a part of the Contract and that must be done in areas where Utility Companies are involved must be completed by the Contractor before the Utility Company can relocate its Utility Facilities. Any clearing, cutting of single trees, or limbing required for the temporary or permanent Utility Facility location must be approved by the Department. The Contractor must provide the Department with prior notice of at least 4 Days before removing or trimming any trees or other vegetation.

9) If blasting occurs on the Project, the Contractor must provide each Utility Company having Utility Facilities that could be damaged by the blast with at least 24-hour prior notice that includes the anticipated time of the initial blast.

10) If the Contractor observes a Utility Company Working within the Project Limits in a manner that (A) violates the MUTCD, the Contractor's Traffic Control Plan, or an applicable OSHA requirement or commonly accepted safety practices, and (B) represents a clear and immediate risk of significant bodily injury to any person within the Project Limits, then the Contractor must notify the Resident and the Utility Company immediately.

11) The Contractor agrees to indemnify, defend, and hold harmless the Department from and against any and all claims or causes of action arising from any act or omission of the Contractor, the Subcontractors, or their respective agents, representatives, or employees for failure to comply with this Section 104.4.6.

D. Temporary Relocations The Contractor may request temporary changes of location of Utility Facilities for the Contractor's convenience. The Contractor must satisfy the Department that the proposed temporary change will not interfere with the Work, the Work of Utility Companies, or the Work of other Contractors and will not impede the free and safe flow of traffic. If acceptable to the Department, the Contractor may make its own request to the Utility Company or other party affected by such temporary changes. The expense and risk of temporary changes will be borne solely by the Contractor; no changes to compensation or time will be made.

E. Unforeseeable Utility Relocations The Department may order utility adjustments in accordance with Section 109.4 - Differing Site Conditions.

F. Cost The cost of all Work related to utility coordination is Incidental to the Contract.

104.4.7 Cooperation with Other Contractors The Department reserves the right to Contract for, perform, or allow other Work to be performed within or near the Project Limits. The Contractor must take all reasonable steps to avoid interfering or hindering such other Work. The Contractor must cooperate with Contractors or others performing such other Work as directed by the Department.

If the basic nature and scope of such other Work are provided or referenced in the Bid Documents or are otherwise known or foreseeable to the Contractor, then the Contractor assumes all risks and liability associated with such other Work and agrees to indemnify, defend, and hold harmless the Department from all claims related to such other Work that arise from the Contractor's acts or omissions.

104.4.8 Coordination with Railroads The Contractor shall (A) perform Work within a railroad Right-of-Way without interfering with trains or railroad company traffic and (B) coordinate all Work crews and the Contractor's Schedule of Work to accommodate the railroad company Work. If the Bid Documents show that Materials must be hauled across railroad tracks, the Department will make preliminary arrangements with the railroad to permit such hauling. The Contractor shall, at its expense, negotiate and enter into any other Agreements with the railroad.

Special Provision will provide any additional conditions or requirements regarding railroad coordination.

104.4.9 Coordination with Marine Traffic The Contractor shall not interfere with free and safe navigation of navigable waters except as provided by permit issued by the US Coast Guard and other applicable regulatory agencies. All Work must comply with all US Coast Guard permit conditions and all applicable Federal regulations affecting navigation.

When the basic nature and scope of marine traffic requirements are provided or referenced in the Bid Documents or are otherwise known or foreseeable to the Contractor, then the Contractor assumes all risks and liability associated with said requirements, and the Contractor shall indemnify, defend, and hold harmless the Department from all claims related to the maintenance or obstruction of marine traffic that arise from the Contractor's acts or omissions.

104.4.10 Coordination of Road Closure/Bridge Closure/Bridge Width Restriction Notification When a road closure, bridge closure, or width restriction is allowed by the Contract, prior to a closure or a width restriction to a single lane of less than 15 ft., the Contractor shall notify affected public officials, agencies, other entities, and the public of the date on which the closure/width restriction will begin and the anticipated duration of the closure/restriction, as indicated below.

The closure shall be announced on a minimum of two portable/changeable message signs, placed in approved locations, beginning at least ten Days prior to the closure. A public notice shall also be published in a local newspaper ten Days prior to the closure.

Advance warning signs shall be placed so the traveling public is aware of the restrictions in place. They shall be placed at enough distance from the restriction so vehicular traffic can be rerouted to an alternate route.

The Contractor shall notify the following public officials, agencies, and organizations ten Days prior to, and again the Day before, the date that the closure/restriction begins and the anticipated length of the closure/restriction. When the road/bridge is reopened/unrestricted to traffic, the following list will again be notified. The Contractor shall provide the Department with documentation that the listed public officials, agencies, and organizations received the notification at least 10 Days prior to the

closure/restriction or with proof that the notification was mailed 15 Days prior to the closure/restriction.

Town Officials (Manager or First Selectperson)  
Representative or County Commissioners (If Unorganized Townships)  
County Sheriff's Department  
Fire Department  
Police Department  
State Police  
Emergency Service  
School Department  
Post Office  
Chamber of Commerce  
Any Large Employers  
Mobile Home Movers, Manufacturers and Dealers  
Bureau of Maine Vehicles – Over Size/Over Weight Permits  
MaineDOT Radio Room

Maine DOT Regional Office

All notifications will be subject to the approval of the Resident. All costs not covered by Pay Items will be considered incidental to the Contract.

#### 104.5 Subcontracting

104.5.1 Limits on Subcontracting The Contractor shall perform at least 30% of the value of the Work with its own Work force, excluding any specialty items as designated in the contract documents by the Department.

The Contractor shall not carry the workers of another recognized Contractor or firm on its payroll or a Subcontractor's payroll. The Contractor shall not use any Subcontractors that are debarred from Bidding by the Federal Government or any agency of the State of Maine.

104.5.2 Contractor's Duties Regarding Subcontractors Subcontractors are solely the responsibility of the Contractor. The Contractor is responsible for assuring that its Subcontractors have sufficient skill and experience to perform the Work properly and for coordinating and managing its Subcontractors to achieve the intent of the Contract. The Contractor agrees to indemnify, defend, and hold harmless the Department from and against all claims and causes of action arising out of any act or omission of Subcontractors, their agents, representatives, and employees. The Contractor agrees to indemnify, defend, and hold harmless the Department from any claims asserted by its Subcontractors, including any claims to recover losses allegedly suffered by a Subcontractor. Subcontracting does not alter or diminish the Contractor's obligations under the Contract. For a related provision, see Section 105.1 - Intent of the Contract.

104.5.3 Documentation Regarding Subcontracting Before any Work is performed by a Subcontractor, the Contractor shall provide the Department a Subcontract approval package which shall include:

A list of all Subcontractors that the Contractor anticipates will be providing Work within the Project Limits. .

If requested by the Department, the Contractor shall provide the Department with copies of any subcontract or other document that establishes the relationship of the Contractor and any Subcontractors.

104.5.4 Discharge of Subcontractors The Department, upon written notice to the Contractor, may require that the Contractor discharge any Subcontractor without cost or liability to the Department. If the Department determines that a Subcontractor's performance jeopardizes the intent of the Contract otherwise, the Department may, but is not required, to notify the Contractor of such a determination. Such notice, or lack thereof, does not affect the Contractor's duties regarding Subcontractors. Upon Receipt of such notice, the Contractor shall take any action it determines is necessary to fulfill its obligations under the Contract. For related provisions, see Sections 104.3.4 - Workers and Equipment, 104.5.2 - Contractor's Duties Regarding Subcontractors, 105.1 - Intent of the Contract, and 105.2 - Health and Safety.

#### Prompt Payment of Subcontractors

Pay When Paid The Contractor shall pay Subcontractors in full for all Work satisfactorily performed and Invoiced by the Subcontractor no later than 30 Days from the date the Contractor receives payment from the Department for such Subcontractor's Work. Contractor will insure that its Subcontractors pay all Sub-Subcontractors, including suppliers and materialmen, no later than 30 days from the date that they receive payment from the Contractor.

Retainage The Contractor shall return to the Subcontractor all retainage withheld from the Subcontractor within 30 Days after the date the Subcontractor's Work is satisfactorily completed. If there is a Delay in such return of retainage, the Subcontractor may pursue all rights it may have under the claims procedure referenced in Section 104.5.6 - Subcontractor Claims for Payment.

Payment Tracking Federal Projects On federally funded projects, the Contractor, Subcontractors, and lower-tier Subcontractors will track and confirm the delivery and receipt of all payments through the Elation System. They will be responsible for entering all payments to all Subcontractors and lower-tier Subcontractors. The Department will run a query monthly to ensure that Contractors are complying and generate an e-mail to Contractors who have not responded to confirm receipt of Department payment or Contractor payment to Subcontractors and lower-tier Subcontractors.

104.5.6 Subcontractor Claims for Payment The Contractor agrees to notify all Subcontractors of the claim filing procedure of Payment and Performance Bonds required by 110.2.1. The Department may use retainage and other remaining project funds to pay outstanding claims for Accepted Work.

104.5.7 Flow Down All subcontracts of the Contractor, and all lower tier subcontracts, shall contain or reference all applicable provisions of the Contract, including all safety, wage, Prompt payment, labor, environmental, and equal opportunity provisions. The Contractor shall indemnify, defend, and hold harmless the Department against any and all claims or liabilities arising from the failure to include such flow down provisions and agrees that any such claims and liabilities may be paid by the Department using retainage on other Project funds.

104.5.8 No Third Party Beneficiaries The Contractor and the Department agree that this Contract is not intended to create any third-party beneficiaries or to authorize anyone not a party to the Contract to maintain an action under Contract provisions.

104.5.10 Warranty and Maintenance Bonds Warranty and Maintenance Bonds may be required of the Contractor or the Subcontractor for specified items that the Department deems appropriate. Specific requirements will be given via Special Provision. These bonds may be for specified items in the Contract Schedule of Items. The Bond must name the “Treasurer-State of Maine” as an obligee. The Contractor shall provide a copy of said bond to the Department before the performance of any affected on-site Work. Should the subcontractor be required by special provision to provide a Warranty or Maintenance Bond, the Contractor hereby authorizes the Department to directly contact the Landscape Subcontractor and/or its Surety in the event of a failure of the bonded item to perform as specified.

## SECTION 105 - GENERAL SCOPE OF WORK

Scope of Section This Section contains Work requirements that are generally within the scope of all Projects. These include provisions related to health and safety, traffic control, maintenance of Work, hauling of Materials and Equipment, construction surveying, Working Drawings, the environment, historic and archeological considerations, equal opportunity and civil rights, and other federal requirements. This Section is not all-inclusive. The scope of these items is often described more specifically and fully elsewhere in the Contract and in other specific items that appear elsewhere.

This Contract is federally funded, unless expressly provided otherwise in the Bid Documents. As a federally funded Contract, it includes all federal requirements set forth in the Project Specific Bid Book.

105.1 Intent of the Contract The intent of the Contract is to provide for the construction and Completion of a functionally complete Project in Conformity with the Contract. The Contractor shall furnish all Work to achieve this intent, including all Work

that may be reasonably inferred to be required from the Contract or from prevailing industry or trade custom, whether or not specifically called for.

## 105.2 Health and Safety

105.2.1 Safety Responsibility The Contractor has the overall authority and responsibility to maintain safety of its employees and of all other persons in the work area or on the worksite. The Contractor shall provide all safeguards, safety devices, and protective Equipment and take all other action that is necessary to continuously and effectively protect the safety and health of all persons from hazards related to the Work. Such safeguards include providing a sufficient number of security guards.

105.2.2 Health and Safety Plan A copy of the Contractor's Health and Safety Plan must be on file with the Contracts Section of the Department as a condition of Prequalification to be awarded a Construction Contract. A copy of the Safety Plan will be provided to the Department's Contracts Section in an electronic media format prior to Contract award. The Contractor shall designate which portions such submissions it considers confidential business information. If such program is revised during the Contract Time, the Contractor shall provide the updated program to the Department. The Contractor shall comply with its safety program and this Section 105.2 - Health and Safety. The Contractor shall be responsible for all claims or damages arising from failure to so comply and to indemnify, defend, and hold harmless the Department from all claims and damages arising from such non-compliance.

105.2.3 Project Specific Emergency Planning Unless the Contract provides for closure of an existing facility, the Contractor shall ensure that essential police, fire, rescue, and ambulance services have reasonable and timely access to and through the Project Limits. The Contractor shall contact all emergency service providers in the area, discuss potential impacts on emergency operations (including water supply for fire suppression), and minimize any negative impacts. Fire hydrants within or adjacent to the Project Limits shall be kept accessible to fire apparatus at all times, unless the fire department agrees otherwise in writing. For a related provision, see Section 104.3.12 - Forest Protection and Laws.

If the nature of the Work involves deep trenching, confined spaces, toxic chemicals, or any other unusual hazards that could require specialized rescue, the Contractor shall inform and cooperate with the appropriate fire department, rescue service, or EMS.

The Contractor shall provide the Resident with, and post and maintain in conspicuous places within the Project Limits, a list containing (A) emergency response numbers with the names and telephone numbers (including cellular phone and pager numbers, if applicable) of local ambulance, police, fire, rescue, and hospitals, (B) emergency response numbers for hazardous Materials spills as required by Section 656.3.4(f) - Spill Prevention, (C) the Contractor's personnel with phone numbers who may be reached in case of emergency, and (D) the Department's personnel with phone numbers who may be reached in case of emergency.

105.2.4 Unsafe Conditions The Contractor will immediately eliminate all unsafe conditions brought to the Contractor's attention by the Department Resident or any other Department staff. If the Contractor or the Department actually observes any person(s) performing Work in a manner that (A) the observing party actually knows is not in compliance with the MUTCD, the Contractor's TCP, an applicable OSHA requirement, or commonly accepted safety practices, and (B) creates a clear and immediate risk of significant bodily injury to any person, then the observing party shall immediately notify such person(s) Working in an unsafe manner and the other party to the Contract. The Contractor and the Department agree to cooperate in eliminating all such unsafe conditions. For related provisions, see Sections 104.3.4 - Workers and Equipment, 104.4.6 - Utility Coordination, 105.3 - Traffic Control and Management, and 105.4 - Maintenance of Work.

105.2.5 Compliance with Health and Safety Laws The Contractor has the authority and responsibility to ensure compliance with all applicable federal, State, and local laws governing safety, health, and sanitation, including all applicable laws and regulations of OSHA. The Contractor shall comply with these laws and regulations and ensure compliance by its subcontractors. The Contractor is responsible for correcting any health and safety violations.

For related provisions, see Sections 105.2.3 – Project Specific Emergency Planning, 105.3 – Traffic Control and Management and 105.4 – Maintenance of work.

105.2.6 Convenience of the Public At all times the Contractor shall perform the Work to minimize obstructions to pedestrian, vehicular, railroad, and marine traffic. All temporary and permanent pedestrian access ways must comply with the Americans with Disabilities Act (ADA). Footways, gutters, sewers, inlets, and portions of the Highway adjacent to the Work must not be obstructed unless allowed by the Contract.

If the Contractor receives notice from the Department that the Contractor has failed to comply with the provisions of this Section 105.2 - Health and Safety, the Contractor shall remedy such non-compliance immediately. If the Contractor fails to do so, the Department may remedy such non-compliance by any means and deduct the cost of the remedy from amounts otherwise due the Contractor.

#### 105.2.7 Use of Explosives

A. Standards When using explosives, the Contractor shall use the utmost care to protect life and property. Explosives must be transported, stored, and used in compliance with this Contract, in compliance with all applicable federal, State, and local laws, rules and regulations, and in accordance with all applicable provisions of the latest version of the Blasters' Handbook published by the International Society of Explosives Engineers (ISEE) of Cleveland, Ohio. In any case, the Contractor shall comply with the recommendations contained in Chapter 13 - "Blasting Safety" of said Blasters' Handbook, unless a qualified person conducting the blasting operations for the Contractor certifies to the Department in

writing that certain provisions of said Chapter 13 are not necessary to protect life and property.

B. Blasting Zone - Signage and Flaggers The Contractor shall define a blasting zone. When using electric detonators, the blasting zone must allow safe distances from radio transmitters based upon their power output frequency. The blasting zone must include all areas within which people could be injured or property could be damaged by the blast. The Contractor shall mark Highways conspicuously at the perimeter of the blasting zone with signs in accordance with MUTCD. If applicable, the Contractor shall place signage along railroads and appropriate notice shall be provided to marine traffic. The Contractor shall provide a sufficient number of flaggers stationed outside the blasting zone to stop all approaching traffic during blasting operations.

C. Other Requirements The Contractor shall provide to the Department general liability insurance coverage covering use of explosives in accordance with Section 110.3.2 - Commercial General Liability. Immediately after the blast, the Contractor shall remove any debris that is obstructing Highway, pedestrian, railroad, or marine traffic flow. . The Contractor shall not use perchlorate in its blasting operations. For related provisions, see Sections 104.4.6(C)(9) - Blasting Notice, 104.3.11 - Responsibility for Property of Others, and 110.1 – Indemnification , 110.3.2- Commercial General Liability and Spec 203.042 Rock Excavation and Blasting.

105.3 Traffic Control and Management The Contractor shall provide continuous and effective traffic control in compliance with Section 652 - Maintenance of Traffic.

105.3.1 Notices Required The Contractor shall plan paving operations so that the Resident will have sufficient advance notification to provide the necessary inspection and testing. Sufficient notification will be considered 48 hours. In the event that paving is suspended, the 48-hour advance notification shall be required again before restarting the paving operations unless otherwise agreed by the Resident. A verbal warning will be given before starting the offense process for paving notification.

The Contractor shall plan granular material operations so that the Resident will have sufficient advance notification to provide a proctor for the material to be placed. Sufficient notification will be considered 7 days. Changes in source will also require this notification.

Failure to provide the above notifications will result in the following actions:

First offense – verbal warning

Second offense - written warning

Third and subsequent offense - liquidated damages will be charged for one Calendar day

105.4 Maintenance of Work

105.4.1 Maintenance During Construction The Contractor shall maintain the Project and all related Work in a safe and satisfactory condition until Final Acceptance. Such maintenance requires continuous and effective Work conducted daily.

Trenches Where existing pavement carries traffic and is removed, the pavement shall be replaced daily with a temporary pavement consisting of a minimum of three inches of acceptable hot or cold bituminous mixture. Cold bituminous mixture shall contain Aggregates, asphalt cutbacks, liquefiers and wetting agents. No separate payment will be made for furnishing, placing, maintaining, and removing temporary pavement, and all cost of such work will be considered Incidental to the Contract.

Before placing any permanent pavement over backfilled trenches, the edge of the adjoining existing pavement shall be cut even and vertical, and coated with tack coat to form a tight joint between the new and the existing pavements. The permanent pavement depth and type (HMA or PCC) will match the existing roadway structure. No separate payment will be made for cutting and tack coating the joint.

If the Contractor fails to meet the conditions of Section 105.4.1, the Department will notify the Contractor of such failure. The Contractor shall remedy such failure within 4 hours after receiving such notice. If the Contractor fails to do so, this may be considered a traffic control violation in accordance with Section 652 and the Department may remedy the situation with its own or Contracted forces without liability to the Department and all costs will be deducted from amounts otherwise due the Contractor. When the Contract involves placing material on, or use of previously constructed subgrade, base course, pavement, or structure, the Contractor shall maintain such previously constructed Work in a safe and satisfactory condition until Final Acceptance.

Except as expressly provided otherwise in the Contract, the cost of complying with this Section 105.4.1 is Incidental to the Contract.

105.4.2 Use of Granular Materials The Department may authorize and pay for granular Materials that are capable of supporting traffic and necessary to maintain the specified traffic Lane widths upon the following conditions.

A. The Contractor must prepare the area where the granular Materials are to be used by eliminating objectionable Material and providing adequate temporary Drainage before the granular Material is placed.

B. Quantities of granular Materials will be determined by the most appropriate method of measurement that applies at the time the Material is placed and that is in accordance with the Specifications for the particular type of granular Material authorized for use. For a related provision, see Section 108.1 - Measurement of Quantities for Payment.

C. Payment for granular Material will be made at the Unit Price for the Material authorized for use.

D. Payment as Common Excavation will be made when Material for maintenance of traffic is removed.

105.4.3 Maintenance During Winter Construction Except as provided in the following paragraph, when the Contractor performs Work during winter weather conditions, the Contractor shall plow snow from the portions of a Project that carry vehicular or pedestrian traffic, including all Bridges and Sidewalks, so as to allow the free and safe flow of such traffic. The State or local governmental agency that would otherwise be responsible for winter maintenance will sand and salt such portions of a Project.

The State or local governmental agency responsible for winter maintenance will plow, sand, and salt such portions of a Project that (A) have been untouched or left by the Contractor in a suitable condition to carry traffic as determined by the Department and (B) are unaffected by the construction operations.

105.4.4 Maintenance During Suspension of Work

A. Work Responsibilities Prior to suspension, the Contractor must make the Project suitable for the free and safe flow of traffic as determined by the Department, including covering or removal of signs. To provide space for snow removal, all areas to be used by traffic must be clear for the entire usable Roadway, including Shoulders, or curb-to-curb, including Sidewalks.

During an approved suspension, the Department will maintain the temporary Roads and Project sections by plowing snow, controlling ice, and patching or retreating the surface. During suspension, the Contractor must (1) take precautions necessary to prevent damage to the Work and to allow the Department to provide such maintenance (such precautions include providing Drainage and erecting any necessary Structures, signs, or other facilities); (2) maintain all temporary Structures and traffic control devices; and (3) continuously maintain, in an acceptable growing condition, all living plant Material, including newly established seedings and soddings furnished under the Contract and take precautions to protect vegetative growth from damage.

After suspension, the Contractor must clean up all evidence of the snow and ice control at its expense, including removing excess sand and debris from the Roadway and replacing all base or subbase Material that was lost as a result of maintenance activity.

If a Work suspension is not approved, the Contractor will remain responsible for maintaining the Project, including plowing snow, controlling ice, and patching or retreating the surface.

B. Cost Responsibility All costs related to suspending and resuming Work related to approved suspensions will be considered Incidental to the Contract. For related provisions, see Sections 104.2.6 - Right to Suspend Work and 107.5 - Suspension of Work.

105.4.5 Maintenance of Existing Structures When a new Bridge or Minor Span is being installed on a new alignment and the existing structure is to remain in service, the Department will maintain the existing structure and the portions of the roadway required for maintaining traffic until such time that the new structure is opened to traffic and the existing structure is taken out of service. A similar situation exists when a new Bridge or Minor Span is being installed on the same alignment as the existing structure, requiring a temporary detour to be installed by the Contractor per Section 510 - Special Detours, prior to removal of the existing structure. In this case, the Department will maintain the existing structure and the portions of the existing roadway required for maintaining traffic until such time that either the temporary detour is opened to traffic or the Contractor begins any work on the existing structure, including, but not limited to, repairs, modifications, moving, demolition, or removal. In either case, once the new structure or temporary detour is opened to traffic, or the Contractor begins any work on the existing structure, the Contractor shall be solely responsible for all maintenance of the existing structure and the portions of the existing approaches that lie outside the new roadway or the temporary detour, respectively. This specification is not intended to supersede Standard Specification Section 104.3.11 - Responsibility for Property of Others.

#### 105.5 Hauling of Materials and Equipment

105.5.1 General Requirements Except as provided otherwise and limited in this Contract, the Contractor may use any public Road or Bridge for the hauling of Materials and Equipment in legally registered vehicles that are carrying legal loads and operating otherwise in accordance with all applicable State or federal laws. If the Contractor violates such laws or the terms of this Contract relating to hauling, the Contractor shall, at its expense, repair damage to any Road or Bridge that the Department determines was caused by the Contractor to the satisfaction of the governmental entity that maintains the Road or Bridge.

The Contractor must abate any dust nuisances caused by such hauling. For a related provision, see Section 637 - Dust Control and Section 656 - Temporary Soil Erosion and Water Pollution Control.

105.5.2 Bond for Use of Municipal Roads If the Contractor wants to use Roads maintained by a municipality for hauling, the municipality may require the Contractor to purchase a bond for each mile of traveled length. The face value for such bond shall not exceed \$50,000/mile. The cost of said bond shall be Incidental to the Contract.

105.5.3 Posted Roads or Bridges The Contractor must comply with all restrictions set forth pursuant to 29-A MRSA § 2395, including springtime posting of load restrictions. An overlimit movement permit pursuant to 29-A MRSA § 2382 will not relieve the Contractor of its obligation to repair damage to such posted Roads or Bridges. For a related provision, see Section 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits.

105.5.4 Narrow Roads The Contractor shall not haul on Roads having a bituminous surface width of less than 20 feet unless there is no practical alternative.

### 105.5.5 Overlimit Loads

A. Within Project Limits Within the Project Limits, the Contractor shall not haul over the base courses, surface course, or accepted subgrades with loads that exceed legal limits, except for Equipment used in grading operations, including the preparation of the subgrade.

B. Outside Project Limits Outside the Project Limits, the Contractor must comply with 29-A MRSA § 2382 - Overlimit Movement Permits before moving vehicles or hauling loads in excess of legal limits. The Contractor is responsible for all damage caused by the movement of loads in excess of legal limits whether under permit or not.

105.5.6 Restrictions on Movement and Storage of Heavy Loads and Equipment on Bridges The Contractor shall comply with legal load restrictions and with special restrictions required by the Contract when hauling or storing materials, including demolition debris, and moving or storing equipment on Bridges within the Project Limits that are under construction or completed but not yet open to traffic.

The Contractor shall not operate equipment mounted on crawler tracks or steel-tired wheels on or across concrete or bituminous surfaces, unless otherwise approved by the Resident. The Contract requirements may impose special restrictions on speed, load distribution, surface protection, or other precautions.

When construction operations require crossing an existing Bridge with otherwise prohibited equipment or loads, the Contractor shall use Department approved methods of load distribution or bridging, at no additional cost to the Department.

The Contractor will not be relieved of liability for damages resulting from the operation and movement of construction equipment because it has been issued a special permit, or it has adhered to any other restrictions imposed.

Unless otherwise allowed by the Contract or approved by the Department, the Contractor shall temporarily store construction materials, including demolition debris, or park equipment on a Bridge deck during construction in accordance with the following limits, which have been established to reflect typical design live loads:

Stockpiles shall not weigh more than 65,000 pounds per 1,000 square feet,

Individual stockpiles of Materials (including pallets of products, reinforcing steel bundles and Aggregate stockpiles) shall not weigh more than 25,000 pounds per 100 square feet, or

No single vehicle or piece of Equipment shall weigh more than 80,000 pounds and no combination of vehicles, Materials, and other Equipment shall weigh more than 200,000 pounds per span, for span lengths greater than 40 feet.

The Contractor may submit alternate loadings with calculations stamped by a licensed Professional Engineer, within 30 Days prior to placement of the load(s).

## 105.6 Construction Surveying

105.6.1 Department Provided Services The Department will provide the Contractor with the descriptions and coordinates of a sufficient number of vertical and horizontal control points, set by the Department, throughout the Project, for full construction Projects and other Projects where survey control is necessary. For Projects of 1,000 feet in length or less, the Department will provide a minimum of three points. For Projects between 1,000 and 5,000 feet in length, the Department will provide a minimum of five points. For Projects in excess of 5,000 feet in length, the Department will provide at a minimum, one set of two points at each end of the Project, plus one additional set of two points for each mile of Project length. For non-full construction Projects and other Projects where survey control is not necessary, the Department will not set any control points and, therefore, will not provide descriptions and coordinates of any control points. Upon request, the Department will provide its Survey Manual to the Contractor, or its survey Subcontractor.

105.6.2 Contractor Provided Services Using the survey information and points provided by the Department, described in Subsection 105.6.1 - Department Provided Services, the Contractor shall provide all additional survey layout necessary to complete the Work. This may include, but not be limited to, re-establishing all points provided by the Department, establishing additional control points, running axis lines, providing layout and maintenance of all other lines, grades, or points, and survey quality control to ensure conformance with the Contract. The Contractor is also responsible for providing construction centerline, or close reference points, for all Utility Facilities relocations and adjustments as necessary to complete the Work. When the Work is to connect with existing Structures, the Contractor shall verify all dimensions before proceeding with the Work. The Contractor shall employ or retain competent engineering and/or surveying personnel to fulfill these responsibilities.

The Contractor must notify the Department of any errors or inconsistencies regarding the data and layout provided by the Department as provided by Section 104.3.3 - Duty to Notify Department If Ambiguities Discovered.

105.6.2.1 Survey Quality Control and Construction Layout The Contractor is responsible for all construction survey quality control. Construction survey quality control is generally defined as, first, performing initial field survey layout of the Work and, second, performing an independent check of the initial layout using independent survey data to assure the accuracy of the initial layout; additional iterations of checks may be required if significant discrepancies are discovered in this process. Construction survey layout quality control also requires written documentation of the layout process such that the process can be followed and repeated, if necessary, by an independent survey crew.

105.6.2.2 Electronic Design Data and Digital Terrain Model (DTM) If provided by the Department, at the request of the Contractor, any electronic project design data will not be deemed a part of the contract, and is supplied as a courtesy by the Department. The Contractor shall not take advantage of any ambiguity or error contained in said data, and upon discovery of any ambiguity or error shall notify the Department before proceeding. The Contractor may convert any electronic data provided by the Department into a format

required by the Contractor's system and equipment at the Contractor's expense. Any Digital Terrain Model (DTM) to be used for construction shall be submitted to the Department in InRoads DTM or LandXML format at least 14 days prior to the pre-construction meeting; any other format shall be preapproved by the Department prior to submittal. No changes shall be made to the electronic model after submittal without prior written consent by the Project Resident. The Department will review and provide comments to the Contractor within 14 days of receipt of the DTM submittal

105.6.2.3 Survey Work Plan The Contractor shall provide a Survey Work Plan to the Department prior to, or at, the preconstruction meeting.

The Survey Work Plan shall include:

- A. Make and model of equipment and software used for project layout.
- B. Make and model of equipment and software used for machine guidance and control.
- C. Manufacturer-stated specifications for vertical and horizontal accuracy attainable by the equipment.
- D. Equipment calibration procedures and date of last calibration.
- E. Narrative of methodology used to establish any additional horizontal or vertical project control points. Field notes for new vertical control shall be submitted to the Department.
- F. Site Calibration (Localization) and control verification procedures, including a timetable and tolerances. A Site Calibration report shall be submitted to the Department, including the values of calculated residuals of each point used in the calibration.
- G. Type and locations of base stations to be used, including methodology for establishing on-site base broadcast positions and localization procedures used for off-site bases.
- H. Describe methodology used to overcome Real Time Kinematic (RTK) signal losses in a portion or portions of the project, and methodology to ensure signals for both inspection operation areas and construction operation areas (i.e. multiple bases operating simultaneously)
- I. Describe procedures used to integrate vertical refinement equipment (i.e. laser); including the process of determining and verifying transmitter set-up location and communicating any necessary adjustments to the machine control equipment.
- J. Name(s) and qualifications of the Contractor's designated on-site surveyor(s) or engineer(s) responsible for performing the project layout.
- K. Design software and version used to develop the Digital Terrain Model (DTM).

The Department will review and provide comments to the Contractor within 7 days of receipt of the Survey Work Plan.

105.6.2.4 Department Verification The Contractor shall furnish a Global Navigation Satellite System (GNSS) or Global Positioning System (GPS) Rover and/or Robotic Total Station (RTS) equipment to the Department with the same capabilities as those used by the Contractor or other approved method, such as reference staking, to allow the Department to independently verify the accuracy of the work, as approved by the Department.

This equipment referred to above shall be compatible with the system(s) used by the Contractor and be provided to the Project Resident prior to the Contractor commences Work using electronic layout methods. This equipment shall stay in the possession of the Department for the duration of the project and shall be returned, in good condition, to the Contractor upon final acceptance of the field work. Any augmented features (such as laser refinement) used by the Contractor shall be included in the features available on the equipment provided to the Department.

The Contractor shall provide manufacturer-certified training on the use of the GNSS, GPS, and/or RTS equipment and the Contractor's systems to Department project personnel prior to beginning any Work. This training is for the purpose of providing Department project personnel with an understanding of the equipment, software, and electronic data being used by the Contractor.

105.6.2.5 Field Layout Specifications All Work accomplished through electronic layout methods and/or machine control must meet the same accuracy requirements as the conventional grading construction standards detailed in the Standard Specifications. The contractor shall not use GNSS, GPS, or RTS equipment for a construction activity that requires a greater precision than the machine's capability as per the manufacturer's recommendation.

105.6.2.6 Basis of Payment No payment shall be made by the Department for the Contractor's elected use of electronic methods of project location layout and control. Any delays arising from the operation of GNSS, GPS, or RTS layout or machine control systems will not result in adjustment to the bid price or quantity of any construction items or be justification for granting any type of contract extension. Any costs incurred through incorrect use of GNSS, GPS, or RTS layout or machine control systems or re-work necessary through their use are the sole responsibility of the Contractor. Training of Department project personnel in the use of GNSS, GPS, or RTS will be paid on a reimbursable basis based on submitted invoices, without Contractor markup.

105.6.3 Survey Quality Assurance It is the Department's prerogative to perform construction survey quality assurance. Construction survey quality assurance is generally defined as an independent check of the Contractor's construction survey quality control. The construction survey quality assurance process may involve physically checking the Contractor's construction survey layout using independent survey data, or may involve reviewing the construction survey quality control written documentation. If the Department elects to physically check the Contractor's survey layout, the Contractor's designated surveyor may be required to be present. The Department will provide a minimum notice of 48 hours to the Contractor, whenever possible, if the Contractor's designated surveyor's presence is required. Any errors discovered through the quality assurance process shall be corrected by the Contractor, at no additional cost to the Department.

105.6.4 Boundary Markers The Contractor shall preserve and protect from damage all monuments or other points that mark the boundaries of the Right-of-Way or abutting parcels

that are outside the area that must be disturbed to perform the Work. The Contractor shall indemnify, defend, and hold harmless the Department from all claims to re-establish the former location of all such monuments or points, including claims arising from 14 MRSA § 7554-A. For a related provision, see Section 104.3.11 - Responsibility for Property of Others.

### 105.7 Working Drawings

105.7.1 General The Contractor shall provide all necessary Working Drawings to the Department for review. The Contractor shall not allow final assembly or fabrication of structural units before the Department completes its review of the applicable Working Drawings and comments on them. The Contract price shall include the cost of furnishing and revising all Working Drawings.

The Department's review of and comment on Working Drawings may be limited to basic Contract requirements relating to design compliance and Material type(s). Such review shall not relieve the Contractor of responsibility under the Contract, including the overall correctness of Working Drawings, including Engineering and mathematical computations, shop fits, and field connections.

105.7.2 Review Times The Contractor's Schedule of Work shall allow the Department the following review and comment times prior to the start of production. For a related provision, see Section 107.4 - Scheduling of Work.

First Submission: 21 Days or 1 day per drawing, whichever is greater.

Second Submission: 10 Days or 1/2 day per drawing, whichever is greater.

Each subsequent submission: 10 Days or 1/2 day per drawing, whichever is greater.

The above review times shall be doubled for submittals that include design computations.

The Department may combine separate submissions of analytically common elements of Work and require the per-drawing review times set forth above when it determines that the Contractor has divided Working Drawings into separate submissions for the purpose of avoiding said per-drawing review times.

Delay caused by exceeding the time periods listed above will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

105.7.3 Cost of Review The Department will review the first and second submission at no cost to the Contractor. For subsequent submissions, the Department will charge the

Contractor a rate of \$75 per person-hour of review. Such costs will be deducted from amounts otherwise due the Contractor.

105.7.4 Submittal Requirements The Contractor shall indicate the order of preference for review and return of Working Drawings and organize all Drawings in the order of their importance.

The Contractor shall submit 3 sets of Drawings or electronic copy to the Resident.

All submittals shall use the same system of units as that used in the Department's Plans.

105.7.5 Review Standards and Procedures If the first submission does not meet accepted industry standards for Working Drawings or Engineering design Drawings and Specifications, as determined by the Department, the entire submission will be returned without review and will be recorded as the first submission. When resubmitted, the review time requirements shall be those applicable to a first submission.

One set of reviewed Working Drawings will be marked with comments and returned to the Contractor. The Contractor shall then revise its Working Drawings accordingly. Except as provided otherwise in the Contract, the Contractor shall furnish the Department with 2 reproducible copies of the final Working Drawings before construction of the element(s) depicted in the Working Drawing(s).

#### 105.8 Environmental Requirements

105.8.1 Temporary Soil Erosion and Water Pollution Control The Contractor shall provide continuous and effective soil erosion and water pollution control in compliance with Section 656 - Temporary Soil Erosion and Water Pollution Control.

#### 105.8.2 Permit Requirements

A. Permits Granted To Department Permits are to be included in or incorporated by reference into the Bid Documents. If Permits are not so included and the Contractor is aware the Work will affect a regulated resource such as water bodies or wetland, the Contractor shall notify the Department before Bidding. For a related provision, see Section 102.5.2 - Bidder's Duty to Notify Department If Ambiguities Discovered.

The Contractor is responsible for complying with all Permit conditions. If the Contractor desires to modify or seek interpretation of any permit granted to the Department, it must coordinate any such requests through the Department.

B. All Other Permits Except as expressly provided otherwise in the Contract, the Contractor, at its expense, shall procure all other environmental or land use Permits, licenses, or other permissions that are necessary or appropriate to perform the Work. At the time of application, the Contractor shall provide the Department with notice of all

applications for such Permits, licenses, or other permissions, and upon request, a copy of all such applications. For a related provision, see Section 104.3.2 - Furnishing of Other Property Rights, Licenses, and Permits.

### 105.8.3 Wetland and Waterbody Impacts

A. General Prohibition Except as specifically allowed by the Contract, there shall be no permanent or temporary impacts to water bodies or wetlands identified on the Plans or otherwise known to the Contractor. For a related provision, see Section 656.3.4 – “Water Pollution Control Requirements.”

B. Wetlands Outside Project Limits If the Contractor desires to conduct an activity that can disturb the soil in an area that is outside the Project Limits, but is contiguous or in close proximity to such Limits, the area first must be examined and analyzed by a qualified wetlands specialist in order to determine whether wetlands exist, and if so, to delineate them. The Contractor must notify the Department of all such examinations and analyses and the results thereof. Wetlands so delineated must not be impacted unless properly permitted.

Any fill Material generated from this Project shall not be placed, stored, or disposed of in a wetland at an off-site location unless the Contractor provides the Department with written evidence that all Permits necessary for such use have been obtained. Such evidence must be signed by the Owner of such site and otherwise acceptable to the Department.

C. Temporary Structures Temporary or permanent impacts to wetlands are prohibited without proper permitting or modification to existing Permits. Temporary Structures in a waterbody must comply with any Contract provisions regarding Instream Work.

105.8.4 Hazardous Materials If the Contractor encounters any condition that indicates the presence of uncontrolled petroleum or hazardous Materials, the Contractor shall immediately stop Work, notify the Department, treat any such conditions with extreme caution, and secure the area of potential hazard to minimize health risks to workers and the public, and to prevent additional releases of contaminants into the environment. Such conditions include the presence of barrels, tanks, unexpected odors, discoloration of soil or water, an oily sheen on soil or water, excessively hot earth, smoke, or any other condition indicating uncontrolled petroleum or hazardous Materials. The Contractor shall continue Work in other areas of the Project unless otherwise directed by the Department. The Contractor shall utilize approved vendors and comply with all federal, State, and local laws concerning the handling, storage, treatment, and disposal of uncontrolled petroleum or hazardous Material. If the condition meets the definition of a Differing Site Condition under Section 109.4.1, the Contractor may be eligible for an Equitable Adjustment.

105.8.5 Dredge Spoils (Dredge Materials) Unless otherwise provided in the Contract, dredge spoils may not be used as fill within the Project Limits. Any use or disposal of dredge spoils must be in accordance with all applicable federal and State laws.

#### 105.8.6 Pit or Quarry Requirements

General Pits or quarries that are sources of Material for the Project, including loam fields, shall meet the requirements of this Section 105.8.6. The Contractor must procure an Agreement from the Owners of such sources stating that the Owners will comply with these requirements. If requested by the Department, the Contractor will provide the Department with a copy of such Agreement. The Contractor shall provide the Resident with the center of the source GPS coordinate pairs (latitude and longitude) in decimal degrees (DD.DDDDDD), name, and town in which the source is located.

Excavation Requirements Surface Material stripped from the pit shall be stored to allow for restoration of the pit. The Contractor shall not excavate from pit faces that are vertical or have an overhang. The Contractor must stop excavating within a 2 horizontal to 1 vertical slope 10 feet inside of a property line of a deposit, even though the Material within the pit may have a steeper angle of repose, except when an additional Agreement is reached with an adjacent property Owner to allow the extension of a pit onto the adjacent property Owner's land. The Contractor must insure that hazards such as steep pit faces and ponds are protected by flattening slopes or by erecting suitable fencing.Rehabilitation If the pit is licensed by MDEP or LURC, the Contractor shall follow the rehabilitation provisions of said license. In the absence of such license requirements, the Contractor shall follow local Municipal Land Use Ordinances pursuant to Gravel Pit Operations. In the absence of such Ordinances, or if the Ordinances do not address rehabilitation of pits, the Contractor and Landowner shall agree, in writing, to the scope of rehabilitation of the pit. This agreement shall be signed by both parties. A copy of the agreement shall be submitted to the Resident.

105.8.7 Environmental Non-compliance - Remedies and Costs The Contractor shall be in non-compliance if it, or Subcontractors at any tier, fail to comply with the terms of this Contract or, pursuant to Section 104.3.7 - Laws To Be Observed, any applicable environmental or land use law or regulation, including Project specific permit conditions.

If the Contractor is in non-compliance, the Department may, at its discretion:

- A. Withhold all Progress Payments, or any portion thereof, during the period the Contractor is in non-compliance;
- B. Remedy such non-compliance using State forces or another Contractor and deduct all costs incurred by the Department from Progress Payments. Such costs include direct costs, Project Engineering costs, and Contractor costs from amounts otherwise due the Contractor, and/or

C. Suspend the Work for cause and without cost or liability to the Department. Said suspension shall continue until the Contractor has addressed all non-compliance issues as directed by the Department.

The Contractor shall be responsible for any fines and penalties assessed by environmental or land use regulatory agencies due to such non-compliance. Such penalties may be withheld from amounts otherwise due the Contractor. For related provisions, see Sections 108.5 - Right to Withhold Payments and 108.9.3 - Amounts Due the Department.

105.9 Historic and Archaeological Considerations Unless otherwise provided in the contract, the Contractor is approved to construct the project in accordance with the contract plans. This in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470 f), the Regulation (36 CFR Part 800), and the 2004 Section 106 Maine Programmatic Agreement.

Changes during construction that vary from the project contract plans must be approved by the Department. These changes could have adverse effects to Historic Resources, as well as jeopardize federal funding.

If the Contractor or any subcontractor discovers any object of potential historic archaeological or other historic interest, all Work that could disturb the object will immediately cease and will not resume until investigation of the object and related deposits have been completed, and if necessary recovered. The Contractor will notify the Department immediately if any such object is discovered. (The first indications of such an object may be burial grounds or campsites of Native Americans that reveal the bones of the dead and implements. Also the exposure of marine fossils or shells found mainly in clay deposits, as well as, exposure of dumps in landfill areas, abandoned campfire sites, and building foundations.)

Any Delay of the Contractor's operations resulting from the above discoveries will be analyzed in accordance with the Department Standard Specification Section 109.5 – Adjustment for Delay, except that in no event will such Delay be a Compensable Delay.

The Contractor is notified of 27 MRSA § 371, which provides that the State owns all artifacts, specimens, and material that are found on, in, or beneath State-controlled lands.

#### 105.10 Equal Opportunity and Civil Rights

105.10.1.1 Disadvantaged Business Enterprises Program The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT), 49 CFR Part 26. The Department receives federal financial assistance from USDOT, and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26. The Department is responsible for determining the eligibility of and certifying DBE firms in Maine.

A DBE is defined as a for-profit business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purpose of this definition:

1. “Socially and economically disadvantaged person” means an individual who is a citizen or lawful permanent resident of the United States and who is Black, Hispanic, Native American, Asian, Female; or a member of another group or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
2. “Owned and controlled” means a business that is:
  - a. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
  - b. A partnership or limited liability company in which at least 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).
  - c. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with the percentage of ownership. If the disadvantaged group ownership interests are real, substantial, and continuing and not created solely to meet the requirements of this program, a firm is considered a bona fide DBE.

105.10.1.2 Commercially Useful Function The Department will count expenditures of a DBE contractor toward the DBE Goal only if the DBE is performing a commercially useful function (“CUF”) on that Contract. A DBE performs a CUF when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Credit will be given only when the DBE meets all conditions for a CUF. Credit for labor will be given in accordance with the responsibilities outlined in the Contract. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the DBE firm is to be paid under the Contract is commensurate with the work it is actually performing and DBE credit claimed for its performance of the work, and other relevant factors.

If, while the DBE is performing under the Contract, the DBE purchases supplies or rents equipment from the Contractor, the costs of such supplies or rentals do not count toward the DBE goal as defined in Section 105.10.1.3.

A current listing of certified DBEs that may wish to participate in the highway construction program and the scope of work for which they are certified can be found at <http://www.maine.gov/mainedot/civilrights/dbe.htm>. Credit will be given for the value described by a DBE performing as:

- A. A Contractor; 100% of actual value of work performed by own workforces.
- B. An approved subcontractor; 100% of work performed by own workforces.
- C. An owner-operator of construction equipment; 100% of expenditures committed.
- D. A manufacturer; 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor. Brokers and packagers shall not be regarded as manufacturers.
- E. A regular dealer; 60% of expenditures committed. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public. For purposes of this provision a “Broker” is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party. Brokers and packagers shall not be regarded as regular dealers.
- F. A bona fide service provider; 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the contract. Eligible services also include services provided by agencies providing bonding and insurance specifically required for the performance of the contract.
- G. A trucking, hauling, or delivery operation. 100% of expenditures committed when trucks are owned, operated, licensed, and insured by the DBE and used on the contract and, if applicable, includes the cost of the self-supplied materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm, including an owner-operator. 100% of reasonable fees or commissions the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- H. Any combination of A through G.

105.10.1.3 Race-neutral Goals The Department is required to set an annual goal (approved on a three year basis) for DBE participation in Federal-aid projects (the “DBE Goal”) pursuant to 49 CFR 26.53. In order to fulfill that goal, bidders are encouraged to utilize DBE businesses certified by the Department. The Department seeks to meet the established DBE goal solely through race-neutral means. *Race-neutral* DBE participation occurs when a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a contract that does not carry a DBE contract goal, or wins a subcontract from a Contractor that did not consider its DBE status in making the award. A DBE/subcontractor Utilization Proposed Form is required to be included in bid documents.

The Department will analyze each project and create a Project Availability Target (PAT), based on a number of factors, including project scope, available DBE firms, and firms certified in particular project work. Each bid will request that the contractor attempt to meet the PAT. This PAT is developed to assist contractors to better understand what the Department expectations are for a specific project. The PAT is not a mandate but an

assessment of what each project can bear for DBE participation. The Department anticipates that each contractor will make the best effort to reach or exceed this PAT for the project.

105.10.1.4 Race-conscious Project Goals If it is determined by the Department that the annual DBE goal will not be met through *race-neutral* means, the Department may implement *race-conscious contract goals* on some projects. Race-conscious contract goals are goals that are enforceable by the Department and require that the Contractor use good faith effort as defined in 49 CFR 26.53 (“Good Faith Efforts”) to achieve the goal set by the Department for that particular project. If race-conscious means are implemented on a project, the Contractor must comply with the requirements of 49 CFR 26.51 and 26.53.

At the time of the bid opening, all Bidders shall submit with their bid a Disadvantaged Business Enterprise (DBE) Commitment Form provided by the Department. This form will list the DBE and non-DBE firms that are proposed to be used during the execution of the Work. The list shall show the name of the firm, the item/material/type of work involved, and the dollar amount of work to be performed. The dollar total of each commitment shall be totaled and a percentage determined.

If the project goal is not met, acceptable documentation showing all Good Faith Efforts (“GFE”) made to obtain participation may be required in order to award the project. Failure to provide the required listing with the dollar participation total or acceptable documentation of GFE to obtain DBE participation within 3 Days after the bid opening date will be considered a lack of responsiveness on the part of the low bidder. Rejection of the low bid under these circumstances will require the low bidder to surrender the Proposal Guaranty to the Department. The submission and approval of the above forms does not constitute a formal subcontract.

If for any reason during the progress of the Work the Contractor finds that DBEs included on the list are unable to perform the proposed work, the Contractor, with written release by the committed DBE or approval of the Department, may substitute other DBE firms for those named on the list. If the Contractor is able to clearly document its inability to find qualified substitute firms to meet the project goal, the Contractor may request in writing approval to substitute the DBE with a non-DBE firm. If at any time during the life of the Contract the Department determines that the Contractor is not fulfilling the goal or commitment(s) and is not making a GFE to fulfill the DBE requirement, the Department may withhold progress payments. Fulfillment of the goal percentage shall be determined by dividing the dollars committed to the DBEs by the actual contract dollars. These requirements are in addition to all other Equal Employment Opportunity requirements on Federal-aid contracts.

105.10.1.5 Certification of DBE attainment on Contracts The Department must certify that it has conducted post-award monitoring of all contracts to ensure that DBEs have done the work for which credit was claimed. The Department will certify these contracts through review of CUF forms, Elations sub-contract payment tracking as well as occasional

on-site reviews of projects and through the project's final closeout documentation provided by our Contracts Section.

105.10.1.6 Bidders' List Survey Pursuant to 49 CFR § 26.11 the Department is required to "create and maintain" a bidders list and gather bidder information on our construction/consultant projects. Contractors are required to maintain information on all subcontract bids submitted by DBE and Non-DBE firms and provide that information to the Department. The following information is required:

Firm name  
Firm address  
Firm status (DBE or non-DBE)  
Age of firm (years)  
Annual gross receipts amount as indicated by defined brackets on the survey form, i.e., \$500,000 to \$800,000

This information critical in determining the availability of DBE businesses relative to other businesses that do similar work. In addition, FHWA requires that the Department obtain this information.

105.10.2 Requirements Applicable to All Contracts Unless expressly provided otherwise in the Bid Documents, the provisions contained in this Section 105.10.1 apply to this Contract.

A. Maine Code of Fair Practices and Affirmative Action The Contractor must comply with the provisions of Maine's Code of Fair Practices and Affirmative Action, 5 MRSA § 781, et seq., and all regulations promulgated thereunder. This Code, found at 5 MRSA § 784(2), reads as follows.

"During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation, physical and/or mental disability. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, color, sexual orientation, religious creed, sex, national origin, ancestry, age, physical handicap, or mental handicap.

3) The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining Agreement, or other Contract or understanding, whereby he is furnished with labor for the performances of [sic] his Contract, a notice, to be

provided by the Contracting Department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.

4) The Contractor will cause the foregoing provisions to be inserted in all Contracts for any Work covered by this Agreement so that such provisions will be binding upon each Subcontractor.

5) Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.”

B. Maine Human Rights Act The Contractor must comply with the provisions of Maine's Human Rights Act, 5 MRSA § 4551, et seq., and all regulations promulgated thereunder. This Act provides, among other things, that it is unlawful discrimination for any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental disability, religion, age, ancestry or national origin, or sexual orientation except when based on a bona fide occupational qualification.

C. EEO Notice to Labor Sources Contractors and Subcontractors that are required by Maine's Code of Fair Practices and Affirmative Action or by federal law to notify a labor union or a representative of workers with whom the Contractor or the Subcontractor has a collective bargaining agreement, contract, or understanding through which labor is furnished must provide notice on the letter shown on this page below. The letter must be written on the Contractor's or Subcontractor's letterhead stationery. A list of Maine Department of Labor Career Center Job Service Centers follows the form below.

To: \_\_\_\_\_  
(Union, employment agency or employee's representative)  
\_\_\_\_\_  
(Address)

Subject: Equal Employment Opportunities on  
State Project No.: \_\_\_\_\_  
Federal Aid Project No.: \_\_\_\_\_  
Location: \_\_\_\_\_  
Description of Work: \_\_\_\_\_

For Work related to the construction of the above listed Project to be performed under State Contract No.: \_\_\_\_\_, I have pledged to provide equal employment opportunities without regard to race, color, religion, sex, national origin, sexual orientation, or disability. This pledge applies to all employees and applicants for employment in connection with:

- Hiring, Placement, Upgrading, Transfer or Demotion
- Recruitment, Advertising or Solicitation for Employment
- Treatment During Employment
- Rates of Pay or Other Forms of Compensation
- Selection for Training, Including Apprenticeship
- Layoff or Termination

Inquiries and complaints should be addressed to:

President's Committee on Equal Employment Opportunity  
Washington, D.C. 20425

Signed: \_\_\_\_\_  
\_\_\_\_\_  
(Title)  
For: \_\_\_\_\_  
(Contractor)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Dated)

**Maine Department of Labor  
Career Centers & Job Service Centers**

Augusta Career Center

21 Enterprise Drive, Suite 2  
109 State House Station  
Augusta, ME 04333-0109  
Toll Free Phone: 1-800-760-1573  
Local Phone: (207) 624-5120  
Fax No: (207) 287-6236  
TTY Users Call Maine Relay 711  
Email: [augusta.careercenter@maine.gov](mailto:augusta.careercenter@maine.gov)

Bangor Career Center

45 Oak Street, Suite 3  
Bangor, ME 04401-7902  
Toll Free Phone: 1-888-828-0568  
Local Phone: (207) 561-4050  
Fax No: (207) 561-4066  
TTY Users Call Maine Relay 711  
Email: [bangor.careercenter@maine.gov](mailto:bangor.careercenter@maine.gov)

Calais Career Center

1 College Drive  
Calais, ME 04619-0415  
Toll Free Phone: 1-800-543-0303  
Local Phone: (207) 454-7551  
Fax No: (207) 454-0349  
TTY Users Call Maine Relay 711  
Email: [calais.careercenter@maine.gov](mailto:calais.careercenter@maine.gov)

Lewiston Career Center

5 Mollison Way  
Lewiston, ME 04240-5805  
Toll Free Phone: 1-800-741-2991  
Local Phone: (207) 753-9001  
Fax No: (207) 783-5301  
TTY Users Call Maine Relay 711  
Email: [lewiston.careercenter@maine.gov](mailto:lewiston.careercenter@maine.gov)

Presque Isle Career Center

66 Spruce Street, Suite 1  
Presque Isle, Maine 04769-3222  
Toll Free Phone: 1-800-760-1572  
Local: (207) 474-4914  
Fax (207) 760-6350  
TTY Users Call Maine Relay 711  
Email: [presqueisle.careercenter@maine.gov](mailto:presqueisle.careercenter@maine.gov)

Skowhegan Career Center

98 North Ave  
Skowhegan, ME 04976-1923  
Toll Free Phone: 1-800-760-1572  
Local Phone: (207) 474-4950  
Fax No: (207) 474-4914  
TTY Users Call Maine Relay 711  
Email: [skowhegan.careercenter@maine.gov](mailto:skowhegan.careercenter@maine.gov)

Springvale Career Center

9 Bodwell Court  
Springvale, ME 04083  
Toll Free: 1-800-343-0151  
Local: (207) 324-5460  
Fax: (207) 324-7069  
TTY Users Call Maine Relay 711  
Email: [springvale.careercenter@maine.gov](mailto:springvale.careercenter@maine.gov)

Wilton Career Center

865 US Route 2E  
Wilton, ME 04294-6649  
Toll Free Phone: 1-800-982-4311  
Fax No: (207) 645-2093  
TTY Users Call Maine Relay 711  
Email: [wilton.careercenter@maine.gov](mailto:wilton.careercenter@maine.gov)

D. Prevention of Sexual Harassment It is the policy of the Department that all parties have a right to Work in an environment free from harassment, including sexual harassment. Maine State Law and the Department prohibit any and all forms of sexual harassment in the Workplace, on the job site, or that may have an effect on the Work environment.

THEREFORE:

The Contractor hereby agrees to the following requirements in order to provide and promote a non-discriminatory Workplace free of sexual harassment.

1. No Contractor, supervisor, or employee shall allow repeated, objectionable, or unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks that cause discomfort, humiliation, or are in any way offensive to the recipient, or that interfere with the quality of any employee's Work environment in any way. Furthermore, no one on any job shall threaten or insinuate either explicitly or implicitly that any employee's submission to or rejection of sexual advances will have any effect on that person's employment, job assignment, training, evaluation, promotion, wages, or any other term or condition of employment or future job opportunity. Under Maine State Law, Contractors are responsible for ensuring and maintaining a Work environment that is free from sexual harassment.

2. Any Contractor whose employee sexually harasses another employee shall be subject to disciplinary action. Contractors that fail to adequately and expeditiously investigate sexual harassment claims will be subject to enforcement proceedings and such sanctions as are authorized by law. Contractors are required to provide detailed written reports to the Department when so requested that shall describe the investigation and corrective actions taken by Contractors in all instances of sexual harassment allegations.

Contractors shall also be responsible for ensuring that no retaliation, reprisal, or intimidation be directed against any complainant or other employee who provides information to any person or agency investigating an allegation or complaint of sexual harassment.

E. Certification of Continuing EEO Efforts The Contractor must certify, to the best of its knowledge and belief, that the Contractor has made and will continue to make a good-faith effort to comply with all applicable State requirements on equal employment opportunity, non-discrimination, and affirmative action, including employment of women, minorities, and disadvantaged as journeyed trade workers. Contractors not having achieved company-wide trade employment goals of 6.9% for females and 0.5% for minorities will, where indicated by Contract and to the maximum extent practical, comply with Section 660 - On-the-Job Training.

105.11 Other Federal Requirements Prior to payment by the Department, the Contractor shall provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of the Buy America provisions of 23 CFR § 635.410, as amended. Such certification shall also include (1) a statement that the iron or steel product or component was produced entirely within the United States, or (2) a statement that the iron or steel product or component was produced within the United States, except for minimal quantities of foreign steel and iron valued at \$ (actual value).

All manufacturing processes must take place within the United States. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process that modifies the chemical content, the physical size and shape, or the final finish is considered a manufacturing process, including rolling, extruding, machining, bending, grinding, drilling, and coating. “Coating” includes epoxy coating, galvanizing, painting, or any other coating that protects or enhances the value of the material.

A “Buy America” Certification is required from each manufacturer, fabricator, supplier, subcontractor that engages in “manufacturing” as defined above.

“Buy America” does not apply to raw materials (iron ore and alloys), scrap, pig iron, or processed, pelletized, and reduced iron ore.

## SECTION 106 - QUALITY

Scope of Section This section contains general provisions related to the Quality of Work, including roles, standards, Materials, Quality Control, Acceptance, Non-conforming Work, and warranties. When specified in the contract, the Department will use the quality level analysis in this Section to determine quality-based pay adjustments.

### 106.1 Roles Regarding Quality

106.1.1 Cooperation The Contractor and the Department shall work cooperatively within their respective Quality Assurance (QA) responsibilities to produce and document a high quality project, meeting or exceeding the quality requirements of the Contract.

106.1.2 Role of the Contractor The Contractor is responsible for all aspects of the quality of construction, including labor, equipment, materials, incidentals, processes, construction methods, and QC. When required by the Contract, the Contractor shall develop, submit for approval, implement, and adjust if necessary a QCP for the Work specified.

106.1.3 Role of the Department The Department is responsible for providing a quality design, approving the QCP, and assuring that the Contractor is following the QCP. The Department will perform acceptance sampling, testing, and inspection for any element of the

Work to ensure compliance with the QCP and contract requirements. The Department may also perform IA and Verification sampling and testing at any time.

## 106.2 Quality Standards

106.2.1 Conformity with Contract The Contractor shall comply with all Contract requirements in performance of the Work. Any required plans such as QCP, the TCP, and the SEWPCP, as approved by the Department, are binding upon the Contractor as Contract requirements.

106.2.2 Conformity with Other Standards Unless otherwise provided in the Contract, all Work shall conform to the following standards, as applicable.

- A. Department
- B. AASHTO
- C. ASTM
- D. AREMA
- E. Standard conditions and special conditions contained in any permit
- F. MUTCD
- G. American with Disabilities Act (ADA)

106.2.3 Industry Standards If there is no applicable standard set forth in this Contract for a particular item of Work, then the Contractor shall perform that item of Work in accordance with industry standards prevailing at the time of the Bid.

## 106.3 Material Quality

106.3.1 General Materials and manufactured products incorporated into the Work shall be new unless otherwise specified, free from defect, and in conformity with the Contract.

When Material is fabricated or treated with another Material or where any combination of Materials is assembled to form a finished product, any or all of which are covered by specifications, the Department may reject the finished product if any of the components do not comply with the specifications.

Title to all hot mix asphalt to be furnished by the Contractor shall pass to the Department immediately before installation. The preceding sentence shall not in any way affect any right or remedy the Department has relating to the quality of the material, installation, or workmanship.

106.3.2 Quality Requirements Materials shall meet the requirements of the Contract at the time they are incorporated into the work. The Contractor shall sample and test proposed sources of materials, using accepted procedures and equipment no more than 60 Days prior to use. Materials shall not be used in the Work until passing results are obtained and provided to the Department. The Contractor shall provide the Resident with a copy of the passing test results, including the source of the Material as identified in Section 105.8.6.

The Contractor shall perform QC inspection, sampling, testing, and documentation in accordance with the Contract requirements. For work without specific QC requirements, the Contractor shall perform inspection, sampling, and testing as the Contractor deems necessary to ensure adequate process control and end product quality.

The Contractor shall provide all facilities, Equipment, and Material samples required by the Department to conduct Acceptance, Verification, and IA sampling and testing.

The Contractor shall supply Materials and perform work using methods and Equipment in a manner that will not degrade the quality of the Materials. Materials with prior approval that become unfit for use or fall outside the specification limits will result in the affected product being declared Non-conforming Work. For a related provision, see Section 106.8 - Non-conforming Work.

The cost of the Contractor's QC activities and its costs for furnishing facilities, testing Equipment, and samples for the Department's Acceptance and IA activities are incidental to the related Pay Items.

#### 106.3.3 Sources

A. General The Contractor shall furnish all materials and products required to complete the work, except as otherwise provided in the Contract. Unless otherwise specified in the Contract, the Contractor shall use only those products contained on the Department's Qualified Products List (available on the Department internet site) if a list is established for that type of product or Material. For any material on the Department qualified products list that is being considered for incorporation into the Work, it shall be the Contractor's responsibility to verify that the Material is appropriate for the use being considered.

B. Department Furnished Materials The Contract may specify that the Department will furnish certain Materials. If the Contractor reasonably believes that the Department-furnished Material is deficient in any way, the Contractor shall immediately notify the Department before accepting delivery. After acceptance of delivery, the Contractor is responsible for all risk of loss of Department-furnished Material. The cost of inspecting, handling, and storing Department-furnished Materials after delivery is incidental to the Contract. The Department may deduct from amounts otherwise due the Contractor all costs necessary to make good any shortage, damage, or deficiencies discovered after the Contractor accepts delivery, including any demurrage or car hire charges.

106.3.4 Storage The Contractor shall store Materials to preserve their quality and fitness for the work. Materials shall not be stored under or in close proximity to Highway Structures unless the Contractor receives written permission from the Resident. If Materials fail to meet the requirements of the Contract, the Materials will be rejected. The Department may inspect stored materials at any time. The Contractor shall locate stored Materials to facilitate their prompt inspection. The Department may approve portions of land within the

Right-of-Way for storage purposes and for the placing of the Contractor's equipment, but the Contractor shall provide any additional land required without cost to the Department. The Contractor shall not use private property for storage purposes without written permission of the owner, with copies of the written permission furnished to the Department upon request. The Contractor shall restore all storage sites, whether within the Right-of-Way or on private property, to original condition at the completion of the project, without cost to the Department.

106.3.5 Handling The Contractor shall handle all Materials in a manner that preserves their quality and fitness for the work. The Contractor shall transport Aggregates in tight vehicles to avoid loss or segregation of Materials after loading and measuring.

106.3.6 Unacceptable Materials The Department may reject Materials not conforming to the Specifications at any time, and the Contractor shall remove them immediately from the project site unless otherwise instructed by the Department. The Contractor shall not store or use rejected materials on any Department project.

106.3.7 Sampling and Testing Qualified Departmental personnel may take samples of Materials for Acceptance Testing. Work in which Material is used without the Department's approval will be at the Contractor's sole risk and the work will be considered Non-conforming Work. Unless otherwise designated, the Department's testing costs will be at the expense of the Department. Materials being used are subject to inspection, testing, or rejection at any time. The Department will furnish copies of test reports to the Contractor upon request.

The Contractor is responsible for the quality of construction and materials incorporated into the work. The Contractor shall perform all necessary QC inspection, sampling, and testing in accordance with the approved QCP. If a QCP is not required, the Contractor is still responsible for all QC necessary for a high quality project. The Contractor shall not rely on the results of the Department's Acceptance Testing being available for process QC.

The Contractor may observe the Department's sampling and testing activities. If the Contractor observes a deviation from the specified sampling or testing procedures, then the Contractor shall describe the deviation to the Department immediately and document the deviation in writing within 24 hours to preserve its ability to dispute the sample.

The Department will randomly sample and test items designated for Acceptance in accordance with the procedure specified for that item. The Department may also sample and test at any time if the Material appears defective or when the Department determines that a change in the process or product has occurred. Acceptance Tests will govern in all cases for determination of pay factors without regard to QC tests, unless otherwise specified in the Contract.

When directed by the Department, the Contractor shall sample and test any Material that appears inconsistent with similar Material being sampled, unless such Material is

voluntarily removed and replaced or corrected by the Contractor. All sampling shall be in accordance with Department, AASHTO, or ASTM procedures as specified for the material being sampled.

#### 106.4 Quality Control

106.4.1 General When required elsewhere in the Contract, the Contractor shall develop, submit, and implement a Quality Control Plan (QCP), approved by the Department, for those items of work specified that will result in work that meets or exceeds the quality requirements of this Contract. Regardless of whether a QCP is required, Quality Control for all work is the Contractor's responsibility.

A. Submittal Within 21 Days of Contract Execution or at least 30 Days before any related work is to be performed, the Contractor shall submit three copies of its QCP to the Department.

B. Approval Within 14 Days of Receipt, the Department will determine if the QCP is in accordance with the requirements of this Section 106.4 and (1) notify the Contractor that its QCP is approved or (2) return it for any needed revisions. If returned for revision, the Contractor shall resubmit three copies of its revised QCP as provided above within 7 Days and the Department will have 7 Days from receipt of the revised plan to notify the Contractor whether its QCP is approved or again requires revision. Additional iterations will occur in a like manner until the Department approves the Contractor's QCP. Failure to submit an approvable QCP shall not be cause for any adjustment to compensation or time.

C. Standard QC Plans For items included in Section 400 – Pavements, the Contractor may choose to submit a standard QCP that includes any items common to all of its plants and paving operations. Standard plans shall be submitted to the Quality Assurance Engineer by March 1 of . The standard plan will apply to all projects constructed by the Contractor until a new standard plan is approved the following year. In addition to the standard plan, the Contractor must submit a supplemental QCP for each project that includes any required items and project specific details not covered by the standard plan. Approval of both standard and Project-specific QCPs shall be as done outlined in paragraph B above, with the exception that the initial 14-Day review period for standard plans will begin on March 1, and that the supplemental Project-specific QCP shall be submitted a minimum of 14 Days prior to any related work being performed with an initial review period of 7 Days.

Upon final approval of the QCP, the Contractor shall provide 5 bound copies or an electronic version to the Department. All Contractor QC personnel shall also be issued their own copy of the approved QCP. The Contractor shall communicate the applicable contents of the approved QCP to all Contractor and Subcontractor personnel involved in completing the work items covered by the QCP.

The Contractor's QCP shall consist of plans, procedures, responsibilities, authority, and an organizational structure that demonstrates that an effective level of QC will exist and

that the finished products will comply with all Contract requirements. The Contractor shall provide all necessary QC inspection, sampling, and testing to implement the QCP. The QCP shall include an organizational structure and reporting requirements that demonstrate that QC personnel have sufficient independence to allow them to be primarily concerned with quality, as opposed to schedule and budget.

The individual administering the QCP shall be a full-time employee of or a consultant engaged by the Contractor. The individual shall have full authority to institute any and all actions necessary for the successful implementation of the QCP.

The Department will not sample or test for process control or assist in controlling the Contractor's production operations. The Contractor shall provide QC personnel and testing Equipment capable of providing a quality product that meets or exceeds the Contract requirements. Continued production of Non-conforming Work for a reduced price, instead of making adjustments to the production operations to bring work into conformance, is not allowed.

106.4.2 Quality Control Plan Requirements The QCP shall include, at a minimum, the following:

- Construction items covered by the QCP, as specified in the Contract
- Sampling location and techniques
- Tests and test methods
- Testing frequencies
- Inspection frequencies
- Detailed description of production and placement Equipment and methods
- Documentation procedures, including:
  - Inspection and test records
  - Temperature measurements
  - Accuracy, calibration, or recalibration checks performed on production or testing Equipment

The QCP shall identify the Contractor's QC personnel, including the company official ultimately responsible for the quality of the Work. The Department's QCP approval process may include inspection of testing Equipment and a sampling and testing demonstration by the Contractor's QC inspector(s) to assure an acceptable level of performance.

106.4.3 Testing Qualified technicians in laboratories approved by the Department shall perform all QC testing covered by the QCP. Technician qualifications shall be as described in the Contract for the corresponding item of Work.

Laboratory facilities shall be clean, and all equipment shall be maintained in proper working condition. The Department shall be permitted unrestricted access to inspect the Contractor's laboratory facility. The Department will advise the Contractor in writing of any noted deficiencies concerning the laboratory facility, equipment, supplies, or testing

personnel and procedures. Deficiencies shall be grounds for the Department to order an immediate stop to incorporating materials into the work until deficiencies are corrected. Work already in place affected by QC deficiencies is Non-conforming Work.

The Contractor shall maintain original documentation of all inspections, tests (including all associated data such as measurements, weights, dial readings, etc. used in the completion of the test), and calculations used to generate reports. The records shall indicate the nature, number, and type of deficiencies found, the quantities approved and rejected, and the nature of corrective actions taken. The Contractor shall maintain standard testing Equipment and qualified personnel as required by the Contract.

The QCP shall include the testing and record keeping requirements for each item as contained in the Contract. The number preceding each item refers to the item and specification number in the Standard Specifications. When testing requirements are not specified, the Contractor shall perform all testing and record keeping as recommended by the manufacturer, vendor, or supplier.

If an item is required to be in the QCP but the Contract does not specify testing requirements, the Contractor shall propose testing requirements in the QCP.

The Contractor shall maintain Control Charts in a manner and location acceptable to the Department. At a minimum, the Control Charts shall identify the project number, the Pay Item number, each test parameter, the upper and lower control limits applicable to each test parameter, and the running average of the last three Contractor test results. The Contractor shall use the Control Charts as part of a process control system for identifying production and Equipment problems and for identifying potential quality reductions before they occur. Acceptable Control Charts are part of the approved QCP.

After final records review, the Contractor will certify in writing to the Department that the project has been constructed and inspected, and all materials have been tested in accordance with the Contract. All Paving certs shall be submitted on the Paving Company's Letterhead.

106.4.4 QC Inspector Qualifications When a QCP is required, the Contractor's QC Inspectors shall hold all certifications from MCTCB or NETTCP that apply to the items included in the QCP. The Department may require the Contractor to remove Inspectors from the project who are not certified as required or who are otherwise unqualified or unable to fulfill their duties in a good and workmanlike manner.

106.4.5 Inspection Requirements The QCP shall cover all construction operations on the site and at off-site production facilities, keyed to the proposed construction materials, sequence and schedule. The QCP shall also identify QC personnel (including qualifications), procedures, controls, tests, records, and forms to be used.

The Contractor shall provide a copy of each completed QC report to the Department by 1:00 PM on the Day following each construction activity, unless other arrangements are

made with the Resident. Failure to provide this report will constitute non-compliance with the QCP and the Contract.

If an item is required to be in the QCP but QC Inspection requirements are not specified in the Contract, the Contractor shall propose inspection and record keeping requirements for such items in the QCP.

106.4.6 QCP Non-Compliance The Contractor shall comply with the approved QCP and shall take all other steps necessary to assure a high quality project.

Failure by the Contractor to comply with the approved Quality Control Plan will result in a letter describing the violation, a mandatory work suspension, and a reduction in payment as shown in Table 106.4A below. The Contractor shall submit a letter to the Department that details the corrective action made to address the violation(s) in its Quality Control Plan. Work may resume when the Department is satisfied the corrective action will result in adherence to the Quality Control Plan.

Table 106.4 A - Quality Control Pay Reduction

Quality Control Plan Value*		Pay Reduction		
From More Than	To and Including	1st	2nd	3rd & Subsequent
\$0	\$500,000	\$1,000	\$2,000	\$4,000
\$500,000	\$1,000,000	\$2,000	\$4,000	\$8,000
\$1,000,000	\$3,000,000	\$5,000	\$10,000	\$20,000
\$3,000,000	and more	\$10,000	\$20,000	\$40,000

\* The Quality Control Plan Value is the total Bid value of all items covered by a Quality Control Plan, as detailed in the applicable specification or Special Provision.

During all periods of the Contractor’s failure to follow the approved QCP, no positive pay incentives will be calculated or paid if the Department accepts the Material.

Pay reductions for failure to comply with the approved QCP are cumulative, and the Department will deduct any pay reductions due from amounts otherwise due the Contractor. These pay reductions are intended to encourage the Contractor to comply with its approved QCP, and are not necessarily related to the quality of the material provided.

106.5 Quality Assurance The Department will conduct Quality Assurance by:

- Review of QC Reports provided by the Contractor.
- Monitoring Contractor compliance with the QCP.
- Random inspection of production, placement, and workmanship
- Randomly accompanying the Contractor’s inspector during QC Inspections/Testing.
- Acceptance Verification and IA sampling and testing of Materials or completed

Work.

The Department's objective is a high quality project through a cooperative effort with the Contractor. Items that are to be buried, covered, are of high cost, or affect the long-term durability of the Work will receive extra attention in the QA effort.

Unacceptable Work found by the Department's Inspector will be brought to the attention of the Resident, who will determine what corrective action the Contractor will need to take. The Contractor shall schedule the corrective work with the Resident, and both the QC and Department's Inspectors will witness the corrective action. Failure of the Contractor to correct unacceptable Work in a timely manner, as determined by the Department, may result in the withholding of progress payment(s) or suspension of the Work, or both. The Contractor will not be eligible for either additional monetary compensation or a time extension should they fail to correct. If necessary for protection of the Work or for public convenience, the Department may accomplish corrective Work by other means and deduct the cost from any monies due the Contractor.

The Department may review and obtain copies of all QC test reports (including original test data), inspections reports, and control charts at all reasonable times without cost to the Department.

If the Department decides to inspect the Materials or operations at the plant, then the following conditions shall be met:

- A. The Department shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has arranged for the Materials.
- B. The Department shall have full access at all times to the parts of the plant(s) that are involved with the manufacture and production of the Materials being furnished.
- C. If required, the Contractor shall arrange for an approved testing laboratory building for the sole use of the Department. The building shall be located near the plant and conform to the requirements of Section 639 - Engineering Facilities.
- D. The Contractor shall provide any needed equipment for safe access to plant stockpiles, equipment, and operations.

106.6 Acceptance The Department is responsible for determining the acceptability of the Work. Acceptance of the Material is based on the visual inspection of the construction, monitoring of the Contractor's QCP, and Acceptance Test results. Acceptance sampling and testing is the responsibility of the Department (unless alternate procedures are specified) except for furnishing facilities, testing equipment, transportation, and Material samples as required.

Acceptance of Hot Mix Asphalt Pavement will be based on Method A, B, or C Statistical Acceptance, or Method D (Small Quantity - Product Verification) as specified. The method of acceptance for each item is defined in Special Provision, Section 403, Hot Mix Asphalt Pavement. When items of Hot Mix Asphalt Pavement are not so designated,

Method A will be utilized whenever there are more than 1000 tons per Hot Mix Asphalt Pavement item, and Method B will be utilized when there are less than or equal to 1000 tons per Hot Mix Asphalt Pavement item.

Acceptance of structural concrete will be based on Method A or B Statistical Acceptance, or Method C Verification. Items to be accepted under Method A, Method B, or Method C are defined in Special Provision, Section 502, Structural Concrete Acceptance Methods. When items of cast-in-place concrete are not so designated, Method B will be used when there are more than 10 cubic yards and Method C will be used when there are 10 cubic yards or less.

The Department may reject Material that appears to be defective based on visual inspection. No payment will be made for the Materials rejected by the Department.

Prior to Contractor's knowledge of the sample location, the Contractor may remove and replace defective Material at no cost to the Department. The Department will sample, test, and evaluate new Material for acceptance.

A. Statistical Acceptance methods utilize the Quality Level Analysis and Pay Factor Specifications described in Section 106.7 - Quality Level Analysis and in Tables 106.7 A, along with specific information contained in the Divisions 400 and 500 Specifications, including Section 401 - Hot Mix Asphalt, Section 402 - Pavement Smoothness, and Section 502 - Structural Concrete.

Pay Items specified to be sampled and tested under Statistical Acceptance methods will be evaluated for acceptance in accordance with the guidelines specified for that Pay Item. All Acceptance Test results for a lot as defined in the Specification will be analyzed collectively and statistically by the Quality Level Analysis - Standard Deviation (Specification Conformance Analysis) Method using the procedures listed to determine the total estimated percent of the lot that is within specification limits. Quality Level Analysis (Specification Conformance Analysis) is a statistical procedure for estimating the percent compliance with a specification and is affected by shifts in the arithmetic mean ( $\bar{x}$ ) and by the sample standard deviation ( $s$ ). Analysis of test results will be based on an Acceptance Quality Level (AQL) of 90.0, unless otherwise specified. AQL may be viewed as the lowest percent within the specification limits of a material that is acceptable as a process average and receive 100% pay. The Department will exclude test results on Material not incorporated in the Work from the Quality Level Analysis.

For items evaluated using Quality Level, and in the Department's sole discretion, a lot with a Quality Level of less than 50 percent within limits will be either (1) removed and replaced with acceptable Material at the Contractor's expense, or (2) accepted and paid for at a Pay Factor determined by the Department. The Department may also reject Material with a Quality Level at or above this level, but such Material will be removed and replaced by the Contractor at the Department's expense.

B. Items not designated for Statistical Acceptance will utilize Product Verification testing to validate the quality of the material incorporated into the Project. The Contractor shall provide the Department with a Certification Letter that indicates that the material supplied complies with the Specifications. Test results representative of the certified material shall be attached to the letter.

The Department will randomly sample and test the certified Material for properties noted in Table 1 of Section 502 - Structural Concrete or Table 8 of Section 401.20 - Acceptance. Material will be subject to rejection as noted in Structural Concrete Section 502.195 - Quality Assurance Method C Concrete or Hot Mix Asphalt, Section 401.204 - Quality Assurance Method D.

### 106.7 Quality Level Analysis

106.7.1 Standard Deviation Method Standard Deviation Method procedures are as follows:

A. Determine the arithmetic mean ( $\bar{x}$ ) of the test results:

$$\bar{x} = \frac{\sum x_i}{n}$$

Where  $\sum$  = summation of

$x_i$  = individual test value

$n$  = total number of test values

B. Compute the sample standard deviation (s):

$$s = \text{Square root of } \frac{\sum (x_i - \bar{x})^2}{n-1}$$

Where  $\sum$  = summation of

$x_i$  = individual test values

$\bar{x}$  = mean test value

$n$  = total number of test values

C. Compute the upper quality index ( $Q_U$ ):

$$Q_U = \frac{USL - \bar{X}}{s}$$

Where USL = upper specification limit.

D. Compute the lower quality index ( $Q_L$ ):

$$Q_L = \frac{\bar{X} - LSL}{s}$$

Where LSL = lower specification limit.

E. Determine P<sub>U</sub> (percent within the upper Specification limit which corresponds to a given Q<sub>U</sub>) from Table 106.7 A.

Note: If a USL is not specified, P<sub>U</sub> will be 100. If the mean test value is equal to the USL, then P<sub>U</sub> will be 50 regardless of the computed value of s.

F. Determine P<sub>L</sub> (percent within the lower Specification limit which corresponds to a given Q<sub>L</sub>) from Table 106.7 A.

If the mean test value is equal to the USL, then P<sub>U</sub> will be 50 regardless of the computed value of s.

Note: If a LSL is not specified, P<sub>L</sub> will be 100.

G. Determine the Quality Level (total percent within Specification limits).

$$\text{Quality Level} = (P_U + P_L) - 100$$

H. Determine the Pay Factor (PF) for the lot using the Quality Level from Step G.  
For items included in Sections 401 – Hot Mix Asphalt:

$$\begin{aligned} \text{Method A: } & \text{PF} = [55 + (\text{Quality Level} * 0.5)] * 0.01 \\ \text{Method B: } & \text{PF} = [70 + (\text{Quality Level} * 0.33)] * 0.01 \\ \text{Method C: } & \text{PF} = [55 + (\text{Quality Level} * 0.5)] * 0.01 \end{aligned}$$

For items included in Section 402 – Pavement Smoothness:

$$\text{PF} = [55 + (\text{Quality Level} * 0.5)] * 0.01$$

For items included in Section 502 – Structural Concrete:

$$\begin{aligned} \text{Method A: } & \text{PF} = [55 + (\text{Quality Level} * 0.5)] * 0.01 \\ \text{Method B: } & \text{PF} = [70 + (\text{Quality Level} * 0.33)] * 0.01 \end{aligned}$$

I. Determine the Composite Pay Factor (CPF) for each lot.

$$\text{CPF} = \frac{[f_1(\text{PF}_1) + f_2(\text{PF}_2) + \dots + f_j(\text{PF}_j)]}{\sum f}$$

Where f<sub>j</sub> = price adjustment factor listed in the specifications for the applicable property.

PF<sub>j</sub> = Pay Factor for the applicable property.

$\sum f$  = Sum of the “f” (price adjustment) factors.

Note: Numbers used in the above calculations shall be carried to significant figures and rounded according to AASHTO Standard Recommended Practice R-11.

106.7.2 Statistical Outliers This procedure specifies how outlying observations in sample test results will be evaluated for their statistical significance. The Department will use this procedure for only those items that are specified to be checked for outlying observations.

An outlying observation or “outlier” is one that appears to deviate markedly from other sample test values in the lot.

When specified, the procedure will determine whether any value is a statistical outlier. If a test result is found to be an outlier, the QA Engineer will investigate the outlying value to determine if it should be retained or discarded. The investigation will include but not be limited to an examination of all available test data and inspection reports relating to the questionable test result, possible additional testing, and discussions with appropriate Contractor and Department personnel. If the investigation concludes that an assignable cause cannot be determined for the outlying value, it will be discarded; otherwise, it will be retained for pay factor determination.

#### Procedure

A. Calculate the sample average ( $\bar{x}$ ) and standard deviation(s) of all the values in the lot.

B. Find the value “t” from Table 106.7 B corresponding to the sample size for the lot.

C. Determine D (the total allowable deviation from the average) by multiplying t by s.

D. Establish values for MAX and MIN by the following:

$$\text{MAX} = \bar{x} + D \quad \text{MIN} = \bar{x} - D$$

E. Any value greater than MAX or less than MIN is an outlier. The Department will investigate any outlying values before determining the Pay Factor for that lot.

Table 106.7 A - Quality Level Analysis by the Standard Deviation Method

PU Or PL %*	Upper Quality Index QU or Lower Quality Index QL														
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to n = 11	n = 12 to n = 14	n = 15 to n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = x
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99		1.47	1.67	1.80	1.89	1.95	2.00	2.04	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97		1.41	1.54	1.62	1.67	1.70	1.72	1.74	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95		1.35	1.44	1.49	1.52	1.54	1.55	1.56	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93		1.29	1.35	1.38	1.40	1.41	1.42	1.43	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.07	1.14	1.15	1.16	1.16	1.16	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89	0.89	0.88	0.88	0.88	0.88	0.88	0.88
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.81
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72	0.72	0.71	0.71	0.71	0.71	0.71	0.71
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69	0.69	0.68	0.68	0.68	0.68	0.68	0.67
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66	0.66	0.65	0.65	0.65	0.65	0.64	0.64
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.63	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.60	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57	0.57	0.56	0.56	0.56	0.56	0.55	0.55
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54	0.54	0.53	0.53	0.53	0.53	0.53	0.52
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51	0.51	0.50	0.50	0.50	0.50	0.50	0.50
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40	0.40	0.39	0.39	0.39	0.39	0.39	0.39
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.32	0.27	0.25	0.25	0.24	0.24	0.24	0.24	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16	0.16	0.15	0.15	0.15	0.15	0.15	0.15
55	0.18	0.15	0.14	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.11	0.09	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.07	0.06	0.06	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.02
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Note: For negative values of QU or QL, PU or PL is equal to 100 minus the table value for PU or PL. If the value of QU or QL does not correspond exactly to a figure in the table, use the next higher figure.

\* Within limits for positive values

Table 106.7 B - Values of t

<b>n</b>	<b>t</b>
3	1.155
4	1.481
5	1.715
6	1.887
7	2.020
8	2.126
9	2.215
10	2.290
11	2.355
12	2.412
13	2.462
14	2.507
15	2.549
16	2.585
17	2.620
18	2.651
19	2.681
20	2.709
21	2.733
22	2.758
23	2.781
24	2.802
25	2.822
26	2.841
27	2.859
28	2.876
29	2.893
30	2.908

106.7.3 Early Termination of Lots In the event a lot in progress is terminated prematurely before the Department is able to take the number of acceptance samples required by the test method specified in the Contract, the following will apply as applicable unless otherwise detailed in the specifications for the item:

A. If three or more samples have been taken, then payfactors will be generated using the available samples results for the lot.

B. If the termination was requested by the Contractor and approved by the Department prior to three samples being taken, then each property's payfactor will be set to 0.80.

C. If the termination was initiated by the Department prior to three samples being taken, then each property's payfactor will be set to 1.00 for each property.

106.8 Non-conforming Work

106.8.1 Substantially Conforming Work If the Department determines the Work substantially conforms to the Contract, the Department may accept the Non-conforming Work and may require a credit to the Department to be deducted from amounts otherwise due the Contractor. If the Department and Contractor cannot agree to the amount of the credit, the work shall be Unacceptable Work.

106.8.2 Unacceptable Work The Contractor shall remove, replace, or otherwise correct all Unacceptable Work as directed by the Department at the expense of the Contractor, without cost or liability to the Department.

106.8.3 Unauthorized Work Prior to Final Acceptance and upon written order by the Department, the Contractor shall remove or uncover Unauthorized Work. After examination, the Contractor shall rebuild the Unauthorized Work to a condition conforming to the Contract at the expense of the Contractor and without cost or liability to the Department. Any Delay arising from Unauthorized Work shall be an Inexcusable Delay.

106.8.4 Uninspected Work Prior to Final Acceptance and upon written order by the Department, the Contractor shall uncover Uninspected Work. After examination, the Contractor shall rebuild the Uninspected Work to a condition conforming to the Contract. If the Department determines that the Uninspected Work is acceptable, the uncovering, removing, and rebuilding will be paid as Extra Work, and any resulting Delay shall be an Excusable Delay. If the Department reasonably determines that the Uninspected Work is unacceptable, the uncovering, removing, and rebuilding shall be at the Contractor's expense and any resulting Delay shall be an Inexcusable Delay.

## 106.9 Warranty Provisions

106.9.1 Warranty By Contractor The Contractor unconditionally warrants and guarantees that the project will be free from Warranty Defects for one year from the date of Physical Work Complete. For a related provision, see Section 107.9.3 – Notices / Final Inspection / Physical Work Completion.

If the Department discovers any Warranty Defects during the warranty period, the Contractor agrees to promptly perform all remedial Work at no additional cost or liability to the Department.

For a related provision regarding obligations regarding plantings, see Section 621.0036 - Establishment Period.

106.9.2 Warranty Definitions Notwithstanding any other provision of the Contract, the following words or phrases have the following definitions for the purposes of the Contractor's warranty obligation under this Contract.

Warranty Defects Warranty Defects are conditions that result from Material, manufacture, or workmanship and that are not in conformity with the Contract or with industry standards applicable to the Work prevailing at the time of submission of the Bid.

Warranty Defects do not include (A) normal wear and tear, (B) conditions caused by occurrences clearly beyond the Contractor's control and not attributable to material, manufacture, or workmanship, and (C) Defects in landscape items that are the subject of Landscape Establishment Period Obligations. Examples of such excepted occurrences might be fires, floods, abnormally poor weather for the site of work, accidents, improper use, improper maintenance, vandalism, or acts of God.

Emergency "Emergency" means necessary for public safety or convenience, as determined by the Department.

Promptly Unless there is an Emergency, "Promptly" means in the first construction season after the Contractor has been notified of the defect(s), but always within one year of Receipt of such notice. In case of an Emergency, Promptly means within 48 hours.

Remedial Work "Remedial Work" means all Work necessary to make the item in like new condition as reasonably determined by the Department and performed in accordance with the Contract and in a good and skillful manner. Remedial Work includes all design, permitting, project management, supervision, materials, and labor, including erosion control and traffic control.

106.9.3 Remedial Work Procedure and Requirements Within 30 Days of being notified of any Warranty Defects, the Contractor shall submit to the Department for approval a Remedial Work Plan, including the scope of Work, conceptual Work methods, schedule, construction phasing, and other significant aspects of the corrective Work (the "Work Plan"). Unless otherwise provided by the Department in writing, any Work commenced prior to Department's approval of the Work Plan will be at the Contractor's sole risk. Before starting any on-site Work, the Contractor shall deliver to the Department certificates of insurance complying with Section 110.3 - Insurance. If the estimated cost of Remedial Work exceeds \$100,000, the Contractor shall provide Performance and Payment Bonds complying with Section 110.2 - Performance and Payment Bonds.

If (A) the Contractor fails to submit a Remedial Work Plan, (B) the Contractor does not comply otherwise with written instructions from the Department, or (C) a State of emergency exists in which Delay would cause serious risk of loss or damage, then the Department may perform or contract for such remedial work and the Contractor will be responsible for all claims, costs, damages, losses, and expenses arising out of such work, including fees and charges of engineers, consultants, attorneys, dispute resolution professionals, and court costs.

Upon a final inspection satisfactory to the Department, the Department will issue a written acceptance of the Remedial Work. The Contractor warrants and guarantees all Remedial Work to be free from Warranty Defects for one year after such acceptance.

106.9.4 Other Warranty Provisions The Contractor hereby assigns to the Department the right to enforce all manufacturer's warranties or guarantees on all Materials,

Equipment, or products purchased for the Work that exceed the nature or duration of the warranty obligations assumed by the Contractor under this Contract.

The Performance Bond and/or Warranty Bond required by Section 110.2.1 - Bonds shall cover all warranty obligations of the Contractor provided by this Contract. Final Acceptance by the Department does not relieve the Contractor of any warranty obligations provided by this Contract.

The Contractor agrees that the warranty obligations provided by this Contract shall be reported as an outstanding obligation in the event of bankruptcy, dissolution, or the sale, merger, or cessation of operations of the Contractor.

## SECTION 107 - TIME

Scope of Section This Section contains general time-related provisions of the Contract, including the Contract Time, allowable Work times, schedule requirements, Liquidated Damages, and Project Closeout.

107.1 Contract Time and Contract Completion Date All Work must be Complete by the Contract Completion Date and within the Contract Time. Unless expressly provided otherwise by the Department in writing, the Contract Time shall be all time between the Contract Execution and the Completion date specified in the Contract, and any authorized extensions.

107.2 Commencement of Contract Time and Work Unless provided elsewhere in this Contract or in writing from the Department, the Contract Time will commence on the date of Contract Execution. For related provisions, see Sections 101.2 - Definitions of Contract Execution and 103.8 - Execution of Contract by the Department.

Unless specified otherwise, Work may commence upon Contract Execution, unless the Contractor has not secured and provided the Performance and Payment Bonds and Insurance Certificates required by Sections 103.5 - Award Conditions, 110.2 - Bonding, and 110.3 - Insurance. Any Work performed before the requirements of these sections are met is Unauthorized Work and is at the sole risk of the Contractor. Pursuant to Section 110.1 - Indemnification, the Contractor and Surety shall indemnify and hold harmless the Department from any claims arising from Work.

### 107.3 Allowable Work Times

107.3.1 General Work can be performed at any time except Sundays and Holidays, unless expressly specified otherwise in this Contract, including any applicable Permit conditions. If a Holiday occurs on a Sunday, the following Monday shall be considered a Holiday. Sunday or Holiday Work must be approved by the Department, except that the Contractor may work on Martin Luther King Day, President's Day, Patriot's Day, the Friday after Thanksgiving, and Indigenous Peoples Day without the Department's approval.

107.3.2 Night Work If the Contractor performs Work during periods of darkness, the Contractor shall comply with Contract requirements governing night Work. If the Contractor elects to perform Work during periods of darkness on its own initiative and without direction from the Department, then the Contractor shall also comply with all municipal ordinances affecting such Work, including noise ordinances. When pricing and scheduling the Work, the Contractor shall not assume that such non-directed night Work will be allowed. Accordingly, the Contractor shall not be entitled to any adjustment to either compensation or time due to its inability to secure any required municipal approvals.

107.3.3 Sundays and Holidays The Contractor shall not carry on construction operations on Sundays or Holidays unless (A) expressly specified otherwise in this Contract, (B) expressly authorized by the Department, or (C) necessary to avoid or eliminate a clear and immediate risk of significant bodily injury to any person.

107.3.4 Seasonal Work Restrictions The Contractor shall meet all seasonal restrictions on time of Work contained in the Contract, including all Permits.

#### 107.4 Scheduling of Work

107.4.1 General Duty of Contractor The Contractor is solely responsible for the planning and execution of Work in order to complete the Work within the Contract Time.

107.4.2 Schedule of Work Required At least 3 days before the pre-construction meeting and before beginning any on-site activities, the Contractor shall provide the Department with its Schedule of Work in a Critical Path Method (CPM) in the form of an activity on node (AON) diagram. This CPM schedule will become the basis for claims involving Delay. The Department will waive this CPM requirement for appropriate Contracts through a special provision. The Contractor shall plan the Work, including the activity of Subcontractors, vendors, and suppliers, such that all Work will be performed in Substantial Conformity with its Schedule of Work. The Schedule must include sufficient time for the Department to perform its functions as indicated in this Contract, including QA inspection and testing, approval of the Contractor's TCP, SEWPCP, and QCP, and review of Working Drawings.

At a minimum, the Schedule of Work shall show the major Work activities, milestones, durations, submittals and approvals, and a timeline. Milestones to be included in the schedule include (A) start of Work, (B) beginning and ending of planned Work suspensions, (C) Completion of Physical Work, and (D) Completion. If the Contractor plans to complete the Work before the specified Completion date, the Schedule of Work shall so indicate.

Any restrictions that affect the Schedule of Work such as paving restrictions or In-Stream Work windows must be charted with the related activities to demonstrate that the Schedule of Work complies with the Contract.

The Department will review the Schedule of Work and provide comments to the Contractor within 20 days of receipt of the Schedule of Work. The Contractor will make the requested changes and issue the finalized version to the Department.

107.4.3 Projected Payment Schedule The Contractor shall provide the Department with a Quarterly Projected Payment Schedule that estimates the value of the Work as scheduled, including requests for payment of Delivered Materials. The Projected Payment Schedule must be in accordance with the Contractor's Schedule of Work and prices submitted by the Contractor's Bid. The Contractor shall submit the Projected Payment Schedule as a condition of Award.

107.4.4 Schedule Revisions The progress of the Work shall be compared against the Schedule of Work at each Progress Meeting. If the Department determines that the Contractor's actual progress is not in Substantial Conformity with the Schedule of Work, then the Contractor shall either increase Project resources to get back on schedule or submit a revised Schedule of Work and Projected Payment Schedule to the Department for its review.

107.4.5 No Separate Payment Unless expressly provided otherwise, the costs for providing a Schedule of Work, a Projected Payment Schedule, and all revisions and updates are Incidental to the Contract.

## 107.5 Suspension of Work

### 107.5.1 Winter Suspensions

A. Start of Winter Suspension The Contractor may request in writing that the Department approve a Winter Suspension. If the Department determines that winter weather conditions make it impossible to perform all or specified portions of the Work, the Department will approve the Contractor's request with respect to such portions and set the start date of the Winter Suspension.

B. Monitoring and Communications During the Winter Suspension, the Contractor is responsible for monitoring weather conditions and requesting approval from the Department to resume Work as soon as possible. In any case, the Contractor shall notify the Project Manager or Resident 14 Days before the end date of the Winter Suspension specified in Section 107.5.1(C), being April 15th or May 1st, as applicable.

C. End of Winter Suspension Upon request by the Contractor or upon its own initiative, the Department may determine the end date of the Winter Suspension and the Contractor is responsible for resuming Work immediately after said end date. If the end date is not determined by the Department in writing, Winter Suspensions shall end on May 1st for Zone 1 and April 15th for Zone 2. For the purposes of the preceding sentence, Zone 1 means all areas north of Route 2 from Gilead to Bangor and Route 9 from Bangor to Calais and Zone 2 means all areas south of Zone 1, including Routes 2 and 9.

D. Impact on Liquidated Damages Liquidated Damages will not be assessed for any portion of a Winter Suspension that occurs after expiration of the Contract Time. Winter Suspensions will not otherwise affect the assessment of Liquidated Damages. For a related provision, see Section 107.7 - Liquidated Damages.

107.5.2 Suspensions Due To Uncontrollable Events Upon request of the Contractor or upon its own initiative, the Department may suspend the Work due to Uncontrollable Events. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 101.2 - Definition of Uncontrollable Event.

107.5.3 Suspensions for Cause The Department may suspend the Work if the Contractor violates any provision of the Contract that may affect the quality, cost, timeliness or Conformity of the Work. Any Delay related to such a suspension will be an Inexcusable Delay. For a related provision, see Section 109.5 - Adjustments for Delay.

107.5.4 Suspensions for Convenience The Department may suspend the Work for any other reason it determines is in the best interest of the Department. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

107.5.5 Pre-Suspension Work If Work is to be suspended for an extended period of time, the Contractor shall store all Materials in a manner that does not obstruct the free and safe flow of vehicular, pedestrian, railroad, or marine traffic and that protects the Materials from damage. The Department may direct the Contractor to install guardrail or other traffic control devices necessary to protect the traveling public. The Contractor shall take all precautions to prevent damage or deterioration of the Work already performed, provide suitable Drainage of the Roadway by opening ditches and Shoulder drains, erecting temporary Structures, and providing temporary erosion control where necessary. The cost of such pre-suspension Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

For related provisions, see Sections 104.2.6 - Right to Suspend Work, 105.4.4 - Maintenance During Suspension of Work, 107.7 - Liquidated Damages, and 109.5 - Adjustments for Delay.

107.6 Completion Incentives and Disincentives When provided in the Contract, financial incentives for early Completion and disincentives for late Completion will be added to or deducted from amounts otherwise due the Contractor. Incentives/Disincentives are separate and distinct from Liquidated Damages and Supplemental Liquidated Damages.

### 107.7 Liquidated Damages

107.7.1 General The Department and the Contractor acknowledge that time is an essential element of the Contract, and that Delay in completing the Work beyond the designated completion date will result in damages, including but not limited to damages to

the State of Maine due to public inconvenience, obstruction to traffic, interference with business, as well as increased engineering, inspection, and administrative costs to the Department. The Department and the Contractor acknowledge the difficulty of making a precise determination of such damages and, as a result, they have agreed to a sum of money in the amount stipulated in the Contract that will be charged against the Contractor for each Calendar Day that the Work remains uncompleted after the expiration of the designated Completion date, not as a penalty but as Liquidated and Supplemental Liquidated Damages.

Except as expressly provided otherwise in this Contract, the Contractor or, in case of default, its Surety, shall owe the Department the per diem amount specified in Section 107.7.2 - Schedule of Liquidated Damages, as well as any per diem amount of Supplemental Liquidated Damages as specified in the Supplement Specifications, for each Calendar Day that any portion of the Work remains incomplete after the Contract Time has expired. Should the Contractor or its Surety fail to complete the Work by the Completion date, a deduction of the amount stipulated in the Contract as Liquidated and Supplemental Liquidated Damages will be made for each and every Calendar Day that such Work remains uncompleted. This amount will be deducted from any money due the Contractor or its Surety under the Contract, and the Contractor and its Surety will be liable for any Liquidated and Supplemental Liquidated Damages in excess of the amount due.

The Contractor acknowledges that the specified amounts per diem of Liquidated and Supplemental Liquidated Damages in the Standard Specifications and Supplemental Specifications, respectively (if applicable) are reasonable, and agrees to stipulate to their reasonableness in any suit for the collection of or involving the assessment of said damages. The damages referred to herein are intended to be and are cumulative, and will be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the contract.

Permitting the Contractor to continue and finish the work or any part thereof after the expiration of the completion date shall in no way operate as a waiver on the part of the Department of its rights to assess and recover Liquidated and Supplemental Liquidated Damages, or any other rights, under the Contract.

For related provisions, see Sections 107.1 - Contract Time, 107.5.1(D) - Winter Suspensions - Impact on Liquidated Damages, and 109.5 - Adjustments for Delay.

107.7.2 Schedule of Liquidated Damages The specific per diem rates for Liquidated Damages are set forth below. By executing the Contract, the Contractor acknowledges that such an amount is not a penalty and that the daily amount set forth in the Contract is a reasonable per diem forecast of damages incurred by the Department due to the Contractor's failure to Complete the Work within the Contract Time.

Original Contract Amount		Per Diem Amount of
From	To and	Liquidated Damages
More Than	Including	Calendar
		Day

\$ 0	to	\$ 100,000.00	\$250.00
\$ 100,000.00	to	\$ 250,000.00	\$500.00
\$ 250,000.00	to	\$ 500,000.00	\$650.00
\$ 500,000.00	to	\$1,000,000.00	\$800.00
\$1,000,000.00	to	\$2,000,000.00	\$1,000.00
\$2,000,000.00	to	\$4,000,000.00	\$1,200.00
\$4,000,000.00	and	More	\$2,100.00

107.8 Supplemental Liquidated Damages Supplemental Liquidated Damages, if any, will be specified by Special Provision and are separate and distinct from Liquidated Damages. Supplemental Liquidated Damages will be deducted from amounts otherwise due the Contractor.

107.9 Project Closeout

107.9.1 Final Cleanup and Finishing To prepare for Final Acceptance, the Contractor shall clean the Project and all ground, lawns, streams, Structures, and other areas adjacent to the Project of all rubbish, excess Material, temporary Structures, and Equipment. The ground shall be backfilled with Material that is generally the same as the surrounding Material, graded to drain properly, and finished such that the surface matches the surrounding surface (examples - loam and seed, compacted gravel, pavement). The Contractor must leave all areas impacted by the Work in a condition that is reasonably acceptable to the Department.

107.9.2 Notice / Inspection / Punch List The Contractor shall notify the Department in writing that it considers the Project complete. As soon as practicable thereafter, the Department will inspect the Work. If incomplete or unsatisfactory Work is noted, the Department will prepare a written list of all items that must be completed or corrected before the Physical Work is Complete (“Punch List”). The Contractor shall immediately take such measures as are necessary to complete all Punch List items.

107.9.3 Notices / Final Inspections / Physical Work Completion The Contractor shall notify the Department in writing that all Punch List items have been completed and/or corrected and that the Contractor considers the Project Complete. As soon as practicable thereafter, the Department will make another inspection of the Work. The Department and the Contractor will attend this inspection jointly. If incomplete or unsatisfactory Work is noted, the Department will prepare a revised Punch List (which may include items not on previous Punch List(s)) and the Contractor shall immediately take such measures as are necessary to complete the revised Punch List items. Additional iterations will occur in a like manner until the Department finds that the Physical Work is Complete and in Conformity with the Contract. If the Contractor has not already done so, the Contractor will Promptly remove all temporary traffic control devices.

107.9.4 Closeout Documentation The Department will notify the Contractor in writing that the Physical Work is Complete and in Conformity with the Contract and that the

Project will be Finally Accepted when the 106 Memo, Buy America Certification, Materials Certification and DBE Signoff, and any other documentation as requested in the Physical Work Complete letter are received from the Contractor. The Contractor shall deliver the Closeout documentation as requested in the Physical Work Complete letter to the Department within 30 Days of the date of the notification that the Physical Work is Complete. Liquidated Damages will cease to accrue upon the Completion of Physical Work. For a related provision, see Section 101.2 - Definition of Closeout Documentation.

107.9.5 Final Acceptance Within 75 Days of Final Acceptance by the Department, the Department will advise the Contractor in writing of the Final Quantities and any damages to be assessed for the Project. The Contractor shall resolve any Project issues that remain and provide the All Bills Paid and Request for Final Payment Letters to the Department within 30 Days. The Department will make Final Payment, including the release of all remaining retainage, and release any escrowed bid documents within 20 Days of receipt of the above letters, which complete the Closeout Documentation. For a related provision, see Section 108.8 - Final Quantity Voucher.

If the Contractor fails to resolve issues and deliver Closeout Documentation within the 30 Days provided in Section 107.9.5, the Department may provide a final notice informing the Contractor in writing that unless the Contractor Delivers all Closeout Documentation within 30 Days of the date of Receipt of final notice, the Contractor shall be in Default under the Contract. The Contractor shall become ineligible to Bid on any Department Contracts. The Department may then pursue all remedies provided by the Contract or by law, including withholding Final Payment. For a related provision, see Section 102.1.1 - Eligibility to Bid - Basic Requirements.

107.9.6 No Waiver of Legal Rights Final Acceptance does not preclude the Department from correcting any measure, estimate, or certificate made. The Department may recover from the Contractor or its Surety, or both, overpayments made due to failure to fulfill Contract obligations.

A waiver on the part of the Department of any breach of any part of the Contract is not a waiver of any other or subsequent breach.

The Contractor retains liability for latent Defects, fraud (or such gross mistakes as may amount to fraud), and warranty obligations.

## SECTION 108 - PAYMENT

Scope of Section This Section contains general provisions related to payment, including measurement of quantities, progress payment, retainage, the right to withhold payment, and other payment-related terms.

### 108.1 Measurement of Quantities for Payment

108.1.1 Use of Plan Quantities Payment for all items labeled in the Bid Documents as “Plan Quantity” will be based upon the estimated quantity for the Work described in the Bid Documents. The Contractor shall accept such payment as full and complete compensation for that item without physical measurement. Quantities included in the Plan Quantity amount but not accomplished will be calculated by the Department using standard estimating procedures and deducted from the plan quantity. Areas not included in the Plan Quantity amount but completed will be measured and added to the Plan Quantity. Upon mutual written Agreement by the Department and the Contractor through a Contract Modification, the estimated quantity of any item of Work may be used as the final quantity for that item without physical measurement.

108.1.2 General Measurement Provisions The Department will use the U.S. Customary system for all measurements unless the Contract utilizes the International System of Units (SI). Measurement of Bid Items shall include all resources necessary to complete the Pay Item of Work under the Contract. The Department will measure items for payment in accordance with the “Method of Measurement” provisions of the applicable Specification. For all items of Work, other than those paid for by lump sum, the Department shall determine the quantities accepted as the basis for Final Payment after the Physical Work is Completed.

108.1.3 Provisions Relating to Certain Measurements Unless expressly provided otherwise, the Department and the Contractor shall use the following general measurement provisions.

Lump Sum or Each “Lump Sum” payment is total reimbursement for all resources necessary to complete the item of Work. Quantities provided for items measured and paid by Lump Sum are estimated quantities and are provided for informational purposes only. There will be no additional payment made by the Department or reduction in payment to the Contractor if the actual, final quantities for items measured and paid by Lump Sum are different than the quantities estimated by the Department. The only exception to this rule is when an item is eliminated, in which case Standard Specification Section 109.2 - Elimination of Items would take precedence.

“Each” payment is payment per complete unit.

Length “Length” is defined as linear measurement parallel to the item base or foundation. A station is 100 feet.

Area “Area” refers to the length, as defined above, multiplied by the width, which is defined as the linear measurement perpendicular to the item base or foundation. When calculating area for payment, use horizontal, longitudinal, and plan (neat) transverse measurements for surface area computations. Make no deductions for individual fixtures having an area of 1 square yard or less. For purposes of the preceding sentence, “fixtures” means small subareas that do not receive Material(s) or on which no Work is performed.

Volume Measure Structures using plan (neat) or approved Contract Modification dimensions. Use the average end area method to compute excavation volumes. Use hauling vehicles approved by the Department when transporting Materials measured by volume. Measure materials at the point of delivery. Ensure the body shape allows contents to be accurately measured. Load and level vehicles to the lesser of their water level or legal capacity. Obtain the Department's approval to convert Materials specified for measure by mass to volume. Use specified conversion factors.

Measure water to the nearest gallon with calibrated tanks, distributors, certified scale weights, or water meters.

Measure bituminous materials by the gallon or ton.

Use net certified scale weights or certified rail car volumes. Correct for bituminous Material lost, wasted, or otherwise not incorporated in the Work. Correct net certified bituminous Material weights or volumes for loss or foaming when shipped by truck or transport.

Measure timber by the board foot. Base measurement on nominal widths and thicknesses and individual maximum lengths.

Mass One ton is 2,000 pounds. Use certified scales to determine mass (weight). Accept certified "car weights" for Material shipped by rail, except for Material to be subsequently processed in mixing plants. Obtain certified haul truck tares as specified. Each haul truck shall display a legible identification mark.

Measure cement by the pound or ton.

Accept nominal mass or dimensions for standard manufactured items unless otherwise specified.

Accept industry-established manufacturing tolerances, unless otherwise specified.

Measure Aggregate mass in the saturated surface dry condition.

The Contractor shall furnish and maintain weigh systems tested and certified by the State or use certified permanently installed commercial scales. The Contractor shall provide certifications after each set-up and before use or as requested by the Department. The weigh system shall be scaled after certification and display a certification stamp. Only mechanical or electronic scales shall be used.

The beams, dials, platforms, and other scale Equipment shall be arranged for safe and convenient viewing by the operator and inspector. Scales shall be tested for accuracy before use at a new site. Platform scales shall be level and with rigid bulkheads at each end. The Department will adjust quantities of Materials received on scales found to be outside of

specified tolerances, using a correction based on the last documented test within specified tolerances.

All materials that are measured or proportioned by weight shall be weighed on approved weighing systems. When a delivery slip is required for payment of Materials measured by weight, weighing, except for automatic ticket printer systems, shall be performed on approved platform truck scales by a Licensed Public Weighmaster furnished by the Contractor, in accordance with the following requirements.

(A) Licensed Public Weighmaster A Licensed Public Weighmaster shall be any person satisfying the requirements of the State Sealer of Weights and Measures and granted a license as a Public Weighmaster. Each Licensed Public Weighmaster shall provide him/her with an impression seal as required by the State Sealer and shall impress this seal upon delivery slips issued by him/her. When completed by a Licensed Public Weighmaster, delivery slips shall be considered as the Weight Certificates required by the Maine Weights and Measures Law, MRSA Title 10. The Weighmaster shall perform all duties required of him/her by law and the specifications.

(B) Weighing Trucks Tare weights of trucks hauling stone, bituminous mixes, and similar items shall be determined twice daily, once during the forenoon and once during the afternoon. The tare weight thus found shall be used to determine the net load until the next tare weighing of the empty truck. Tare weights of trucks hauling liquid and bituminous cement materials or other items not generally hauled on a repeat basis shall be determined immediately before being loaded and the weight thus found shall be used for that load only. The tare weight of a truck shall be defined as the weight of the empty vehicle, including the driver, but with no passengers.

(C) Platform Truck Weighing Systems An approved platform truck scale meeting the following requirements shall be provided, installed and maintained, when required, by the Contractor or be available to the Contractor at an approved nearby location:

- 1) The weighing system shall conform to the specifications, tolerances, and regulations for commercial weighing devices of the National Institute of Standards and Technology and shall be accurate within maximum tolerances of plus or minus 2 pounds for every 1000 pounds of load.

- 2) No auxiliary indicators, in combination with the beams or dial of the weighing system shall be used to increase the maximum allowable load above 105 percent of the manufacturer's rated capacity, as stated in the National Institute of Standards and Technology Handbook 44 S.1.7.

- 3) The platform of the weighing system shall be of sufficient size to accommodate the entire vehicle or combination of vehicles. If a combination of vehicles must be divided into separate units in order to be weighed, each unit shall be entirely disconnected before weighing and a separate weight certificate, delivery slip, or ticket shall be issued for each separate unit.

4) The value of the minimum graduation on the indicator of the scale shall not be greater than 20 pounds. All weighing shall be read and recorded to the nearest 20 pounds or one-hundredth ton.

5) The weighing system shall be set on concrete or other approved foundation. The recording mechanism of the scale shall be suitably housed or protected from weather.

6) The Contractor shall have the weighing system inspected and approved by the State Sealer of Weights and Measures or by a Repairman registered and approved by the State Sealer within a period of 12 months preceding the date of any weighing and again after each change of location.

(D) Check Weighing for Platform Truck Weighing System Check weighing shall be made on the weights and on the weighing in scales during production in the following manner:

1) At least twice during 5 days of production, in the presence of a State Inspector, a loaded truck that has been weighed and issued a weigh slip shall be turned and a new weighing made of the truck and load with the truck heading in reverse direction and at the opposite end of the weighing system platform from the first weighing. The new weight will be recorded. If the variation from the first weight is 0.2 percent or less, the fact will be so noted in the project records. However, if the variation exceeds 0.2 percent, the scales may not be used until rechecked and resealed by the State Sealer of Weights and Measures.

2) At least twice during 5 days of production a loaded truck that has moved off the weighing system will be intercepted, directed back to the scales, and reweighed under the supervision of a State Inspector.

3) At least twice during 5 days of production, in the presence of a State Inspector, a truck that has been emptied will be directed to the weighing system before being loaded at a time other than the normal tare weighing and weighed again for a check on the tare weight.

4) Check weighing will be on a plant basis and, although a plant may produce material for more than one project or Contract, check weighing will not be required for each project or Contract.

At least twice during 5 days of production, additional checks will be made occasionally at the discretion of the Engineer.

Claims by the Contractor for delays or inconvenience due to check weighing will not be considered.

(E) Reciprocal Agreements Weighing of materials on weighing systems located outside the State of Maine will be permitted for materials produced or stored outside the State when requested by the Contractor and approved by the Department. In order to be

approved, out-of-State weighing must be performed by a Licensed Public Weighmaster or a person of equal authority in that state, on scales accepted in that state and meeting the requirements of this Section.

(F) Delivery Slips Serially pre-numbered delivery slips of acceptable size and format for stating the following minimum information shall be furnished by the Contractor, in as many copies as may be necessary. One copy shall be retained by the Resident or Inspector upon accepting delivery of the material.

- 1) Vehicle identification
- 2) Date loaded
- 3) Work identification number & location
- 4) Identification of Material:
  - a) Item number
  - b) Source location of supplier
  - c) Type and grade
  - d) Tank number from which loaded, if liquid
- 5) Quality information as necessary for bituminous liquids
  - a) Specific gravity at 60°F
  - b) Serial number of the Certificate of Analysis as furnished according to Division 700, General Statement
  - c) The Certificate Statement as required in Division 700, General Statement
  - d) Viscosity of the Material: if asphalt cement, in poises at 140°F and in centistokes at 275°F; if other bituminous liquid, the specified viscosity according to the type and grade shown in Section 702
- 6) Quantity information as necessary: gross, tare and net weights, volume of load if not material requiring weighing, net gallons at 60°F if bituminous liquids
- 7) Signatures (legible initials acceptable) of: Weighmaster (if weight measured material), Contractor's representative (if volume measured material), and Resident (Cover Slips).

If Materials are shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for Materials to be passed through mixing plants. Trucks used to haul Material being paid for by weight shall be weighed empty daily, at such times as directed. Each truck shall bear a legible identification mark.

Rail shipments of bituminous liquid shall be measured directly by volume. Correction shall be made when liquid bituminous Material has been lost from the car, wasted, or otherwise not incorporated in the work. Other shipments of bituminous liquids will be measured by the gallon or ton. Volumes will be measured at 60°F or will be corrected to the volume at 60°F using the tables in ASTM D1250.

When bituminous liquids are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming may be used for computing quantities. Net certified weight shall be determined upon loading for all bituminous liquids when shipped

by truck or transport. The net weight of each load shall be converted to net gallons at 60°F by a conversion factor expressed in pounds per gallon.

(G) Time Measure Equipment by hours in accordance with Section 631 - Equipment Rental.

### 108.2 Progress Payments

108.2.1 Generation of Progress Payment Estimates The Department will estimate the amount of Work performed at least monthly and make payment based upon such estimates. Estimates may be paid once every two weeks if, in the opinion of the Resident, the amount of Work performed is sufficient to warrant such payment. No such estimates or payment will be made if, in the judgment of the Resident, the Work is not proceeding in accordance with the provisions of the Contract, or when the total value of the Work performed since the last estimate amounts to less than \$5,000. The Contractor agrees to waive all claims related to the timing and amount of such estimates.

If the Contract requires, the Contractor will submit an application for progress payment with a detailed written explanation of the payments requested, on forms and media approved by the Department, to the Resident for approval. The Resident may request that the Contractor submit backup documentation, including copies of receipts, invoices, and itemized payments to Subcontractors.

108.2.2 Payment The Department will make payment within 15 Days if the Contractor agrees to accept electronic transfer of payments in a manner approved by the Department, except as otherwise provided in the Contract. In other cases, the Department will make payment within 30 days, except as otherwise provided in the Contract. These payment obligations shall not apply in the event of unforeseeable circumstances such as insufficient legislative appropriations, information systems failure, and other Uncontrollable Events. All payments made are subject to correction in subsequent Progress Payments and the Final Payment. For related provisions, see Sections 108.8 - Final Payment, and 108.9.2 - No Inflation Adjustments/ Interest.

108.2.3 Mobilization Payments “Mobilization” includes the mobilization and demobilization of all resources as many times as necessary during the Work.

Upon approval of all pre-construction submittals required for approval by this Contract, including those listed in Section 104.4.2 - Preconstruction Conference, the Contractor will receive payment of 50% of the Lump Sum price for Mobilization, not to exceed 5% of the Bid less the amount bid for Mobilization. After the Department determines that the Work is 50% complete, the Contractor will receive the other 50% of the Lump Sum price for Mobilization, not to exceed 5% of the Bid less the amount bid for Mobilization. Any remaining Mobilization Payments will be paid upon Final Acceptance.

108.3 Retainage The Department will pay 100% of each approved Progress Payment until the Work is approximately 50% complete. Thereafter, the Department will

deduct 5% of the amount of each Progress Payment as retainage. In the event that the Department believes that the retainage will be insufficient to cover the Contractor's obligations under this Contract, the Department may withhold a greater percentage of the money to cover Contractor obligations.

The Department may hold, temporarily or permanently, retainage as needed to assure timely Completion of the Work and payment of all Subcontractors and Suppliers in Conformity with the Contract. The Department may also disburse retainage to Subcontractors as set forth in Section 104.5.6 - Subcontractor Claims for Payment.

Upon Final Acceptance, the Contractor may request that the Department reduce retainage. The Department may grant or deny such request as it deems desirable and prudent. Otherwise, retainage will be held until the receipt of all Closeout Documentation

108.4 Payment for Materials Obtained and Stored Acting upon a request from the Contractor and accompanied by bills or Receipted Bills, the Department will pay for all or part of the value of acceptable, non-perishable Materials that are to be incorporated in the Work, including Materials that are to be incorporated into the Work, not delivered on the Work site, and stored at places acceptable to the Department. Examples of such Materials include steel piles, stone masonry, curbing, timber and lumber, metal Culverts, stone and sand, gravel, and other Materials. The Department will not make payment on living or perishable Materials until acceptably planted in their final locations.

If payment for Materials is made to the Contractor based on bills, only, then the Contractor must provide Receipted Bills to the Department for these Materials within 14 days of the date the Contractor receives payment for the Materials. Failure of the Contractor to provide Receipted Bills for these Materials within 14 days of the date the Contractor receives payment will result in the paid amount being withheld from the subsequent progress payment, or payments, until such time the Receipted Bills are received by the Department.

Materials paid for by the Department are the property of the Department, but the risk of loss shall remain with the Contractor until the materials are installed and accepted. Payment for Materials does not constitute Acceptance of the Material. If Materials for which the Department has paid are later found to be unacceptable, then the Department may withhold amounts reflecting such unacceptable Materials from payments otherwise due the Contractor.

In the event of Default, the Department may use or cause to be used all paid-for Materials in any manner that is in the best interest of the Department.

108.4.1 Price Adjustment for Hot Mix Asphalt: For all Contracts with hot mix asphalt in excess of 500 tons total, a price adjustment for performance graded binder will be made for the following pay items:

Item 403.102      Hot Mix Asphalt – Special Areas

Item 403.206	Hot Mix Asphalt - 25 mm
Item 403.207	Hot Mix Asphalt - 19 mm
Item 403.2071	Hot Mix Asphalt - 19 mm (Polymer Modified)
Item 403.2072	Hot Mix Asphalt - 19 mm (Asphalt Rich Base)
Item 403.208	Hot Mix Asphalt - 12.5 mm
Item 403.2081	Hot Mix Asphalt - 12.5 mm (Polymer Modified)
Item 403.209	Hot Mix Asphalt - 9.5 mm (sidewalks, drives, & incidentals)
Item 403.210	Hot Mix Asphalt - 9.5 mm
Item 403.2101	Hot Mix Asphalt - 9.5 mm (Polymer Modified)
Item 403.2102	Hot Mix Asphalt - 9.5 mm (Asphalt Rich Base)
Item 403.2104	Hot Mix Asphalt - 9.5 mm (Thin Lift Surface Treatment)
Item 403.21041	Hot Mix Asphalt - 9.5 mm (Polymer Modified Thin Lift Surface Treatment)
Item 403.211	Hot Mix Asphalt – Shim
Item 403.2111	Hot Mix Asphalt – Shim (Polymer Modified)
Item 403.212	Hot Mix Asphalt - 4.75 mm (Shim)
Item 403.213	Hot Mix Asphalt - 12.5 mm (base and intermediate course)
Item 403.2131	Hot Mix Asphalt - 12.5 mm (base and intermediate course Polymer Modified)
Item 403.2132	Hot Mix Asphalt - 12.5 mm (Asphalt Rich Base and intermediate course)
Item 403.214	Hot Mix Asphalt - 4.75 mm (Surface)
Item 403.235	Hot Mix Asphalt (High Performance Rubberized HMA)
Item 403.301	Hot Mix Asphalt (Asphalt Rubber Gap-Graded)
Item 404.70	Colored Hot Mix Asphalt – 9.5mm (Surface)
Item 404.72	Colored Hot Mix Asphalt – 9.5mm (Islands, sidewalks, & incidentals)
Item 461.13	Light Capital Pavement
Item 461.210	9.5 mm HMA - Paver Placed Surface
Item 462.30	Ultra-Thin Bonded Wearing Course
Item 462.301	Polymer Modified Ultra-Thin Bonded Wearing Course

Price adjustments will be based on the variance in costs for the performance graded binder component of hot mix asphalt. They will be determined as follows:

The quantity of hot mix asphalt for each pay item will be multiplied by the performance graded binder percentages given in the table below times the difference in price between the base price and the period price of asphalt cement. Adjustments will be made upward or downward, as prices increase or decrease.

Item 403.102	–6.2%
Item 403.206	–4.8%
Item 403.207	–5.2%
Item 403.2071	–5.2%
Item 403.2072	–5.8%
Item 403.208	–5.6%
Item 403.2081	–5.6%

Item 403.209–6.2%  
Item 403.210–6.2%  
Item 403.2101–6.2%  
Item 403.2102–6.8%  
Item 403.2104–6.2%  
Item 403.21041–6.2%  
Item 403.211–6.2%  
Item 403.2111–6.2%  
Item 403.212–6.8%  
Item 403.213–5.6%  
Item 403.2131–5.6%  
Item 403.2132–6.2%  
Item 403.214–6.8%  
Item 403.235–5.5%  
Item 403.301–6.2%  
Item 404.70–6.2%  
Item 404.72–6.2%  
Item 461.13–6.7%  
Item 461.210 – 6.4%  
Item 462.30–0.0021 tons/SY  
Item 462.301–0.0021 tons/SY

Hot Mix Asphalt: The quantity of hot mix asphalt will be determined from the quantity shown on the progress estimate for each pay period.

Base Price: The base price of performance graded binder to be used is the price per standard ton current with the bid opening date. This price is determined by using the average New England Selling Price (Excluding the Connecticut market area), as listed in the Asphalt Weekly Monitor.

Period Price: The period price of performance graded binder will be determined by the Department by using the average New England Selling Price (Excluding the Connecticut market area), listed in the Asphalt Weekly Monitor current with the paving date. The maximum Period Price for paving after the adjusted Contract Completion Date will be the Period Price on the adjusted Contract Completion Date.

108.5 Right to Withhold Payments The Department may withhold payments claimed by the Contractor on account of:

- A. Defective Work,
- B. Damages for Non-conforming Work,
- C. Failure to provide the Department the opportunity to inspect the Work,
- D. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor, or failure of Subcontractors to make payments to Sub-Subcontractors or for Materials or labor,

- G. Substantial evidence that the Project cannot be completed for the unpaid balance,
- H. Substantial evidence that the amount due the Department will exceed the unpaid balance,
- I. Regulatory non-compliance or enforcement,
- J. Failure to submit Closeout Documentation,
- K. All other causes that the Department reasonably determines negatively affect the State's interest.

108.6 Taxes, Fees, Allowances, and Notices The Contractor shall pay all taxes, charges, fees, and allowances and give all notices necessary and incidental to the due and lawful prosecution of the Work. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract.

Certain items of tangible personal property purchased by the Contractor for use in the Contract may be are exempt from Maine sales tax. *See* 36 MRSA §§ 1760(2) & (61).

108.7 Damages for Non-Conforming Work If the Contractor performs Non-conforming Work that causes the Department to incur costs, including environmental costs or penalties, failure of FHWA to share in certain costs, Departmental staff time related to the non-Conformity, penalties, or other damages of any nature whatsoever ("Damages"), then the Contractor shall be liable to the Department for such Damages. The Department, at its option, and without liability, may deduct such Damages from amounts otherwise due the Contractor and/or postpone disbursement of Progress Payments until the Non-conforming Work is corrected.

108.8 Final Quantity Voucher The Department will prepare a final quantity voucher reflecting final quantities of the items of Work performed. The Department may require the Contractor to provide information necessary to substantiate Pay Items, including Statements itemizing Force Account Work.

#### 108.9 General Payment Provisions

108.9.1 Full Compensation Payments to the Contractor shall be full compensation for furnishing all labor, Equipment, Materials, services, and Incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or prosecution of the Work.

108.9.2 No Inflation Adjustments / Interest No payments due the Contractor will be adjusted for inflation. No interest shall be due and payable on any payment due the Contractor, except that the Department will pay statutory interest on uncontested Final Payments for any period of time that extends beyond 60 Days of the date of Receipt of all Conforming Closeout Documentation. The preceding exception expressly does not include payments regarding pending Issues, a Dispute, or a claim.

108.9.3 Amounts Due the Department Unless expressly provided otherwise in this Contract, in cases where the Department may deduct sums from amounts otherwise due the

Contractor and where the sums to be deducted are more than the funds otherwise due the Contractor, the Contractor shall remit all amounts due the Department within 30 Days of receiving an Invoice from the Department. After such 30 Days, the Contractor shall be in Default of this Contract and shall not be entitled to any additional cure period. Statutory interest shall accrue after 60 Days of Receipt of the Invoice.

## SECTION 109 - CHANGES

Scope of Section This Section contains general provisions related to changes in quantities, scope, time, and payment.

### 109.1 Changes in Quantities

109.1.1 Changes Permitted The Department may increase or decrease Pay Item quantities from the estimated quantities shown in the Bid Documents, and such increase or decrease shall not be considered Extra Work. Except as expressly provided otherwise in this Contract, the Contractor shall be paid for actual quantities in place and accepted at the Unit Prices contained in the Contractor's Bid. The Contractor accepts such payment as full and complete compensation. There will be no adjustment to Contract Time due to an increase or decrease in quantities compared to those estimated, except as addressed through Contract Modification(s).

109.1.2 Substantial Changes to Major Items If quantities of Major Items vary from the estimated quantities contained in the Bid Documents by more than 25%, then the Department may increase or decrease the Unit Price of such item using the extra work process. For related provisions, see Section 109.3 - Extra Work and Section 109.8 - Contract Modification. If an adjustment to the Unit Price is made, it will apply only to that portion of the actual quantity that is less than 75% of the estimated quantity or more than 125% of the estimated quantity.

109.2 Elimination of Items Upon written notification to the Contractor, the Department may entirely eliminate item(s) of Work for any reason. Upon notification, the Department is entitled to a credit. For Minor Items, the credit shall be the Contractor's Bid price for the eliminated item(s). For Major Items, the amount of the credit shall be the Contractor's Bid price for the eliminated item(s), less (A) direct costs actually incurred by the Contractor after Award, including mobilization, shipping, and restocking expenses that the Contractor cannot recoup on other Projects as reasonably determined by the Department, and (B) 10% for overhead and profit. The Department may withhold said credit from amounts otherwise due the Contractor.

109.3 Extra Work The Department reserves the right to revise the Contract by adding Extra Work. Such revisions neither invalidate the Contract nor release the Surety. The Contractor and/or its Surety agree to perform all such Extra Work. The Department will compensate for Extra Work by written Contract Modification in accordance with Section 109.7.1 - General and Section 109.7.2 - Basis of Payment. Any Delay related to

Extra Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 109.8 - Contract Modification.

#### 109.4 Differing Site Conditions

109.4.1 Definition “Differing Site Conditions” are subsurface or latent physical conditions that, at the time of Bid submittal, were:

- (A) Materially different from conditions indicated in the Bid Documents,
- (B) Not discoverable from a reasonable site investigation prior to Bid,
- (C) Materially different from conditions ordinarily encountered and generally recognized as inherent in Work like that specified by the Contract by Contractors experienced in such Work, and
- (D) Actually unknown to the party seeking relief due to such conditions, which in the case of the Contractor includes its Subcontractors.

109.4.2 Risk of Other Conditions All costs, Work, Delays, or other damages related to or arising from site conditions that are not Differing Site Conditions are the sole risk and responsibility of the Contractor.

109.4.3 Notice and Procedural Requirements If the Contractor discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, the Contractor shall provide “Notice of Issue for Consideration” within 48 hours of discovery and before doing any Work relating to such conditions as provided in Section 104.4.5 - Early Negotiation. The Contractor shall then comply with all other requirements of Section 104.4.5 - Early Negotiation, and Section 111 - Resolution of Disputes. The Contractor will not be entitled to any change to compensation, time, or Work requirements without proper notice as specified in this Section 109.4. Failure to provide such notice or to otherwise comply with this Section 109.4 will constitute a waiver of all claims related to such conditions.

If the Department discovers what it considers Differing Site Conditions that may cause adjustments to compensation, time, or other Contract requirements, then the Department will provide the Contractor with written notice within 48 hours of discovery. If the Contractor disagrees with the Department’s finding of Differing Site Conditions or the related adjustments, then the Contractor shall provide “Notice of Issue for Consideration” within 48 hours of receipt of the Department’s written notice and comply with the requirements of Section 104.4.5 - Early Negotiation and Section 111 - Resolution of Disputes.

109.4.4 Investigation / Adjustment Upon notification by the Contractor or upon the Department’s own initiative, the Department will investigate the conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused an increase in the cost or time required for the performance of the Work, then the Contractor is entitled to an Equitable Adjustment for the additional costs in accordance with Section 109.7, Equitable Adjustments to Compensation and Time - Basis of

Payment that are caused directly by the Differing Site Conditions. If the Department determines that Differing Site Conditions exist and that the Differing Site Conditions have caused a decrease in the cost or time required for the performance of the Work, then the Department is entitled to a credit in the amount of savings to compensable items in accordance with Section 109.7, Equitable Adjustments to Compensation and Time, that are caused directly by the Differing Site Conditions. Delays caused by Differing Site Conditions will be considered in accordance with Section 109.5 - Adjustments for Delay.

### 109.5 Adjustments for Delay

109.5.1 Definitions - Types of Delays Delays are defined as follows and may be divided into more than one type depending upon cause.

A. Excusable Delay Except as expressly provided otherwise by this Contract, an “Excusable Delay” is a Delay to the Critical Path that is directly and solely caused by (1) a weather-related Event of such an unusually severe nature that a Federal Emergency Disaster is declared. The Contractor will be entitled to an adjustment of time under this Section only if the Project falls within the geographic boundaries prescribed under the disaster declaration. or (2) a flooding event at the affected location of the Project that results in a Q25 headwater elevation, or greater, but less than a Q50 headwater elevation. Theoretical headwater elevations will be determined by the Department; actual headwater elevations will be determined by the Contractor and verified by the Department or (3) An Uncontrollable Event

B. Compensable Delay A “Compensable Delay” is a Delay to the Critical Path that is directly and solely caused by: (1) a weather-related Uncontrollable Event of such an unusually severe nature that a Federal Emergency Disaster is declared. The Contractor will be entitled to an Equitable Adjustment under this Section only if the Project falls within the geographic boundaries prescribed under the disaster declaration and receives project-specific emergency funds, and the Contractor can show proof that the Work was delayed by this weather event, (2) an Uncontrollable Event caused by a Utility Company for which the Utility Company reimburses the Department, (3) an Uncontrollable Event caused by other third party (not Subcontractors) Working on Project-related Work within the Project Limits if, and only if, the such other third party offers the Department reimbursement for such Delay, or (4) acts by the Department that are in violation of applicable laws or the Contract, or (5) a flooding event at the affected location of the Project that results in a Q50 headwater elevation, or greater. Theoretical Q50 headwater elevations will be determined by the Department; actual headwater elevations will be determined by the Contractor and verified by the Department.

C. Inexcusable Delay “Inexcusable Delays” are all Delays that are not Excusable Delays or Compensable Delays.

For a related provision, see Section 101.2 - Definition of Uncontrollable Event.

### 109.5.2 Entitlement to Adjustments

A. Types of Adjustments Provided the Contractor meets the requirements of Section 109.5.2(B) below and complies with the notification, documentation, and procedural requirements set forth in the Contract, the Contractor is entitled to certain adjustments to the Contract depending upon the type of Delay.

1. For an Excusable Delay, the Contractor is entitled to an extension of time, but no additional compensation.
2. For a Compensable Delay, the Contractor is entitled to an extension of time and an Equitable Adjustment as set forth in Section 109.7 - Equitable Adjustments to Compensation and Time.
3. For an Inexcusable Delay, the Contractor is entitled to neither an extension of time nor additional compensation.

For related provisions, see Sections 104.2.7 - Damage to Project Caused By Uncontrollable Events and 104.3.10 - Responsibility for the Damage to Work.

B. Requirements for Entitlement To be entitled to any adjustments for an Excusable Delay or a Compensable Delay, the Contractor must demonstrate all of the following:

1. The Contractor consistently utilized its Schedule of Work to schedule, coordinate, and manage the Work, as evidenced by documentation created as the Work progressed, including Progress Meeting minutes;
2. The Delay affected the Critical Path of the Schedule of Work; and
3. There are no concurrent Inexcusable Delays.

C. Concurrent Delays The Contractor is not entitled to a time extension for the period of time when Excusable and Inexcusable Delays are concurrent. The Contractor also is not entitled to either a time extension or an Equitable Adjustment for the period of time when Compensable and Inexcusable Delays are concurrent. In the event Compensable and Excusable Delays are concurrent, the Contractor is entitled only to a time extension, not an Equitable Adjustment, for the period of time such Delays are concurrent.

109.5.3 Early Completion Date Delay Claims For the purposes of this Section 109.5.3, a "Contractor's Early Completion Date" means a Project Completion date shown on the Contractor's initial Schedule of Work submitted in accordance with Section 107.4.2 - Schedule of Work Required that is earlier than the Contract's specified Completion date. The Department will not be liable for any claims or expenses related to the period of time between the Contractor's Early Completion Date and the Contract's specified Completion date, unless the Contractor demonstrates, by clear and convincing evidence that: (A) all requirements of Section 109.5.2(B) - Requirements for Entitlement are met, and (B) that the Contractor's Early Completion Date was reasonable at the time of Bid in light of the surrounding facts and circumstances, including the Contractor's available resources, and the requirements of the Work.

109.5.4 Notice and Procedural Requirements If the Contractor becomes aware of facts or circumstances that may cause a Delay for which the Contractor may seek adjustments to compensation, time, or other Contract requirements, the Contractor must notify the Resident of such “Issue” within 48 hours and before doing any Work relating to such facts or circumstances as provided in Section 104.4.5 - Early Negotiation. Except as otherwise provided in this Section 109.5, the Contractor shall then comply with all other requirements of Section 111 – “Resolution of Disputes.” The Contractor will not be entitled to any change to compensation, time, or Work requirements without proper and timely notice. Failure to provide such notice constitutes a waiver of all claims related to such conditions.

#### 109.5.5 Documenting the Delay and Request for Adjustments

A. Weekly Reports During Delay To be entitled to any adjustments for Delay, the Contractor must keep records as provided in Section 111.1.6 – Contractor’s Obligation to Keep Records. Further, the Contractor must submit weekly written reports containing the following information.

1. Number of Days of impact to the Critical Path.
2. A summary of all operations that have been Delayed, or will be Delayed on the impact of the Contractor's Critical Path.
3. A narrative describing how the cause of the Delay meets the definition of “Excusable Delay” or “Compensable Delay” contained in Section 109.5.1(A) or (B).
4. Itemization of all extra costs being incurred, including (A) how the extra costs relate to the Delay, (B) the identification of all non-salaried Project employees for whom costs are being compiled, and (c) a summary of time charges for Equipment, identified by the manufacturer’s number for which costs are being compiled.

B. Request and Report After Completion Within 14 Days of Completion of the phase of Work that the Contractor claims has been Delayed, the Contractor shall submit a written report to the Department that contains the following information:

1. A description of the operations that were Delayed and the documentation and narrative of how the cause for the Delay meets the definition of “Excusable Delay” or “Compensable Delay” contained in Sections 109.5.1(A) or (B), including all reports prepared for the Contractor by consultants, if used;
2. An as-built chart showing when Work operations were actually performed;
3. A graphic depiction of how the operations were Delayed and the impact on the Critical Path; and
4. An item-by-item request for additional time and compensation for items allowed under Section 109.7.5 – Force Account Work, including measurement and explanation.

The Department may require that all costs shown in the report be certified by an accountant, and that the Contractor provide all other information described in Section 111.2.2 - Detailed Notice of Dispute.

109.5.6 Decision by Program Manager Within 30 Days of receiving all information described in Section 109.5.5(B) - Request and Report After Completion, the Program Manager will Deliver a written decision on the request made to the Contractor. Failure to provide a decision within said 30-day period shall be considered a denial of the Contractor's request, unless the parties mutually agree to an extension of time for such decision.

109.5.7 Additional Consideration By Department If the Contractor wants additional consideration, the Contractor shall Deliver a "Notice of Unresolved Dispute" to the Department's appropriate Bureau Director within 14 Days of Receipt of the Program Manager's decision. Such Notice shall comply with Section 111.3.1 - Notice of Unresolved Dispute. The parties must then comply with all other Dispute resolution provisions of this Contract, beginning with Section 111.3 - Negotiation By Management.

## 109.6 Value Engineering

109.6.1 Overview - General Requirements A Value Engineering Change Proposal (VECP) is a proposal made by the Contractor after Contract Execution that is intended to produce cost savings without impairing essential characteristics of the Project, including function, serviceability, safety, durability, maintainability, and aesthetics, all as determined by the Department.

A VECP shall contain proven features that have been used under similar conditions. A proposal is not a VECP if equivalent options are already provided in the Contract.

A VECP must be approved by the Department. Unless otherwise agreed in writing, the Contractor and the Department will equally share the Net Savings generated by the VECP as provided in Section 109.6.4(C) - Contract Modification - Amount of Payment.

Unless mutually agreed otherwise, the VECP approval process will occur in three steps: (A) Conceptual VECP submission and review, (B) Detailed VECP submission and evaluation, and if approved, (C) Contract Modification, including the amount of payment due to the Contractor and credit due to the Department. When the nature and scope of a VECP warrants, the parties may agree to truncate the VECP approval process.

### 109.6.2 Conceptual VECP

A. Submittal To propose a VECP, the Contractor must submit a written "Conceptual VECP" to the Resident. The Conceptual VECP is not a formal and complete submittal based upon detailed technical analysis, but instead relays a conceptual idea based upon the Contractor's knowledge and experience. The Conceptual VECP should include the following information:

1. General Description A narrative that describes the proposed change in concept and includes the basic differences between the existing Contract and the proposed change.

2. Advantages and Disadvantages A listing and brief description of the comparative advantages and disadvantages of the VECP, including effects on function, serviceability, safety, durability, maintainability, aesthetics, and any other factors significantly altered by the VECP.
3. Estimate of Net Savings An estimate of the Net Savings as defined in Section 109.6.4(C) - Contract Modification - Amount of Payment.
4. Savings and Schedule Impacts An estimate of the time necessary for the Contractor to submit a Detailed VECP. Such estimate must specify the date by which the Department must approve the VECP to obtain the maximum cost reduction, and the latest date by which the Department must approve the VECP for the Contractor to avoid significant impacts on the estimated Net Savings or the Contractor's Schedule of Work. If the Department determines that the time for response is insufficient for review, the Contractor will be so notified.

B. Conceptual Review and Response The Department will use its best efforts to review a Conforming Conceptual VECP and respond to the Contractor within 14 Days of Receipt. The Department may, at its sole discretion, (1) invite the Contractor to submit a Detailed VECP, (2) reject the Conceptual VECP for reasons that will be described briefly, or (3) request additional information. The Department may also, in its sole discretion, agree to partially reimburse the Contractor for the costs to develop and submit a Detailed VECP.

### 109.6.3 Detailed VECP

A. Submittal If the Department invites the Contractor to submit a Detailed VECP, it shall contain the following information that is sufficient in detail to clearly define and explain the proposed change(s):

1. Updated and more complete information regarding items included in the Conceptual VECP, including the general description of the VECP, advantages and disadvantages, use, or testing performed, elsewhere, a detailed computation of the estimated Net Savings generated in accordance with Section 109.6.4(C) - Contract Modification - Amount of Payment, actual VECP development costs to date, and estimated savings and schedule impacts, including approval date(s) required. If the Department determines that the time for response is insufficient for review, the Contractor will be notified promptly.
2. A complete set of Plans and Specifications showing the proposed revisions relative to the original Contract features and requirements. All VECPs that require engineering design, computations, or analysis shall be prepared under the responsible charge of, and sealed by, a Professional Engineer licensed in the State of Maine.

### B. Evaluation

1. Additional Information The Department may request any additional information that it determines is necessary to properly evaluate the VECP. Where design changes are proposed, such additional information may include results of field investigations and surveys, design computations, specifications, and field change sheets. The Contractor will promptly provide any such requested information.
2. Cost Verification The Department may require the Contractor to provide additional information to verify the Contractor's cost analyses.

C. Response The Department will evaluate a Conforming Detailed VECP and provide the Contractor with a written response within 14 Days of Receipt of all of the information it has determined is necessary to properly evaluate the VECP. Such response will include a brief description of the Department's reason(s) for its decision. The Department, at its sole discretion, will either approve the Detailed VECP, approve it with conditions, or reject it. The Department may base its decision on any reason that is in the best interest of the Department, including: (1) unacceptable impact on the function, serviceability, safety, durability, maintainability, or aesthetics of the Project, (2) insufficient testing or use of the VECP concepts elsewhere, (3) insufficient justification of cost savings, (4) unacceptable schedule impacts, (5) insufficient review time, or (6) differing engineering judgment. The Contractor may request that the Department reconsider certain portions of the decision. If requested, the Department will reconsider its decision and then issue a final decision, which is not subject to review or appeal.

D. Termination of VECP Process If the Department rejects the VECP or the Contractor does not desire to proceed with the VECP as approved by the Department, the VECP process will terminate and the Department will reimburse the Contractor for 100 percent of all VECP development costs incurred by the Contractor to date.

109.6.4 Contract Modification - Amount of Payment If the VECP is approved, or if it is approved with conditions, and the Contractor wants to proceed, a Contract Modification will be executed by the parties. In addition to the requirements of Section 109.8 - Contract Modifications, the VECP will set forth the net savings generated by the VECP, which shall be split equally between the Contractor and the Department, per the following formula:

$$NS = EGS - CDC - DVEC$$

Where:

NS = Net Savings generated by the VECP, as determined by the Department.

EGS = Estimated Gross Savings, which is the difference between the cost of performing the Work as originally specified in the Contract and the cost of performing the Work as revised by the VECP, at agreed upon or lump sum prices.

CDC = Contractor's Development Costs related to the preparation of the Detailed VECP, including costs of the Contractor's design subconsultants and Subcontractors. The Department shall reimburse the Contractor for these costs.

DVEC = Department's VE Costs related to review, approval, and implementation of the VECP, including design costs, field inspection, and the value of any Department provided property.

Once the Contract Modification is executed, the Contractor may be paid for its actual Development Costs. The Contractor's share of the Net Savings shall not be disbursed until the Work is complete and the actual Net Savings is known.

The Contract Modification shall also set forth any adjustments to Contract Time related to the Work as revised by the VECP, if any.

109.6.5 Subsequent Payment Adjustments Upon Completion of the portion of the Work revised by the VECP, the Department, on its own initiative or upon request by the Contractor, may review the actual net savings realized by the VECP. The Contractor will be afforded an opportunity to review and comment on such a review. If the actual net savings was greater than set forth in the Contract Modification, the increased savings will be shared equally by the parties. If the net savings was less than set forth in the Contract Modification, the reduction in savings will be borne equally by the parties.

#### 109.6.6 General Conditions Regarding VECPs

- A. VECPs will remain the property of the Contractor, provided that the Department will have the unrestricted right to use any approved VECP, or any VECP in which the Department has reimbursed the Contractor for any portion of the development costs, on other Department Projects without notice, cost, or liability to the Contractor.
- B. Only the Contractor may submit VECPs. The Contractor shall review, be responsible for, and submit all proposals initiated by the Contractor's Subcontractors.
- C. The Contractor shall not anticipate Departmental approval of a VECP when Bidding or otherwise before approval of a Detailed VECP. The Contractor is responsible for all Delays caused by the VECP that were not negotiated in the Contract Modification.
- D. If a VECP is rejected, the Contractor shall perform the Work in accordance with the Contract.
- E. Except as otherwise provided in this Section 109.6, the Contractor shall have no claim against the Department for additional compensation or time resulting from the Delayed review or rejection of a VECP, including, but not limited to, development costs, loss of anticipated profits, and increased Material or labor costs.
- F. Cost sharing applies only to the Contract for which the VECP was submitted.
- G. Because the Department has no obligation to change the terms of the original Contract, all VECP decisions by the Department are final and are not subject to the Dispute resolution provisions provided in this Contract or otherwise available at law.

## 109.7 Equitable Adjustments to Compensation and Time

109.7.1 General Equitable Adjustment means an adjustment to compensation due to a change in the nature or scope of Work as defined in this Section 109.

This Section 109.7 applies to all changes to the nature or scope of the Work excepting (A) changes in quantities, which are governed by Section 109.1, (B) elimination of items of Work which is governed by Section 109.2, and (C) payment for Value Engineering Change Proposals, which is governed by Section 109.6.

109.7.2 Basis of Payment Adjustments will be established by mutual Agreement based upon Unit or Lump Sum Prices that include labor, materials, equipment, mark-up, overhead, profit, and time. These agreed upon Unit or Lump Sum prices will be full compensation and no additional overhead, profit, mark-ups, or fees are allowed. If Agreement on Equitable Adjustments cannot be reached, the Contractor shall accept payment on a Force Account basis as provided in Section 109.7.5 - Force Account Work, as full and complete compensation for all Work relating to the Equitable Adjustment.

### 109.7.3 Reserved

109.7.4 Non-Compensable Items The Contractor is not entitled to compensation or reimbursement for any of the following items:

- A. Lost profits or lost opportunity costs,
- B. Labor inefficiencies,
- C. Consequential damages, including but not limited to loss of bonding capacity, loss of Bidding opportunities, and insolvency,
- D. Indirect costs or expenses of any nature,
- E. Dispute resolution costs of any nature, including attorney's fees, claims consultant fees, expert witness fees, claims preparation expenses, and costs related to DRB proceedings, mediation, arbitration, or litigation, and
- F. Interest.

109.7.5 Force Account Work Compensation for Force Account Work will be computed according to this Section.

A. Labor The Contractor will receive the actual hourly wages paid to workers actually engaged in the changed Work and the foreperson in direct charge of the changed Work as determined from certified payrolls, plus 90 percent of the sum thereof for all fringe benefits, payroll taxes, overhead, and profit.

B. Materials For Materials incorporated in the permanent Work, the Contractor will receive the Actual Cost of Materials, including freight and Delivery charges (but excluding any sale or use tax) plus a single 15 percent markup. For all Materials not incorporated in the permanent Work, the Contractor will receive the difference of actual value of such Material at the time of its use less the fair salvage value of Material when released, plus 15 percent of said difference. There shall be no markup on markups.

C. Equipment For all authorized usage of power-operated machinery, trucks, or other Equipment, the Contractor will receive the rental rates for the actual time to the nearest ¼ hour that such Equipment is in operation on the Work. Time spent moving Equipment within the Project Limits and any approved idle time may be measured for payment when authorized. Time spent servicing, maintaining, and changing attachments will not be paid for. The rental rates shall include the cost of all fuel oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, small tools, and all other Incidentals.

The maximum Hourly Equipment rental rates (R) will be determined using the most current Blue Book rates and the following formula:

$$R = A \times B \times E + C + D$$

Where:

A = Blue Book monthly rate divided by 176

B = Blue Book regional adjustment factor for Maine

C = Blue Book estimated operating costs per hour

D = Operator's hourly payroll rate plus 90 percent

E = Factor from the Rate Adjustment Table for the year the machine was made

When the Contractor's Equipment is ordered to be available for Force Account Work, but is idle for reasons not the fault of the Contractor, standby time will be paid at 70% of the hourly Equipment rental rate excluding all operating costs.

For each piece of Equipment, the Contractor shall provide the following information: the manufacturer's name, Equipment type, year of manufacture, model number, type of fuel used, horsepower rating, attachments required, together with its size or capacity and any further information necessary to ascertain the proper rate. The Contractor shall also provide a photocopy of the appropriate pages from the Blue Book that were used to arrive at the rates and prepare a chart that fully shows all the details of the Equipment costs.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications will be used to classify Equipment for the determination of applicable rental rates. A unit of at least the minimum rating recommended by the manufacturer shall power equipment that has no direct power unit.

If the Department specifies Equipment not listed in the above publication, the Department will establish a reasonable rate for such Equipment. If requested by the

Department, the Contractor will produce cost data to assist the Department in the establishment of such rental rate, including all records that are relevant to the Actual Costs including rental Receipts, acquisition costs, financing documents, lease Agreements, and maintenance and operational cost records.

Equipment leased by the Contractor for Force Account Work and actually used on the Project will be paid for at the actual invoice amount plus 10% markup for administrative costs.

D. Superintendence No part of the salary or expense of anyone connected with the Contractor above the grade of foreman or having general supervision of the Work will be included in the labor items as specified above, except when the Contractor's entire on-site Workforce is occupied with Force Account Work, in which case, the salaries of the Superintendent may be included in the labor item specified above when the nature of the Work is such that their services are required, as determined by the Department.

E. Documentation Requirements All Statements shall be accompanied and supported by Receipted Invoices for all Materials used and transportation charges. If Materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then instead of Invoices, the Statements shall contain or be accompanied by an affidavit of the Contractor certifying that such Materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the Actual Cost to the Contractor, excluding storage costs.

No payment will be made for Work performed on a Force Account basis until the Contractor has furnished duplicate itemized Statements of the cost of such Force Account Work detailed to the following:

- 1) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer.
- 2) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of Equipment.
- 3) Quantities of Materials, prices, and amounts.
- 4) Transportation charges on Materials.

F. Subcontractor Quoted Work When accomplishing Force Account Work that utilizes Subcontractors, the Contractor will be allowed a maximum markup of 5% for profit and overhead on the Subcontractor's portion of the Force Account Work. If the Department does not accept the Subcontractor quote, then the Subcontractor work will be subject to the Force Account provisions with a 5% markup for profit & overhead.

109.8 Contract Modification Excepting changes to quantities as provided in Section 109.1.1 - Changes Permitted, all changes to the Contract that affect compensation, time, or quality must be made by written Contract Modification. The Contract Modification will describe the underlying issue that resulted in the Contract Modification and will specify adjustments to compensation, time, or other Work requirements, as applicable. If

adjustments to compensation or time are not shown on the face of the Contract Modification, then there are no such adjustments.

All Contract Modifications must be signed by the Project Manager or Resident. By signing a Contract Modification, the Contractor agrees to all the terms thereof and waives any and all claims for additional compensation, time, or other Work requirement adjustments relating to the issue that is the subject of the Contract Modification. All Contract Modifications are to be noted in Progress Meeting minutes.

## SECTION 110 - INDEMNIFICATION, BONDING, AND INSURANCE

Scope of Section This Section contains general requirements for indemnification, bonding, and insurance by the Contractor.

110.1 Indemnification The Contractor agrees to indemnify, defend, and hold harmless the Department and its officers, directors, employees, agents, and consultants from and against all claims, actions, torts, costs, losses, and damages for bodily injury (including sickness, disease, or death) and property damage arising out of or relating to this Contract or the performance of Work by the Contractor, its Subcontractors, subconsultants, engineers, suppliers, any individuals or entities directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excepting only claims directly and solely caused by the negligence of the Department. Damages covered include, but are not limited to, all Dispute resolution costs, including court costs, attorney's fees, and the fees of engineers and consultants, arbitrators, and other professionals related to Dispute defense and preparation.

This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor, subconsultant, engineer, supplier, or other individual or entity under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

### 110.2 Bonding

110.2.1 Bonds The Contractor shall provide signed, valid, and enforceable Performance and Payment Bonds complying with the Contract. The Department may also require Warranty and Maintenance Bonds for specific items using a Contract specific special provision. For a related provision, see Section 103.5 - Award Conditions.

The Contractor shall procure bonds from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Professional and Financial Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for "Companies Holding Certificates

of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

The bonds shall each be in the full Contract amount, payable to the “Treasurer - State of Maine,” and on the Department’s forms, on exact copies thereof, or on forms that do not contain any significant variations from the Department’s forms as solely determined by the Department.

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time of performance, quality, warranties, and the Department’s self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by these bonds, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-Day period constitutes the Surety’s waiver of any right to deny or contest payment and the Surety’s acknowledgment that the claim is valid and undisputed.

If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified or becomes aware of such change.

For a related provision, see Section 106.9.4 - Other Warranty Provisions.

110.2.2 Bond for Use of Municipal Roads A bond for use of municipal Roads may be required as provided in Section 105.5 - Hauling of Materials and Equipment.

110.2.3 Bonding for Landscape Maintenance Period The Contractor shall provide a signed, valid, and enforceable Landscape Warranty Bond when specified in Special Provision 621. The Landscape Warranty Bond shall be presented to the Resident at the time of Physical Work Complete. Payment for the Landscape Warranty Bond shall be incidental to the Landscape Items. The bond shall be in the full amount for all Pay Items for work pursuant to Section 621 - Landscape, payable to the “Treasurer - State of Maine,” and on the Department’s forms, on exact copies thereof, or on forms that do not contain any significant variations from the Department’s forms as solely determined by the Department.

The Contractor shall pay all premiums and take all other actions necessary to keep said bond in effect for the duration of the Landscape Establishment Period described in Special Provision 621.0036 - Maintenance Period. If the Surety becomes financially insolvent, ceases to be licensed or approved to do business in the State of Maine, or stops operating in the United States, the Contractor shall file new bonds complying with this Section within 10 Days of the date the Contractor is notified or becomes aware of such change.

All Bonds shall be procured from a company organized and operating in the United States, licensed or approved to do business in the State of Maine by the State of Maine Department of Business Regulation, Bureau of Insurance, and listed on the latest Federal Department of the Treasury listing for “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

By issuing a bond, the Surety agrees to be bound by all terms of the Contract, including those related to payment, time for performance, quality, warranties, and the Department’s self-help remedy provided in Section 112.1 - Default to the same extent as if all terms of the Contract are contained in the bond(s).

Regarding claims related to any obligations covered by the bond, the Surety shall provide, within 60 Days of Receipt of written notice thereof, full payment of the entire claim or written notice of all bases upon which it is denying or contesting payment. Failure of the Surety to provide such notice within the 60-Day period constitutes the Surety’s waiver of any right to deny or contest payment and the Surety’s acknowledgment that the claim is valid and undisputed.

110.3 Insurance The Contractor shall provide signed, valid, and enforceable certificate(s) of insurance complying with this Section. All insurance must be procured from insurance companies licensed or approved to do business in the State of Maine by the State of Maine, Department of Business Regulation, Bureau of Insurance. The Contractor shall pay all premiums and take all other actions necessary to keep required insurances in effect for the duration of the Contract obligations, excluding warranty obligations.

110.3.1 Workers' Compensation For all operations performed by the Contractor and any Subcontractor, the Contractor and each Subcontractor shall carry Workers’ Compensation Insurance or shall qualify as a self-insurer with the State of Maine Workers’ Compensation Board in accordance with the requirements of the laws of the State of Maine. If maritime exposures exist, coverage shall include United States Long Shore and Harbor Workers coverage.

110.3.2 Commercial General Liability With respect to all operations performed by the Contractor and any Subcontractors, the Contractor and any Subcontractors shall carry commercial general liability insurance in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. The coverage must include products, completed operations, and Contractual liability coverages, and Insurance Services Office (ISO) form #CG25031185 or equivalent. The Contractual liability insurance shall cover the Contractor’s obligations to indemnify the Department as provided in this Contract, including Section 110.1 - Indemnification. The coverage shall also include protection against damage claims due to use of explosives, collapse, and underground coverage if the Work involves such exposures.

When the work to be performed entails the use of barges, tug boats, work boats, supply boats, or other watercraft, Protection and Indemnity coverage for such work shall be provided at the limits called for under Commercial General Liability insurance.

110.3.3 Automobile Liability The Contractor shall carry Automobile Liability Insurance covering the operation of all motor vehicles, including any that are rented, leased, borrowed, or otherwise used in connection with the Project. The minimum limit of liability under this Section shall be \$1,000,000.00 per occurrence.

110.3.4 Professional Liability Contractors and Subcontractor(s) who engage in design Work, preliminary engineering Work, and environmental consulting Work for the Department shall maintain a Professional Liability policy for errors and omissions that provides a minimum liability of \$1,000,000 per claim and annual aggregate. "Design Work" includes the design of temporary Structures and all other Work that requires design computations. This policy shall cover "Wrongful Acts," meaning negligent acts, errors, or omissions by the Contractor, or any entity for whom the Contractor is legally liable, arising out of the performance of, or failure to perform, professional services. The Department reserves the right to adjust liability coverage on a project-by project basis as it deems appropriate.

110.3.5 Owners and Contractors Protective Liability If required by Special Provision, the Contractor shall carry an Owners and Contractors Protective (OCP) Policy covering all operations performed by the Contractor and any Subcontractor in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, naming the Department as the sole insured party under the policy.

110.3.6 Builders Risk Unless required by Special Provision, the Department does not require the Contractor to carry Builders Risk Insurance. However, the Contractor is advised of its risks for damage to the Work as provided in Section 104.3.10 - Responsibility for Damage to the Work. The Contractor is responsible for managing and insuring these risks as it deems appropriate.

110.3.7 Pollution Liability If required by Special Provision, the Contractor shall carry Pollution Liability insurance to cover the risk of sudden or accidental discharge of pollutants during the prosecution of the Work. The limits of liability for this coverage shall be in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Regardless of whether such insurance is carried by the Contractor, the Contractor is responsible for managing these risks as it deems appropriate.

110.3.8 Railroad Protective Liability When working adjacent to a railroad, the Contractor and Subcontractors shall carry Railroad Protective Liability Insurance as required by the Railroad.

110.3.9 Administrative & General Provisions

A. Additional Insured Each insurance policy, with the exception of Workers' Compensation and Professional Liability insurance, shall list the Department of Transportation as an additional insured.

B. Defense of Claims Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify, and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even if groundless. The Contractor's insurer shall name the Department as a released party ("Releasee") on any release or settlement agreement for settled claims.

C. Primary Insurance The insurance coverage provided by the Contractor shall be primary insurance with respect to the State, its officers, agents, and employees. Any insurance or self-insurance maintained by the State for its officers, agents, and employees is in excess of the Agent's insurance and shall not contribute with it.

D. Reporting Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the State, its officers, agents, and employees.

E. Separate Application The insurance provided by the Contractor shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Nothing in this document constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Department or its officers, agents, or employees under the Maine Tort Claims Act (14 M.R.S.A. § 8101, et seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the Department.

## SECTION 111 - RESOLUTION OF DISPUTES

Scope of Section This Section contains provisions for resolving Disputes early, efficiently, fairly, and as close to the Project level as possible. For related provision, see Section 104.4 - Communication and Coordination.

### 111.1 General

111.1.1 Definitions "Dispute" is defined in Section 101.2 - Definitions. "Issue" is defined in Section 104.4.5 – Early Negotiation. Additionally, an "Issue" as used in Sections 111.1 through 111.3 below, is a matter that may give rise to a Dispute.

111.1.2 Escalation Process To resolve Issues or Disputes, the Contractor and the Department may mutually agree in writing at any time to any form of Dispute resolution, including mediation, facilitated negotiation, neutral case evaluation, arbitration, or litigation.

In the absence of such written Agreement, the parties must pursue resolution of Issues or Disputes that arise after Contract Execution as follows: (A) first through negotiation at the Project level as provided in Sections 104.4.5 - Early Negotiation and 111.2 - Project Level

Negotiation, (B) next through negotiation by management as provided in Section 111.3 - Negotiation by Management, and (C) next through the Commissioner as set forth in Section 111.5 - Appeal to Commissioner. If the Dispute remains unresolved after final agency action by the Commissioner, then, and only then, may a party seek judicial review of a Dispute as provided in Section 111.6 - Judicial Review.

111.1.3 Relationship to Partnering Partnering, including the establishment of a partnership charter, does not in any way waive, alter, or otherwise affect any provision of the Contract, including those requiring notice and all other provisions governing the resolution of Issues or Disputes. For a related provision, see Section 104.4.1 - Partnering.

111.1.4 Mandatory Notice The Contractor shall comply with all notice provisions of this Contract relating to Issues or Disputes, including those contained in Sections 104.3.3 - Duty to Notify If Ambiguities Discovered; 104.4.5(A) - Early Negotiation, Notice Required; 109.4.3 - Differing Site Conditions, Notice and Procedural Requirements; 109.5.4 - Adjustments for Delay, Notice and Procedural Requirements; and 111 - Resolution of Disputes. In order to promote the purposes of this Section 111, all notice provisions are mandatory and are to be strictly construed. Failure to provide conforming notice constitutes waiver by the Contractor of any and all claims to additional compensation, time, or modification of Contract requirements related to the Issue or Dispute.

111.1.5 Work to Proceed Despite Issue or Dispute Regardless of the status or disposition of any Issue or Dispute, the Contractor and the Department must perform their Contractual responsibilities Promptly and diligently. Unless expressly directed otherwise by the Department, the Contractor shall proceed without Delay to perform the Work or to conform to the decision or order of the Department.

111.1.6 Contractor's Obligation to Keep Records Throughout the course of any Issue or Dispute, the Contractor shall keep daily records, including supporting documentation, of extra costs and time related to the Issue or Dispute. Such records shall include all non-salaried labor, Material costs, Equipment expenses, and location for all operations that are affected by the Issue or Dispute. The Contractor will not be entitled to any change to compensation, time, or Work requirements without such records. The Contractor shall permit the Department daily access to and shall provide copies of these and any other records needed for evaluating the Dispute. The Contractor shall retain those records for the duration of the Dispute and as provided in Section 104.3.6 - Project Records.

111.1.7 Dispute Resolution Time Extensions All deadlines provided in this Section 111 may be extended only by mutual written consent signed by both parties.

111.1.8 Commissioner Communications Before Appeal Because the Commissioner may hear an Appeal and render final agency action under Section 111.5 - Appeal to Commissioner, the following persons shall not communicate with the Commissioner regarding the substance of a Dispute, except upon notice and opportunity for all parties to participate: (A) the Contractor or any agent for the Contractor and (B) Department staff, counsel, or consultants who are directly participating in Dispute resolution processes in an

advocate capacity. The preceding sentence does not prohibit the Commissioner from communicating with, or having the aid or advice of all other Department staff, counsel, or consultants. This Section does not apply where the Commissioner has delegated hearing the Appeal to other Department personnel, in which case, this Section shall apply instead to the Commissioner's delegate.

111.1.9 Contract Modification Required All changes to the Contract that regard Issues or Disputes and that affect compensation, time, quality, or other Contract requirements must be made by written Contract Modification as provided by Section 109.8 - Contract Modification.

### 111.2 Project Level Negotiation

111.2.1 Early Negotiation The parties must first comply with all requirements of Section 104.4.5 - Early Negotiation.

111.2.2 Detailed Notice of Dispute If Early Negotiation fails to resolve the Issue within 45 Days of the date of Receipt of the written Notice of Issue for Consideration Conforming to Section 104.4.5(A) - Early Negotiation, and if the Contractor desires additional consideration by the Department, then the Contractor must Deliver a written Detailed Notice of Dispute to the Program Manager within 14 Days of the expiration of said 45-Day period. At a minimum, the Detailed Notice of Dispute shall include all of the following information in sufficient detail to allow reasoned analysis as determined by the Program Manager:

- A. A description of the background of Dispute, including the date(s) the Issue or Dispute first arose and the date the Contractor provided the Project Manager or Resident with the "Notice of Issue for Consideration" Conforming to Section 104.4.5(A) - Early Negotiation;
- B. All Contract provisions that are relevant to the Dispute;
- C. All facts relevant to the Dispute, including all non-Contract Documents and all non-documentary facts, including identification of all persons with knowledge of relevant facts and a synopsis of their testimony;
- D. The Contractor's position as to why the Contract and facts demonstrate that the Contractor is entitled to additional compensation and/or time;
- E. The estimated dollar cost, if any, of the Disputed Work and how the estimate was determined;
- F. If the Contractor is asserting an Excusable or Compensable Delay occurred, an analysis of the progress schedule showing the impact on the Critical Path; and

G. A specific request for additional compensation or time, or other change to provisions of the Contract.

111.2.3 Decision by Program Manager Within 30 Days of receiving a Detailed Notice of Dispute Conforming to Section 111.2.2 - Detailed Notice of Dispute, the Program Manager will Deliver a written decision to the Contractor on the specific request made.

### 111.3 Negotiation by Management

111.3.1 Notice of Unresolved Dispute If the Contractor desires additional consideration, the Contractor shall Deliver a written “Notice of Unresolved Dispute” to the Department's appropriate Bureau Director (hereafter "Director" in this Section 111 - Resolution of Disputes within 14 Days of receiving the Program Manager’s decision provided for in Section 111.2.3 - Decision by Program Manager.

At a minimum, the Notice of Unresolved Dispute must include the following information in sufficient detail to allow reasoned analysis as determined by the Director or the director's designee(s): (A) all documentation submitted to the Resident for Project-level negotiation, (B) all decisions rendered by the Program Manager or equivalent Bureau level manager, and (C) all additional information the Contractor desires the Department to consider.

111.3.2 Additional Documentation Within 14 Days of the receiving a Notice of Unresolved Dispute Conforming to Section 111.3.1, the Director or the Director’s designee(s) may require the Contractor to provide Additional Documentation. If required, the Contractor shall completely and accurately supply all requested information in writing within 21 Days of receiving said request. Failure to provide all Additional Documentation constitutes a waiver of all claims for additional compensation or time.

Additional Documentation may include the following:

- A. The date(s) on which facts arose which gave rise to the Issue or Dispute.
- B. The dates the Department Received the “Notice of Issue for Consideration” Conforming to Section 104.4.5(A) - Early Negotiations - Notice Required and the “Detailed Notice of Dispute” Conforming to Section 111.2.2.
- C. A list of all Contract provisions that is relevant to the Dispute and a Statement of which specific Contract provisions the Contractor believes controls or is relevant to the outcome of the Dispute.
- D. A narrative setting forth the Contractor’s position regarding additional compensation and time, if any, including all supporting facts, including dates, locations, and items of Work affected by the Dispute, and how the Contract provisions set forth in subparagraph C support the Contractor’s position.

- E. A list of and copies of all documents that are relevant to the Dispute organized chronologically. With respect to each document, the list must include its date, the author(s) (including address and telephone numbers), and the recipient(s).
- F. A list of all persons who are involved in or knowledgeable of the Dispute, including addresses and telephone numbers of such persons. If such person has knowledge of oral statements upon which the Contractor is relying, the list must also include the substance of the oral statements, the date(s) they were made, and all people present at the time the statement was made.
- G. If an extension of time is sought:
  - 1. The specific Days or dates for which it is sought, including an explanation of impact on the Critical Path;
  - 2. The specific reasons the Contractor believes a time extension should be granted; and
  - 3. The specific provisions of the Contract under which it is sought.
- H. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the categories provided by Section 109.7- Equitable Adjustments to Compensation and Time.

I. An oath consisting of the following language:

“ON OATH, and under the penalty of law for perjury or falsification, the undersigned, (Name of person signing oath and title) hereby certifies that the amounts claimed by the Contractor for additional compensation and time (as applicable) set forth in the Notice of Unresolved Dispute and this additional documentation are a true and complete Statement of the Actual Costs incurred and time sought, and are fully documented and supported in accordance with the Contract.”

J. Date of signature, sworn signature, and acknowledgment by notary.

The Director or the Director’s designee may also retrieve and review the Bid Escrow Documentation, if any, if the Contract required submission of Bid Escrow.

111.3.3 Decision by Director Within 21 Days of receiving a Notice of Unresolved Dispute Conforming to Section 111.3.1 - Notice of Unresolved Dispute or, if requested, all Additional Documentation, whichever is later, the Director or the Director’s designee(s) will Deliver a written decision. The decision will affirm, reverse, revise, or amend the decision of the Program Manager.

111.5 Appeal to Commissioner

111.5.1 Filing of Appeal If the Contractor elects, the Contractor may file an “Appeal of the Director’s Decision.” Such Appeal must be filed within 14 Days of the Contractor’s Receipt of the Director’s Decision. At a minimum, the Appeal must contain:

- A. All Materials submitted to the Director and all decisions by the Director;
- B. The specific findings of the Director that the appealing party claims are contrary to law and/or fact;
- C. Any other pertinent new documentary evidence;
- D. Any written arguments the appealing party wishes the Commissioner to consider;  
and
- E. The specific relief sought.

Unless directed otherwise by the Commissioner, review of the Appeal will be limited to the documentation submitted.

111.5.2 Director’s Response The Director may submit a written response within 14 Days of receiving notice that an Appeal was filed with the Commissioner.

111.5.3 Time and Alternatives for Commissioner Action Within 30 Days of receiving an Appeal Conforming to Section 111.5.1 or, if applicable, the Director’s response, allowed by Section 111.5.2, the Commissioner will:

- A. Affirm the decision of the Director, or
- B. Revise, amend, or reverse the decision of the Director.

111.5.4 Final Agency Action Any affirmation, revision, amendment, or reversal by the Commissioner is final agency action as of the date of Receipt of such action by the Contractor. If the Commissioner takes no action within such 30-Day period, the decision of the Director shall be final agency action upon the expiration of said 30-Day period.

111.6 Judicial Review All Bidders and Contractors hereby agree and acknowledge that with respect to any and all Disputes and/or Issues arising from the Bid and/or the Contract, they must and will comply with all of the Notice and Dispute Resolution provisions of this Contract. For related provisions see Sections 111.1.2 – Escalation Process and 111.1.4 – Mandatory Notice. All Bidders and Contractors hereby agree and acknowledge that they must comply with, and exhaust, the Notice and Dispute Resolutions provisions of this Contract to the point of Final Agency Action prior to seeking judicial review. See Section 111.5.4 - Final Agency Action.

All Bidders and Contractors hereby agree and acknowledge that the sole and exclusive means of judicial review of final agency actions under the Contract is through a

petition for review pursuant to Maine Rule of Civil Procedure 80C and 5 MRSA § 11001, et seq., of the Maine Administrative Procedure Act, to be filed in Maine Superior Court, Kennebec County.

## SECTION 112 - DEFAULT AND TERMINATION

Scope of Section This Section contains general provisions related to Default and termination of the Contract.

### 112.1 Default

112.1.1 Grounds for Default The Contractor and the Surety are in Default of the Contract if the Contractor or the Surety violate any provision of Section 103.3.2 or the following:

- A. Fails to Promptly begin the Work under the Contract after being authorized to proceed,
- B. Fails to perform the Work with sufficient labor, Equipment, or Materials to assure the timely Completion of the Work,
- C. Performs Defective Work, neglects or refuses to uncover, remove or rebuild Unacceptable Work, or neglects or refuses to uncover Unauthorized or Uninspected Work when directed by the Department,
- D. Discontinues the prosecution of the Work without Departmental approval,
- E. Continues to perform Work after the Department directs that Work be stopped,
- F. Fails to resume Work that has been suspended as required by the Contract,
- G. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency that could affect the Work in any way,
- H. Allows any final judgment to stand against the Contractor unsatisfied for a period of ten Days,
- I. Makes an assignment for the benefit of creditors without authorization by the Department, or
- J. In any other manner, fails to perform the Work in Substantial Conformity with any material provision of the Contract.

112.1.2 Notice of Default / Cure Except as otherwise provided in this Contract, if Default occurs, the Department may give written Notice of Default to the Contractor and its Surety. Failure to give Notice of Default is in no way a waiver by the Department of any provision of the Contract.

If the Contractor or Surety fails to completely cure such Default within a period of 14 Days after Notice of Default, then the Department may (A) terminate the Contract for cause in accordance with Section 112.2.1 - For Cause, or (B) take prosecution of the Work away from the Contractor without violating the Contract.

112.2 Termination The Department may, by written order to the Contractor, terminate the Contract as provided in this Section 112. Termination of the Contract or

portion thereof shall not relieve the Contractor of its Contractual responsibilities for the Work completed (including warranty obligations), nor shall it relieve the Surety of its obligation for claims arising from the Work or the Contract.

112.2.1 For Cause If the Contractor fails to completely cure all Defects identified in the Notice(s) of Default provided for in Section 112.1.2 within the 14-Day cure period provided, the Department may immediately terminate the Contract for cause by written Notice of Termination For Cause. In this event, the Department may use any or all Materials and Equipment for the Work and may enter into an Agreement with another entity for the Completion of the Work, or use such other methods as in the opinion of the Department are required for the Completion of the intent of the Contract in an acceptable and timely manner.

The Department will pay for all Accepted items of Work as of the date of Termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items, except that there will be no reductions in the amount of the credit to the Department. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. All costs and charges incurred by the Department, together with the cost of completing the Work specified in the Contract, will be deducted from amounts otherwise due the Contractor. If such expenses exceed the sum that would have been payable under the Contract, then the Contractor and the Surety are liable and shall pay to the Department the amount of such excess within 30 Days of the Delivery of a Statement setting forth such expenses to the Contractor and the Surety, as applicable.

If the Contractor files for bankruptcy at any time before expiration of the warranty periods provided by this Contract, then the Contractor and its Surety agree, if requested by the Department and within 30 Days of such request, to take all actions necessary or convenient to reject or accept this Contract under the executory Contract provisions of the federal bankruptcy code.

112.2.2 For Convenience The Department may terminate this Contract for convenience or for any reason that is in the best interest of the Department. Terminations caused without fault of or for reasons beyond the control of the Contractor are Terminations for Convenience. The Department will notify the Contractor of such terminations by sending a Notice of Termination for Convenience.

In case of a Termination for Convenience, the Department will pay for all Accepted items of Work as of the date of termination at agreed upon prices. Items eliminated in their entirety by Termination will be paid for as provided in Section 109.2 - Elimination of Items. The Contractor shall make all Work records available to the Department upon request regarding payment under this Section. Acceptable Materials, obtained by the Contractor for the Work but which have not been incorporated therein, may at the option of the Department be purchased from the Contractor at Actual Costs delivered to a prescribed location or otherwise disposed of as mutually agreed.

After Receipt of Notice of Termination for Convenience from the Department, the Contractor may also submit a claim for additional damages or costs not covered above or elsewhere in this Contract to the Project Manager within 60 Days of the effective Termination date. Such claim may include such cost items as idle Equipment time, 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, 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 item for which the Contractor reasonably believes reimbursement should be made. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make the Bid Escrow, Documentation, if any, and its cost records available to the extent necessary to determine the validity and amount of each item claimed.

The Department will respond in writing to such claim within 60 Days of Receipt. If the Contractor wants additional consideration, the Contractor must Deliver a written "Notice of Unresolved Dispute" to the Director as provided in Section 111.3.1 - Notice of Unresolved Dispute and comply with all other applicable Dispute resolution provisions of Section 111 - Resolution of Disputes.

## APPENDIX A TO DIVISION 100

### SECTION 1 - BIDDING PROVISIONS

A. Federally Required Certifications By signing and delivering a Bid, the Bidder certifies as provided in all certifications set forth in this Appendix A - Federal Contract Provisions Supplement, including:

- Certification Regarding No Kickbacks to Procure Contract as provided on this page 1 below.
- Certification Regarding Non-collusion as provided on page 1 below.
- Certification Regarding Non-segregated Facilities as provided by FHWA Form 1273, section III set forth on page 21 below.
- "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" as provided by FHWA Form 1273, section XI set forth on page 32 below.
- "Certification Regarding Use of Contract Funds for Lobbying" as provided by FHWA Form 1273, section XII set forth on page 35 below.

Unless otherwise provided below, the term "Bidder," for the purposes of these certifications, includes the Bidder, its principals, and the person(s) signing the Bid. Upon execution of the Contract, the Bidder (then called the Contractor) will again make all the certifications indicated in this paragraph above.

CERTIFICATION REGARDING NO KICKBACKS TO PROCURE CONTRACT Except expressly stated by the Bidder on sheets submitted with the Bid (if any), the Bidder hereby certifies, to the best of its knowledge and belief, that it has not:

(A) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract;

(B) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or;

(C) paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract;

By signing and submitting a Bid, the Bidder acknowledges that this certification is to be furnished to the Maine Department of Transportation and the Federal Highway Administration (FHWA), U.S. Department of Transportation in connection with this contract in anticipation of federal aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

CERTIFICATION REGARDING NONCOLLUSION Under penalty of perjury as provided by federal law (28 U.S.C. §1746), the Bidder hereby certifies, to the best of its knowledge and belief, that:

the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competitive bidding in connection with the Contract.

For related provisions, see Section 102.7.2 (C) of the Standard Specifications - "Effects of Signing and Delivery of Bids" - "Certifications", Section 3 of this Appendix A entitled "Other Federal Requirements" including section XI - "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" and section XII. - "Certification Regarding Use of Contract Funds for Lobbying."

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B. Bid Rigging Hotline To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

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SECTION 2 - FEDERAL EEO AND CIVIL RIGHTS REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 2 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

A. Nondiscrimination & Civil Rights - Title VI The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate. The Contractor and subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with all State of Maine and other Federal Civil Rights laws.

For related provisions, see Subsection B - "Nondiscrimination and Affirmative Action - Executive Order 11246" of this Section 2 and Section 3 - Other Federal Requirements of this "Federal Contract Provisions Supplement" including section II - "Nondiscrimination" of the "Required Contract Provisions, Federal Aid Construction Contracts", FHWA-1273.

B. Nondiscrimination and Affirmative Action - Executive Order 11246 Pursuant to Executive Order 11246, which was issued by President Johnson in 1965 and amended in 1967 and 1978, this Contract provides as follows.

The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

Ensure and maintain a working environment free of harassment, intimidations, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all forepersons, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and to maintain a record of the organization's responses.

Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

Provide immediate written notification to the Department's Civil Rights Office when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under B above.

Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligation; by including it in any policy manual and collective bargaining agreement; by

publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Forepersons, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractor's and Subcontractors with whom the Contractor does or anticipates doing business.

Direct its recruitment efforts, both orally and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above describing the openings, screenings, procedures, and test to be used in the selection process.

Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of a Contractor's workforce.

Validate all tests and other selection requirements.

Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

Ensure that all facilities and company activities are non segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractor's and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

C. Goals for Employment of Women and Minorities Per Executive Order 11246, craft tradesperson goals are 6.9% women and .5% minorities employed. However, goals may be adjusted upward at the mutual agreement of the Contractor and the Department. Calculation of these percentages shall not include On-the-Job Training Program trainees, and shall not include clerical or field clerk position employees.

For a more complete presentation of requirements for such Goals, see the federally required document "Goals for Employment of Females and Minorities" set forth in the next 6 pages below.

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Start of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES  
Federally Required Contract Document

§60-4.2 Solicitations

- (d) The following notice shall be included in, and shall be part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part (see 41 CFR § 60-4.2(a)):

Notice of Requirement for Affirmative Action to Ensure Equal Opportunity (Executive Order 11246)

- 1. The Offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- 2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for female participation in each trade 6.9%

Goals for minority participation for each trade

Maine

001 Bangor, ME 0.8%

Non-SMSA Counties (Aroostook, Hancock, Penobscot, Piscataquis, Waldo, Washington)

002 Portland-Lewiston, ME

SMSA Counties: 4243 Lewiston-Auburn, ME (Androscoggin)	0.5%
6403 Portland, ME (Cumberland, Sagadahoc)	0.6%
Non-SMSA Counties: (Franklin, Kennebec, Knox, Lincoln, Oxford, Somerset, York)	0.5%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR § 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be in violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract; estimated started and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department form 941;
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of the North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor, is participating (pursuant to 41 CFR § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors for Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a. through p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals

established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specific.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant, thereto.
6. In order for the non working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as expensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, when possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment sources or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment, efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing prior to the date for the acceptance of applications for apprenticeship or the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on site and in other areas of a Contractor's work force.

- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitation to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7 a through p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7 a through p. of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program and reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions take on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, specific minority group of women is underutilized.)

10. The Contractor shall not use the goals and timetables or affirmative action even through the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementation regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.6.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

End of GOALS FOR EMPLOYMENT OF FEMALES AND MINORITIES  
SECTION 3 - OTHER FEDERAL REQUIREMENTS

Unless expressly otherwise provided in the Bid Documents, the provisions contained in this Section 3 of this "Federal Contract Provisions Supplement" are hereby incorporated into the Bid Documents and Contract.

## A. Buy America

If the cost of products purchased for permanent use in this project which are manufactured of steel, iron, or the application of any coating to products of these materials exceeds 0.1 percent of the contract amount, or \$2,500.00, whichever is greater, the products shall have been manufactured and the coating applied in the United States. The coating materials are not subject to this clause, only the application of the coating. In computing that amount, only the cost of the product and coating application cost will be included.

Ore, for the manufacture of steel or iron, may be from outside the United States; however, all other manufacturing processes of steel or iron must be in the United States to qualify as having been manufactured in the United States.

United States includes the 50 United States and any place subject to the jurisdiction thereof.

Products of steel include, but are not limited to, such products as structural steel, piles, guardrail, steel culverts, reinforcing steel, structural plate and steel supports for signs, luminaries and signals.

Products of iron include, but are not limited to, such products as cast iron grates.

Application of coatings include, but are not limited to, such applications as epoxy, galvanized and paint.

To assure compliance with this section, the Contractor shall submit a certification letter on its letterhead to the Department stating the following:

“This is to certify that products made of steel, iron or the application of any coating to products of these materials whose costs are in excess of \$2,500.00 or 0.1 percent of the original contract amount, whichever is greater, were manufactured and the coating, if one was required, was applied in the United States.”

## B. Materials

### a. Convict Produced Materials References: 23 U.S.C. 114(b)(2), 23 CFR 635.417

Applicability: FHWA's prohibition against the use of convict material only applies to Federal-aid highways. Materials produced after July 1, 1991, by convict labor may be incorporated in a Federal-aid highway construction project only if: 1) such materials have been produced by convicts who are on parole, supervised release, or probation from a prison; or 2) such material has been produced in a qualified prison facility, e.g., prison industry, with the amount produced during any 12-month period, for use in Federal-aid projects, not exceeding the amount produced, for such use, during the 12-month period ending July 1, 1987.

Materials obtained from prison facilities (e.g., prison industries) are subject to the same requirements for Federal-aid participation that are imposed upon materials acquired from other

sources. Materials manufactured or produced by convict labor will be given no preferential treatment.

The preferred method of obtaining materials for a project is through normal contracting procedures which require the contractor to furnish all materials to be incorporated in the work. The contractor selects the source, public or private, from which the materials are to be obtained (23 CFR § 635.407). Prison industries are prohibited from bidding on projects directly (23 CFR § 635.112e), but may act as material supplier to construction contractors.

Prison materials may also be approved as State-furnished material. However, since public agencies may not bid in competition with private firms, direct acquisition of materials from a prison industry for use as State-furnished material is subject to a public interest finding with the FHWA Division Administrator's concurrence (23 CFR § 635.407d). Selection of materials produced by convict labor as State-furnished materials for mandatory use should be cleared prior to the submittal of the Plans Specifications & Estimates (PS&E).

b. Patented/Proprietary Products References: 23 U.S.C. § 112, 23 CFR § 635.411

FHWA will not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

- the item is purchased or obtained through competitive bidding with equally suitable unpatented items,
- the STA certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- the item is used for research or for a special type of construction on relatively short sections of road for experimental purposes. States should follow FHWA's procedures for "Construction Projects Incorporating Experimental Features" ([expermnt.htm](#)) for the submittal of work plans and evaluations.

The primary purpose of the policy is to have competition in selection of materials and allow for development of new materials and products. The policy further permits materials and products that are judged equal may be bid under generic specifications. If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of, acceptable materials or products listed; and the FHWA Division Administrator may approve a single source if it can be found that its utilization is in the public interest.

Trade names are generally the key to identifying patented or proprietary materials. Trade name examples include 3M, Corten, etc. Generally, products identified by their brand or trade name are not to be specified without an "or equal" phrase, and, if trade names are used, all, or at least a reasonable number of acceptable "equal" materials or products should be listed. The licensing of several suppliers to produce a product does not change the fact that it is a single product and should not be specified to the exclusion of other equally suitable products.

c. State Preference References: 23 U.S.C. § 112, 23 CFR § 635.409

Materials produced within Maine shall not be favored to the exclusion of comparable materials produced outside of Maine. State preference clauses give particular advantage to the designated source and thus restrict competition. Therefore, State preference provisions shall not be used on any Federal-aid construction projects.

This policy also applies to State preference actions against materials of foreign origin, except as otherwise permitted by Federal law. Thus, States cannot give preference to in-State material sources over foreign material sources. Under the Buy America provisions, the States are permitted to expand the Buy America restrictions provided that the STA is legally authorized under State law to impose more stringent requirements.

d. State Owned/Furnished/Designated Materials References: 23 U.S.C. § 112, 23 CFR § 635.407

Current FHWA policy requires that the contractor must furnish all materials to be incorporated in the work, and the contractor shall be permitted to select the sources from which the materials are to be obtained. Exceptions to this requirement may be made when there is a definite finding, by the Department and concurred in by FHWA's Division Administrator, that it is in the public interest to require the contractor to use materials furnished by the Department or from sources designated by the Department. The exception policy can best be understood by separating State-furnished materials into the categories of manufactured materials and local natural materials.

Manufactured Materials When the use of State-furnished manufactured materials is approved based on a public interest finding, such use must be made mandatory. The optional use of State-furnished manufactured materials is in violation of our policy prohibiting public agencies from competing with private firms. Manufactured materials to be furnished by the Department must be acquired through competitive bidding, unless there is a public interest finding for another method, and concurred in by FHWA's Division Administrator.

Local Natural Materials When the Department owns or controls a local natural materials source such as a borrow pit or a stockpile of salvaged pavement material, etc., the materials may be designated for either optional or mandatory use; however, mandatory use will require a public interest finding (PIF) and FHWA's Division Administrator's concurrence.

In order to permit prospective bidders to properly prepare their bids, the location, cost, and any conditions to be met for obtaining materials that are made available to the contractor shall be stated in the bidding documents.

Mandatory Disposal Sites Normally, the disposal site for surplus excavated materials is to be of the contractor's choosing; although, an optional site(s) may be shown in the contract provisions. A mandatory site shall be specified when there is a finding by the Department, with the concurrence of the FHWA Division Administrator, that such placement is the most

economical or that the environment would be substantially enhanced without excessive cost. Discussion of the mandatory use of a disposal site in the environmental document may serve as the basis for the public interest finding.

Summarizing FHWA policy for the mandatory use of borrow or disposal sites:

- mandatory use of either requires a public interest finding and FHWA’s Division Administrator's concurrence,
- mandatory use of either may be based on environmental consideration where the environment will be substantially enhanced without excessive additional cost, and
- where the use is based on environmental considerations, the discussion in the environmental document may be used as the basis for the public interest finding.

Factors to justify a public interest finding should include such items as cost effectiveness, system integrity, and local shortages of material.

C. Standard FHWA Contract Provisions - FHWA 1273

Unless expressly otherwise provided in the Bid Documents, the following “Required Contract Provisions, Federal Aid Construction Contracts”, FHWA-1273, are hereby incorporated into the Bid Documents and Contract.

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Start of FHWA 1273 REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS (As revised through May 1, 2012)

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions

- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

## ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents; however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR Parts 1625-1627, 23 USC § 140, the Rehabilitation Act of 1973, as amended (29 USC § 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with the requirements of the Equal Opportunity Clause in 41 CFR § 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR § 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 USC § 140, the Rehabilitation Act of 1973, as amended (29 USC § 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. § 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such

advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where such evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. § 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals

(even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR § 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### **IV. Davis-Bacon and Related Act Provisions**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR § 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

## 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Prt 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve,

modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements that is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR § 5.5(a) or 29 CFR § 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR § 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3704).

3. Pursuant to 29 CFR § 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and

honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. § 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

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

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local)

transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--  
Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

## **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR Part 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR § 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

End of FHWA 127