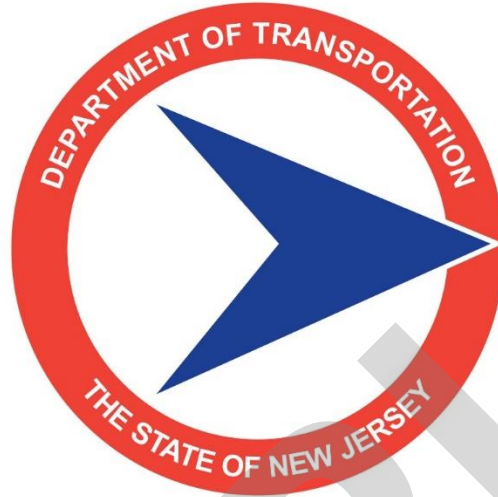


New Jersey
Department of Transportation



<PROJECT TITLE>

<UNIQUE IDENTIFIER>

<CONTRACT NUMBER>

**CONTRACT DOCUMENTS
REQUEST FOR PROPOSALS**

PART 2

**DB DIVISION 100 GENERAL PROVISIONS
DRAFT <DATE>**

SAMPLE

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DIVISION 100 – GENERAL PROVISIONS

SECTION 101 – GENERAL INFORMATION

101.01 INTRODUCTION

This RFP Part 2 Division 100 General Provisions replaces the 2019 Standard Specifications for Road and Bridge Construction Division 100 in its entirety.

The 2019 Standard Specifications for Road and Bridge Construction, as amended by these General Provisions, are written to the Proposer before Award and to the Design-builder after Award. Sentences that are written as commands are directed to the Design-builder. For example, a requirement to construct a cofferdam would be expressed as, “Construct cofferdams to ensure the stability of the excavation and to keep the excavation free of water,” rather than “The Design-builder shall construct cofferdams to ensure the stability of the excavation and to keep the excavation free of water.”

Titles and headings of sections and subsections are for convenience and do not bear on the meaning of the text. Whenever any Section, Subsection, Subpart, or Subheading is amended in the Special Provisions by such terms as changed to, deleted, or added, it is construed to mean that it amends that Section, Subsection, Subpart, or Subheading of the Standard Specifications.

When a publication is specified or referenced, if no issue or effective date for the publication is specified, use the issue or version of the publication that is current on the proposal submission due date.

101.02 ABBREVIATIONS

The following abbreviations are used in the Contract:

AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
ACI	American Concrete Institute
AISC	American Institute of Steel Construction, Inc.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
API	American Petroleum Institute
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASCE	American Society of Civil Engineers
ASTM	ASTM (American Society for Testing and Materials) International
ATC	Alternative Technical Concept
AWPA	American Wood Protection Association
AWS	American Welding Society
AWWA	American Water Works Association
CIAP	Construction Industry Advancement Program of New Jersey
CFR	Code of Federal Regulations
CRSI	Concrete Reinforcing Steel Institute
CQAE	Construction Quality Assurance Engineer
CQCE	Construction Quality Control Engineer
CUF	Commercially Useful Function
DB	Design Build
DBE	Disadvantaged Business Enterprise
DCR/AA	New Jersey Department of Transportation, Division of Civil Rights and Affirmative Action
DQAE	Design Quality Assurance Engineer
DQCE	Design Quality Control Engineer

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ESBE	Emerging Small Business Enterprise
EEI	Edison Electric Institute
EEO	Equal Employment Opportunity
EPA	United States Environmental Protection Agency
FED-STD	Federal Standard
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration
GFE	Good Faith Effort
HDPE	High-Density Polyethylene
HMA	Hot Mix Asphalt
HPC	High Performance Concrete
IA	Independent Assurance
ICEA	Insulated Cable Engineers Association, Inc.
ISO	International Organization for Standardization
ITE	Institute of Transportation Engineers
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
JV	Joint Venture
MSDS	Material Safety Data Sheet
MUTCD	Manual on Uniform Traffic Control Devices
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NIST	National Institute of Standards and Technology
N.J.A.C.	New Jersey Administrative Code
N.J.S.A.	New Jersey Statutes Annotated
NJACI	New Jersey Chapter American Concrete Institute
NJDEP	New Jersey Department of Environmental Protection
NOAA	National Oceanic and Atmospheric Administration
NJDOT	New Jersey Department of Transportation
NPCA	National Precast Concrete Association
NTCIP	National Transportation Communications for ITS Protocol
NTP	Notice to Proceed
OJT	On-The-Job-Training
OSHA	Occupational Safety and Health Administration
PCI	Precast/Prestressed Concrete Institute
PVC	Polyvinyl Chloride
PM	Project Manager
QA	Quality Assurance
QC	Quality Control
QCP-HP	Quality Check Points (Hold Points)
QCP	Quality Control Plan
QM	Quality Manager
QPL	Qualified Products List
RAP	Reclaimed Asphalt Pavement
RE	Department's Project Manager
RFP	Request for Proposals
ROW	Right-of-Way
SBE	Small Business Enterprise
SESC	Soil Erosion and Sediment Control
SI	International System of Units
SSPC	Society of Protective Coatings
UL	Underwriters Laboratories
USACE	United States Army Corps of Engineers

USC	United States Code
USCG	United States Coast Guard
USDOL	United States Department of Labor

101.03 TERMS

When the following terms are used in the Contract, the meaning is as follows. If the term is capitalized, it is capitalized in the Specifications.

Acceptance. The written confirmation by the Department that informs the Design-builder that a submittal, deliverable, work product, test result, or the project is in conformance with the Contract requirements or NJDOT standards.

acceptance testing. Testing conducted by the Department to measure the degree of compliance to the Contract.

actual cost. The computed cost using calculations provided in [104.03.08](#).

Addenda. Separate publication(s) containing supplemental additions, deletions, and modifications to the provisions of the Request for Proposals (RFPs) after the date of issuance of the Final RFP.

Alternative Technical Concept. A concept that deviates from, and provides a solution equal to or better than, the requirements set forth in the contract documents. The Department's prior written approval is required for Alternative Technical Concepts (ATCs) in accordance with the Instruction to Proposers.

approval. The Department's written notification that a submission or portion of work is believed to be in general conformance with the Contract. Approval does not constitute the Department's agreement to a change in the Contract.

authorized funding amount. The amount of funds authorized by the Department for the Contract.

Basic Project Configuration. The basic information presented by the Department regarding the nature of the project to be constructed as documented in the RFP.

Bid(s), Bidder(s), Bidding. "Proposal(s)", "Proposer(s)" and "Proposing" respectively.

bridge. A structure, other than a culvert, including supports, erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of the structure of more than 20 feet between undercopings of abutments or extreme ends of openings for multiple boxes. Structure dimensions are defined as follows:

1. **bridge length.** The length of a bridge structure is the overall length measured along the line of survey stationing from back to back of backwalls of abutments, if present, otherwise end to end of the bridge floor; but, in no case less than the total clear opening of the structure.
2. **bridge width.** The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs, or in the case of multiple height of curbs, between the bottoms of the lower risers or, if curbs are not used, between inner faces of parapet or railing.

Change Order. A written order issued by the Department to the Contractor after execution of the Contract authorizing one or more of the following:

1. Changes in the Work.
2. Modifications in the basis of payment.
3. Modifications to Contract Time.

Commercially Useful Function. Occurrences in which the Contractor or subcontractor is responsible for the execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved, and with respect to materials and supplies used on the contract, prepares the estimate, negotiates price, determines quality and quantity, orders the material, arranges delivery, installs (where applicable), and pays for the material and supplies itself for the project.

Completion. When all of the following have occurred:

1. The Work has been satisfactorily completed in all respects according to the Contract including landscaping planting work, removal of SESC measures, FINAL CLEANUP, and repair of unacceptable work.

2. The Project is ready for use by the Department as required by the Contract.
3. The Contractor has satisfactorily executed and delivered to the RE all documents, certificates, and proofs of compliance required by the Contract including the Notice of Completion.

Conformed RFP. The RFP that incorporates all of the contractual changes issued by the Department during the procurement in the form of an addendum. The Conformed RFP is provided for convenience only and should be verified for accuracy by the DB Team that is awarded the contract. The Contract Documents remain as the Final RFP and Addendum issued by NJDOT.

Construction Inspection (CI). The act of inspecting all construction operations and enforcing all safety measures (for employees and the traveling public), performed by the Design-builder to ensure conformance with the contract documents. This includes performing daily inspection and testing activities in accordance with all the requirements set forth in Department policies, manuals; preparation of applicable forms; preparation of monthly estimates; monitoring compliance to safety procedures, including fall protection and Work Zone Traffic Control (WZTC) requirements; monitoring compliance to environmental requirements. Construction Inspection also includes Contract Administration functions including, but not limited to keeping required records, monitoring the Design-builder's progress, monitoring certified payroll compliance and processing of payments, monitoring adherence to Equal Opportunity and Labor requirements contained in the contract, taking measurements as required for payment, and maintaining a contemporaneous project diary documenting conformance with the contract documents.

construction operations. Physical construction of work done in the performance of the Contract within the Project Limits. Does not include off-site mobilization, procurement and off-site storage of materials and plants, engineering, performance bond and payment bond, surveys, working drawings, off-site field offices, schedules, certificates, forms, or documents.

Construction Quality Assurance Engineer (CQAE). The Department's representative with primary responsibility for monitoring and/or auditing the Design-builder's construction and environmental field activities for compliance with the Contract's requirements and the Design-builder's Quality Control Plan.

Construction Quality Control Engineer (CQCE). The Design-builder's designated representative who leads the Construction QC activities. The Construction QC Engineer, or his/her designees, shall be delegated the authority to actively monitor the quality of materials and workmanship and to make necessary improvements to the quality of Work, including the suspension of the Work if required.

Contract. The written integrated agreement between the Department and the Design-builder setting forth the obligations of the parties, with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of all labor and materials, and transportation, and the basis of payment.

The Contract includes, the Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Resolution of Award of Contract, Executed Form of Contract, performance and payment bonds, Specifications, Right-of-Way Plans, permits, , Request for Proposals Parts 2 through 10 including Design-Build Division 100 General Provisions, the Project Requirements, the Utility Requirements, Additional Project Requirements, Directive and Indicative Plans, Engineering Data, Design-Build Special Provisions, the Design-builder's Proposal, Addenda, Change Orders, and Field Orders, all of which are to be treated as one instrument whether or not set forth at length in the form of Contract. Other information mailed or otherwise made available to the Proposers before the submittal of proposals is not part of the Contract unless specified as such.

Contract Documents. The documents identified as such in the Contract.

Contract Plans. Design Plans prepared by the Design Builder.

Contract Time. The number of working days allowed to complete the work for a milestone or the date by which work must be completed, as provided in the Contract and as modified by Change Order. When Interim Completion and Completion requirements are specified as a specific date instead of the number of working days, achieve Interim Completion or Completion on or before that date.

Contractor. Design-builder.

Constructor. A Principal Participant or subcontractor retained by the Design-builder, who is involved in the actual construction of the Project.

day. Every day shown on the calendar.

Definitive Design. The stage of design development where design concepts and parameters are established that will be followed through to completion of the Project.

Department. The Department of Transportation of the State of New Jersey, as created by law, acting through duly authorized representatives, such representatives acting within the scope of the particular duties delegated to them.

Department Laboratory. The main testing laboratory of the Department at 930 Lower Ferry Road, P.O. Box 607 Trenton, New Jersey 08625, or such other laboratory as the Department may designate.

Department's Project Manager. The designated person, representing the Department and having direct supervision of the administration and execution of the Contract (the Department's Design-Build (DB) Project Manager).

Design Acceptance. Written confirmation by the Department after submittal and review of the As-Built Plans that the design conforms to the Contract requirements and reflects the As-Built conditions. This is required as part of Final Acceptance.

Design-build (DB). A Project delivery methodology by which the Department contracts with a single firm that has responsibility for the design and construction of the Project under a single contract.

Design-builder. The entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, design-build team, joint venture or other legal business entity or successor, that proposes to design and construct any public project, who is registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 et seq.), classified by the New Jersey Division of Property Management and Construction or the New Jersey Department of Transportation, where relevant, to perform work on a design-build project, and prequalified pursuant to N.J.A.C. 16:44-3 et seq. and N.J.A.C. 16:44A-3.1.

Design Documents. Maps, Design Plans, Project Specifications, reports, calculations, records, submittals, and other specified documents prepared by the Design-builder and/or Designer in the course of performing Project engineering and design Work.

Design Manager. The Design-builder's designated person who has primary responsibility for coordination and oversight of the Project Designs including design plans, calculations, and specifications. The Design Manager shall be a registered Professional Engineer in the State of New Jersey.

Design Plans. Plans prepared by the Design-builder showing the location, character, dimensions and other design-related details of the Work to be done.

Design Quality Assurance Engineer (DQAE). The Department's representative with primary responsibility for monitoring and/or auditing the Design-builder's design and engineering activities for compliance with the Contract requirements and the Design-builder's Quality Control Plan.

Design Quality Control Engineer (DQCE). The person appointed by Design-builder who reports directly to the Design-builder's Quality Manager and is responsible for the QC of all Work conducted by the Designer. The Design QC Engineer shall be a New Jersey professional engineer with similar experience as the Design Manager. The Design QC Engineer shall ensure that checkers are assigned for each design discipline and for each Design Unit and that they are properly scheduled. Design Requirements – Those specifications contained in the Contract that specify the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed.

Design Review. A comprehensive and systematic examination of the design as specified in the Contract to verify that it is in conformance with the requirements of the Contract, as performed by the Design-builder for all stages of the design except As-Built Plans, which is performed by the Department. During all stages of the design, except As-Built Plans, the Department will contribute to the review through Oversight including participation, auditing and spot-checking.

Design Unit. A distinct portion of the Project of which the design is performed as a contiguous, integrated unit.

Designer. A Principal Participant, specialized Subcontractor, or in-house designer that leads the team furnishing or performing the design of the Project.

Directive Plans. Plans contained in Part 6 - RFP Plans designated as Directive Plans. Directive Plans depict required elements and components of the Project within specifically defined parameters. The Design-builder has limited or no latitude to adjust components or details shown on Directive Plans. Examples of Directive Plans may include the following:

- A. Standard Plans;
- B. Right-of-way plans;
- C. Any other plans included in Part 6 of the RFP

Discrimination. That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, creed, color, national origin, age, ancestry, nationality, sex (including pregnancy and sexual harassment), marital status, domestic partnership or civil union status, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, or disability has been otherwise subjected to unequal treatment.

Estimate. Progress payment made to the Contractor by the Department.

Equity Participant. Person holding (directly or indirectly) a 15% or greater interest in the Proposer.

Federal Aid Project. Any agreement or modification thereof between NJDOT and any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Federal government or borrowed on the credit of the Federal government pursuant to any program involving a grant, contract, loan, insurance or guarantee under which the NJDOT itself participates in the construction work.

Federal Aid Project Attachments. Attachments to the Contract Special Provision document, used for Federal Aid Projects.

Field Order. Written direction, signed by the Department, requiring action by the Contractor.

Final Acceptance. The acceptance of the completed Work, given by the Department in accordance with 108.19.

Final Design. The stage of design development, after Interim Design, at which time the Design Plans and Project Specifications for a Design Unit are 100% complete.

Final Inspection. The inspection scheduled by the Department after receipt of notification from the Design-builder that it has completed all Work items, including punch list items, so that a certificate of Project Completion may be issued.

Full Traffic Access. All work is complete to allow safe unencumbered use of the final paved portion of roadway throughout the project including but not limited to striping, RPMs, rumble strips, highway lighting, and traffic signals as determined by the Department's Project Manager.

General Provisions. This document, RFP Part 2 Design-Build Division 100 General Provisions which replaces the 2019 Standard Specifications for Road and Bridge Construction Division 100 in its entirety.

highway, street, or road. A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW (see [Figure 101-1](#)).

holiday. A legal holiday as defined by N.J.S.A. 36:1-1.

Indicative Plans. Those Plans that are provided indicating the nature and type of Work to be designed and constructed as part of the Project and reflecting items for which the Department has not directed the specific configuration or material used in the final product. Indicative Plans do not necessarily reflect the final locations, quantities, or all elements required to complete the Work.

inspector. A representative of the Design-Builder or Department detailed to inspect methods of construction or fabrication and/or materials, equipment for Work both on and off the Site of the Project for conformance to the Contract.

Interim Completion. A milestone other than "Completion of Work," requiring completion by a specified date or within a specified time.

Interim Design. The stage of design development after Definitive Design where the Design Plans and Project Specifications for a Design Unit are at the 60% to 80% stage of completion.

Item. A specifically described portion of Work for which there is a unit or lump sum price. Items described in the Specifications are designated in all capital letters.

ITS commissioning. Completion of Level A testing of an Intelligent Transportation System per [704.03.01](#). This does not constitute Acceptance by the Department of the work.

ME. The Department’s Manager of the Bureau of Materials, or the Department’s Regional Materials Engineer and their designated representatives.

land surveyor. A person who is legally authorized to practice land surveying in New Jersey according to the provisions of N.J.S.A. 45:8-27, *et seq.*

Lead Principal Participant. The Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Proposer’s organization.

manufacturer’s recommendations. Recommendations and instructions by the manufacturer including but not limited to the construction requirements, drawings, plans, and material requirements.

New Work. Work directed by the Department that is not covered under an existing Item or combination of Items in the Contract. Items established to provide payment modifications as specified in the Contract, such as damages, bonuses, and penalties, are not New Work.

Non-Conformance Report. The written documentation of deficiencies, instances of noncompliance, errors, and/or omissions in the Work, per 105.11. The Non-Conformance Report is a means and method to document findings brought forth by either the Design-builder or the Department at any point during the Project design or construction to identify nonconforming items that shall be documented and managed until Final Acceptance.

Non-responsive Price Bid. A Proposer’s Price Bid which is incomplete or which contains mathematical errors.

Others. An individual or a legal entity other than the Contractor, the Surety, or an individual or a legal entity in a contractual relationship with the Contractor or the Surety. For example, the term “Others” may include the Department, a Utility, or another contractor on the Project.

Oversight. Actions by the Department to satisfy itself that the Design-builder is designing, constructing and managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms QA, Independent Assurance, Verification Sampling and Testing, compliant/compliance, accept/acceptance, inspect/ inspection, audit, ensure, certify, confirm, review, verify or terms of similar import. The Department’s comments as a result of Oversight are conveyed to the Design-builder through consultation and written comment. Neither the activity of Oversight nor the lack of consultation and written comment on the part of the Department shall be construed to relieve the Design-builder and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

pavement structure. The combination of pavement, base courses, and when specified, a subbase course, placed on a subgrade to support the traffic load and distribute it to the roadbed (see [Figure 101-1](#)). These various courses are defined as follows:

1. **pavement.** One or more layers of specified material of designed thickness at the top of the pavement structure.
2. **base course.** One or more layers of specified material of designed thickness placed on the subgrade or subbase.
3. **subbase.** One or more layers of specified material of designed thickness placed on the subgrade.

plan. The Design-builder’s proposed methods of performing work including but not limited to materials, equipment, personnel, and schedules.

Plans. The official Design Plans and applicable Standard Details, which show the location, character, dimensions, and details of the Work to be performed. Also, the Design-builder’s Design Plans showing profiles, typical cross sections, and other details; Work Plans; or exact reproductions which show the location, character, dimensions, and general or specific details of the Work to be done.

Principal Participant. Means any of the following entities:

The Proposer;

If the Proposer is a partnership, joint venture, or limited liability company, any general partner or any member of the partnership, joint venture or LLC; and/or

Any Equity Participant.

Professional Engineer. A person licensed to practice engineering in the State of New Jersey.

Project. The specific section of highway or other public improvement constructed under the Contract. The Project may include work performed by Others.

Project Limits. The Project Limits are shown on the key sheet and modified as follows:

1. The areas of construction operations and areas used by the Design-builder to perform the work. If only a portion of a lane or shoulder of a road is being constructed, the Project Limits include all lanes and shoulders of the roadway.
2. Where only one direction of a road is being constructed, and the road is divided by a median, island, or barrier curb, the Projects Limits include all of the lanes in that direction and the median. Otherwise, the Project Limits include all lanes in both directions.
3. The longitudinal Project Limits include all safety devices and signs excluding signs greater than 1,600 feet outside the Project Limits shown on the key sheet.
4. Areas within the ROW provided for the Design-builder's use.

Project Manager. The Design-builder's designated representative responsible for all aspects of the Work, including construction oversight, design oversight, project finances, project scheduling, etc. Disputes regarding design or construction that cannot be resolved with the designer or in the field will be brought to the attention of the Design-builder's Project Manager for resolution.

Project Specifications. Those specifications developed by the Design-builder to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements, including the Specifications, and shall provide finished products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to review, consultation and written comment of the Department's Project Manager during Design Reviews, and to a determination by the Department, in their sole discretion, whether the Project Specifications meet the Contract requirements.

Proposal. A complete submittal by a proposer in response to a request for proposals from the Department which includes both a technical proposal and price bid. If the Department requested a revised Proposal, the term "Proposal" means the revised Proposal submitted by the proposer, including any revisions thereto.

Proposer. A Design-builder submitting a proposal in response to a request for proposals for the award of a design-build contract.

qualified products list (QPL). A list of specific qualified products maintained by the Department for use in the Work. The complete QPL is available at the following website: <http://www.state.nj.us/transportation/eng/materials/qualified>

RE. The Department's field representative having direct supervision of construction.

Release for Construction. The stage of design development where the Design Plans and Specifications for a Design Unit or a component thereof are 100% complete and satisfy the requirements of Part 3, Section 3.5.7.4.

Right-Of-Way (ROW). The land, property, or interest therein acquired for or devoted to transportation purposes or construction of a public improvement (see [Figure 101-1](#)).

Right-Of-Way Plans. The most current revisions of the General Property Parcel Maps and Entire Tract Maps approved for use in setting the existing and proposed ROW, including setting out or laying out the various easements within which Items are to be constructed or used to enable construction.

Quality Assurance (QA). The Department's process of forming an acceptance decision to ensure the Design-builder's design and construction, including the workmanship and materials incorporated into the Project, are in accordance with the Contract requirements. The QA process includes the planned and systematic Oversight actions that provide the Department with confidence that the Design-builder is performing QC in accordance with the Quality Control Plan, that Work complies with the Contract and that Materials incorporated in the Work, Equipment, and all elements of the Work will perform satisfactorily for the purpose intended. Quality Assurance includes, but is not limited to, monitoring and verification of design through auditing, spot-checking and participation in the review of the design, and monitoring and verification of construction, manufacturing/process facilities and equipment, on site equipment and QC documentation through auditing, spot inspections and Verification Sampling and testing at production sites and the Project Site. Quality Assurance also includes Independent Assurance, consultation and provision of written comments by the Department, documentation of QA activities, Completion and Acceptance.

Quality Check Points (Hold Points). Quality Check Points (QCP) established at various stages of construction for the Project that provide an opportunity to evaluate work for acceptability before beginning the next portion of the Work.

Quality Control (QC). The total of all activities performed by the Design-builder, Constructor, Designer, Construction Inspection Professional Engineering Firm and the Materials Testing Firm or Laboratory, Subcontractors, producers or manufacturers to ensure that the Work performed by the Design-builder conforms to the Contract requirements. For design, this shall include, but not be limited to, procedures for design quality, checking, design review including reviews for constructability, and review and approval of Working Plans. For construction, Quality Control activities shall include, but not be limited to, procedures for materials handling and construction quality, inspection, sampling and testing of materials, both on site and at the plant(s), field testing of materials, obtaining and verifying material certifications, record keeping and equipment monitoring and calibration, production process control, and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

Quality Control Plan. The Design-builder's plan for implementing the Design-builder's overall Quality System and associated activities, including the Design-builder's QC and procedures to assure and document quality of design and construction activities through reviews, inspections, testing, internal communications, and necessary interfaces with the Department and the Department's QA activities.

Quality Manager. The Design-builder's designated individual who is responsible for the overall Quality Program of the Design-builder, including the quality of management, design, and construction.

Quality Program. The overall quality system and associated activities, including the Department's QA and IA program, Design-builder QC activities and associated Quality Control Plan that will assure materials and workmanship incorporated into the Project are in conformity with the Contract requirements, Design Documents and Project Specifications.

Resident Engineer. A qualified individual as specified in the RFP, who directs the organization and coordination of the inspectors and the on-site Construction Quality Control inspection of the execution of the construction by the Design-builder. They ensure that the construction is executed in accordance with the approved designs, drawings and specifications related to the Work under construction.

RFP Plans. Those plans included in Part 6 – RFP Plans which are, generally-speaking, incomplete plans representing the Project and its components. RFP Plans may be Directive Plans and/or Indicative Plans.

Safety Manager. The Design-builder's designated person who working under the direction of the Project Manager shall have the primary responsibility for implementing and tracking safety measures for the Project and for ensuring that the Project is progressed safely and in accordance with the Design-builders Safety Plan, the Contract requirements and the Safety Requirements of the Project.

Special Provisions. Project specific specifications, non-standard specifications, and requirements for the performance of prescribed work which, in addition to the Standard Specifications, is part of the Contract documents.

Specifications. The compilation of provisions and requirements for the performance of prescribed work contained in the Standard Specifications, Special Provisions, and Electrical Materials Specifications as modified by addenda and change orders.

State. The State of New Jersey.

State Funded Project Attachments. Attachments to the Contract Special Provision document, used for wholly State Funded contracts.

subcontractor. An individual, firm, partnership, corporation, joint venture, or any acceptable combination thereof, to which the Contractor subcontracts part of the Work pursuant to [108.01](#).

subgrade. The surface of the roadbed upon which the first layer of the pavement structure is constructed (see [Figure 101-1](#)).

Substantial Completion. When all work is complete, with the exception of landscaping Items listed in [811.04](#), removal of SESC measures, FINAL CLEANUP, and repair of unacceptable work; provided the RE has determined that:

1. The Project is safe and convenient for use by the public.
2. Failure to complete work and repairs excepted above will not result in the deterioration of other completed work.
3. The value of the remaining landscaping work, removal of SESC measures, repairs, and FINAL CLEANUP is less than 2 percent of the Total Adjusted Contract Price.

Superintendent. The Contractor's authorized representative responsible for and in charge of the Work and is authorized by the Contractor to receive all communications from the Department.

Surety. The individual, partnership, or corporation, other than the Contractor, that has provided a proposal bond, a performance bond, or a payment bond.

Testing Agency. A privately-owned facility capable of testing and evaluating component parts, or the whole, for certification of the composition or construction of the material or product. The testing agency must be an AASHTO-accredited laboratory for each field of accreditation and type of material to be tested.

Total Adjusted Contract Price. The Total Contract Price as it is adjusted through the issuance of Change Orders.

Total Contract Price. The price bid submitted by the proposer.

traveled way. The portion of the roadway for the movement of vehicles exclusive of shoulders and auxiliary lanes (see [Figure 101-1](#)).

Utility. The company, agency, or other entity that provides services, including, but not limited to: electric, water, gas, sewer, fiber optic, communications, and railroad, and the Department with regard to ITS and electrical facilities.

utility. The rails, lines, facilities, or systems owned by Utilities.

Work. Labor, services, materials, equipment, tools, transportation, supplies, and incidentals necessary or convenient for Completion by the Design-builder of the design and construction described in the Contract and the carrying out of all duties and obligations imposed by the Contract wholly, or any portion thereof, on the Design-builder.

work. Particular elements, Items, or portions of the Work.

working day. Any day, exclusive of:

1. Saturdays, Sundays, and holidays.
2. Days on which the Design-builder is specifically required by the Contract to suspend construction operations.
3. Days on which the Design-builder is prevented by any conditions beyond the control of the Design-builder and adverse to the current controlling operation or operations, as determined by the Department's Project Manager, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations for all shifts.

working drawings. Stress sheets, shop drawings, catalogue cuts, calculations, diagrams, illustrations, schedules, performance charts, brochures, and other supplementary plans or similar data prepared by the Design-builder or

subcontractors, manufacturers, suppliers, or distributors. The Design-builder is required to submit working drawings, as specified in [105.05](#), for consultation and written comment.

101.04 INQUIRIES REGARDING THE PROJECT

Submit inquiries regarding discrepancies, errors, or omissions, or concerns regarding the intent or meaning of the Contract to the Department as follows:

1. **Before Request for Proposals (RFP) Submission.** Submit inquiries and view other questions/answers as noted in the Instructions to Proposers (ITP).
2. **After Award of Contract.** Submit inquiries to the Department's Project Manager through the office specified in RFP Part 8 Special Provisions.

101.05 CHANGES TO DIVISIONS 200 THROUGH 1000

The following applies to Divisions 200 through 1000 inclusive of the 2019 Standard Specifications for Road and Bridge Construction in effect as of the Proposal Due Date, and any NJDOT Special Provisions, Project Requirements or which otherwise might be required during the design and construction of the Project:

- A. All contact with Department staff or offices except for personnel assigned to the Project shall be through the Department's Project Manager.
- B. There will be no measurement for payment except for Unit Priced items specifically shown in the Price Bid. All Work will be paid on the basis specified in 109.
- C. All references to "Division 100" Specifications shall mean equivalent references in this RFP Part 2.
- D. Delete the following phrases:
 - 1) "to the satisfaction of the RE";
 - 2) "acceptable to the RE";Or similar phrases denoting instruction by or consent from the RE.

If the relevant information is not shown on the Design Plans or covered in the Project Specifications, the Design-Builder shall have the Designer change the Design Plans or Project Specifications or both to incorporate the missing information.

- E. Unless specifically stated otherwise in the Contract Documents, sampling and testing specified to be done by the RE or other Department staff, shall be performed by the Design-Builder's Construction Quality Control (QC) staff;
- F. Submissions and submittals used in the design are subject to review and Department acceptance per Part 3, Section 5.8;
- G. References to: "ME"; any Division in Main Office NJDOT; "Materials Engineer"; or any other similar title and role shall mean the Department's Project Manager or a designated representative;
- H. References to "preconstruction meeting" shall mean "pre-work conference";
- I. There shall be no quality payment adjustments under this Contract;
- J. In each Specification delete the sections titled "Measurement and Payment";

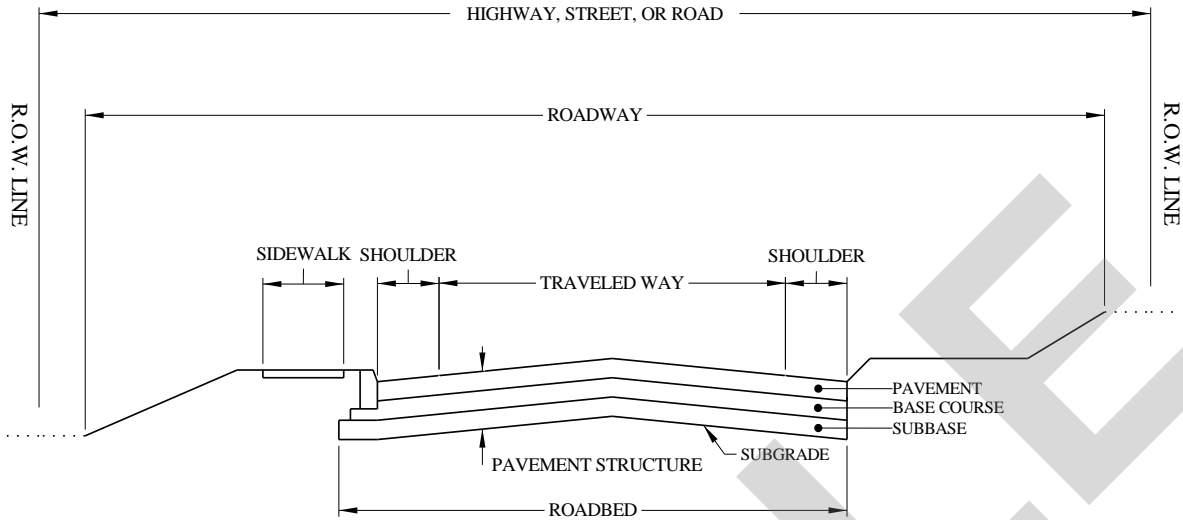


FIGURE 101-1

SECTION 102 – PROPOSAL REQUIREMENTS AND CONDITIONS

102.01 QUALIFICATION TO PROPOSE

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102.02 PROPOSER REGISTRATION AND DOWNLOADING OF THE PROPOSAL DOCUMENTS

This Contract is being proposed by use of an electronic bidding process. Electronic bidding information is available on the Department’s website. Registration and a subscription fee are required to access the Proposal documents.

The Proposer shall download all Proposal documents from the Department’s website. The Department assumes no responsibility for errors or omissions in the downloaded Proposal documents except as specifically provided for in the Contract. The Proposer shall direct questions or problems with downloading or using the electronic files to the contacts identified on the website.

102.03 REVISIONS BEFORE SUBMITTING A PROPOSAL

See ITP 2.3.1.

102.04 EXAMINATION OF CONTRACT AND PROJECT LIMITS

The Proposer shall carefully examine the Contract and the Project Limits of the proposed Project before submitting a bid. The Proposer shall provide written notice to the Project Manager, as specified in the Special Provisions, at least 48 hours in advance of any visits to the Project Limits. The Proposers shall ensure that staff visiting the Project Limits have proper identification.

If conditions of the Project Limits are inconsistent with the Contract or there are discrepancies, conflicts, errors, omissions, or ambiguities within the Contract, the Proposer shall immediately notify the Department as specified in

[101.04](#). The Proposer shall evaluate subsurface conditions to determine how these conditions may affect the methods and cost and time of construction. The Proposer shall evaluate, with respect to possible material sources, the quality and quantity of material available, applicable regulatory requirements, and the type and extent of processing that may be required to produce material conforming to the requirements of the Contract. It is understood and agreed that the Proposer has considered in its Proposal all of the permanent and temporary utilities in their present, new, or relocated positions to the extent required by the Contract and as revealed by its own investigations. It is also understood and agreed that the Proposer is aware that a Utility's service demands, field conditions, and emergencies may affect the Utility's ability to comply with the proposed schedules for utility work.

The structures containing lead paint and the locations of the lead, if any, are listed in the Special Provisions.

Items 1 through 3 below are not a part of the Contract and are made available for information only. The boring logs and pavement cores are part of the Contract, but any reports or interpretations of them are provided for information only. The Department makes no representation, warranty, or guarantee, expressed or implied, by making reports or interpretations available. It is the Proposers responsibility to obtain the following information:

- 1. Evaluation of Subsurface and Surface Conditions.** The Proposer may inspect the records of the Department's subsurface investigation through the Department's Engineering Documents Unit, 1035 Parkway Avenue, P.O. Box 600, Trenton, NJ 08625-0600. This investigation is not a substitute for the Proposer's own evaluation or judgment in preparing a proposal. The Proposer should not rely on any estimates or quantities included in these investigations. The conditions indicated by such investigations or records thereof, and as shown by the cross sections in the Indicative or Directive Plans, if provided, may not be representative of those existing throughout such areas. The Design-builder may encounter materials other than, or in proportions different from, those indicated.

The soil and rock descriptions shown on the boring logs are determined by a visual inspection of samples from the various explorations, unless otherwise noted. The Department may make these samples available for nondestructive examination. The observed water levels and other water conditions indicated on the boring logs are as recorded at the time of the exploration. These levels and other conditions may vary considerably, with time, according to the prevailing climate, rainfall, and other factors. If a generalized soil profile is described in the text, it is intended to convey trends in subsurface conditions. The boundaries between strata are approximate and idealized and have been developed by interpretations of widely spaced explorations and samples.

The Proposer is charged with knowledge of the State's physical geography and geology, and in performing its Project Limit evaluation is fully aware of the available publications on that subject matter.

The International Roughness Index (IRI) values of the existing roadway and the Pavement Core Record, if any, are listed in the Special Provisions.

A. Boring logs and other subsurface information made available for the inspection of Proposers were obtained with reasonable care and recorded in good faith by the Department. It is made available to Proposers so that they may have access to the same information available to the State. It is presented in good faith, but as with all subsurface information it represents only a small fraction of the total volume of material at the site. The Department represents that, to the best of its knowledge, the information represented by the borings and tests taken by the Department are accurate at the location of the tests. Any extrapolation of such information to other locations by the Design-builder shall be at Design-builder's risk. Furthermore, the Design-builder is responsible to determine what additional geotechnical information is required to support its design and is responsible for obtaining such information and is responsible for the accuracy of such information.

The soil and rock descriptions shown are as determined by a visual inspection of the samples from the various explorations unless otherwise noted. The observed water levels and/or water conditions indicated thereon are as recorded at the time of the exploration. These levels and/or conditions may vary considerably, with time, according to the prevailing climate, rainfall and other factors. Interpolation between data points may not be indicative of the actual material to be encountered.

- 2. Utility Agreements.** In addition to what is specified in [105.07](#), any Utility agreements, modifications, and orders relating to the Contract are available in the Request for Proposals.

3. **Existing Plans and As-Builts.** The Department will provide a list of existing structures bearing structure numbers within the Project Limits on the Plans. The Department will list the existing plans including structural plans, contour maps and as-built plans in the Reference Documents. The Proposer may download the existing plans including structural plans, contour maps and as-built plans of Department-owned facilities through the electronic bidding process along with the Proposal documents. The Proposer shall obtain plans of municipality-owned or county-owned facilities through the municipality or county. The Proposer shall verify information obtained from the existing documents with regard to its application to propose and performing the Contract.

Submission of a proposal is confirmation that the Proposer has made an independent evaluation and examination and is fully aware of the requirements of the Contract, including all restrictions. Further, the Proposer warrants that the proposal price include all costs to complete the Work.

The Design-builder shall be responsible to determine the nature, extent, and locations of subsurface explorations needed to obtain data and support subsequent analysis, design, and construction. The Design-builder shall also be responsible for determining the adequacy of any subsurface exploration data provided by the Department to support its analyses, design, and construction and to supplement such data provided by the Department as the Design-builder deems necessary.

102.05 INTERPRETATION OF WORK IN THE PROPOSAL

The Department has a right to modify Work proposed in the Contract, or has the right to eliminate work in its entirety, at its sole discretion.

102.06 “IF AND WHERE DIRECTED”

The Request for Proposals may include Items for which the Department has designated quantities as “if and where directed.” The estimated quantities set out in the Request for Proposals as “if and where directed” quantities are presented for the purpose of obtaining a representative bid price, but are not indicative of the Department’s intent regarding incorporation into the Project.

102.07 PREPARATION OF THE PROPOSAL

See ITP 4.1.

102.08 BALANCED PROPOSALS

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102.09 PROPOSAL BOND

The Proposal Bond guarantees execution of the Contract by the Proposer receiving Award.

With the proposal submission, the Proposer shall complete the electronic bond form. The Proposal Bond must be satisfactory to the Department and for a sum of 50 percent of the total bid amount.

The Proposer shall ensure that the Proposal Bond is properly completed and furnished by a surety authorized to do business in the State as are listed in the current US Treasury Department Circular 570 as of the date of proposal submission for the particular Contract and are authorized to issue bonds in at least the amount of the Proposal Bond.

The Proposer shall ensure that the Proposal Bond has a power of attorney executed by the Surety. The power of attorney shall set forth the limits of authority of the attorney-in-fact who has signed the bond on behalf of the Surety to bind the company and shall further certify that such power is in full force and effect as of the date of the bond.

The Department will not accept Proposal Bonds that do not comply in all respects with the provisions of N.J.A.C. 16:44-7.3(e) and that are not substantiated by a valid power of attorney executed by the Surety.

102.10 SUBMISSION OF PROPOSALS

See ITP 4.1.

102.11 WITHDRAWAL OF PROPOSALS

A Proposer may withdraw a proposal after it has been submitted to the Department, provided the request for such withdrawal is received by the Department in writing or by fax, before the Proposal Due Date and time.

Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the Proposal Due Date and time.

The Proposer agrees that its Proposal will remain valid for 120 days following the Proposal Due Date, or such longer period as may be agreed to in writing by the Proposer and the Department.

The Department will not consider any late Proposals or late requests to modify or withdraw Proposals. Proposals and/or modification or withdrawal requests received after the Proposal Due Date and time will be returned to the Proposer.

102.12 OPENING OF PROPOSALS

The Department will post the design-builder awarded the design build contract, if any.

102.13 CONSIDERATION OF PROPOSALS.

Proposals will be evaluated in accordance with ITP 7.0 Proposal Evaluations.

102.13.01 Proposer Pre-Award Requirements

The following Proposer Pre-Award Requirements as supplemented by ITP 1.9 DBE, ESBE, SBE, shall apply.

A. Federal Aid Projects

1. **Contract DBE Goal(s).** On projects having a Contract DBE goal(s), all Proposers shall ensure that DBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts in Federal Aid Projects with the Department. All Proposers shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26 to ensure that DBEs are given equal opportunity to compete for and to perform on the Department's Federal Aid Projects. All Proposers shall not discriminate in the award and performance of any Contract obligation including, but not limited to, their performance of their obligations on USDOT assisted contracts as specified in Section 107.

a. All Proposers shall demonstrate commitment of meeting the Contract DBE goal(s) that is specified in the Contract.

(1) If at the time of Proposal Submission the Proposer includes work items to be performed by DBEs during the life of the contract (Form LDB Table 2) then an Open-Ended Performance Plan (OEPP) will be required to document good faith efforts throughout the life of the contract to attain the Contract DBE goal(s). The OEPP shall include the information required in ITP Appendix B 2.2.7 Open Ended Performance Plan. The Department's DCR/AA has sole authority to determine whether the Proposer demonstrated and documented a commitment and would make adequate good faith efforts to meet the Contract DBE goal(s).

(i) Good faith efforts are actions taken to achieve a DBE goal(s) or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement, including affirmative action measures designed to implement the established objectives of an affirmative action plan that a Proposer may utilize to obtain DBE participation. Efforts to include firms not certified as DBEs in New Jersey are consequently not good faith efforts to meet the DBE Contract goal(s). Actions of Good faith effort include, but are not limited to:

(a) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the Contract. This may include

attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the New Jersey Unified Certification Program Vendor Certification database of transportation firms that specialize in the areas of work desired (as identified by the North American Industry Classification system (NAICS) code noted in the New Jersey Unified Certification Program Vendor Certification database) and which are located in the area or surrounding areas of the project. The Proposer shall solicit this interest as early in the proposal process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The Proposer should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the Proposer might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- (c) Providing interested DBEs with adequate information about the Proposal, Plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- (d₁) Negotiating in good faith with interested DBEs. It is the Proposer's responsibility to make a portion of the work available to DBE firms and to select those portions of the services, work, material needs, transportation needs consistent with the available DBE firms, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the Proposal, plans and specifications for the work selected for subletting/subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the services, work, material supply, or transportation.
- (d₂) Proposer using good business judgment would consider a number of factors in negotiating with DBE firms, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Proposer's failure to meet the Contract DBE goal(s), as long as such costs are reasonable. Also, the ability or desire of a Proposer to perform the work of a Contract with its own organization does not relieve the Proposer of the responsibility to make good faith efforts. Proposers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (e₁) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Proposer's efforts to meet the Contract DBE goal(s). Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Proposer to accept unreasonable quotes in order to satisfy the Contract goals.
- (e₂) A Proposer's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Proposer has the ability and/or desire to perform the Contract work with its own forces does not relieve the Proposer of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Proposer.
 - (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, but not directly or indirectly providing equipment, supplies or materials to the DBE.
 - (h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (2) If the Department determines that the apparent successful proposer has failed to commit to meet the Contract DBE Goal(s) and made adequate good faith efforts to do so, the Department must, before awarding the Contract, provide the Proposer an opportunity for Administrative Reconsideration.

The apparent successful proposer will have the opportunity to provide written documented evidence or argument concerning the issue of whether DCR/AA determined that their Proposal adequately showed the Proposer's commitment to meet the Contract goal(s) or demonstrated adequate good faith efforts to do so to an official who did not take part in the original determination that the Proposer failed to show a commitment to meet the Contract DBE goal(s) or made adequate good faith effort to do so, pursuant to 49 C.F.R. 26.53(d). The apparent successful proposer has the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it showed a commitment to meet the Contract DBE goal(s) or made adequate good faith efforts to do so.

Within 1 working day of being notified by the Department that it is not a responsible Proposer because it failed to show a commitment to meet the Contract DBE goal(s) and made adequate good faith efforts to do so, a Proposer may make a request for administrative reconsideration in writing to the New Jersey Department of Transportation, Director, Division of Procurement, PO Box 605, Trenton, New Jersey, 08625-0605. The Proposer must specify one of the following types of administrative reconsideration in its request:

- (i) **Written Review by the Department.** If the Proposer seeks written review by the Department, it must submit written documented evidence or argument proving the Proposer showed a commitment to meet the Contract DBE goal(s) at time of Proposal submission, or submitted adequate good faith efforts to do so at Proposal submission, to the Department within 2 working days of the Proposer's request for Administrative Reconsideration.
- (ii) **In-Person Meeting.** If the Proposer seeks an in-person meeting by the Department it must submit written documented evidence or argument proving the Proposer showed a commitment to meet the Contract DBE goal(s) at time of Proposal submission, or submitted adequate good faith efforts to do so at Proposal submission, to the Department within 2 working days of the Proposer's request for Administrative Reconsideration. The in-person meeting will be scheduled by the Department as soon as time permits.

If the timeframe for a Proposer's request for Administrative Reconsideration, or submission of written documented evidence or argument proving the Proposer showed a commitment to meet the Contract DBE goal(s) or submitted adequate good faith effort to do so falls on a weekend or holiday, the written requests are due to the Department on the next working day. The Department, at its discretion, may not review or consider any documentation or argument in its administrative reconsideration that was not contained in the Proposer's request for written review or in-person meeting with the Department.

Once the Reconsideration Official has made a determination, the Department will send the Proposer a written decision on reconsideration, explaining the basis for finding that the Proposer did or did not show a commitment to meet the DBE goal(s) or make an adequate good faith effort to do so.

Failure to follow this request procedure may result in the Proposer's waiver of the right for Administrative Reconsideration under this Section.

The result of the reconsideration process is not administratively appealable to the USDOT.

2. **Contract ESBE Goal.** Where a Contract ESBE goal is set, the Proposer shall follow all requirements and the same administrative reconsideration procedures of [102.13](#).

B. State Funded Projects [Reserved]

C. All Projects. Prior to the time of contract award:

1. Submit proof of business registration with the Division of Revenue and Enterprise Services in the New Jersey Department of Treasury as required by N.J.S.A. 52:32-44. Information on how a business can register and obtain proof of business registration can be accessed on the internet at www.nj.gov/njbgs.
2. Submit proof of valid Public Works Contractor Registration issued by the New Jersey Department of Labor, Division of Wage and Hour Compliance according to N.J.S.A. 34:11-56.48, *et seq.*

102.14 IRREGULAR PROPOSAL

The Department will consider a proposal irregular and will reject it if the Department determines that the proposal contains a material defect.

102.15 DISQUALIFICATION OF PROPOSERS

The Department will disqualify a Proposer and reject a proposal submitted by that Proposer if the Proposer is determined by the Department to lack responsiveness. Failure of a Proposer to follow the requirements of [102.10](#) demonstrates a lack of responsiveness.

The Department will disqualify a Proposer and reject a proposal submitted by that Proposer if the Proposer is determined by the Department to lack responsibility. Factors demonstrating a lack of responsibility include, but are not limited to:

1. Evidence of collusion among Proposer .
2. Uncompleted work, which in the opinion of the Department, might hinder or prevent completion of additional work if awarded.
3. Failure of the Proposer to acknowledge that the prevailing wage rate is accounted for in their price bid and that the Proposer agrees to pay the prevailing wage rate, if awarded the Contract, for Projects subject to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 to .98,
5. Submission of unbalanced price bid. Unbalanced Price bid - A Price bid may be unbalanced either Materially or Mathematically. A Materially Unbalanced Price bid is a Price bid that generates a reasonable doubt that awarding the Contract to the Proposer submitting the price bid will result in the lowest ultimate cost to the Department. A Mathematically Unbalanced Price bid is a Price bid containing lump sum or Unit Price items that do not reasonably reflect the actual costs plus a reasonable proportionate share of the Proposer's anticipated profit, overhead costs, and other indirect costs.
6. Lack of competency or lack of adequate machinery, plant, or other equipment.
7. Unsatisfactory performance on previous or current contracts.
8. Questionable moral integrity as determined by the Attorney General of New Jersey or the Department.
9. Any other outward actions or lack of action that demonstrates the Proposer is not responsible.
10. Disqualification, suspension, or debarment of an individual, firm, partnership, corporation, joint venture, or any combination as required by N.J.A.C. 16:44-11.1 for state projects.
11. Disqualification, suspension, or debarment of an individual firm, partnership, corporation, joint venture, or any combination as required by N.J.A.C. 16:44-11.1 or Federal Government's System for Award Management (SAM), located at <https://www.sam.gov/SAM/> for federally assisted contracts.
12. If the Proposer is Federally debarred pursuant to N.J.S.A. 52:32-44.1.

102.16 REJECTION OF ALL PROPOSALS

The Department has the right to reject all proposals when the Department deems it advisable to do so in the best interest of the State or public.

SECTION 103 – AWARD AND EXECUTION OF CONTRACT

103.01 AWARD OF CONTRACT

See ITP 6.1 Contract Award

The Department will award the Contract or reject all proposals within 120 State Business Days after the proposals are received. The Department may conditionally award the Contract pending the approval of the Federal Government, another State governmental body, or private party. If the Department does not award the Contract or conditionally award the Contract within 120 State Business Days, all Proposers have the right to withdraw their proposals. The Department, may extend the time that the Department may make an Award or Conditional Award. Any agreement to extend the time for the Department to make an Award may only be made with the condition to enter into the Contract without any alteration of the terms of the Contract, including but not limited to the Contract Time, and the price bid.

At the time of Award or Conditional Award, if the Proposer is not a resident of the State, such Proposer shall appoint, on the form provided by the Department, a proper agent located in the State on whom service of process can be made in the event of litigation of any type arising under the Contract or as a result of performance of the Contract. Said agency shall remain in effect during the performance of the Contract and for 6 years following Acceptance.

The Award or Conditional Award is not binding upon the Department until the Department has executed the Contract. No person shall perform any Work in furtherance of the Contract until notified that the Contract has been executed, and then only as specified in [108.02](#).

The term “State Business Day” as used in this Subsection is synonymous with the term “Working Day” as used in N.J.S.A. 27:7-31 and N.J.S.A. 27:7-33 and is any day exclusive of Saturdays, Sundays, State recognized legal holidays, and such other holidays or State office closings as declared by the State.

The Department will post public announcement of award on the Department’s website at www.BidExpress.com and/or <https://www.state.nj.us/transportation/business/procurement/>.

103.02 CANCELLATION OF AWARD

The Department reserves the right to cancel an Award or Conditional Award at any time before the execution of said Contract by all parties without incurring any liability of any kind.

103.03 RELEASE OF PROPOSAL BOND

The Department will release all Proposal Bonds except those of the 2 highest ranked Proposers within 5 days after best value selection.

The Department will release the Proposal Bond of the highest and second ranked Proposer when the Contract and performance bond and payment bond have been executed and delivered as specified in [103.04](#), or, if not executed, when other disposition of the matter has been made by the Department.

103.04 EXECUTION OF THE CONTRACT

See ITP 6.2 Execution of Contract

Within 5 days of the date of Award or Conditional Award, the Proposer shall properly and duly execute the Contract and deliver to the Department the following:

1. Proposal documents shall be escrowed as specified in [103.05](#).
2. Performance bond and payment bond as specified in [151.03.01](#).

3. Proof of the registrations specified in [102.01](#) for the Department of Treasury and the Department of Labor.
4. If the case of non-resident Proposers, the completed form regarding “Appointment of Agent” for compliance with N.J.S.A. 14A:15-2, *et seq.*

Where the Proposer chooses not to withdraw its proposal consistent with the provisions of ITP 6.2, the Proposer shall be deemed to have waived any claim for additional payment or for an extension of time. The Contract does not become effective until it has been fully executed by all parties.

103.05 ESCROW OF PROPOSAL DOCUMENTS

Refer to ITP 2.7

- A. Purpose.** The proposal documents are the supporting information, calculations, quotes, and other information used to prepare the proposal. The Department may use the Contractor’s proposal documents to negotiate changes and claims. The information contained in the proposal documents does not modify the terms and conditions of the Contract. If the Contractor fails to escrow proposal documents within the time specified in [103.04](#), the Department will not make payment for a disproportionate allocation of costs for work.
- B. Stipulations and Acknowledgements.** Escrowed proposal documents are the property of the Design-builder and are not public records. If a third party requests a copy of the escrowed proposal documents, the Design-builder, and not the Department, must take the legal steps needed to defend the confidentiality of the escrowed proposal.
- C. Form and Contents.** The Department will consider escrowed proposal documents reliable only if information is provided for all work, and the total cost shown in the proposal documents for all work.

The Design-builder may submit escrowed proposal documents in its usual cost-estimating format. It is not the intent of the Department to cause the Design-builder to expend additional effort in preparing its proposal.

- D. Custody.** Escrow proposal documents in sealed boxes with a custody agent, and provide a copy of the fully executed custody agreement provided by the Department. Include with the custody agreement a certification that the escrowed proposal documents have not been modified, corrected, or otherwise revised in any manner after the proposal submission.

The Department may access the escrowed proposal documents with the Design-builder’s written authorization.

After Acceptance and upon request from the Design-builder, the Department will provide a release for the proposal documents provided that there are no pending claims.

103.06 FAILURE TO EXECUTE CONTRACT

Failure on the part of the Proposer, to whom the Contract has been awarded, to execute the Contract as specified in [103.04](#), in the manner and within the time specified, is just cause for annulment of the Award or Conditional Award and for the exclusion of the Proposer from bidding/proposing on subsequent projects for such period as the Department deems appropriate. If the Award is annulled, the Proposal Bond, as specified in [102.09](#), is forfeited, and the Department has the right to recover under the terms and provisions of the Proposal Bond. The Department has the right to award the Contract to the next best value Proposer, or to readvertise and construct the Work under the Contract, or otherwise, as the Department decides in its sole discretion.

The successful Proposer may file with the Department a written notice, signed by the Proposer or the Proposer’s authorized representative, stating that the Proposer refuses to execute the Contract. The filing of such notice has the same force and effect as the failure of the Proposer to execute the Contract and furnish a performance bond and payment bond within the time specified in [103.04](#).

103.07 ACQUISITION OF DOCUMENTS

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SECTION 104 – SCOPE OF WORK

104.01 INTENT

The intent of the Contract is for the Design-builder to design and construct the Work to be functionally complete and aesthetically acceptable. Perform work that may be reasonably inferred from the Contract as being required to produce the intended result under the Items of the Contract. Perform the Work using the best design and construction practices and provide materials and workmanship of the first quality to meet the Contract requirements.

Perform the Work to ensure the least possible obstruction to traffic, while adhering to the highest safety standards, and with the least inconvenience to local residents and the general public.

Perform all work enumerated under the terms of the contract and protect all adjoining properties, utility facilities and existing highway facilities within the right of way. Repair or replace or both any property, utility facility or highway facility damaged or destroyed by the Design-builder or its employees through construction operations, within and adjacent to the right of way.

Coordinate the work of Subcontractors, Manufacturers, Fabricators and Material Suppliers. Ensure their operations are arranged and conducted so that delays will be avoided. Where the Work of the Design-builder, or Subcontractors, overlaps or dovetails with that of other Contractors, ensure materials are delivered and operations are conducted so as to carry on the work continuously in an efficient and workmanlike manner.

During the life of this contract, Utilities may make changes in their facilities. These changes may be made by the Utility employees or by contract within the limits of or adjacent to this contract and may be temporary or permanent or both.

Delays or oversights on the part of the Design-builder, Subcontractors or Utilities in properly completing any work, thereby requiring the removal and replacement of work already in place, will not be the basis for a claim of extra compensation. Such work will be performed at the cost and expense of the responsible Design-builder, Contractor, Subcontractor or Utility.

104.02 VALUE ENGINEERING

104.02.01 Purpose and Scope

The intent of value engineering (VE) is to promote Contractor innovation, for which the Department will share with the Contractor 50 percent of the value of cost savings generated as a result of a Department approved VE proposal.

The Department will only consider VE proposals that produce a cost savings to the Department without, in the sole judgment of the Department, impairing essential functions or characteristics of the Project. Essential functions that cannot be adversely impacted include, but are not limited to, safety, service life, economy of operation, ease of maintenance, environmental compliance, and desired appearance. The Department will not consider VE proposals that change the Project's original design criteria; merely eliminate work; are based on an unknown factor; do not show a cost savings; or extend Contract Time.

104.02.02 Conditions

The Department will consider VE proposals only after Award of the Contract and only in accordance with the following terms and conditions:

1. In the event that the Department rejects a VE proposal during any step of the process, the Contractor is required to complete the Work as specified in the Contract. The Contractor recognizes that the Department has the right to reject VE proposals and cannot base its bid on the anticipated approval of a VE proposal.
2. All VE proposals, approved or not approved by the Department for use in the Contract, apply only to the ongoing Contract or Contracts referenced in the VE proposal. The VE proposals shall become the property of the Department and shall contain no restrictions imposed by the Contractor on their use or disclosure. The Department will have the right to use, duplicate, and disclose in whole or in part any data necessary to use the VE proposal. The Department retains the right to use any accepted VE proposal or part thereof on

any other or subsequent project without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

3. If the Department already has under consideration certain revisions to the Contract that are subsequently incorporated in a VE proposal, the Department will reject the Contractor's VE proposal and has the right to proceed with such revisions without obligation to the Contractor.
4. The RE will determine whether a VE proposal qualifies for consideration and evaluation by the Department, including whether the savings generated by the VE proposal are sufficient to warrant review and processing. The Department may still reject a final VE proposal after approval of the initial VE proposal.
5. The RE has the right to reject all or any portion of work performed according to an approved VE proposal if the RE determines that results do not meet the requirements of the VE proposal or the Contract. The RE has the right to direct the removal of such rejected work and require the Contractor to proceed according to the original Contract. If the Contractor is directed to proceed according to the original Contract, the Department will not make payment for the rejected work performed under the VE proposal, or for its removal. The Contractor is responsible for the consequential costs arising from the rejected work to complete the work as proposed under the original Contract, including the cost to Others.
6. The Contractor may only submit VE proposals based on Items scheduled to be performed by the Contractor. The Department will not consider anticipated cost savings based on revisions to utility relocations or other work to be performed by Others. The Contractor is responsible to obtain the concurrence of Utilities, property owners, governing bodies, and agencies for any work affected by the VE proposal. The Department has the right to reject VE proposals that may increase the time or cost of work done by Others.
7. In calculating the value of cost savings, the Department has the right to disregard the Contract bid prices, if such prices do not represent the value of the work to be performed or to be deleted, and has the right to calculate the savings based on reasonable costs for such work.
8. Ensure that VE proposals are designed according to the Department design manuals and other Department standards for the proposed work.
9. If additional information is needed to evaluate VE proposals, provide this information in the Department specified time period, otherwise the Department will reject the VE proposal. Additional information may include, where design changes are proposed, results of field investigations and surveys, design computations, and field change sheets.
10. The Department will not deduct the Department's costs for review and processing of the VE proposal from the cost savings.
11. The Department will not make payment for the Contractor's costs for development and submission of the VE proposal. The Contractor waives its right to claim for costs or delays incurred due to the Department's review or rejection of a VE proposal. These costs include, but are not limited to, development costs, loss of anticipated profits, or increased material or labor costs resulting from delays in the review of such VE proposal.
12. The Department will not use the value of cost savings for: additional vehicle operating and delay costs incurred by the traveling public, compared to normal operating conditions, resulting from the establishment of construction, maintenance, or rehabilitation work zones (road user costs), or for costs to oversee the Project (construction engineering costs).
13. The Contractor may submit VE proposals for an approved subcontractor, provided that payment is made by the Department to the Contractor and that the terms of the payment to the subcontractor are satisfactorily negotiated and accepted before the proposal is submitted to the Department. Submit revised agreements as specified in [108.01.1](#). Subcontractors may only submit a VE proposal through the Contractor.

104.02.03 Submittals

The Contractor may submit VE proposals electronically. With electronic submissions, submit the appropriate attachments and a printed copy.

If the initial VE proposal is only submitted in printed form, provide at least 3 sets of documents. If the final VE proposal is only submitted in printed form, the Department will designate the required number of sets of documents.

Submit initial and final VE proposals as follows:

1. **Initial VE Proposal.** Submit to the RE an initial VE proposal outlining the general technical concepts associated with the VE proposal and the estimated savings that will result.

The Department will review the initial VE proposal and, if found to be conceptually acceptable, will grant approval to submit a final VE proposal. A finding of conceptual acceptability of the initial proposal in no way obligates the Department to approve the final VE proposal.

2. **Final VE Proposal.** The Department will consider a final VE proposal only after the approval of the initial VE proposal. With each final VE proposal, submit, at a minimum, to the RE the following information:
- a. A statement that the final VE proposal is submitted as a VE proposal with a reference to the approval of the initial VE proposal.
 - b. A description of the differences between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each. Document the effects on safety, service life, economy of operations, ease of maintenance, environmental requirements, and desired appearance.
 - c. Complete plans, specifications, and calculations showing the proposed changes relative to the original Contract features and requirements. Ensure that plans and engineering calculations are signed and sealed by a Professional Engineer.
 - d. A complete cost analysis indicating the final estimated costs and quantities to be replaced by the VE proposal, the new costs and quantities generated by the final VE proposal, and the cost effects of the proposed changes on operational, maintenance, and other considerations.
 - e. An evaluation of the effect the final VE proposal has on Contract Time, including a revised schedule and a time impact evaluation as specified in [108.11.01.C](#).
 - f. A description of any previous use or testing of the final VE proposal on another Department project or elsewhere and the conditions and results. If the final VE proposal was previously submitted on another Department project, indicate the date, the project, and the action taken by the Department.
 - g. A letter of concurrence to the VE proposal from Others that are affected.
 - h. The specific date that the Change Order adopting the final VE proposal must be executed to obtain the maximum cost reduction. Ensure that this date allows the Department ample time, usually a minimum of 60 days, for review and processing a Change Order. If the Department finds that there is insufficient time available for review and processing, it has the right to reject the final VE proposal solely on such basis. If the Department fails to respond to the final VE proposal by the date specified, the Contractor shall consider the final VE proposal rejected and shall make no claim against the Department as a result thereof.
 - i. Additional information requested by the Department.

104.02.04 Final Documents

If the final VE proposal is approved, submit working drawings for approval. The Department will designate the number of sets to be submitted.

104.02.05 Payment

If the VE proposal is approved, the Department will issue a Change Order incorporating the VE proposal and establishing payment for the cost savings.

The Department will make payment to the Design-builder for 50 percent of the cost savings from the VE proposal. It is understood that the payment includes all costs resulting as a consequence of the change, including but not limited to quantity increases to Items, and unanticipated work or expenses arising out of the change.

104.03 CHANGES TO THE CONTRACT

104.03.01 Authority to Make Changes

The Department has the right to make changes to the Work at any time, including altering the Contract, altering the requirements of an Item, increasing, or decreasing the quantities of any Item, or deleting any Item. Such changes neither invalidate the Contract, nor release the Surety. The Design-builder agrees to perform the Work as changed. If the Design-builder does not perform, or refuses to perform the Work as changed, the Department may perform the work with its own forces. If the Department mobilizes its forces to perform the work, the Design-builder agrees to pay

the Department's cost of performing the work including the cost of material and labor used and the actual costs for police traffic protection and maintenance and protection of traffic as specified in 107.16.

The Department will direct changes using a written Field Order or Change Order as follows:

- 1. Field Orders.** The Department's Project Manager has the right to unilaterally direct Design-builder performance with a written Field Order. Upon receipt of a Field Order, proceed as directed by the Field Order. A Field Order will state whether the directions provided by the Field Order are eligible for payment or modification of Contract Time. The Department will provide such payment or modification to Contract Time in a subsequent Change Order.
- 2. Change Orders.** The Department will modify the Contract with a Change Order.

The Department has the right to unilaterally make the following changes: make minor increases or decreases in work; modify Contract Time as specified in [108.11](#); direct New Work to be performed on a force account basis; and establish payment modifications for damages, credits, bonuses, and penalties provided for in the Contract.

For changes that require the Design-builders assent, the Department's Project Manager will negotiate the terms of the change and the Department will offer a Change Order. If the Design-builder accepts the offer, the Design-builder will sign the Change Order, whereupon the Department may approve and issue the Change Order. By signing a Change Order, the Design-builder agrees that the Change Order constitutes the full extent of the agreement between the Department and the Contractor, including the full extent of payment and modified Contract Time for the work and for any effects upon all and any part of the Work, and supersedes any prior written or oral agreement between the parties. Additionally, the Design-builder acknowledges the sufficiency and propriety of the consideration for the work detailed in the Change Order, and understands that the agreement is binding.

Upon receipt of an approved Change Order, proceed as directed by the Change Order.

DBE, ESBE or SBE goals apply to work performed through Field Orders and Change Orders. On Federal Aid Projects, the Design-builder is responsible for complying with the DBE program, rules and regulations of 49 CFR Part 26, the requirements as specified in [105.02.05](#), Federal Aid Project Attachments 1 through 11 for this work. On State Funded Projects, the Design-builder is responsible for complying with SBE program rules and regulations, the requirements as specified in [105.02.05](#), and State Funded Project Attachments 1 through 6 for this work.

Design-builder resubmission of Forms LDB, LSI, CR-272, CR-274, SDP forms may be required on the work performed through Field Orders and Change Orders.

Do not deviate from the requirements of the Contract unless and until a Field Order is issued by the RE or a Change Order is approved by the Department.

104.03.02 Protests to Change Orders

If the Design-builder disagrees with any terms or conditions set forth in a Change Order, submit a written protest to the Department within 30 days after the date of receipt of the Change Order.

A protest is notice that the terms and conditions for proposed work are not in accordance with the Contract, quantity adjustments are incorrect, or that the modification for Contract Time is incorrect. A protest is not a substitute for notice as specified in [104.03.04](#). Providing a protest within 30 days after the date of the receipt of a Change Order may not meet the requirements of [104.03.04](#) or N.J.S.A 59:13-5 and the Department will not make payment for the costs of a claim if recovery is barred by other provisions in the Contract.

In the protest, list the points of disagreement, and, if possible, the specification references, quantities, and costs involved. Ensure that the protest is a specific, detailed statement of the points of disagreement. The Department will reject general protests. If the Department rejects a protest for being a general protest, provide a specific, detailed statement within 7 days of such rejection.

Regardless of whether the Design-builder's assent is required, if the Design-builder refuses to sign the change order or submit an acceptable written protest within 30 days after the date of receipt of the Change Order or within 7 days of the initial rejection of a protest, the Department will make payment and modify Contract Time as set forth in the

Change Order. Such payment is full payment for all work included or required by the Change Order and is conclusive as to any Contract Time modifications provided for therein or in establishing that no Contract Time modification was warranted.

When the Design-builder signs a change order and the Department processes the Change Order within 15 days of receiving the Design-builder's signature, the Design-builder is barred from protesting the approved Change Order.

Protest does not relieve the Design-builder from the obligation to proceed with work directed by an approved Change Order.

104.03.03 Types of Changes

The Department will address all changes under one or a combination of the following types:

1. **Deleted Work.** If the Department deletes work from the Contract, immediately cancel orders for materials for that Item. If the Contractor has ordered acceptable material for work deleted from the Contract before the date the Department's Project Manager notified the Contractor that the work was deleted and the material cannot be returned to the vendor, the Department will make payment based on the cost of the material, as evidenced by paid invoices. In that event, the Department becomes the owner of the material, and the Contractor will deliver the material to a location as directed by the Department's Project Manager. The Department will only make payment for material that meets the requirements of the Contract.

If the Contractor has ordered acceptable material for work deleted from the Contract before the date the Department's Project Manager notified the Contractor that the work was deleted, the material is returnable to the vendor, and the Department's Project Manager directs the material be returned, the Contractor shall return the material. The Department will make payment for actual vendor charges for returning and restocking the material.

For deleted work, the Department will make payment for material costs and vendor restocking charges as specified in [104.03.08](#); except that the Department will not apply profit, and the total payment may not exceed the work cost multiplied by the deleted quantity. If the Department directs the material to be delivered to a designated location, the Department will make payment for the associated handling and delivery costs. If a price for these handling and delivery costs cannot be agreed upon, the Department will make payment by force account as specified in [104.03.08](#).

2. **New Work.** When requested by the Department's Project Manager, submit to the Department's Project Manager a detailed cost proposal as specified in [104.03.08](#), for performance of New Work. If a price for a New Work cannot be mutually agreed upon, the Department will make payment by force account as specified in [104.03.08](#).
3. **Changes in the Character of Work.** A change in the character of work is a change that causes the work to substantially differ in kind or nature from the Request for Proposals. The Department may make payment for a change in the character of work whether the change directly causes a change in the character of the work or causes other work to become significantly different in character.

For changes in the character of work, the Department will base the modification on the difference between what the actual cost to perform the work of the Item or portion thereof involved would have been if there were no change, and the actual cost of performing the work or portion of work as changed. The modification shall only apply to the portion of the work actually affected by the change.

If a modification cannot be reached by agreement, the Department will make payment, only for the change in work, by force account as specified in [104.03.08](#).

Specific changes in character of work have the following requirements:

- a. **Differing Site Condition.** A condition is considered to be a Type 1 Differing Site Condition when a subsurface or latent physical condition at the site differs materially from those specified in the Contract. A condition is considered to be a Type 2 Differing Site Condition when unusual conditions are encountered that differ materially from those ordinarily encountered or is generally recognized as

inherent in the work that could not have been reasonably anticipated from the pre-bid examination as specified in [102.04](#) or from the preparation of the bid as specified in [102.07](#).

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Design-builder shall promptly notify (reference 104.03.04) the Department of the specific differing site conditions before the site is further disturbed and before the affected work is performed.

If an agreement on an adjusted price has not been reached before the work begins, the Design-builder shall keep daily records and make reports of all labor, material and equipment used in connection with such work and the cost thereof as specified in 104.03.07 Tracking Costs. Compensation for increased costs of the work resulting from the differing site conditions will be made in accordance with 104.03.08. Compensation for time related costs, if any, will be made in accordance with 108.11 Modifications to Contract Time.

- b. Constructive Acceleration.** The Department will make payment for costs resulting from constructive acceleration as a change in the character of work if there was an excusable compensable delay for which the Department improperly rejected the Contractor's notice requesting an extension of Contract Time, and for which the Contractor incurred additional costs. Payment for constructive acceleration may not exceed the cost of liquidated damages saved by the actions of constructive acceleration. The Department will not make payment for claims for constructive acceleration if the Contractor fails to have an approved progress schedule as specified in [153.03](#).

Before constructively accelerating, provide the Department's Project Manager with a plan detailing the methods and activities of the constructive acceleration. Include how the plan accelerates the Work relative to the current approved progress schedule. Do not deviate from the submitted plan without providing the Department's Project Manager with a revised plan.

- c. Inefficiencies.** If the source of the loss of productivity cannot be isolated and priced separately, the Department will consider making payment for inefficiency costs based on a Measured Mile analysis comparing the productivity of work impacted by a change to the productivity of similar work under unimpacted conditions.

If the source of the inefficiency is working out of the scheduled sequence, use the current approved progress schedule to show that the work was performed out-of-sequence.

- d. Delays.** The Department will modify Contract Time as specified in [108.11](#). The Department will make payment for delay damages resulting from excusable, compensable delays as specified in [104.03.09](#).

- e. Changes in Basic Project Configuration** Except as authorized by a Change Order or approved Alternative Technical Concept, the Design-builder shall not make any material change in the Basic Project Configuration. Non-material Department-Directed Changes may be covered by a Change Order whether they are within the parameters of the Basic Project Configuration or not. Non-material Department-Directed Changes may be ordered without any change in the Contract Price or extension of the contract Time, provided the change is ordered prior to completion of the Definitive Design review for the affected Design Unit(s).

- 1. Necessary Basic Project Configuration Change.** Notwithstanding the fact that this Contract obligates the Design-builder to undertake all Work necessary to complete the Project without changes in the Contract Price, this section provides for a change in the Contract Price to be made in conjunction with necessary basic project configuration changes if approved by the Department prior to the commencement of work on a basic project configuration change. If any necessary basic project configuration change increases or decreases the cost of performing the Work, then the Department may issue a Change Order to adjust the Contract Price accordingly. Furthermore,

if the Design-builder commences any construction work affected by the Basic Project Configuration Change prior to delivery of the required notice of the change to the Department, the Change Order shall allow the Department a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed. The Change Order shall also account for any offsets from Change Orders previously issued.

2. In the event that the Department approves a necessary basic project configuration change that reduces the Design-builder's costs, the Change Order shall note the amount of cost decrease.
3. If a necessary basic project configuration change results in a Critical Path delay, the Change Order may include an appropriate extension of time and/or time-related damages. If a necessary basic project configuration change creates float in the schedule thus allowing early completion without additional cost, the Change Order shall include an appropriate modification of the contract deadlines accelerating the time for completion.
4. The notice, recordkeeping and other requirements (104.03.04) shall apply with respect to any request to adjust the Contract Price or the Contract Time due to a necessary basic project configuration change.
5. Relationship to VECP. If a Value Engineering Change Proposal (VECP) results in a material change in Basic Project Configuration, any cost savings from such VECP shall be shared in accordance with 104.02.
6. Inaccuracies in RFP Plan. The Design-builder shall be responsible for any cost increases and/or delays resulting from inaccuracies in the RFP Plans other than an error, omission, or defect in the Directive Plans constituting or requiring a material change in the Basic Project Configuration. If any such changes occur, no change in the Work shall be deemed to have occurred and no Change Order will be issued for any such cost increases and/or delays, unless the change qualifies as a Necessary Basic Project Configuration Change. Accordingly, any non-material changes in the Basic Project Configuration shall be the responsibility of the Design-builder.
7. Applicability of Change Orders. In general, the Design-builder may implement non-material changes in the Basic Project Configuration without a Change Order, unless the change involves a circumstance for which a Change Order is specifically required hereunder.

104.03.04 Contractual Notice

It is the responsibility of all parties to promptly provide written notice to the other party when circumstances are believed to constitute a change to the Contract.

Immediately provide written notice to the Department's Project Manager of a circumstance that is believed to be a change to the Contract. If notice is not provided on Contractual Notice (Form DC-161), include the following in the initial written notice:

1. A statement that this is a notice of a change.
2. The date when the circumstances believed to be a change were discovered.
3. A detailed and specific statement describing the nature and circumstances of the change.
4. If the change will or could affect costs to the Department.
5. If the change will or could affect Contract Time as specified in [108.11.01.C](#).

In addition to the hard copy of the notice, email the notice to the Department's Project Manager. It is not necessary to attach listed documents to the email.

The Department will not modify the Contract for work performed or for expenses incurred due to a change before the date notification is provided to the Department's Project Manager. The Design-builder waives its right to file a claim for costs incurred before providing notice to the Department's Project Manager.

Following submission of written notice, diligently continue with the unaffected work to the maximum extent possible.

Within 5 days after receipt of each written notice, the Department's Project Manager will respond in writing with one of the following:

1. Reject the notice for providing insufficient information. The Department will not accept general notices. The Department's Project Manager may request resubmission of the notice with additional information. If the Department rejects the written notice for insufficient information, the Department will deem the Design-builder to have not provided notice even if the Department's Project Manager issues directions based on the information provided.
2. Reject the notice because the Design-builder failed to submit the notice within the specified time frames of N.J.S.A 59:13-5, or [104.03.02](#).
3. Acknowledge that notice has been provided, and state that the Department has determined that the circumstances do not constitute a change.
4. Acknowledge that notice has been provided, and state that the Department has not determined whether the circumstances constitute a change that may be eligible for additional payment or time or both. If necessary, the Department's Project Manager may direct the mode of further performance. The Department's Project Manager may require the Design-builder to submit additional information within a specified time period.
5. Acknowledge that notice has been provided, and confirm that the circumstances constitute a change that may be eligible for additional payment or time or both. If necessary, the Department's Project Manager may direct the mode of further performance. The Department's Project Manager may require the Design-builder to submit additional information within a specified time period.

104.03.05 Unrecoverable Costs

For all changes, the Department will not make payment or modify Contract Time for the following:

1. Loss of anticipated profits.
2. Consequential damages.
3. Expense related to claim preparation and submission, including but not limited to attorney's fees and expenses, consultant's fees and expenses, and litigation expenses.
4. Interest.
5. Reimbursement for home office overhead in excess of that provided by the Contract.

104.03.06 Unacceptable Cost Calculation Methods for Construction Change Orders

The Design-builder has the burden of substantially proving entitlement to and quantifying its costs. The Department will not make payment for costs calculated using the following methods:

- 1 Total Cost Method.** Method based on calculating costs as the difference between the Design-builder's bid for the Work from the Design-builder's calculation of costs for the Work.
- 2. Modified Total Cost Method.** Method based on calculating damages as the difference between the Design-builder's bid for a portion of the Work and the Design-builder's calculation of cost for that portion of the Work.
- 3. Productivity Factors.** Costs for inefficiency based on industry productivity factors such as those provided by the Mechanical Contractors Association of America (MCAA) Factors Affecting Labor Productivity.
- 4. Eichleay Formula.** Eichleay and other formulas or approaches to calculating home office overhead costs due to delay other than as specified in [104.03.09](#).

104.03.07 Tracking Costs

For all work directed to be paid for by force account, , track and maintain complete records to provide a clear distinction between the costs for the Force Account work and the costs of other operations. For costs which the Design-builder will pursue reimbursement through a Notice or Claim, track and maintain complete records in Force Account style making a clear distinction between Contract work and the work related to the alleged changed condition. On a daily basis, submit for review by the Department's Project Manager a daily work report for the work involved

in the force account or claim, signed by the Design-builder's authorized representative. For days with multiple shifts of work, submit a separate report at the completion of each shift to the Department's Project Manager. Provide the following in the daily or shift work report:

1. For labor, provide the name, classification, date, daily hours, and whether the hours are straight time or overtime for each worker and foreperson.
2. For equipment, provide the description, dates, daily hours worked, daily hours idle, and whether each unit of equipment or component thereof is rented or Contractor-owned.
3. For materials, provide the description, quantities delivered and placed, and whether the materials were for temporary use or permanent construction.
4. Indicate the description of work associated with the force account or claim performed for that day or shift.

If there are separate instances of work being tracked, provide separate daily or shift reports for each instance to the Department's Project Manager.

Submit in writing to the Department's Project Manager for review before using special equipment, materials, or labor. The Department will not make payment for costs that the Design-builder fails to document as required in the daily work report.

104.03.08 Force Account

Payment made for the work directed to be performed by force account represents full payment for that work including layout. Submit to the Department's Project Manager a detailed cost of the work to be paid by force account using the electronic format provided by the Department. Submit daily or shift reports for force account costs as specified in [104.03.07](#). For work directed to be paid for by force account, and when approved by the Department's Project Manager in the daily or shift reports, the Department will make payment for the following:

1. **Direct Labor.** The Department will make payment for all necessary direct labor and the supervising foreperson of the specific operation, whether the employer is the Design-builder, or Design-builder subcontractor, based on the gross rate of wage paid to the employee as shown in its certified payrolls for each and every hour that said labor and foreperson are actively engaged in such work.

For specific extraordinary operations, the Department may allow supervising or other special types of employees, which would usually be considered as overhead, to be considered direct labor, but only for that time allowed by the Department's Project Manager. Submit justification in writing for the Department's Project Manager's approval before using such employees.

2. **Labor Fringe Benefits.** The Department will make payment for the cost of benefits paid by the Design-builder on direct labor costs allowed under [104.03.08.1](#), to or on behalf of, workers when required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the work.
3. **Indirect Labor Costs.** The Department will make payment for the cost of FICA, Workers Compensation Insurance, Federal and State unemployment insurance and other payroll taxes paid by the Contractor on direct labor costs allowed under [104.03.08.1](#).
4. **Insurance.** The Department will make payment for the actual increased cost of insurance, necessarily and directly resulting from the force account work, as evidenced by certified documentation of insurance rates and premiums.
5. **Materials.** The Department will make payment for the cost of materials and shipping charges as evidenced by paid invoices, except as follows:
 - a. If a cash or trade discount is offered by the actual supplier or available to the purchaser, credit the Department notwithstanding the fact that such discount may not have been taken.
 - b. If materials are procured by the purchaser by any method that is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials is the price paid to the actual supplier as determined by the Department's Project Manager, plus the costs, if any, incurred in the handling of such materials.

- c. If in the opinion of the Department's Project Manager the cost of such materials is excessive, then the Department will limit the cost of such materials to the prevailing market price for such materials as are available in the quantities concerned, delivered to the Project Limits, and deducting any discounts as specified in [104.03.08.5.a](#).
- d. For materials not incorporated into the permanent construction, the Department will deduct the reasonable salvage value of the material after the performance of the work.

The Department will only allow sales tax on materials that are not permanent and do not qualify for an exemption under the Sales and Use Tax Act.

The Department reserves the right to furnish materials, and the Department will not make payment for costs and markup on such materials.

- 6. **Extraordinary Expenses.** Extraordinary Expenses will be limited to only permit and disposal fees, including any associated required soil testing. The Department will only make payment for Extraordinary Expenses, if they are approved by the Department's Project Manager before incurring the cost and evidenced by paid invoices. If the cost is, in the opinion of the Department's Project Manager, excessive, then the Department will limit the payment for such expenses to reasonable costs as available in the prevailing market.
- 7. **Equipment.** The Department will make payment for Design-builder-owned or rented equipment required for the force account work. The Department will not provide payment for equipment that is determined to be more than necessary or unsuitable by the Department's Project Manager for the force account work or that is inoperable due to breakdown or during periods of repair. In the event the Design-builder proposes to use equipment of a higher cost, including equipment with one or more of the following: specialized functionality, features, trim levels, options, or accessories than that suitable and necessary for the work, the Department will make payment at the rate applicable to the suitable and necessary equipment. The Department will make payment for Design-builder -owned or rented equipment as follows:
 - a. **Design-builder -Owned Equipment.** For equipment owned directly by the Design-builder or by entities that are divisions, affiliates, subsidiaries, or in any other way related to the Design-builder or its parent company, submit in writing to the Department's Project Manager for approval the type of equipment and proposed cost before starting the work. The Department will make payment for equipment rental, operating, and idle time costs based on the calculated cost. The Department will determine the calculated cost using the Rental Rate Blue Book (Blue Book), published by Equipment Watch, as follows:
 - 1 The Department will calculate the "rental" hourly rates by dividing the monthly rate by 176. The Department will not use weekly, daily, or hourly rates. The Department will apply rental hourly rates for every hour the equipment is in active use, except that for any 30 day period, the Department will limit the total amount paid for each piece of equipment to a maximum of the monthly rate.
 - 2. The Department will apply the operating cost rate for every hour the equipment is active.
 - 3. The Department will apply the rental and operating rates that are current on the first day that the equipment is in use for the force account work throughout the next 6 months that the force account is in progress. The Department will apply updated rates for every following 6 month period the force account is in progress. Submit to the Department's Project Manager documentation establishing the Blue Book rates for the equipment proposed and the age of the equipment. The Department will adjust rates for each 6 month period thereafter.
 - 4. The Department will not permit area adjustments. The Department will adjust rental rates for equipment age adjustments according to the rate adjustment tables.
 - 5. The Department will not make payment for idle time for equipment required for only portions of the force account work, except where the equipment has been held on the work site on a standby basis at the request of the Department's Project Manager and, but for this request, would have left the work site. Portions of the work include hours when the equipment is inactive within a working day. For the idle time for each piece of equipment, the Department will make payment at one-half the rate established as specified in [104.03.08.7.a.1](#). Idle time is limited to the Design-

builder's normal working hours. Idle time is further limited to a maximum of eight hours a day and a maximum of 176 hours in a 30 day period.

6. The Department will make payment for costs for transporting equipment to and from the work site, if said costs are solely required as a direct result of the Force Account activity.

The payment established is full payment for all equipment costs, including the cost of fuel, repairs, maintenance, depreciation, storage and incidentals.

If a rate is not established in the Blue Book for a particular piece of equipment, the Department's Project Manager will establish a rate for that piece of equipment that is consistent with its cost and use in the industry.

- b. Rented Equipment.** In the event that the Design-builder does not own a specific type of equipment and must obtain it by rental, submit in writing to the Department's Project Manager for approval the need to rent the equipment and the rental rate for that equipment before using it on the work. Ensure the rental company does not rent equipment exclusively to a single Design-builder. The Department will make payment for the rental of the equipment as specified in the rental agreements and as evidenced by paid invoices for the time that the equipment is used to accomplish the work, plus the cost of moving the equipment to, on, and away from the work site.

8. **Profit.** The Department will make payment for profit at the rate of 10 percent applied on the following:

1. Total direct labor cost as specified in [104.03.08.1](#).
2. Total labor fringe benefit costs as specified in [104.03.08.2](#).
3. Total material cost as specified in [104.03.08.5](#) excluding transportation, shipping, handling, and taxes.

9. **Overhead.** The Department will make payment for overhead at the rate of 15 percent applied on the following:

1. Total direct labor cost as specified in [104.03.08.1](#), except for the direct labor cost of any extraordinary supervisory or special employees.
2. Total labor fringe benefit costs as specified in [104.03.08.2](#).
3. Total material cost as specified in [104.03.08.5](#) excluding transportation, shipping, handling, and taxes.

The above 15 percent allowance is full compensation for the Design-builder's field and home office overhead including, but not limited to, the following:

1. Salaries and expenses of executive officers, supervising officers, or supervising employees, except as provided for specific extraordinary operations under [104.03.08.1](#).
2. Salaries and expenses of clerical and administrative employees.
3. Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and equipment consumed during operations, such as saw blades, drill bits, and milling teeth.
4. Costs for preparing documents and records, including reproduction and mailing costs.

10. **Subcontractors.** The Department will make payment for work performed by subcontractors in the same manner as for the Design-builder as specified in [104.03.08](#), except the Department will not make payment for markup on subsequent tier subcontracts.

The Department will make payment for markup on subcontracted work at the rate of 5 percent applied on the total amount of all costs for subcontracted force account work up to \$500,000 and 2 percent applied on the total amount of all costs for subcontracted force account work over \$500,000.

104.03.09 Delay Damages

If the Department grants an extension of Contract Time for excusable, compensable delays, as specified in [108.11.01](#), beyond the completion time requirements specified in [108.10](#), the Department will make payment for the following:

1. **Non-Productive Activity.** The Department will make payment for the following non-productive activities:

- a. **Direct Labor.** For all necessary non-productive labor and supervising forepersons of specific operations who must remain on the Project during such periods of delay due to collective bargaining contracts or other reasons approved by the Department's Project Manager and cannot be assigned to other work not affected, the Department will make payment at the prevailing rate of wage as shown in its certified payrolls. This includes the necessary labor required for maintenance within the Project Limits, maintenance of traffic control devices, maintenance of SESC measures, and similar activities resulting from the delay and approved by the Department's Project Manager. This rate is inclusive of all employee contributions to taxes, insurance, and other benefits.
- b. **Labor Fringe Benefits.** The Department will make payment for the costs for benefits paid by the Design-builder on direct labor costs allowed under [104.03.09.1.a](#) to or on behalf of, workers when required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the work.
- c. **Indirect Labor.** The Department will make payment for the costs for FICA, Workers Compensation Insurance, Federal and State Unemployment Insurance and other payroll taxes paid by the Design-builder on direct labor costs allowed under [104.03.09.1.a](#).
- d. **Insurance.** The Department will make payment for the actual increased cost for insurance, necessarily and directly resulting from the delay, as evidenced by certified insurance rates and premiums.
- e. **Equipment.** If as the result of the delay, equipment cannot be used for any active work, and is directed by the Department's Project Manager to remain on the work site during the delay, the Department will make payment as specified in [104.03.08.7.a.5](#). If as the result of the delay, the Department's Project Manager determines that the equipment cannot be used for any active work, the Department's Project Manager may request the Contractor to remove the equipment. The Design-builder may remove the equipment from the work site or allow it to remain. If the equipment is removed from the work site, the Department will make payment for labor and equipment costs to remove the equipment and to return it to the work site at the end of the delay period. If the equipment remains, the Department will not make payment for the equipment as specified in [104.03.08.7](#).

If equipment is required for additional maintenance within the Project Limits, maintenance of traffic control devices, maintenance of SESC measures, and similar activities resulting from the delay and approved by the Department's Project Manager, the Department will make payment as specified in [104.03.08.7](#).

- f. **Design-builder's Field Office.** If the Design-builder has a field office dedicated for the Project, and if the extension of time is for more than one month, the Department will make payment for the costs to maintain the Design-builder's field office, as evidenced by paid invoices. These costs may include property rent or leases, trailer rentals, utility and sanitation services, and fixed monthly telephone services required for a field office directly established for the Project.
 - g. **Profit.** The Department will not make payment for profit.
 - h. **Overhead.** The Department will make payment for overhead at a rate of 15 percent of the sum of labor and labor fringe benefits. This is full payment for all field and home office overhead and general superintendence.
2. **Labor Escalation.** If, as the result of the delay, an activity, which had a planned late-finish date occurring before a labor rate increase date, is required to start after the labor rate increase date, the Department will make payment for the following:
 - a. **Increased Direct Labor.** For all necessary non-salaried labor and supervising forepersons of the specific activity, the Department will make payment for the difference between the gross rate of wage paid to the employee as shown in its certified payrolls and the gross rate of wage for the planned period of performance, for each and every hour that the employee was actively engaged in such work.
 - b. **Increased Labor Fringe Benefits.** The Department will make payment for the increased costs for benefits paid by the Design-builder on direct labor costs allowed in [104.03.09.2.a](#), to, or on behalf of,

workers when required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed on the work.

- c. **Increased Indirect Labor Costs.** The Department will make payment for the costs for FICA, Workers Compensation Insurance, Federal and State Unemployment Insurance, and other payroll taxes paid by the Contractor on increased direct labor costs allowed under [104.03.09.2.a](#).
 - d. **Profit.** The Department will make payment for profit at the rate of 10 percent applied on the following:
 - 1. Total direct labor cost as specified in [104.03.09.2.a](#).
 - 2. Total labor fringe benefit costs as specified in [104.03.09.2.b](#).
 - e. **Overhead.** The Department will not make payment for overhead for labor escalation costs. Provide the Department's Project Manager with the following documentation for all labor escalation costs:
 - 1. A breakdown of costs by Item, activity, and date detailing the labor classification and hours for each.
 - 2. For each activity, an analysis demonstrating that the entire activity was forced to be performed when labor costs were higher than the labor rates in effect on the planned late-finish date.
 - 3. Collective bargaining agreement information detailing the increase in direct wages and fringe benefits.
3. **Material Escalation and Storage.** If the delay forces the Design-builder to purchase material when material costs are higher than the cost of material would have been for the planned late-finish dates of an activity using the material, or if the Design-builder incurs additional storage costs as a result of the delay, provide the Department's Project Manager with the following documentation:
- 1. A breakdown of costs by Work activity, and date the material cost was incurred.
 - 2. Cost basis for the material at the time of an activity's late start date as evidenced from documented vendor quotes.
 - 3. The cost of materials and transportation charges as evidenced by paid invoices.
 - 4. An analysis demonstrating that the activity or portions of the activity were forced to be performed when material costs were higher than those that were in effect on the planned late-finish date.

For such material escalation and storage, the Department will make payment as follows:

- a. **Increased Material Costs.** The Department will make payment for the difference between the costs of materials, as specified in [104.03.08.5](#), and the cost of such materials that were available for the planned late-start to late-finish dates of an activity using the material. However, the cost of unacceptable material, and cost increases for fuel and asphalt are not eligible for payment. Furthermore, the Department will not make payment for quantities in excess of the amount necessary for construction, except where lesser quantities cannot be economically purchased and the excess has no significant reuse value. If the cost basis of materials is, in the opinion of the Department's Project Manager, excessive, the Department will establish the cost of the materials from market prices.
- b. **Increased Storage Costs.** Obtain the Department's Project Manager's approval before storing materials. The Department will make payment for additional storage costs as evidenced by certified vendor quotes detailing the terms of the storage agreement, and paid invoices.
- c. **Profit.** The Department will make payment for profit at the rate of 10 percent applied on the following:
 - 1. Total increased material costs as specified in [104.03.09.3.a](#).
 - 2. Total increased storage costs as specified in [104.03.09.3.b](#).
- d. **Overhead.** The Department will make payment for overhead at the rate of 15 percent applied on the following:
 - 1. Total increased material costs as specified in [104.03.09.3.a](#).
 - 2. Total increased storage costs as specified in [104.03.09.3.b](#).

4. **Equipment Escalation.** If, as the result of the delay, equipment use, which had a planned late-finish date occurring before an equipment rate increase date, is required to start after the equipment rate increase date, the Department will make payment for the following:
- a. **Contractor owned equipment.** Equipment costs as specified in 104.03.08 at the higher rate as evidenced by a comparison of the Blue Book rate between the planned late finish date for the work and the Blue Book rate when the work was required because of the delay.
 - b. **Rented equipment.** Equipment costs as specified in 104.03.08 at the higher rate as evidenced by a comparison of rental agreements, including paid invoices, between the planned late finish date for the work and the date the work was required because of the delay. If rental agreements and paid invoices are not available, provide quotes from the rental company for both dates.

From the total value of delay damages, when the Total Adjusted Contract Price cost is greater than the Total Contract Price, the Department will deduct the amount of 10 percent applied to the difference between the Total Adjusted Contract Price and the Total Contract Price. If this deduction is greater than the total value of delay damages, the Department will not deduct the difference from the Design-builder.

104.03.10 Change Order Status Report

The Design-builder shall provide a report of outstanding Change Order requests containing the following:

- A. The Design-builder's and Department's Change Order identification numbers and/or coding;
- B. The issue title;
- C. A brief description of the change;
- D. Any outstanding issues to be resolved;
- E. The estimated cost and time implications; and
- F. The projected resolution date.

104.04 ALTERNATE TECHNICAL CONCEPTS (ATC)

The Design-builder acknowledges that, subject to the allocation of responsibilities set forth in the Contract Documents, any approvals from entities other than the Department required to implement approved Alternative Technical Concepts incorporated in the Contract Documents are Design-builder's sole responsibility to obtain. Design-builder agrees that if any condition set forth in the Department's pre-approval of an ATC included in its Proposal has not been met as of the Proposal Date, the Design-builder shall be responsible for ensuring that such condition is satisfied before implementing the ATC. If the Design-builder fails to obtain any required approval, fails to satisfy any such condition, or fails in any other way to implement the approved Alternative Technical Concept, it shall comply with the corresponding baseline requirements (unmodified by the Alternative Technical Concept) without any increase in the Contract Price or extension of the Contract Deadlines.

SECTION 105 – CONTROL OF WORK

105.01 AUTHORITY OF THE DEPARTMENT

105.01.01 Department's Project Manager

Design-builder must send correspondence with the Department to the Department's Project Manager. Where correspondence is specified to be directed to persons other than the Department's Project Manager, send a copy to the Department's Project Manager. Ensure that correspondence complies with the following:

1. Assign every correspondence sent to the Department a unique correspondence serial number in the subject line, numbered sequentially beginning with Design-Builder Correspondence No. 1.
2. If the correspondence includes a request for information or asks for an interpretation of the Contract, also assign a unique RFI serial number in the subject line numbered sequentially beginning with RFI-1.
3. If the correspondence constitutes a notice of change as specified in [104.03.04](#), assign a unique change notice serial number in the subject line numbered sequentially beginning with Change Notice No. 1. For subsequent correspondence referring to a change notice or to the events that are the subject of a previous change notice, refer in the subject line to the original change notice number.

As designee of the Department, the Department's Project Manager, has immediate charge of the Project for the Department. The Department's Project Manager will be delegated authority commensurate with that responsibility, including the authority to reject defective material and construction and disapprove and reject Design Documents that do not comply with Contract requirements.

Except as otherwise expressly provided in the Contract, the Design-builder is required to submit all issues related to the Project through the Department's Project Manager. All communications by the Design-builder with the Department, written or verbal, shall be in English. All references to costs, changes, prices, etc. shall be in United States dollars. Except as otherwise expressly provided in the Contract, the Department's Project Manager, designated representative, Construction Quality Assurance Engineer, or Design Quality Assurance Engineer will address all questions that may arise under the Contract, including but not limited to the following topics:

- A. Acceptability of Design Documents;
- B. The quality and acceptability of material furnished;
- C. Work performed;
- D. The rate of progress of the Work;
- E. Interpretation of the Contract;
- F. Acceptable performance of the Contract requirements; and
- G. Administration of monthly progress payments.

In addition to the authority to administer the Contract, modify the Contract by Change Order, and oversee and terminate the Contract as expressly provided by the Contract, the Department's Project Manager or designated representative will have the authority to suspend the Work, wholly or in part, or withhold progress payments due to the following:

- A. Conditions such that unsatisfactory Work might result;
- B. Improper material or procedures being used;
- C. Unsafe conditions for the workers or the general public as a result of the failure of the Design-builder to correct those conditions;
- D. The Design-builder's failure to carry out provisions of the Contract;
- E. The Design-builder's failure to carry out directions of the Department's Project Manager;
- F. The Design-builder's failure to comply with applicable Governmental Rules;
- G. The Design-builder's non-conformance with the Work Zone Traffic Control (WZTC) provisions of the Contract, causing serious disruptions to traffic operations; or
- H. The Department's Project Manager's determination that suspension is necessary because of unsuitable weather.

105.01.02 Inspection

The Design-builder shall have the responsibility for QC inspection of all Work. See Part 3, Section 4 - Design-builder's Quality Control Program, Section 5 - Design, Design Quality Assurance and Quality Control, and Section 6 -

Construction Quality Control and Quality Assurance for the specific Design-builder QC Inspection and QC responsibilities.

- A. Authority and Duties of Department's Oversight Staff. The Department's Construction Quality Assurance Engineer, and associated construction staff shall be authorized to inspect all Work done and material furnished, including all or any part of the Work and the preparation, fabrication, or manufacture of the material to be used. The Construction Quality Assurance Engineer, and associated construction inspectors may be Department employees or agents acting for the Department. Inspection shall include the Design-builder's compliance with applicable safety requirements set forth in 108.05. The Construction Quality Assurance Engineer and associated construction inspectors are not authorized to either alter or waive requirements of the Contract Documents, nor are they authorized to issue instructions contrary to the Design Plans and Project Specifications without written approval of the Department's Project Manager. Further, the Construction Quality Engineer and associated staff are not authorized to act as a foreman for the Design-builder.

Oversight is for the sole benefit of the Department and does not:

1. Relieve the Design-builder of responsibility for providing adequate QC measures;
 2. Relieve the Design-builder of responsibility for damage to or loss of the material/Work before Project Completion;
 3. Obligate the Department to determine that Substantial Completion of the Project, Project Completion or Final Acceptance have occurred; or
 4. Affect the continuing rights of the Department hereunder.
- B. Department's Inspection of Work. All material and each part or detail of the Work may be subject to Inspection by the Construction Quality Assurance Engineer, and associated staff and the Department's Project Manager. The Department's Project Manager and Department staff shall be allowed full access to the Work and shall be furnished with necessary information and assistance by the Design-builder to make a complete and detailed Inspection.

If the Department's Project Manager requests it, the Design-builder, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Design-builder shall restore said portions of the Work to the standard required by the Project Specifications. If the Work thus exposed or examined proves acceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed may be paid for as Extra Work under 104.03.01 and 109.03. But, if the Work so exposed or examined proves unacceptable, or if the Design-Builder failed to document its Work according to the requirements of the Quality Control Plan, the uncovering or removing and the replacing of the covering or making good of the parts removed will be at the Design-builder's expense. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by the Department and others as specified herein may be ordered uncovered, removed or restored at the Design-builder's cost, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this 105.01.02 is in conformance with the requirements of the Contract Documents, then any delay in the Critical Path from uncovering, removing and restoring Work shall be considered a Department-Caused Delay, and a Change Order may be issued to the Design-builder for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

The Design-builder shall provide at least a 24-hour notice, or such other notice to which the parties have agreed, before beginning Work on any item and before resumption of Work on an item after an extended suspension.

When a unit of government, political subdivision, or Utility is involved in the cost of the Work covered by this Contract, its representative(s) shall have the right to inspect the Work. Such inspection shall not make

such unit of government, political subdivision, or Utility a party to this Contract in any manner of form, and shall in no way interfere with the rights of either party hereunder.

The above paragraphs shall not apply to pavement or sub-base rejected as a result of core tests. Work so rejected shall be removed and replaced at the expense of the Design-builder.

The Design-builder shall transmit a copy of any audit or inspection report conducted by SSPC, OSHA, or EPA, or any other government agency to the Department's Project Manager within seven days of receiving such a report. If any Subcontractor responsible for painting structural steel has been disciplined by SSPC or placed on warning, probation, suspended or revoked status from the Painting Contractor Certification Program during the past 24 months, the Design-builder shall provide a written explanation of the cause for such action, the corrective measures enacted, and the Subcontractor's PCCP status.

- C. Correction of Unacceptable Work. All Work which does not conform to the requirements of the Contract shall be considered unacceptable unless otherwise determined acceptable under the provisions in 105.03. Unacceptable Work, whether caused by poor workmanship, defective material, damage through carelessness, or any other cause found to exist prior to the Final Acceptance of the Work shall be documented via a Non-Conformance Report. Such Unacceptable Work shall be corrected in a manner acceptable to the Design-builders Responsible Engineer and the Department irrespective of the presence of, or lack of, a CQAE or a representative of the Department at the time the Work was originally completed. The fact that Department representatives may have previously overlooked such defective Work shall not constitute an approval or acceptance of any part of it.

105.01.03 Design-builder Performance Evaluation

Pursuant to N.J.A.C. 16:44-1 to 3.8 and N.J.A.C. 16:44A-3.1, the Department will assign Performance Evaluation ratings to determine the Design-builder's Work Classification Limit.

The Department's Project Manager will perform a Contractor Performance Evaluation using the Department's form DC-83 that is current at the time of bid. The Department's form DC-83 is available at <http://www.state.nj.us/transportation/eng/forms/>. The Department's Project Manager will perform the Contractor Performance Evaluation at the end of the annual rating period, which extends from January 1 through December 31, if the value of work performed is at least 25 percent of the Total Adjusted Contract Price or has a value of more than \$1 million. If a Project is completed prior to the end of the regular annual rating period, the Department's Project Manager will perform the Contractor Performance Evaluation when the Department initiates a Certificate of Completion. The Department may extend the rating period or decide to not perform a Contractor Performance Evaluation Rating at its sole discretion, and will provide the Contractor with written notification of a decision to extend a rating period or to not perform a Contractor Performance Evaluation Rating. The Department's Project Manager will provide the Contractor with the breakdown and weighting of the Quality/Contract Compliance subcategories at the preconstruction conference. The Contractor Performance Evaluation process is not an administrative process and is contractual in nature.

Meet with the Department's Project Manager to review the Contractor Performance Evaluation rating when requested by the Department's Project Manager. A protest regarding the Performance Evaluation rating will be resolved through the Rating Review meeting process specified in this Subpart and not through the Contractual Claim Resolution Process specified in [107.12](#).

The Contractor may only protest a Contractor Performance Evaluation rating of less than 70. If the Contractor receives a Contractor Performance Evaluation rating of less than 70, the Contractor may protest the assigned rating by submitting a request for a Rating Review meeting with the Department Manager as specified in [101.04.2](#) of the Special Provisions, responsible for the administration of the construction. Submit a written request for a Rating Review meeting to the Department Manager within 15 days of receiving the Contractor Performance Evaluation Rating from the Department's Project Manager. Provide with the request for a Rating Review Meeting a specific and detailed statement of the reasons for the protest and provide a copy of any documents that the Contractor wants the Department to consider. The Contractor waives its right to protest a Contractor Performance Evaluation Rating if it does not

submit a written request for a Rating Review meeting within 15 days of the Contractor's receipt of the Contractor Performance Evaluation Rating.

The Department Manager will schedule and hold a meeting to review the Contractor's Performance Evaluation with the Contractor and hear the Contractor's protest within 30 days of receiving the Contractor's request for a Rating Review meeting. The Department Manager will issue a written decision upholding or adjusting the Performance Evaluation rating within 10 days of conducting the Rating Review meeting.

105.02 RESPONSIBILITIES OF THE DESIGN-BUILDER

105.02.01 Labor and Equipment

Provide labor and equipment sufficient to prosecute the Work, as specified in the Contract, to Completion. Ensure that the labor and equipment used to prosecute the Work do not cause damage to public or private property. Provide labor and equipment as follows:

- 1. Labor.** Employ workers that have sufficient skill and experience to properly perform the work assigned to them. Do not engage or employ current Department employees or workers that would cause the worker to be in violation of N.J.S.A. 52:13D-17. Do not engage or employ any former federal, state, or municipal worker who has been personally or individually debarred or subject to a forfeiture of public office pursuant to N.J.S.A. 2C:51-2.

Upon written direction by the Department's Project Manager, the Design-builder will remove Design-builder employees or subcontractor employees including the Superintendent who, in the opinion of the Department's Project Manager, are not performing the Work in a proper or skillful manner, or are intemperate, disorderly, or create a hostile environment. Do not allow the removed employee to be re-employed to perform any portion of the Work without written approval by the Department's Project Manager.

- 2. Equipment.** Provide equipment of sufficient size and mechanical condition to meet the requirements of the Contract. Ensure that each piece of equipment has an automatic audible warning signal when operating in reverse.

Do not provide equipment that is owned or operated by firms or individuals suspended or debarred by the Department or included in the *State of New Jersey Consolidated Debarment Report* as maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification or in the Federal Government's General Services Administration document titled "List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List)."

Equip construction equipment powered by an internal combustion engine with a properly maintained muffler. Fit air-powered equipment with pneumatic exhaust silencers. Ensure air compressors meet EPA noise emission standards. Do not operate stationary equipment powered by an internal combustion engine within 150 feet of noise sensitive sites without portable noise barriers placed between the equipment and the noise sensitive sites. Noise sensitive sites include but are not limited to residential buildings, motels, hotels, schools, churches, hospitals, nursing homes, libraries, and public recreation areas.

Whenever automatically-controlled equipment is specified and a breakdown or malfunction of the automatic controls occur, the Design-builder may operate the equipment manually for the remainder of the day provided such operation produces results that comply with the Contract. Repair or replace the equipment so that it is controlled automatically before starting construction operations the next day.

105.02.02 Superintendent

Provide a competent, English-speaking superintendent and alternate who are experienced in the type of construction being performed and are capable of reading and understanding the Contract.

Ensure that the superintendent and alternate have the authority to represent the Design-builder. Ensure that the superintendent and the alternate have the authority to execute orders or direction from the Department's Project Manager, without delay, and to promptly supply materials, equipment, tools, labor, and incidentals as necessary.

Ensure that the superintendent gives the Work the constant attention necessary to ensure its successful prosecution. Ensure that the superintendent cooperates with the Department's Project Manager, the Department inspectors, and Others. Ensure that the superintendent or the alternate is present at the work site at all times while the Work is in progress.

The Department's Project Manager has the right to suspend the Work if the superintendent or the alternate is not present at the work site. The Department will not modify Contract time or make payment for such suspensions.

105.02.03 Subcontracted Work

Consent of the Department to allow work to be subcontracted, as specified in [108.01](#), does not relieve the Design-builder of its responsibility for the Work, nor does it relieve the Surety of its obligations under the bond. The Design-builder is responsible for the work of subcontractors. Ensure that the work performed by subcontractors conforms to the Contract. The Department's consent to subcontract any part of the Work shall not be construed as approval of the subcontract or its terms, but only as approval of the Design-builder's request to subcontract to its chosen subcontractor.

105.02.04 Fabricators and Suppliers

If the Design-builder is not the owner of the place where fabrication, preparation, or manufacture is in progress, the owner thereof is deemed to be the agent of the Design-builder.

105.02.05 Civil Rights Requirements

The Design-builder is obligated to comply with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21 and 28 CFR Section 50.3, 2 C.F.R. Part 200 and 2 C.F.R. Part 200 Appendix II and any other Rules relative to Nondiscrimination as they may be amended from time to time, which are herein and incorporated by reference and made part of the Contract. The Design-builder in the performance of the Contract agrees to comply with nondiscrimination regulations and other requirements as specified in [Section 107](#). Failure of a Design-builder to comply with the nondiscrimination provisions of the Contract may result in the actions as set forth as specified in [Sections 105](#), [108](#), and [109](#).

The source of funding determines which EEO regulations and goals (Federal and/or State goals) apply to a specific project.

- 1. Federal Aid Projects.** On contracts containing Federal funding, Federal EEO regulations and goals apply as specified in Federal Aid Project Attachments 1 through 11. The DCR/AA monitors and reviews these projects on behalf of the Federal Highway Administration (FHWA), under Federal statutes (23 USC 140) and Rules (23 CFR 230, 2 CFR Part 200).

Comply with the DBE/ESBE program, rules and regulations of 49 CFR Part 26 in the administration of the Contract. Failure to do so is a material breach of the Contract and may result in termination of the Contract, or other such actions that the Department or the FHWA deem appropriate which may include, but are not limited to, rejection of bids, denial or limit of credit toward the Contract goal(s), payment being delayed or withheld as specified in [Section 105](#), assessing sanctions as set forth in 49 CFR Part 26, and default as specified in [Section 108](#). Deliberate attempts by the Design-builder or subcontractors to circumvent or commit fraud in the DBE/ESBE program may result in termination of the Contract as specified in [Section 108](#), investigation by the Department's Inspector General or the U.S. Department of Transportation, or both, and prosecution by the State Attorney General's Office or the U.S. Department of Justice, or both.

Ensure compliance with the labor standards provisions of the Contract. Submit weekly certified payrolls and Statement of Compliance as required in the Contract to the RE. In addition, file Diane B. Allen Equal Pay Act information to the NJ Wage Hub online using the following link: <https://www.nj.gov/labor/wageandhour/prevaling-rates/njwagehub.shtml>. Monitor and verify the owner-operator status of all DBE and non-DBE truckers working on Federal Aid Projects used for the Contract. Submit the DBE Trucking Verification (Form CR-274) to the Department. Failure of a Contractor to meet the requirements of this paragraph may result in payment being delayed or withheld as specified in [Section 105](#), default as specified in [Section 108](#), disqualifying the Contractor from future bidding as non-responsible, or termination of the Contract as specified in [Section 108](#).

Obtain executed subcontract agreements as specified in [Section 108](#). Failure of a Design-builder to meet this requirement may result in payment being delayed or withheld as specified in [Section 105](#), default as specified in [Section 108](#), disqualifying the Design-builder from future bidding as non-responsible, or termination of the Contract as specified in [Section 108](#).

The Design-builder is responsible for compliance by any subcontractor, lower tier subcontractor as specified in [Section 108](#). On Federal Aid construction contracts, utilize a DBE that performs a commercially useful function (CUF) and performs the work committed to in the Proposer's Open Ended Performance Plan. Monitor and report DBE participation on the Contract, on a monthly basis utilizing the CR-267 - Monthly Report of Utilization of DBE/ESBE or SBE form. Failure of a subcontractor or lower tier subcontractor may result in denial or limit of credit toward the Contract DBE goal(s), payment being delayed or withheld as specified in [Section 105](#); default as specified in [Section 108](#), or termination of the Contract as specified in [Section 108](#).

The Design-builder is required to make good faith effort as defined in 23 CFR Part 230 and 41 CFR Part 60 in meeting the Equal Employment Opportunity, Affirmative Action, on-the-job training and female and minority work hour goals. Ensure compliance by subcontractors and lower tier subcontractors. Failure of the Design-builder, subcontractor or lower tier subcontractor to meet these requirements may result in payment being delayed or withheld as specified in [Section 105](#); default as specified in [Section 108](#), or termination of the Contract as specified in [Section 108](#).

Utilize the specific DBEs listed to perform the work, manufacture the materials or goods, and furnish or supply the equipment, materials, supplies or services for which each is listed on the LDB Tables 1 and 2 unless prior written consent from the DCR/AA is obtained. Unless prior DCR/AA consent is provided, the Design-builder shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Design-builder is responsible for Equal Employment Opportunity requirements of the Contract, including Affirmative Action, EEO workforce and On-The-Job Training. Failure by the Design-builder to meet the requirements of the Affirmative Action Program for Equal Employment Opportunity may result in payment being delayed or withheld as specified in [Section 105](#) pending corrective and appropriate measures by the Design-builder to the satisfaction of the Department.

The Design-builder is responsible for compliance with the Trainee program. Failure to meet this requirement may result in payment being delayed or withheld as specified in [Section 105](#), default as specified in [Section 108](#), disqualifying the Design-builder from future bidding as non-responsible, or termination of the Contract as specified in [Section 108](#).

The Design-builder and subcontractors are required to provide all information and reports as specified in [Section 107](#).

a. Disadvantaged Business Enterprise/Emerging Small Business Enterprise Goals for this Contract

This Contract includes a goal of awarding a percentage of the Total Contract Price to subcontractors, transaction expeditors, regular dealers, manufacturers and truckers qualifying as certified DBEs/ESBEs as specified in Federal Aid Project Attachment 1 – Disadvantaged Business Enterprise Utilization on Federal Aid Projects or Federal Aid Project Attachment 1 – Emerging Small Business Enterprise Utilization on Federal Aid Projects, of the Special Provisions.

To receive DBE credit toward meeting a contract goal in the context of the contract award process, a DBE firm must be certified before the due date for proposals or offers on the Contract, as stated in 49 CFR Part 26.81(c). There may be situations after the award of the Contract, however, in which it is appropriate to count DBE credit for the use of a DBE firm certified after the contract is executed. To be eligible to obtain DBE credit, a DBE firm must be certified before the subcontract on which it is working is executed.

A Design-builder is deemed to have satisfied the requirements of the DBE Program if the Design-builder meets the Contract DBE goal(s) or the approved DBE commitment utilizing the approved,

certified DBEs for the kind and type of work shown on the most recent approved Form LDB – Schedule of Disadvantaged Business Enterprise/Emerging Small Business Enterprise/Small Business Enterprise Participation form, or demonstrates an adequate GFE. DCR/AA will determine whether or not the Design-builder met the Contract DBE goal or demonstrated adequate GFE. Failure to meet the Contract DBE goal(s) or the approved DBE commitment, without demonstrating an adequate GFE, is considered a material breach of the Contract.

The Contract DBE goal(s) may be changed by the Department based on changes in the Work that increase or decrease work assigned to approved DBEs, or to create potential DBE subcontracting opportunities regarding the Contract. The Department’s DCR/AA will evaluate these changes in the Work in the same manner that the original Contract DBE goal(s) or the approved DBE commitment was established. When the Contract DBE goal(s) or the approved DBE commitment is increased or decreased due to changes in firms, type of work, work items or subcontract value, and for each Field / Change Order that increases or decreases the Contract’s dollar value, submit to DCR/AA to determine if and how these changes will apply to the Contract DBE Plan/Program:

- (i) a completed and signed Form Form LDB – Schedule of DBE/ESBE/SBE Participation listing each DBE firm being used to meet the Contract goal, including Proposers if they are certified DBEs. Revisions to the Form LDB will not be accepted after its initial submission and before award of the contract.
- (ii) a completed and signed Form LSI Letter of Subcontract Intent for each named firm listed on the Form LDB to demonstrate direct written confirmation from each DBE firm of willingness to participate on the Contract, confirming the kind and amount of work that was provided on the Contractor’s Form LDB, and, if applicable,
- (iii) a completed and signed DBE/ESBE/SBE Regular Dealer/Supplier Verification (Form CR-272) for all Regular Dealers/Suppliers listed on the Form LDB form, and, if applicable,
- (iv) a completed and signed DBE/ESBE/SBE Trucking Verification (Form CR-274) and supporting documentation for all DBE trucking firms listed on the Form LDB.
- (v) a written explanation of each revision, and why

In such circumstances, do not complete any portion of the LSI, CR-272, or CR-274 forms, and the Design-builder shall meet the Modified DBE goal(s) or demonstrate an adequate GFE.

If the Design-builder fails to meet the Contract DBE goal(s), without demonstrating an adequate GFE as determined by DCRAA, the Department will make a payment reduction from the total amount of payments made to the Design-builder equal to the value of the DBE goal not attained as follows:

$$\text{Value of DBE Goal Payment Reduction} = (\text{CG} - \text{AG}) \times \text{CP}$$

Where:

CG = Contract DBE Goal percentage, or approved DBE commitment, or if modified by the Department, the Modified DBE Contract Goal percentage.

AG = Attained DBE Goal percentage = (total dollar amount paid to DBE suppliers and DBE subcontractors divided by CP) plus the percent value attributed to the Design-builder’s GFE approved by the Department.

CP = Total Adjusted Contract Price less the payment adjustments for changes not associated with actual work including but not limited to incentives/disincentives, bonuses/penalties, acceleration, and portions of settlements not associated with work.

If the Contractor fails to meet the Contract DBE goal(s) and DCR/AA deems the Contractor’s GFEs insufficient, the Department will provide the Contractor with an opportunity for an in-person meeting or written review of information and documentation provided with its Final DBE Report (Form CR 268). The Contractor will be required to make its case based on information it provided with Form CR 268. No new DBE evidence (e.g. revised CR 268 or introduction of new information/documentation) will be considered. The Contractor may make a request for an in-person meeting or written review in writing to the New Jersey Department of Transportation, Director, Division of Procurement, PO Box 605, Trenton, New Jersey, 08625-0605. The Contractor must specify one of the following in their request:

- (i) Written Review by the Department. If the Contractor seeks written review by the Department, it must submit written documented evidence or argument proving the Contractor submitted adequate good faith efforts; and include a narrative on what information DCR/AA failed to consider and/or where the regulations/rules were misapplied.
- (ii) In-Person Meeting. If the Contractor seeks an in-person meeting by the Department, it must submit a written request for a meeting along with written documented evidence or argument proving the Contractor submitted adequate good faith efforts; and include a narrative on what information DCR/AA failed to consider and/or where the regulations/rules were misapplied. The in-person meeting will be scheduled by the Department as soon as time permits.

b. Trainees

This Contract includes a trainee goal which is part of the Design-builder's equal employment opportunity affirmative action program, on-the-job training aimed at developing full journey people in the type of craft or job classification involved on the project as specified in Section H of Federal Aid Project Attachment 2 – Specific Equal Employment Opportunity Responsibilities on NJDOT Federal Aid Projects, of the Special Provisions.

2. Wholly State Funded Contracts. [Reserved]

3. Civil Rights Monitoring and Reporting. After award, the Design-builder's Civil Rights Compliance Manager will submit quarterly updates to the Open-Ended Performance Plan which shall include documentation of DBE/ESBE/SBE participation to date, as well as any and all efforts taken in solicitation for DBE/ESBE/SBE participation, including but not limited to, the information provided in Form LDB Table 1, LDB Table 2, and Form SDP.

Where the Department determines that the Design-builder is not in compliance with the requirements of the contract and the Design-builder refuses to comply with such requirements, or if the Design-builder is found to have willfully and intentionally failed to comply with the DBE/ESBE/SBE participation goal(s), the Department will make a payment reduction to the Design-builder. Such payment reduction for failure to meet the DBE/ESBE/SBE requirements shall be calculated as an amount equaling the difference between the amount committed to the DBE/ESBE/SBE in LDB Tables 1 & 2 by the Design-builder in their proposal and the amount actually paid to the DBE/ESBE/SBE for work performed and materials supplied under the Contract, not including any amount for work committed to a DBE/ESBE/SBE that was deleted by the Department or work which a DBE/ESBE/SBE declined or failed to reasonable perform.

105.02.06 Access to Department Facilities

Provide the Department with access to Department facilities. Ensure that the Design-builder's equipment or materials do not impede access to Department facilities, including but not limited to electrical controllers and cabinets; ITS and communication devices, controllers and cabinets; and mechanical controls for pump stations and bridges.

105.03 CONFORMITY WITH CONTRACT

The Contract is comprised of complementary documents that together describe the requirements of the Project. Requirements occurring in one are as binding as though occurring in all. Keep one set of Plans, Special Provisions, addenda, Change of Plan, Right-of-Way Plans, Standard Specifications, and Standard Details within the Project Limits at all times.

In the event the Design-builder discovers a discrepancy, error, omission, or ambiguity in the Contract, or if the Contractor has any doubt or question as to the intent or meaning of the Contract, the Design-builder must immediately notify the Department's Project Manager as specified in [104.03.04](#). Do not take advantage of a discrepancy, error, omission, or ambiguity in the Contract. The Department will promptly make, in writing, interpretations or corrections if necessary. The Contractor is not relieved of the obligation to complete work because of a discrepancy, error, omission, or ambiguity. Do not make changes to the Work/Release for Construction documents without written direction from the Department.

Except where the Contract explicitly establishes a performance standard to the contrary, the work must adhere to the highest quality of prevailing industry standards. The Department may reject work that does not reasonably conform to prevailing industry standards.

If the Department's Project Manager determines that work is not in conformance with the Contract or Department's Project Manager direction, remove and replace the work. The Design-builder may request Department's Project Manager approval to perform corrective action rather than remove and replace nonconforming work. Submit a plan detailing a proposed method of performing corrective action to the Department's Project Manager for approval. Approval of a corrective action plan does not relieve the Contractor from providing work that is in conformance with the Contract.

The Department will not make payment or modify Contract Time to correct or replace nonconforming work. The Department will not make payment for increases in work resulting from the Contractor's failure to construct the work to the locations, dimensions and tolerances noted in the Contract.

If the Department's Project Manager identifies work that, while not in full conformance with the Contract, is reasonably acceptable, the Department's Project Manager will determine if the work may remain in place. The Department's Project Manager and the Contractor will negotiate an appropriate reduction in the Contract price. The reduction may be for a value greater than the value of the work as determined from proposal prices. If the Department loses Federal funding for the nonconforming work, on the basis of permitting nonconforming work to remain, the Department will not pay for the work permitted to remain in place. If an appropriate modification cannot be negotiated, remove and replace or otherwise correct the work. Processing an Estimate or making payment, as specified in [109.05](#), does not imply or establish that the work is in conformance with the Contract.

105.04 PLANS AND SPECIFICATIONS

Perform work in conformity with the lines, grades, cross sections, dimensions, material requirements, and to the tolerances specified in the Contract. Whenever a slope is indicated in the Specifications, it is given in horizontal to vertical dimensions. The horizontal is indicated with an "H" and the vertical is indicated with a "V". In case of discrepancy, calculated dimensions will govern over scaled dimensions. ROW Plans will govern over Plans when setting monuments. Release for Construction documents will govern over Standard Details. See RFP Part 1 Agreement/Contract for additional information.

Where the Design-builder's Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Department has accepted the proposed change to the Work and products to that of a higher quality, the Design-builder's Proposal will take precedence for that specific higher quality Work and products, as applicable. Additionally, Alternative Technical Concepts (ATC), where the Design-builder's Proposal includes an approved Alternative Technical Concept, the Design-builder's Proposal (including the approved Alternative Technical Concept) will take precedence for that specific Work that is the subject of the approved Alternative Technical Concept.

105.05 WORKING DRAWINGS

When working drawings are specified, submit methods of construction, material designations, design calculations, catalogue cuts, illustrations, schedules, performance charts, brochures, and other information necessary to construct the work as specified in the Contract. Do not submit working drawings that are repetitious or duplicative of Items specified or detailed within the Contract or that change the Contract. Changes to the Contract must be submitted to the Department's Project Manager for approval and implemented by change order.

Ensure that working drawing submissions also conform to the Department design manuals and other Department standards for the proposed work.

Submit working drawings on 22 × 36 inch sheet format. The Department may approve the use of 8 1/2 x 11 inch sheet format on a case by case basis. Submit design calculations required for the working drawings on 8 1/2 × 11 inch sheet format. Submit working drawings for review along with the transmittal letter in accordance with the Request for Proposals, Part 3, Section 3.5. For railroad-carrying structures, ensure coordination with the railroad and the Department's Project Manager prior to submission to the Department. All railroad, utility, and third-party requirements shall be resolved by the Design-builder prior to submitting working drawings to the Department. Ensure coordination with each outside testing agency or authority involved in the Project.

For 22 × 36 inch format, locate the title block in the lower right-hand corner of each sheet. For 8 1/2 × 11 inch format, provide a cover sheet with the title block. Do not include the title block on subsequent 8 1/2 × 11 inch format. Include in the title block the following minimum information:

1. Route and Section or Contract number.
2. Name of bridge/structure (on structural drawings only).
3. Municipality and County.
4. Contractor’s name.
5. Fabricator’s name (if applicable).
6. Data Processing Number and Federal Project Number (if applicable).
7. Title of drawing.
8. Sheet number.

For 22 × 36 inch format, include a revision block located to the left and adjacent to the title block and a block for a Professional Engineer’s seal on each sheet. For 8 1/2 × 11 inch format, include a revision block and a block for a Professional Engineer’s seal on the cover sheet. Do not include the revision block and the block for a Professional Engineer’s seal on subsequent 8 1/2 × 11 inch sheets.

For 22 × 36 inch format, include the structure number shown on the Plans for each structure in the upper right-hand corner of each sheet. For 8 1/2 × 11 inch format, include the structure number shown on the Plans for each structure on the cover sheet.

Review, sign, and submit working drawings in an orderly sequence so as not to delay the Work, or the work performed by Others. The Design-builder shall consider the time required for fabrication and procurement when determining his working drawing submission schedule. By submitting working drawings for consultation and written comment, the Design-builder certifies that it has verified all field measurements and that all dimensions shown conform to the Contract. The Design-builder further certifies that catalog numbers, field construction criteria, materials, and other criteria have been coordinated with the requirements of the Contract and the Work for each submitted working drawing. Working drawing notes regarding materials do not satisfy the requirements for materials approval as specified in [106.04](#). The acceptance of working drawings does not constitute an approval of any materials noted.

The Department’s acceptance of working drawings signifies only that the drawings are in general conformance with the Contract. Acceptance of a working drawing does not constitute approval of a change in the Contract and does not relieve the Design-builder from the requirements of the Contract and the Work. The Department’s acceptance of working drawings does not relieve the Design-builder from responsibility for errors and omissions in the working drawings and their correction.

Submit working drawings for acceptance as specified in [Table 105.05-1](#). This list is not all inclusive. Ensure that the working drawings submitted are signed and sealed by a Professional Engineer licensed to practice in the State of New Jersey as noted in Table 105.05-1. The working drawings noted as not requiring a PE stamp are not required to be signed and sealed by a Professional Engineer unless they alter the original Contract.

Table 105.05-1 – Working Drawing Submission Category

Certified (PE Stamp Not Required)	Approved (PE Stamp Required)
Breakaway I-Beam GA Sign Support Posts	Catalog Cuts (related to landscape Items)
Bridge Drainage	Change in Structural Steel Details
Bridge Railing and Fencing Anchorage System	Change of Prestressed Concrete Strand Patterns
Catalog Cuts	Demolition Plans
Composite Piles	Erection Plans
DMS Sign Support Structure	High Load Multi-Rotational (HLMR) Bearings
DMS Standard Ground Mounted	Isolation Bearings
Elastomeric Bearings Pads	ITS System Drawings, including Block Diagrams
Electrical Items Not Pre-Qualified	Machinery and Electrical Items for Movable Bridges
Expansion Joint Assemblies (except Modular Expansion Joint Assemblies)	Mechanically Stabilized Earth (MSE) Walls

Precast Prestressed Concrete Beams and Piles Fabrication
Reinforced Elastomeric Bearings
Sign Legends
Sign Support Structures
Structural Steel Fabrication

Modular Expansion Joint Assemblies
Other work shown on the Plans as conceptual
Precast Concrete Arch Structures
Precast Concrete Box Culverts
Prefabricated Modular Walls
Stay-In-Place Forms
Temporary Sheeting and Cofferdams
Temporary Shielding
Temporary Structures
Temporary Bridge Load Rating
Stage Construction Permanent Bridge Load Rating
Complete Permanent Bridge Load Rating
Temporary Bridge NBIS Inspection Report
Permanent Bridge Stage Construction NBIS Inspection Report
Value Engineering Plans
Foundation Construction Items, including but not limited to:
Pile Tip Elevations, Pile Load Tests, Drilled Shaft Testing,
Wave Equation Analysis (WEAP), PDA Reports, Analysis,
Shoes, Hammers, etc.

Submit working drawings in accordance with the Request for Proposals, Part 3, Section 3.5. The Department's acceptance of working drawings does not relieve the Design-Builder of the responsibility to satisfactorily complete the Work in accordance with the Contract requirements.

Unless otherwise stated in the Contract documents, no portion of the Work requiring working drawings shall be commenced until the submission has been approved by the Design-Builder's Designer of Record and accepted by the Design Quality Assurance Engineer.

Department review of working drawings will begin only after the submission of a complete set of information required to complete a discrete item of work.

Addendums to working drawings will not be accepted for review. When a change is necessary, the entire working drawing package shall be resubmitted.

When unsatisfactory test results are received for a constructed item or an item to be constructed and this triggers additional working drawing submissions and/or review periods, this shall not be considered as a cause for a delay claim for additional schedule time or compensation.

Do not deviate from the approved, certified, or conditionally certified working drawings without obtaining prior written approval from the Department.

105.06 COOPERATION WITH OTHERS

At any time during the Contract, the Department has the right to procure, permit, and have work performed by Others on or near the Project. The Department will provide available information for work to be performed by Others.

Conduct Work so as not to interfere with or hinder the progress of the work being performed by Others. The Design-builder assumes the positive obligation of cooperating with and coordinating its activities with the work done by Others. If there is a difference of opinion regarding the rights of the Design-builder and Others doing work, the Department's Project Manager will decide the rights of the various parties involved.

105.07 COOPERATION WITH UTILITIES

105.07.01 Working in the Vicinity of Utilities

A. Initial Notice. For the Utilities within the project limits, at least 10 days before beginning construction operations, submit notice to each Utility, with a copy to the Department's Project Manager, that includes the following:

<Contract Title>
<Numerical Identifier>

1. Name and location of the Project.
2. Name and contact information of the Design-builder and superintendent.
3. Portion of the approved preliminary schedule or baseline schedule that affects the Utility.

If the Work requires or causes the Design-builder to enter railroad ROW, obtain the regulations from the railroad, including fouling parameters, before beginning construction operations.

B. Locating Existing Facilities. Before performing construction operations, obtain the location of utilities and Department electrical and ITS facilities as follows:

1. Notify the State's One Call System (811) to obtain the location of public utilities. The locations of gravity sewer mains are not identified by the State's One Call System, the Design-builder is responsible for locating gravity sewer mains.
2. For the Department's fiber optic network, obtain and complete the fiber optic markout request form according to Special Provisions. Submit a fiber optic markout request form to the Traffic Operations location specified in the Special Provisions for the markout. Traffic Operations will complete the markout within 15 days of the receipt. Provide the Department's Project Manager a copy of the markout and maintain the markout until construction operations in the vicinity of the Department's fiber optic network are completed.
3. For the Department's electrical facilities and other ITS facilities, obtain the as-built information as specified in [102.04](#) and contact the Department as specified in the Special Provisions.

At least 15 days before excavating test pits, as specified in [202.03.02](#), to determine utility locations, contact each affected Utility.

C. Protection of Utilities. If required by the Utility, provide the required advance notice before beginning the work within the vicinity of the utility. If utilities need to be supported or protected, submit a plan to the Utility for approval that includes the method of support or protection to provide for uninterrupted service. At least 20 days before beginning the work, provide a copy of the plan and the Utility's approval to the Department's Project Manager. Protect and support utilities according to the approved plan.

Protect and support existing Department electrical and ITS facilities and ensure that there is no interruption of service. Use hand tools only while working within two feet of the fiber optic network. At least 30 days before beginning the work, submit a plan to the Department's Project Manager for approval showing the method of support and protection. When access to Traffic Operation Centers, communication hubs, ITS cabinets or any other ITS facilities is required to perform work, submit a request for access to ITS facilities. Ensure that the request for access is made at least 5 working days before any work is scheduled, using the online form as specified in the Special Provisions.

When high voltage lines are within the Project Limits, comply with N.J.S.A. 34:6-47.1 to N.J.S.A. 34:6-47.9, 29 CFR 1926.550, and N.J.A.C. 16:25. Obtain written approval from the Department of Labor, Office of Safety Compliance, and the respective Utilities for construction operations that do not provide the minimum clearances under these regulations.

Access within railroad ROW is restricted. Before beginning work within the railroad ROW or on railroad facilities, obtain the railroad's written approval for access, the method of construction, and the schedule of the work. Provide a copy of the submittal and approval to the Department's Project Manager. Comply with the railroad's requirements for working within the railroad ROW.

Complete a Request for Right of Entry onto railroad property in compliance with the requirements of the specific railroad.

If the Design-builder wants to use crossings other than those indicated in the Contract, obtain written approval from the railroad. At least 14 days before beginning the work, provide the Department's Project Manager with a copy of the approval.

When working in proximity of the railroad, do not interfere with the continuity of railroad operations. The Department will provide the estimated railroad train schedules in the Special Provisions. Ensure that construction operations do not affect the tracks appurtenances, and other property of the railroad. Ensure that the work is performed following the railroad's access and safety restrictions.

Do not store or operate equipment or material within the fouling distance of railroad facilities without written approval from the railroad. Provide the Department's Project Manager a copy of the approval at least 7 days before beginning the work.

- D. Access.** Provide Utilities or their agents access to their facilities at all times, including the opportunity to monitor the work.
- E. Damage.** If the Design-builder damages a utility, including service connections, immediately notify the affected Utility and the Department's Project Manager.

105.07.02 Work Performed by Utilities

The Design-builder is responsible for coordinating work performed by Utilities, and is responsible for delays and costs resulting from failure to coordinate. Provide a written request to each Utility in the time specified for the advance notice requirements specified in the Special Provisions. Include the following:

1. Name and location of the Project.
2. Name and contact information of the Design-builder and superintendent.
3. Portion of the approved preliminary schedule or baseline schedule that affects the Utility.

Provide a copy of the notice and response to the Department's Project Manager.

Where Utilities jointly use poles or duct banks, the Utilities will perform the work sequentially.

Ensure that the work site is in a condition that allows the Utility to perform its work at the scheduled time. If the Design-builder fails to provide the work site at the scheduled time, the Design-builder is responsible for the resulting delays and costs to the Project. If the Design-builder causes the Utility to incur additional costs, or delays the Utility without prior written approval of the Department's Project Manager, the Design-builder is responsible for these costs and delays. The Department has the right to recover the cost of damages from the Design-builder.

Immediately notify the Department's Project Manager of failure by the Utility to respond or complete its work as specified in the Contract.

105.08 ENVIRONMENTAL PROTECTION

Perform the Work in compliance with environmental requirements of the Contract and the terms and conditions of permits, grants, licenses, authorizations, certifications, and other approvals procured for the Work. Maintain a copy of Department-obtained permits, grants, licenses, authorizations, certifications, and other approvals within the Project Limits. Keep a copy of Design-builder-obtained permits, grants, licenses, authorizations, certifications, and other approvals for the Work within the Project Limits.

Obtain all permits, grants, licenses, authorizations, and other approvals, for off-site disposal, storage, and borrow locations. These may include but are not limited to wetlands, floodplains, regulated waste, threatened and endangered species, and historic properties (archeological sites, historic buildings, and historic districts). Conduct the studies required to obtain the necessary environmental clearances, permits, grants, licenses, authorizations, and other approvals for off-site disposal, storage, and borrow locations. Provide the Department's Project Manager a copy of all of the permits, grants, licenses, authorizations, and other approvals.

The Department's authority to certify SESC plans does not include off-Project borrow pits, disposal sites, or storage areas that the Design-builder uses or establishes to accomplish the Work of the Project. If the land disturbance for off-Project work is 555 square yards or greater, provide the Department's Project Manager with a copy of the SESC plan certified by the soil conservation district according to N.J.S.A. 4:24-39, *et seq.*

Do not use treated timber products in shellfish areas and other environmentally sensitive areas such as, but not limited to, essential fish habitat, endangered or threatened species habitat, category one waters, trout-associated waters, and wetlands. Use non-polluting materials such as fiberglass composites in these areas. Before using treated timber products in areas other than those specified in the Contract, obtain the Department's approval.

Take the necessary precautions to prevent pollution, caused by construction operations, of land, air, waterbodies, wetlands, and groundwater within and beyond Project Limits. Employ methods and controls to minimize noise caused

by construction operations. Before beginning construction operations, ensure that SESC methods are in place and functioning as specified in [158.03.02](#). Also, comply with the following:

1. **Historical and Archeological Sites.** Ensure that locations eligible for or listed on the State or National Registers of Historic Places are not used for disposing, storing, or obtaining borrow excavation. For information about historical places, consult the New Jersey Department of Environmental Protection Historic Preservation Office website at www.state.nj.us/dep/hpo/1identify/nrsr.htm.

When prehistoric or historic artifacts or remains are encountered, immediately cease construction operations in that area and notify the Department's Project Manager. Do not resume construction operations until the Department provides direction.

2. **Forests.** When performing work within or adjacent to State or National Forests or Parks, comply with the regulations of the State Fire Warden, State Division of Parks and Forestry, or other authority having jurisdiction.

Take reasonable precautions to prevent forest fires caused by construction operations and also other precautions requested by Forestry officials. If a wild fire occurs, immediately notify a Forestry official and the Department's Project Manager of the location and extent of the fire.

3. **Navigable Waters.** If work is required over, on, or adjacent to navigable waters, do not interfere with the free navigation of the waterways, and ensure that the existing navigable depths are not reduced, except as allowed by permits issued for the Project. Before beginning work in or over a navigable waterway for which a Coast Guard permit has been issued, notify the Coast Guard and other agencies specified by permit condition.

4. **Hazardous Material.** If evidence of hazardous material not specified in the Contract is discovered, immediately cease construction operations and notify the Department's Project Manager. Do not resume construction operations in that area until the Department provides direction.

105.09 LOAD RESTRICTIONS

Do not haul equipment or loads whose weight may damage structures, roadways, or construction. The Department's Project Manager may limit hauling of materials over the pavement structure. When hauling outside of the Project Limits, do not exceed legal load limits unless a permit is obtained from the New Jersey Motor Vehicle Commission.

If the Design-builder is provided a certified weigh ticket by the material supplier, submit a copy of the certified weigh ticket to the Department's Project Manager.

If a certified weigh ticket is not provided by the material supplier, and when the Design-builder will haul more than 5,000 cubic yards of material for that Item to or from the Project Limits, submit to the Department's Project Manager a list of the trucks to be used for the operation. Include the certified tare weight of the truck, license plate number, and the motor vehicle classification. At least 5 days before starting hauling, provide the Department's Project Manager notice when hauling will begin. Provide to the Department's Project Manager a certified weigh ticket indicating the gross weight for the first load for each truck.

If the Department's Project Manager finds that trucks are in violation of the legal weight limits under N.J.S.A. 39:3-84, the Department's Project Manager has the right to reject that load of material. The Department's Project Manager has the right to suspend the Work for repeated violations until the condition is corrected.

105.10 USE OF EXPLOSIVES

When using explosives, conform to N.J.S.A. 21:1A-128, *et seq.* and N.J.A.C. 12:190. When storing explosives within the Project Limits, store safely under lock and key at a location approved by the Department's Project Manager. Clearly mark the storage places as DANGEROUS EXPLOSIVES. Ensure that the storing and handling of explosives and highly inflammable materials conform to the regulations of the New Jersey Department of Labor and Workforce Development Safety Compliance Unit and local regulations.

Submit a blasting plan as specified in [202.03.03.A.3.a](#). Attend a pre-blasting meeting scheduled by the Department's Project Manager with the New Jersey Department of Labor and Workforce Development Safety Compliance Unit. Do not blast before the pre-blasting meeting and obtaining Department's Project Manager approval.

When using explosives for the prosecution of the Work, exercise the utmost care not to endanger life or property, including work completed under the Contract.

105.11 CONSTRUCTION LAYOUT

Perform a site investigation within the Project Limits to locate existing ROW markers, property markers, survey control markers, and monuments. Before beginning construction operations, protect ROW markers, property markers, survey control markers, and monuments from disturbance and destruction. Notify the Department's Project Manager of the location of property markers and monuments that are in danger of being removed or disturbed and tie to fixed points or locate from established contract control. Do not remove or disturb existing ROW markers, property markers, survey control markers, and monuments until obtaining Department's Project Manager approval. Record and provide a report of the findings of the site investigation to the Department's Project Manager.

Before removing a monument that is not owned by the Department, notify the agency to which the monument belongs of the need to remove the monument. Provide the Department's Project Manager with copies of correspondence with the agency, as well as the agency's written requirements or guidelines for setting monuments.

If a monument or marker is disturbed or removed without Department's Project Manager approval, the Contractor is responsible for reimbursing the Department for the cost to replace the monument.

Perform layout for the construction of the Contract using the control points and data shown on the Plans. Perform layout under the direct supervision of a licensed land surveyor. Preserve control points throughout the duration of the Project. Reset control points that are damaged, lost, displaced, or removed.

Before beginning construction operations, verify the vertical and horizontal controls provided in the Plans using, at a minimum, third-order, Class I accuracy procedural standards and equipment. Notify the Department's Project Manager in writing of discrepancies or errors and obtain resolution before proceeding with the work. Upon request, provide the Department's Project Manager with survey notes and calculations related to the field control verification.

Before beginning construction operations, establish lines for ROW, easement, and other restrictions, such as boundaries for environmentally sensitive areas to define the limits of construction and temporary operations. Establish limits of tree protection and other vegetation to be preserved. Do not encroach on private property, except as allowed by easements. Document existing site conditions, including vegetation, in areas to be used for excavation, temporary construction, storage, parking, movement of equipment, field office, etc. which will have to be later restored to pre-existing conditions. Provide documentation, including photographs, to the Department's Project Manager.

Provide the Utilities with the layout needed to install relocated utility facilities and coordinate the Work. Ensure that relocated facilities do not conflict with proposed construction, including High Voltage Proximity Act conflicts.

Establish the exact location of the Work from the control points. Reference the Work to baselines that are established from the control points. Maintain baselines until Completion.

Provide and maintain offset baseline stakes for roadways, ramps, jughandles, and turnarounds outside the limits of grading and construction. Set offset stakes at a maximum interval spacing of 50 feet. Where baselines have a radius of less than 475 feet, provide offset stakes at a maximum interval spacing of 25 feet. Identify and mark each stake to show the offset distance from the baseline and provide grade sheets to the Department's Project Manager showing the cut or fill to the finished profile lines with reference to the offset stakes. Provide grade sheets for construction of subbase that include calculations to establish the typical cross section from the profile grade stake. Provide adequate and accurate offset lines during construction that requires occupation of the baseline points by construction operations. Provide the Department's Project Manager with assistance as requested for verification of lines, grades, boundaries, dimensions, and elevations.

Construct the Work to the dimensions and tolerances noted within the Contract. Except where otherwise noted, construct subbase, base courses, pavements, and structures to within 1/4 inch of the elevations, stations and offsets noted in the Contract. If work does not conform to the tolerances allowed, the Department may consider the work to not be in conformance with the work as specified in 105.03.

For each bridge and sign structure within the Project Limits, provide the Department's Project Manager as-built measurements of the minimum vertical underclearance at each lane line, shoulder line, curb line, and edge of pavement line under a structure to the nearest hundredth of a foot. For each bridge structure, provide vertical underclearance measurements at each fascia beam and the portions of the structure that govern the minimum vertical underclearance. Provide minimum vertical underclearance measurements prior to the completion of each stage of construction. Notify the Department's Project Manager in writing of any discrepancies, errors, or deviations from plan dimensions and clearances prior to opening any bridge or structure or any portion thereof to traffic.

Upon request, provide the Department's Project Manager with survey notes and calculations related to the alignment and horizontal and vertical control, and field notes to document the ROW, including easements and monument locations. Maintain survey notes in a bound field notebook in a professional manner.

The Department will not make payment for survey, stakeout, and layout. The cost is to be distributed across the various items of work and to be included in extra work as may be added to the Contract.

If the Department discovers survey errors, including errors that should have been detected during verification of controls provided in the plans, the Department will deduct the costs of checking and correcting these errors from any money due to the Contractor.

105.12 CONSULTATION AND WRITTEN COMMENT

Except for items specifically designated for "approval" in the Contract Documents, the Design-builder shall be responsible for determining how to address written comments and other input received from the Department during the consultation process concerning reviews, observations and/or inspections regarding Design Documents, Working Plans, other required submittals and construction means and methods. While the Design-builder is not required to revise its Work in response to such comments, the Design-builder shall develop designs that are code compliant and conform to all Project requirements as set forth in the Contract Documents and provide a timely written response to the Department's Project Manager, or person designated by the Department's Project Manager, regarding its disposition of all such comments. Any issues raised during consultation and written comment by the Department, if not properly addressed by the Design-builder, could affect the Department's Final Acceptance of the Project.

SECTION 106 – CONTROL OF MATERIAL AND EQUIPMENT

106.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

Ensure that materials furnished for the Project are new, unless otherwise specified in the Contract. Comply with 2 CFR 200.323 – Procurement of recovered materials, ensuring that materials furnished for the Project contain, "the highest percentage of recovered materials practicable," where the purchase price of the covered item listed exceeds \$10,000. Use materials that conform to the requirements of the Contract. When required by the Contract, use only products and suppliers listed on the QPL. Use sources of materials that have been approved by the Department on a Materials Questionnaire as specified in [106.04](#).

Within 12 hours of receiving a shipment of material, notify the Department's Project Manager of the type, size, quantity, and location of the material. Within 2 days of the receipt of material, provide the Department's Project Manager with the delivery ticket indicating the Project, Contractor, material supplier, date shipped, material description, quantity, Item, and Item number.

Do not change the source, brand, or type of material from that which has been approved for use, without the consent of the Department as specified in [106.04](#).

For telecommunication and video surveillance services or equipment a certification is required to confirm that the telecommunication and video surveillance services or equipment are not from companies as listed in 2 CFR 200.216. Ensure that the certification includes the statement that all telecommunication and video surveillance services or equipment proposed in this project are not produced by companies as listed in 2 CFR 200.216.

106.02 DEPARTMENT-FURNISHED MATERIAL

If the Department furnishes materials, the Department will deliver or make the materials available at the points specified in the Special Provisions. After the Contractor picks up or takes possession of Department-furnished material, submit written notice to the Department certifying that the material was received, inspected, and accepted by the Contractor. After the notice is submitted, the Contractor is responsible for the material. The Department has the right to recover costs from the Contractor for losses, deficiencies, or damage to materials that occur after receipt by the Contractor. The Department may require the Contractor to replace, at no cost to the Department, the lost, deficient, or damaged material with material that is acceptable to the Department.

106.03 FOREIGN MATERIALS AND EQUIPMENT

Comply with the appropriate statutes and regulations concerning the use of foreign materials as follows:

1. **Wholly State Funded Projects.** Comply with N.J.S.A. 52:32-1 and N.J.S.A. 52:33-1, *et seq.*, which prohibits the use by the Contractor or subcontractors of farm products or materials produced or manufactured outside of the United States on public work. The Department may allow exceptions if its enforcement would be inconsistent with the public interest, where the cost of enforcing the prohibition would be unreasonable, or where the material in question is not of a class or kind mined, produced, or manufactured in the United States.
2. **Federal Aid Projects.** Comply with the Federal statutes and regulations that establish the “Buy America” requirements applicable to the Project. These Federal requirements, which are contained in 23 CFR 635.409 and 23 CFR 635.410, mandate among other things that manufacturing processes for iron and steel materials and all iron and steel coatings must be performed in the United States.

Comply with the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”), Pub. L. No. 117-58, §§ 70901-52 and implementing regulations. Comply with IIJA’s three categories: iron and steel, manufactured products, and construction materials:

- a. Ensure all iron and steel used in the project are produced in the United States. Iron and steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. Ensure all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. Ensure all manufactured products are exempted from the Buy America requirements pursuant to 48 FR 50399 (1983) which excludes manufactured products from 23 CFR 635.410. Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape; or combined with other articles, materials or supplies to create a product with different properties than the individual articles, materials, or supplies.
- c. Ensure all construction materials are manufactured in and manufacturing processes occurred in the United States. Construction materials includes an article, material, or supply - other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is or consists primarily of non-ferrous metals, plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall. Items that consist of two or more of the listed materials that have been combined through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

For steel and iron products incorporated into the Project, provide the Department’s Project Manager a certification from the manufacturer stating the country where the steel or iron product was melted and manufactured including application of coatings which protect or enhance the value of the material. Ensure that 4 copies of the manufacturer’s certification are provided with each delivery of steel and iron products. Retain 1 copy and submit 3 copies to the Department’s Project Manager. Ensure that the certification includes, materials description, quantity of material represented by the certification, country of manufacture, and notarized signature of a person having legal authority to

bind the supplier. If a Certification of Compliance as specified in [106.07](#) contains a statement regarding the country of manufacture, a separate certification is not necessary.

If the use of foreign materials is allowed, the Department may require the Design-builder to deliver the material to a Department-approved site for sampling, inspection, and testing. Do not use or incorporate the foreign material into the Work before the Department approves the material.

If the Department finds the Design-builder failed to comply with the Federal or State provisions regarding foreign materials, the Department will require the unapproved foreign material be removed and replaced with acceptable material at no additional cost to the Department.

Comply with 2 CFR 200.216 Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.

Do not provide Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Do not provide video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Do not provide Telecommunications or video surveillance services provided by such entities or using such equipment.

Do not provide Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Do not provide any equipment assembled by others that has an integral component that was manufactured and supplied by the aforementioned companies.

Build America, Buy America domestic preferences for iron and steel, manufactured products, and construction materials requirements are waived for projects where: 1. The total value of non-compliant products is no more than the lesser of \$1,000,000.00 or 5 percent of total applicable costs for the project. This does not apply to iron and steel subject to the requirements of 23 USC 313; or 2. The total amount of Federal financial assistance applied to the project is below \$500,000.00. Refer to the August 16, 2023 Federal Register for USDOT's issuance of a Waiver of Buy America Requirements for De Minimis Costs and Small Grants at the following link: [Federal Register: Waiver of Buy America Requirements for De Minimis Costs and Small Grants](#).

106.04 MATERIALS QUESTIONNAIRE

At least 30 days before shipment of a material, and at least 30 days before fabrication of structural steel, precast concrete, and prestressed concrete Items, notify the Department's Project Manager of the proposed source of materials using the Materials Questionnaire form provided by the Department. For soil aggregate and dense-graded aggregate (DGA) material, submit a copy of recently performed test results for washed gradation test, proctor test, and other tests, as specified in [901.11](#), for the source with the Materials Questionnaire. For ITS systems as specified in [Section 704](#), obtain approval of system working drawings including individual components and Electrical material instead of submitting a materials questionnaire.

The Department will approve the source of material based on conformance of the source or material with the requirements of the Contract. If the material is required by the Contract to be listed on the QPL, the Department will base approval on the QPL. A material is not approved for use solely because the product is on the QPL; the Contractor must submit the material for approval. Do not order, fabricate, or procure materials before obtaining material source approval by the Department.

Approval by the ME of a proposed source of aggregate materials does not constitute approval of materials delivered to the Project Limits from that source, but is permission to select and use materials from that source only so long as they conform to the Specifications. As the work progresses, ensure that materials selected from approved sources continue to conform to the Specifications.

The Department will not approve material from firms and individuals suspended or debarred by the Department, included in the *State of New Jersey Consolidated Debarment Report* as maintained by the Department of the Treasury,

Division of Building and Construction, Bureau of Contractor Prequalification, or in the Federal Government's General Services Administration document titled "List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List)."

106.05 MATERIALS INSPECTIONS, TESTS, AND SAMPLES

All materials being used are subject to inspection and testing at any time before Acceptance. For material that is to be fabricated, notify the Department's Project Manager, in writing, at least 21 days before the start of fabrication of the designated material to allow for inspection. For materials that are stored, locate the materials so that the Department may promptly and conveniently inspect them. The Department's test results are the official test results for acceptance or rejection of materials. The Department will base acceptance or rejection on acceptance testing results or Certifications of Compliance for the various materials as specified in the respective methods of test or in the Subsections applicable to that particular material or work. After inspection, store materials to ensure the preservation of their quality. The Department has the right to reinspect or retest materials regardless of previous approvals.

The Department may require additional samples to determine the quality and suitability of materials for their intended uses. The provisions in [Section 106](#) do not limit the rights of the Department to order special inspections or tests as specified in [105.01.02](#).

Submit to the Department's Project Manager a request for HMA plant and field inspection, concrete plant and field inspection, and in-place testing for soil aggregate by 1:00 p.m. of the day before the requested inspection, or by 1:00 p.m. of the previous Friday for inspections requested for a Monday. With the request, provide the Department's Project Manager with the locations, estimated quantities, and estimated start times for each type of material. If the start time for a material delivery is delayed by more than 2 hours, the Department has the right to cancel the request, and require the Contractor to submit a new request.

The Department will not pay for unapproved materials, and the Design-builder shall remove and replace unapproved materials at no cost to the Department.

When the Department performs testing on materials, the Department will bear the expense of the testing except as otherwise specified.

For aggregates that do not meet the requirements of the Contract for gradation or density or are not used in the Work, the Department has the right to charge the Design-builder for the cost of sampling and testing at Departmental rates. The Department will charge \$300.00 per failing sample tested for gradation and \$200.00 per failing lot or subplot tested for density.

106.06 PLANT INSPECTION

The ME has the right to inspect the materials at the source and has the right to inspect manufacturing plants periodically for compliance with specified manufacturing methods. The ME may obtain material samples for laboratory testing for compliance with materials quality requirements at the plant or may use plant inspection as the basis for the acceptability of manufactured materials.

In the event plant inspection is undertaken, meet the following conditions:

1. Ensure that the ME has the cooperation and assistance of the Design-builder and the producer.
2. Ensure that the ME has full access at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
3. If required for the use of the ME, provide office space located conveniently in or near the plant.
4. Ensure that adequate safety measures for the ME are provided and maintained.

The Department reserves the right to retest or reinspect materials that have been approved at the source of supply after they have been delivered and to reject materials which, when retested or reinspected, do not meet the requirements of the Contract.

106.07 CERTIFICATION OF COMPLIANCE

106.07.01 Certification of Compliance

Submit manufacturer's Certifications of Compliance stating that the materials and assemblies fully comply with the requirements of the Contract when required by the Contract or requested by the Department, except for materials and assemblies that are temporary and not incorporated into the final construction and are not iron or steel such as sheeting and bridge assemblies. The Department reserves the right to determine if a specific material or assembly meets this provision.

Ensure that manufacturer's Certification of Compliance contains the following information:

1. Project Name.
2. Name of the Design-builder.
3. Material description.
4. Quantity of material represented by the certification.
5. Means of identifying the consignment, such as label marking or seal number.
6. Date and method of shipment.
7. A statement that the material conforms to the Contract material requirements and that representative samples have been sampled and tested.
8. If the submission is for an assembly of materials, a statement that the assembly conforms to the Contract.
9. Signature of a person having legal authority to bind the supplier.
10. Typed or printed name of the person who signed the certification.

Before incorporating the materials into the Project, obtain 3 copies of the manufacturer's Certifications of Compliance for materials, components, and manufactured items that are accepted by certification. Retain 1 copy and submit 2 copies to the Department's Project Manager. With the Certification of Compliance, provide a DC-1811, Certificate of Compliance Cover Sheet, identifying the Item for which it is submitted. For products that contain steel or iron, attach additional documents as required by the certification procedures as specified in [106.07.02](#). The Design-builder may submit the Certifications of Compliance electronically to the Department's Project Manager in a scanned document. Include the DC-1811 and all backup documentation in the scanned document.

The Department has the right to sample and test materials or assemblies accepted on the basis of Certifications of Compliance at any time. The Department will reject materials or assemblies, whether in place or not, if found not to be in conformance with the Contract requirements.

The Department will not make payment for work which material is accepted on the basis of a Certification of Compliance until the Department's Project Manager has received the required Certification of Compliance, and has inspected and accepted the material or assembly.

106.07.02 Certification for Iron and Steel, and Construction Materials

- A. Precast Concrete Steel and Concrete Pipe Certification of Compliance.** For precast concrete and concrete pipe items, a Buy America Compliance Plan is required to confirm that the material meets the Buy America requirements and the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§ 70901-52 as specified in [106.03](#). The ME will periodically audit compliance with the program at the precast plant. If the precast concrete item is not inspected by ME, submit a Certification of Compliance for the precast concrete item as required in [106.07.01](#). When a Certification of Compliance is submitted, ensure that the Certification of Compliance contains a statement that the reinforcing steel used in the precast concrete item complies with the Buy America requirements and the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§ 70901-52 as specified in [106.03](#).
- B. Certification for Construction Materials.** For construction materials, a Buy America Compliance Plan is required to confirm that the material meets the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-

58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 as specified in [106.03](#). When a Certification of Compliance is submitted, ensure that the Certification of Compliance contains a statement that the construction materials used complies with the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 as specified in [106.03](#).

- C. Step Certification of Compliance.** For products that contain steel or iron components and are not covered in [106.07.02.A](#), step Certification of Compliance is required to confirm that the item meets the Buy America requirements and the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 as specified in [106.03](#). A step certification is a process under which each handler (e.g., supplier, fabricator, manufacturer, processor, coating facility) of the iron and steel components certifies that the steel and iron components were of domestic origin, and that their step in the process was domestically performed.

Every step in the process from melting to coating must be performed in the United States in order for the steel or iron component to be considered domestic and must be documented by step certification. If a domestic source for a steel or iron component cannot be found, submit a request for waiver to the Department. Do not purchase non-domestic steel or iron components without the express written consent of the Department.

Ensure that 3 copies of the Design-builder’s Certification of Compliance (Form DC-17) and the step Certifications of Compliance are provided for items containing steel or iron. Retain 1 copy and submit 2 copies to the Department’s Project Manager. The Contractor may submit the DC-17 and the step certifications electronically in a scanned document.

Ensure that step Certifications of Compliance contain the following information for each heat of material listed in the DC-17:

1. Name of the Company supplying the material.
2. Name and location of the Company the material was shipped to.
3. Material description.
4. Quantity of material represented by the Certification.
5. Means of identifying the consignment, such as label marking or seal number.
6. Date and method of shipment.
7. A statement that the material conforms to the Contract material requirements and to the Buy America requirements in [106.03](#) and the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52.
8. A statement that all steel or iron components in the material or assembly were “melted and manufactured in the US”, unless there is non-domestic steel or iron in the material or assembly.
9. If there is non-domestic steel or iron in the assembly, describe in detail the non-domestic steel or iron material and the quantity. Attach a copy of the Department’s approval for the use of non-domestic steel or iron components.
10. Signature of a person having legal authority to bind the supplier.
11. Typed or printed name of the person who signed the certification.

The Department will not make payment for work containing steel or iron materials until the Department’s Project Manager has received the required DC-17 and step Certifications of Compliance, has inspected and accepted the material or assembly.

106.08 UNACCEPTABLE MATERIAL

Materials, whether in place or not, that do not conform to the requirements of the Contract, are considered unacceptable. The Department will reject unacceptable materials. Immediately remove rejected materials, unless approved by the Department’s Project Manager as specified in [105.03](#). Do not use rejected material, for which the defects have been corrected, until approval has been given by the Department’s Project Manager.

106.09 SUBSTITUTES FOR PROPRIETARY ITEMS

If material or equipment is specified in the Contract by using the name of a proprietary item or the name of a particular supplier, the Design-builder may propose a substitute except when the Special Provisions state that no substitution is permitted. To request approval for using a substitute item of material or equipment, submit a written request to the Department's Project Manager including the following:

1. Certification that the proposed substitute performs the functions and achieves the results called for by the design, is similar and of equal substance to that specified, and is suited to the same use as that specified.
2. Details or catalogue cut sheets on the material properties of the substitute.
3. A statement that the evaluation and approval of the proposed substitute does not hinder the Design-builder's ability to complete the Contract as specified in [108.10](#).
4. A statement that the proposed substitute for use in the Work does not change or modify the Contract.
5. Difference between the proposed substitute from that specified.
6. Manufacturer's recommendations, maintenance requirements, and repair or replacement requirements for the substitute.

Submit additional information as requested by the Department to assist the Department's evaluation. The Department will evaluate the request and notify the Design-builder in writing of approval or rejection of the proposed substitute. The Department has the right to require the Design-builder to provide, at no cost to the Department, a special performance guarantee or other bond with respect to a substitute.

If, during the use of the substitute material or equipment, the Department's Project Manager determines that the work produced is not in conformance with the Contract, immediately discontinue the use of the substitute and complete the remaining work with the specified material or equipment. Remove the deficient work and replace it, or take corrective action as directed by the Department's Project Manager. The Department will not make payment or modify Contract Time to remove and replace work resulting from an authorized substitution.

106.10 USE OF UNITED STATES FLAG VESSELS

For Federal Aid Projects, comply with the Cargo Preference Act of 1954 as amended and the requirements of 46 CFR 381. Use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liner and tankers) whenever shipping any equipment, material or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels, and ensure that within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, submit a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Department's Project Manager and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 in accordance with 46 CFR 381.7(a)-(b)

106.11 MONTHLY CERTIFICATE

The Design-builder shall submit monthly a certificate signed by the Design Quality Control Engineer and the Construction Quality Control Engineer certifying the following for the previous month:

1. That all Work, including that of the Designer and all other designers, Subcontractors at all tiers, and vendors has been checked and/or inspected by the Design-builder's QC staff, that all documentation regarding this QC effort is in place, and that all Work, except as specifically noted in the certification, conforms to the requirements of the Contract; and
2. That the Quality Control Plan and all measures and procedures provided therein are functioning properly and are being followed, except as specifically noted in the certification.

SECTION 107 – LEGAL RELATIONS

107.01 LEGAL JURISDICTION

107.01.01 Applicable Law

This Contract shall be construed and governed by the Constitution and laws of the State. It is Design-builder's responsibility to be aware of and comply with Federal, State, and local laws, ordinances, rules, and regulations, and orders and decrees of bodies or tribunals having jurisdiction or authority that affect those engaged or employed on the Work, or that affect the conduct of the Work. The Design-builder shall observe and comply with, and ensure Design-builder's agents and employees observe and comply with, laws, ordinances, rules, regulations, orders, and decrees. Defend and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Design-builder or the Design-builder's agents or employees, subcontractors of any tier, or suppliers. If discrepancies or inconsistencies are discovered between any document of the Contract and any law, ordinance, regulation, order, or decree, immediately notify the Department's Project Manager in writing.

107.01.02 Permits, Licenses, and Approvals

Procure permits, grants, licenses, authorizations, certifications, and other approvals for the prosecution of the Work, except where the Department has procured such permits, grants, licenses, authorizations, certifications, and other approvals.

For existing permits previously obtained by the Department, submit proposed modifications to the permits to the Department for approval before submitting them to the regulatory agencies having jurisdiction and interest. After receiving the Department's approval, obtain the necessary approvals from the appropriate regulatory agencies. Do not begin work covered by the proposed permit modification until the necessary approvals are obtained from the designated regulatory agencies. Before beginning the work affected by the modification, provide a copy of the approval, authorization, or modification to the Department's Project Manager.

Keep copies of current permits, grants, licenses, authorizations, certifications, other approvals, and modifications within the Project Limits. Clearly post a copy of each so that it is publicly available for inspection. Before beginning work that requires Design-builder-procured permits, grants, licenses, authorizations, certifications, or other approvals, provide a copy to the Department's Project Manager.

If the Design-builder is not in compliance with required permits, grants, licenses, authorizations, certifications, or other approvals, the Design-builder shall take corrective actions immediately. The Department's Project Manager has the right to suspend the Work as specified in [108.13](#), until the Design-builder is in full compliance. Provide to the Department's Project Manager, whenever requested, documentation pertaining to the noncompliance and related corrective actions taken. The Department will not make payment for or modify Contract Time for performing corrective and remedial work required to bring the Design-builder into compliance.

The Design-builder is responsible to pay fines levied against the Design-builder, its agents, employees, and subcontractors that arise out of or are alleged to arise out of noncompliance with permits, grants, licenses, authorizations, certifications, or other approvals. The Department will recover from the Design-builder costs due to fines levied against the Department that arise out of, or are alleged to arise out of, noncompliance by the Design-builder, its agents, employees, and subcontractors with permits, grants, licenses, authorizations, certifications, or other approvals. The Department may hold the Design-builder responsible for all engineering, inspection, and administration costs (including overhead) incurred as a result of the Design-builder's noncompliance.

107.01.03 Sovereign Immunity

The Department, by entering into this Contract, does not waive its Sovereign Immunity, except as provided under N.J.S.A. 59:13-1, *et seq.* The rights or benefits provided the Design-builder in this Contract that exceed those provided under N.J.S.A. 59:13-1, *et seq.*, are contractual in nature, and do not expand the waiver of Sovereign Immunity provided under N.J.S.A. 59:13-1, *et seq.*

107.02 NONDISCRIMINATION

It is the policy of the Department that anyone performing work under any program, activity, or Contract with the Department, shall not discriminate on the basis of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, sex/gender, disability, affectional or sexual orientation, gender identity or expression, religion, liability for military service, veteran's status, income level or ability to read, write or speak English.

Pursuant to N.J.S.A. 10:2-1, the Design-builder agrees that in the hiring of persons for the performance of work under this Contract or any subcontract hereunder, or for the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under this Contract, no contractor, nor any person acting on their behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

No Design-builder, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex.

There may be deducted from the amount payable to the Design-builder by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and this contract may be terminated by the Department, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the Design-builder from the Department of any prior violation of this section of the contract.

Standard Title VI Assurance. During the performance of this Contract, the Design-builder, for itself, its assignees, and successors in interest (hereinafter referred to as the "Design-builder"), in accordance with Title VI/Nondiscrimination Assurance – Appendix A, USDOT Order 1050.2A agrees as follows:

- 1. Compliance with Regulations:** The Design-builder will comply with the Acts and Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which herein incorporated by reference and made a part of this Contract.
- 2. Nondiscrimination:** The Design-builder, with regard to the Work performed by it during the Contract, will not discriminate on the grounds race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, affectional or sexual orientation, gender identity or expression, religion, liability for military service, veteran's status, income level or ability to read, write or speak English in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Design-builder will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, negotiation made by the Design-builder for Work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Design-builder of the Design-builder's obligations under this Contract and the Acts and Regulations relative to nondiscrimination on the grounds of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, affectional or sexual orientation, gender identity or expression, religion, liability for military service, veteran's status, income level or ability to read, write or speak English.
- 4. Information and Reports:** The Design-builder will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Design-builder is in the exclusive possession of another who fails or refuses to

furnish the information, the Design-builder will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Non-Compliance:** In the event of a Design-builder's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such Contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to the following:
 - a. Withholding payments to the Design-builder under the Contract until the Design-builder complies.
 - b. Cancelling, terminating, or suspending a Contract, in whole or in part.
6. **Incorporation of Provisions:** The Design-builder will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Design-builder will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the Design-builder becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Design-builder may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Design-builder may request the United States to enter into the litigation to protect the interest of the United States.

During the performance of this Contract, the Design-builder, for itself, its assignees, and successors in interest (hereinafter referred to as the "Design-builder") in accordance with the Title VI /Nondiscrimination Assurance – Appendix E, USDOT Order 1050.2A, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601).
- c. Section 162(a) of the Federal Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*)
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended; and 49 C.F.R. Part 27.
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*)
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended.
- g. The Civil Rights Restoration Act of 1987, (PL 100-209).
- h. Title II and III of the Americans with Disabilities Act (42 U.S.C. § 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123).
- j. Executive Order 12898, Federal Actions to address Environmental Justice in Minority Populations and Low Income Populations.
- k. Executive Order 13166, Improving Access to services for Persons with Limited English Proficiency (70 Fed. Reg. at 74087 to 74100).
- l. 23 CFR Part 230 (EEO, Affirmative Action & OJT).
- m. 49 CFR Part 26.
- n. Executive Order 11246, as amended.
- o. Section 503 of the Rehabilitation Act of 1973, as amended.
- p. Section 4212 of the Vietnam Era Veteran's Readjustment Assistance Act, as amended.
- q. New Jersey Statutes N.J.S.A. 10:5-31 *et seq.*
- r. New Jersey P.L. 1975 Chapter 27.

107.03 AFFIRMATIVE ACTION, DISADVANTAGED BUSINESS ENTERPRISES OR EMERGING SMALL BUSINESS ENTERPRISES, AND SMALL BUSINESS ENTERPRISES

It is the public policy of the State and of the United States that no individual, group, firm, corporation or joint venture working on or seeking to work on a Public Works Project should be discriminated against on the basis of race, creed, color, national origin, age, ancestry, nationality, marital or domestic partnership status, gender, disability, liability for military service, affectional or sexual orientation, atypical cellular or blood trait, or genetic information (including the refusal to submit to genetic testing). The Department has developed Affirmative Action, Disadvantaged Business

Enterprise, or Emerging Small Business Enterprise Programs to implement this policy, and the regulations and requirements applicable to the Contract are contained in the Special Provisions. The Department will resolve conflicts between these regulations and requirements and the other provisions of the Contract to further the above stated public policy.

Contract Assurance. The Design-builder, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Design-builder 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, which may include, but is not limited to one or more of the following:

1. Withholding monthly progress payments.
2. Assessing sanctions.
3. Liquidated damages.
4. Disqualifying the Design-builder from future bidding as non-responsive.

107.04 NEW JERSEY CONTRACTUAL LIABILITY ACT

The Design-builder agrees to be responsible for compliance with N.J.S.A. 59:13-1, *et seq.* The Contract does not in any way waive or amend the Design-builder's duties under N.J.S.A. 59:13-1, *et seq.*

The various notice provisions specified in the Contract are contractual obligations that are in addition to the Design-builder's notice obligations under N.J.S.A. 59:13-1, *et seq.*

The Design-builder acknowledges that it will be forever barred from recovering against the State if it fails to give timely notice in accordance with N.J.S.A. 59:13-1, *et seq.*, of any happening of an event, thing, or occurrence or of an act or failure to act, by the Department, and that the Design-builder is solely responsible for complying with the various notice requirements and the timeliness of a claim as set forth under N.J.S.A. 59:13-1, *et seq.*

For purposes of determining the date of "completion of the contract" pursuant to N.J.S.A. 59:13-5, "completion of the contract" occurs on the date that the Design-builder provides written notice to the Department of acceptance of the Proposed Final Certificate or conditional acceptance of the Proposed Final Certificate or the 30th day after the Department issues the Proposed Final Certificate, whichever event occurs first.

Subcontractors, suppliers, manufacturers, and fabricators are barred from making claims against the Department as a matter of law by N.J.S.A. 59:13-1, *et seq.*

107.05 LIMITATIONS OF LIABILITY

Regarding any claim arising from a breach of Contract, tort (including negligence), or otherwise, the State will not be liable to the Design-builder for any special, consequential, incidental, or penal damages, including, but not limited to, loss of profit or revenues, loss of rental value for Design-builder-owned equipment, damages to associated equipment, cost of capital, or interest, except as permitted by N.J.S.A. 59:13-8.

107.06 PERSONAL LIABILITY OF PUBLIC OFFICIALS

There shall be no liability upon the Department or authorized representatives of the Department, either personally or as officials of the State, in carrying out any of the provisions of the Contract or in exercising any power or authority granted to them by or within the scope of the Contract, it being understood that in all such matters they act solely as agents and representatives of the State. Similarly, for projects on county or local roads, there shall be no liability, either personally or in an official capacity, upon the Board of Chosen Freeholders of the county or counties, or upon the governing body of the municipality or municipalities within the Project Limits.

107.07 ASSIGNMENT

Do not assign the performance of the Contract.

Do not transfer or assign to any party any Contract funds, due or to become due, or claims of any nature the Design-builder has against the Department, without obtaining the written approval of the Department. The Department, by sole discretion, may grant or deny such approval.

107.08 NON WAIVER

Provisions of the Contract do not waive other provisions of the Contract unless specifically stated.

If the Department waives a provision of the Contract for a particular occurrence, this waiver does not constitute a continued waiver by the Department of that provision or any other provision of the Contract.

107.09 INDEPENDENT CONTRACTOR

The relationship of the Design-builder to the State is that of an independent contractor. Conduct business consistent with such status. Do not hold out or claim to be an officer or employee of the Department by reason hereof. Do not make a claim, demand, or application to or for the rights or privileges applicable to an officer or employee of the Department, including, but not limited to, Workers Compensation Insurance, unemployment insurance benefits, social security coverage, or retirement membership or credit.

107.10 NON-THIRD PARTY BENEFICIARY CLAUSE

No provision of the Contract is intended to make the public or any member thereof a third party beneficiary, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of the Department and the Design-builder in executing the Contract that no individual, firm, corporation, or any combination thereof, that supplies materials, labor, services, or equipment to the Design-builder for the performance of the Work becomes thereby a third party beneficiary of the Contract. The Department and the Design-builder understand that such individual, firm, corporation, or combination thereof, has no right to bring an action in the courts of this State against the Department, by virtue of this lack of standing, and also by virtue of the provisions of N.J.S.A. 59:13-1, *et seq.*, which allows suit against the State in Contract only on the basis of express contracts or contracts implied in fact.

107.11 RISKS ASSUMED BY THE DESIGN-BUILDER

107.11.01 Risks

Take every precaution, as allowed by the Contract, against injury or damage to any part of the Project by the action of the elements, the traveling public, vandalism, or from any other cause, whether arising from the execution or the non-execution of the work.

The Design-builder cannot impute the negligence of consultants, other contractors, Utilities (other than the Department), other public entities, persons or entities to the Department.

The Design-builder assumes the following distinct and several risks, whether they arise from acts or omissions, whether negligent or not, and whether such risks are within or beyond the control of the Design-builder, as specified in [107.11.01.1](#) to [107.11.01.4](#). Excepted from this assumption of risks are only those risks that arise from solely affirmative acts by the State subsequent to the execution of the Contract with actual and willful intent to cause loss, damage, or injury. The risks are assumed by the Design-builder as follows:

- 1. Damage Caused by the Design-builder.** The Design-builder bears the risk of all loss or damage caused by the Design-builder, the Design-builder's agents or employees, subcontractors of any tier, suppliers, or agents making deliveries. Protect and preserve public and private property from damage or loss in the prosecution of the Work. Promptly repair or replace such damage or loss as directed by the Department's Project Manager. The Department will not make payment or modify Contract Time for such repair or replacement.

If the Design-builder damages the Department's fiber optic network, the Design-builder shall immediately notify the Department's Project Manager and the Traffic Operations Center. The Design-builder shall

include in the notification if the Design-builder shall perform the repairs or if it is necessary for the Department to perform the repairs. If the Design-builder cannot complete the repairs in the time specified by the Department's Project Manager, the Department has the right to repair the damage and recover the cost for the repair from the Design-builder. The Department will assess liquidated damages for lost services at the rate of \$1,000 per hour.

- 2. Risks of Loss or Damage to the Construction.** Until Acceptance, the Design-builder bears the risk of all loss or damage to materials and to construction performed under the Contract. Promptly repair or replace such damage or loss. The Department will not make payment or modify Contract Time for repairing or replacing loss or damage.

The Design-builder shall not bear such risk of loss or damage for the repair or replacement of any permanent element of work if the element of the work damaged is completed and is serving its intended function, is subsequently damaged by a public traffic accident, and the Design-builder provides the Department's Project Manager satisfactory evidence that such damage was caused by a public traffic accident. Satisfactory evidence is limited to:

- a. Accident reports filed with the New Jersey Motor Vehicle Commission.
- b. Documents supporting the damage issued by police agencies or insurance companies.
- c. Statements by reliable, unbiased eye witnesses.
- d. Identification of the vehicle involved in the accident.

The Design-builder shall not bear the risk of loss or damage that arises from acts of war, floods, tidal waves, earthquakes, cyclones, tornadoes, hurricanes, or other cataclysmic natural phenomenon, unless such loss or damage is covered by the Design-builder's insurance.

- 3. Risks of Claims on Account of Injury, Loss, or Damage.** The Design-builder bears the risk of claims, just or unjust, by third persons made against the Design-builder or the State, on account of injuries (including wrongful death), loss, or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work. The risk of claims, whether or not actually caused by or resulting from the performance of the Work, or out of or in connection with the Design-builder's operations or presence at or within the Project Limits, whether such claims are made and whether such injuries, loss, and damages are sustained, applies at any time both before and after Acceptance.

- 4. Risks of Loss to Property of Those Performing the Work.** The Design-builder bears the risk of loss or damage to any property of the Design-builder, and of claims made against the Design-builder or the State for loss or damage to any property of subcontractors, workers, and others performing the Work, and to lessors. Said risk occurs at any time before removal of such property from the Project Limits, the State's ROW, or any other property procured by the Design-builder for the Project.

Defend and indemnify the State from any and all claims or alleged claims described in [107.11.01.3](#) and [107.11.01.4](#), and for all expense incurred by the State in the defense, including legal and related costs, settlement, or satisfaction thereof. If so directed by the State, the Design-builder shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from the State, raise any defense involving in any way jurisdiction of the tribunal, immunity of the State, governmental nature of the State, or the provisions of any statutes respecting suits against the State.

The provisions of this Subsection are also for the benefit of the State, its agents, officers, and employees so that they have all the rights that they would have under this Subsection if they were named at each place above at which the State is named, including a direct right of action against the Design-builder to enforce the foregoing indemnity except, however, that the State may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this Subsection, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Except as specified in [107.11.01.2](#), Acceptance, the Final Certificate, or Termination does not release the Design-builder from its obligations under this Subsection.

The enumeration in this Subsection or elsewhere in this Contract of particular risks assumed by the Design-builder or of particular claims for which it is responsible shall not be deemed:

1. To limit the effect of the provisions of this Subsection or of any other provision of the Contract relating to such risks or claims; or
2. To imply that the Design-builder assumes or is responsible for risks or claims only of the type enumerated in this Subsection; or
3. To limit the risks that the Design-builder would assume or the claims for which the Design-builder would be responsible in the absence of such enumerations.

The Design-builder expressly understands and agrees that any insurance protection required by the Contract, or otherwise provided by the Design-builder, in no way limits the Design-builder's responsibility to defend and indemnify the State. Such insurance requirements are designed to provide greater assurance to the State that the Design-builder is financially able to discharge its obligations under this Subsection and as to the risks assumed elsewhere in the Contract, and are not in any way construed as a limitation on the nature and extent of such obligations.

107.11.02 General Insurance

A. Policy Requirements. Procure and maintain insurance until Acceptance. The Department will not consider the Work or any portion as put to its intended use until Acceptance. The Design-builder may only obtain insurance from companies that are licensed to provide insurance in the State. Ensure that policies are underwritten by companies with a current A.M. Best rating of A- with a Financial Size Category of VII or better. Before performing construction operations, provide the Department's Project Manager with certificates of insurance and policy declaration pages. The Department's Insurance Certificate (Form DC-175) is the only acceptable form as evidence of insurance. Ensure that insurance policies are endorsed to provide written notice by certified mail to the Department 30 days before changes to and cancellation of the policy. Upon request, provide the Department's Project Manager with a certified copy of each policy.

Submit documentation to identify all exclusions and deductible clauses. The limits of liability set forth below do not relieve the Design-builder from liability in excess of such coverage. Deductibles for each policy are limited to \$250,000 per occurrence. The Design-builder is responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

B. Types. At a minimum, provide the following insurances.

1. Comprehensive General Liability Insurance. Procure Comprehensive General Liability insurance with a minimum limit of liability in the amount of \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage.

Ensure the coverage for the policy is at least as broad as that provided by the standard basic, unamended, and unendorsed comprehensive general liability coverage forms currently in use in the State. Ensure the policy is endorsed to include:

- a. Personal injury.
- b. Contractual liability.
- c. Premises and operations.
- d. Products and completed operations.
- e. Independent contractors.
- f. Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles.
- g. Severability of Interest/Separation of Insureds.
- h. Per project aggregate.

Ensure the policy is endorsed to delete any exclusions applying to property damage liability arising from:

- a. Explosions.
- b. Damage to underground utilities.
- c. Collapse of foundations.

Ensure the policy names the State, its officers, employees, and agents as additional insured. On the Insurance Certificate, indicate the cost for providing the policy.

2. Comprehensive Automobile Liability Insurance. Procure Comprehensive Automobile Liability insurance to cover owned, non-owned, and hired vehicles with a minimum limit of liability in the amount

of \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. Ensure the policy is endorsed to include a Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles. Ensure the policy is endorsed to include Severability of Interest/Separation of Insureds clause.

- 3. Owner's and Contractor's Protective Liability Insurance.** Procure a separate Owner's and Contractor's Protective Liability Insurance Policy with a minimum limit of liability in the amount of \$4,000,000 per occurrence as a combined single limit for bodily injury and property damage. Ensure the policy is endorsed to include Severability of Interest/Separation of Insureds clause. Ensure the policy names the State, its officers, employees, and agents as additional insured. Provide documentation from the insurance company that indicates the cost of the Owner's and Contractor's Protective Liability Insurance Policy.

Ensure the policy is endorsed to include per project aggregate. Procure a separate Owner's and Contractor's Protective Liability Insurance Policy with a minimum limit of liability in the amount of \$4,000,000 per occurrence as a combined single limit for bodily injury and property damage. Ensure the policy is endorsed to include a Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles. Ensure the policy is endorsed to include Severability of Interest/Separation of Insureds clause. Ensure the policy names the State, its officers, employees, and agents as additional insured. Provide documentation from the insurance company that indicates the cost of the Owner's and Contractor's Protective Liability Insurance Policy.

- 4. Workers Compensation and Employer's Liability Insurance.** Procure Workers Compensation Insurance according to the requirements of the laws of this State and include an all-states endorsement to extend coverage to any state that may be interpreted to have legal jurisdiction. Provide Employer's Liability Insurance with the following minimum limits of liability:

- a. \$100,000 each accident.
- b. \$100,000 Disease each employee.
- c. \$500,000 Disease aggregate limit.

If construction operations requires marine operations, including working from a barge or ship, or unloading material from a barge or ship on a navigable waterway in the United States, ensure the policy is endorsed to include US Longshore and Harbor Workers coverage and Jones Act coverage.

- 5. Excess Liability Insurance.** Procure Excess Liability or Umbrella Liability insurance with limits in excess of the underlying policies for Comprehensive General Liability and Comprehensive Automobile Liability with minimum limits of liability of \$10,000,000. Ensure the Excess Liability Insurance policy takes effect (drops down) if the primary coverage is impaired or exhausted. Ensure the excess or umbrella policy has the same terms and conditions as the primary underlying coverage.

- 6. Marine Liability Insurance.** If construction operations require the Design-builder to use a boat, procure Marine Liability Insurance with a minimum limit of liability in the amount of \$2,000,000 per occurrence. Ensure the policy is endorsed to include:

- a. Personal injury.
- b. Contractual liability.
- c. Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles.
- d. Per project aggregate.

Ensure the policy names the State, its officers, employees, and agents as additional insured.

- 7. Professional Liability Insurance.**

The design-build firm shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance sufficient to protect the design-build firm from any liability arising out of professional obligations performed pursuant to the requirements of this contract. This insurance shall be in the minimum amount shown below and in such policy form as shall be approved by the STATE. Should the design-build firm change carriers during the term of this contract, the design-build firm shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

Insurance Type	Contract Value			
	\$0 - \$10,000,000	10,000,000.01 - \$20,000,000	\$20,000,000.01 - \$100,000,000	Over \$100,000,000
Professional Liability / Errors and Omissions.	\$2 million per occurrence; \$4 million aggregate	\$3 million per occurrence; \$6 million aggregate	\$4 million per occurrence; \$8 million aggregate	\$5 million per occurrence; \$10 million aggregate

- C. Renewal.** Submit an updated DC-175, Insurance Certificate, to demonstrate continued renewal of insurance. During any period when the required insurance is not in effect, the Department’s Project Manager may suspend the Work. The Department may refuse to make payments due under this Contract or any other contracts with the Department until the required insurance coverage is in effect. The Department may use monies withheld to renew the insurance for the periods and amounts referred to above. Alternatively, the Department may default the Design-builder and direct the Surety to complete the Project.

107.12 THE CONTRACTUAL CLAIM RESOLUTION PROCESS

107.12.01 Satisfying the Notice Requirements

If the Design-builder has provided the Department’s Project Manager notice of change as specified in [104.03.04](#), the Department’s Project Manager and the Design-builder may negotiate a resolution, even if the full impact has not been determined. If a notice of change has not been resolved, the Design-builder may initiate the contractual claims resolution process.

To initiate the contractual claims resolution process, submit to the Department’s Project Manager a Contractual Notice Form for the claim. Upon request, provide the Department’s Project Manager with 5 copies of all documentation submitted in support of the claim. At a minimum, include the following information with the Contractual Notice Form:

1. A detailed factual statement of the claim providing all necessary dates, locations, and Items affected by the claim.
2. The date on which facts arose that gave rise to the claim.
3. A copy of notice given to the Department pursuant to any other Subsection of the Contract that relates to the matter giving rise to the claim.
4. The name, function, and activity of each individual involved in or knowledgeable about the claim.
5. The specific provisions of the Contract that support the claim and a statement of the reasons why the provisions support the claim.
6. A detailed factual statement of the actions taken by the Design-builder to mitigate the claim.
7. If the claim relates to a decision of the Department that the Contract leaves to the Department’s discretion or as to which the Contract provides that the Department’s decision is final, the Design-builder shall set out in detail the facts supporting its contention that the decision of the Department was fraudulent, arbitrary, or capricious.
8. The identification of documents and the substance of communications relating to such claim.
9. If an extension of Contract Time is sought, the specific days sought and the basis for the claim, supported by the Design-builder’s approved baseline progress schedule and updates, as well as relevant fragments. Include a time impact evaluation of the delay as specified in [108.11.01.C](#).
10. If additional payment is sought, provide a breakdown of the amount sought in the manner specified in [104.03.08](#), or other calculations and basis of the amount sought.
11. If additional payment is sought, the Design-builder may provide the bid documents when escrowed with an escrow custody agent, as specified in [103.05](#).
12. The Design-builder must state in writing that all documentation in support of the claim has been provided to the Department and that the Design-builder has requested that the review process begin.

If the Department’s Project Manager determines that the submitted Contractual Notice Form does not provide sufficient information, the Department’s Project Manager will consider the Contractual Notice Form incomplete for

the purpose of processing the claim under the Contractual Claim Resolution Process, and the Department's Project Manager will notify the Design-builder of the missing components required to start the process. The Department will not initiate formal discussions or meetings concerning a claim submitted on an incomplete Contractual Notice Form.

The Department will review alleged liability and damages at the same time.

107.12.02 Steps

The Department will not process or review claims submitted by a subcontractor or supplier at any tier. Claims submitted by the Design-builder are eligible only for payment when there is an obligation or liability on the part of the Design-builder and shall not be a pass through of a claim by a subcontractor or by a supplier. The Design-builder can submit a claim, based on a subcontractor's dispute only if under the terms of the subcontract agreement, the Design-builder has an underlying obligation to the subcontractor. If the Design-builder has no liability to the subcontractor under the subcontract agreement, the Design-builder cannot pursue the claim with the Department.

A Design-builder may initiate the Contractual Claims Resolution Process up to 30 days after the issuance of the proposed Final Certificate.

The Contractual Claims Resolution Process may continue beyond the "completion of the contract" as defined in [107.04](#); however, the Contractual Claims Resolution Process will not extend any statute of limitation that may apply to a claim.

The Contractual Claims Resolution Process is sequential in nature and is composed of the following steps:

1. Step I – Review by the Department's Project Manager.
2. Step II – Review by the Regional Claims Review Board.
3. Step III – Review by the Claims Committee.
4. Step IV – Non-Binding Mediation.

The Department will not allow a claim to proceed to the next level of review unless and until the claim has been reviewed at the preceding step. Additionally, the Department will not allow the claim to proceed to the next level until the Design-builder indicates in writing that the decision of the previous step is unacceptable and requests that the claim be forwarded to the next step within the specified timeframe. If during any step in the process, a claim is resolved, the Design-builder must sign an unconditional release, provided by the Department, as to all matters arising from the claim.

The Design-builder is limited to the documentation provided to the Department at the beginning of Step I throughout all steps of the Contractual Claims Resolution Process. Submission of additional information by the Design-builder at any subsequent step is cause for the claim to be returned by the Department to Step I for review. The Department will inform the Design-builder in writing if the claim is returned to Step I. If a claim is returned, it must proceed through all completed steps in the process again.

The Department will not pay interest on the amount of any payment made in resolution or settlement of a claim resolved through the Contractual Claims Resolution Process.

When the value of the claim submitted by the Design-builder is \$20,000 or less, the Step II review will be the final step in the Contractual Claims Resolution Process. For such claims, the decision of the Regional Claims Review Board is final and terminates the Contractual Claims Resolution Process.

Where there has been a determination at Step I or Step II that the Contract does not provide a basis for the claim or that the Design-builder has failed to timely submit a notice of claim pursuant to N.J.S.A. 59:13-1, *et seq.*, the Department reserves the right to terminate the Contractual Claims Resolution Process at the end of Step II. For such claims, the Secretary of the Department Claims Committee will provide the Design-builder with the reasons for the termination of the Contractual Claims Resolution Process and the rejection of the claim. The review of a claim at any step does not constitute a waiver by the Department of its defenses that the Contract does not provide a basis for the claim or that the Design-builder failed to timely submit a notice of claim pursuant to N.J.S.A. 59:13-1, *et seq.*

When the Contractual Claims Resolution Process is terminated for a claim as a result of the Design-builder's act or failure to act, the Design-builder waives its rights to further participation in the Contractual Claims Resolution Process for that claim.

The Contractual Claims Resolution Process is as follows:

1. **Step I, Department's Project Manager.** The Department's Project Manager will render a written decision regarding the claim presented by the Design-builder within 20 days after the Department's Project Manager has determined that sufficient information was provided by the Design-builder on the Contractual Notice Form as specified in [107.12.01](#). This time limit may be extended by mutual agreement of the parties.

Within 10 days of the receipt of the decision by the Department's Project Manager, the Design-builder shall either accept or reject the decision in writing; or upon failure to accept or reject the decision in writing, the Department will terminate the Contractual Claims Resolution Process. If the Design-builder rejects the decision and intends to proceed to a Step II review, the Design-builder must request a Step II review within 10 days of receipt of the Department's Project Manager's decision.

2. **Step II, Regional Claims Review Board (RCRB).** The RCRB is comprised of 3 delegated members of the Department.

If the Design-builder provides a timely written rejection of the Department's Project Manager's decision and a timely request to forward the claim to Step II, the Department's Project Manager will forward the claim and supporting information previously submitted by the Design-builder to the RCRB within 7 days of receipt of the Design-builder's request to forward the claim to the next step. The RCRB will schedule and hold a meeting to review the claim with the Design-builder within 30 days of receipt of the claim information from the Department's Project Manager. This time limit may be extended by mutual agreement of the parties. The RCRB will issue a written decision regarding the claim within 20 days of the meeting.

Within 15 days of the receipt of the decision by the RCRB, the Design-builder shall either accept or reject the decision in writing to the RCRB Chair; or upon failure to accept or reject the decision in writing, the Department will terminate the Contractual Claims Resolution Process. If the Design-builder rejects the decision and intends to proceed to a Step III review, the Design-builder must then request a Step III review within 15 days of the Design-builder's rejection. Submit the Step III request to the Secretary of the Department Claims Committee, P.O. Box 600, Trenton, New Jersey 08625-0600 or email to DOT-Secretary.ClaimsCommittee@DOT.NJ.GOV.

3. **Step III, Claims Committee.** The Claims Committee is comprised of 3 delegated voting members of the Department's management. Additional non-voting members may include a Deputy Attorney General, the Secretary of the Claims Committee, and a member of the FHWA. For issues involving the Claims Committee or Mediation, contact the Secretary of the Claims Committee.

The Claims Committee will not review a claim or combination of claims valued less than \$250,000 or 1 percent of the current adjusted Contract Price, whichever is greater, until after the receipt of conditional release as specified in [109.11](#). If the Contract is 75 percent complete or greater as measured by Contract Time or Total Adjusted Contract Price, the Claims Committee will not review a claim or combination of claims until after receipt of conditional release as specified in [109.11](#). If the Claims Committee does not review a claim or combination of claims before Completion, the Claims Committee will review the claim or combination of claims at a single session of the Claims Committee after the receipt of the conditional release as specified in [109.11](#) and all claims have been reviewed at Steps I and II of the Claims Resolution Process. When reviewing a combination of claims, the Claims Committee will not review any individual claim valued less than \$20,000.

Regarding a request for a Step III review that meets the applicable requirements, the Secretary of the Claims Committee will schedule a Claims Committee review to be held within 60 days of the receipt of the request from the Design-builder. This time limit may be extended by mutual agreement of the parties. The Claims Committee will notify the Design-builder in writing of its decision on the claim within 60 days of the review. Within 20 days of the receipt of the decision by the Claims Committee, the Design-builder shall either accept or reject the decision in writing, or upon failure to accept or reject the decision in writing, the Department will terminate the Contractual Claims Resolution Process. If the Design-builder rejects the decision and intends to proceed to a Step IV Non-Binding Mediation, the Design-builder must request a Step IV Non-Binding Mediation within

60 days of receipt of the Claims Committee's decision. Submit the request to the Secretary of the Claims Committee.

4. Step IV, Non-Binding Mediation.

- a. Conditions.** If the Design-builder submits a timely request for a Step IV Non-Binding Mediation, and the Department tentatively agrees to participate in non-binding mediation, the Design-builder must satisfy the following conditions to proceed:
 - 1. The Design-builder has entered into the Department's standard Step IV Non-Binding Mediation Agreement (Step IV Agreement), a copy of which is available on the Department's website.
 - 2. The Design-builder has submitted the names of 6 proposed mediators. Include the fee schedule and the biographical background listing the experience and qualifications of each candidate. If a candidate was previously engaged by the Department or Design-builder, identify the project and when the candidate served. If a candidate was employed by the Department or Design-builder, identify when the candidate was employed and the candidate's job duties. The Design-builder may propose candidates that have been used for mediation purposes for this Project or another project.
- b. Mediator.** The Department will select the mediator for the Non-Binding Mediation from the list of candidates submitted by the Design-builder. If the Department rejects the proposed candidates, the Department will request the Design-builder to submit 4 additional candidates that meet the original criteria. Submit this additional list within 15 days of the receipt of a written request from the Department. The mediator must be acceptable to both the Design-builder and to the Department for the Non-Binding Mediation to proceed. Upon mutual agreement, the mediator can be an individual proposed by the Department.
- c. Meeting.** Upon selection of the mediator and the return of the executed Step IV Agreement, the Secretary of the Claims Committee will schedule a meeting for the Non-Binding Mediation.
- d. Decision.** If an agreement is reached at non-binding mediation, it will be forwarded for Department approval.

107.13 LITIGATION OF CLAIMS BY THE DESIGN-BUILDER

The Contractual Claims Resolution Process is not an administrative procedure but is contractual in nature, intended to review properly filed and documented claims. The exhaustion of the Claims Resolution Process is not a prerequisite to the filing of a legal action against the Department. The Design-builder, however, must fully comply with all of the terms and conditions of N.J.S.A. 59:13-1, *et seq.* before commencing a legal action. Therefore, where a Design-builder brings a legal action, arising out of a Contract, against the Department, its agents, officers, or employees, arising out of or related, directly or indirectly, to a claim pending against the Department, the Contractual Claims Resolution Process, at any step, shall terminate as to that claim(s) or related claims being litigated, no matter which level of review the claim may be at when the legal action is filed. The Department will, thereafter, resolve such claim(s) under the legal action, subject to the provisions of N.J.S.A. 59:13-1, *et seq.* The Design-builder may submit claims to the Department for processing through the Contractual Claims Resolution Process that are unrelated to pending litigation, subject to the terms of the Contract and N.J.S.A. 59:13-1, *et seq.*

In a legal action, the Design-builder's remedy for additional payment or an extension of Contract Time shall not exceed the actual additional costs incurred by the Design-builder resulting directly from the change. In addition, the damages sought by the Design-builder shall not exceed the amount allowed by force account as specified in [104.03.08](#). The Design-builder bears the burden of proving compliance with the requirements of the Contract, and must maintain all records required under the Contract.

107.14 PATENTED DEVICES, MATERIALS, AND PROCESSES

Observe patent and copyright laws. If a design, device, material, or process covered by letters of patent or copyright is used in the Work, obtain permission for such use by suitable legal agreement with the patentee or owner. Pay the costs for the use of patented materials, equipment, devices, or processes used on or incorporated in the Work. Defend and indemnify the State and the Department, affected third parties, or political subdivision from any and all claims

filed against the State or Department for infringement of patented designs, devices, materials, or processes, or any trademark or copyright. The Design-builder is responsible for all costs, expenses, and damages that the Design-builder may be obliged to pay by reason of an infringement during the performance of the Work or after Acceptance.

Observe 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements” and any implementing regulations set forth by the USDOT, FHWA or FAA if State contract is for the performance of experimental, developmental, or research work funded under a Federal Aid Project.

107.15 TAXES

N.J.S.A. 54:32B-9 provides that any sale or service to the State, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state), or political subdivisions where the State is the purchaser, user, or consumer, is not subject to the sales and use taxes imposed under the Sales and Use Tax Act. N.J.S.A. 54:32B-8 provides that sales of materials, supplies, or services made to contractors, subcontractors, or repairmen for exclusive use in erecting structures, or building on, or otherwise improving, altering, or repairing real property of the above listed bodies are exempt from the tax on retail sales imposed by the Sales and Use Tax Act. The sales tax exemption does not apply to equipment used for Contract work or for force account work whether the equipment is to be purchased or rented. The Design-builder may obtain the required Design-builder’s Exemption Purchase Certificate (Form No. ST-13) to apply for the exemption, by writing or calling the New Jersey Division of Taxation, Tax Information Services, P.O. Box 269, Trenton, New Jersey 08625, or any New Jersey Division of Taxation Regional Office.

Pursuant to N.J.S.A. 54:49-19, *et seq.*, and notwithstanding any provisions of the law to the contrary, whenever a taxpayer, partnership, or S-corporation under contract to provide goods, services, or construction projects to the State or its agencies or instrumentalities, including the legislative and judicial branches of the State government, is entitled to payment for those goods or services at the same time a taxpayer, partner, or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation will seek to set off the necessary payment to satisfy the indebtedness. The amount set off shall not allow for the deduction of any expense or other deductions that might be attributable to the taxpayer, partner, or shareholder subject to set-off under this act.

The Director of the Division of Taxation will give notice of the set-off to the taxpayer, partner, or shareholder and will provide an opportunity for a hearing within 90 days of the notice under the procedures for protests established under N.J.S.A. 54:49-18. No request for conference, protest, or subsequent appeal to the tax court from any protest, shall stay the collection of the indebtedness. The Department will stay interest that may be payable by the State to the taxpayer, pursuant to N.J.S.A. 52:32-32, *et seq.*

107.16 RECOVERY OF MONIES BY THE STATE

Whenever the Contract provides all of the following:

1. State or Department is entitled to withhold, deduct, or recover money from any monies due or that may become due the Design-builder.
2. Design-builder is to pay or return monies for any reason.
3. State or Department is entitled to payment from the Design-builder for costs, assessments, or fines.

The State or Department has the right to recover any monies due or that may become due the Design-builder under the Contract or any other contracts with the Department (including joint ventures in which the Design-builder is a participant but only to the extent of its participation), including but not limited to deducting the amount from Estimates, retainage, or the sale of bonds held in lieu of retainage for any contract with the Department, even when such recovery is being contested by the Design-builder.

107.17 COMMUNICATION WITH THE NEWS MEDIA

Do not communicate with the news media or issue a news release regarding the Contract without obtaining a prior written approval from the Department.

SECTION 108 – PROSECUTION AND COMPLETION

108.01 SUBCONTRACTING

Do not discriminate on the grounds of race, creed, color, national origin, age, ancestry, nationality, marital/domestic partnership/civil union status, gender, disability, religion, affectional or sexual orientation, gender identity or expression, family status, atypical cellular or blood trait, genetic information, military service, or veterans status, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. In all solicitations, either by competitive bidding, or negotiation made by the Design-builder for work to be performed under a subcontract, including procurement of materials, leases of equipment, or professional services, each potential subcontractor or firm will be notified by the Design-builder of the Design-builder's obligations under this Contract and the Acts and Regulations relative to Nondiscrimination.

The Department will not permit subcontracting without Department approval. For the purposes of this section, subcontracting includes all agreements between the Design-builder and any entity for the performance of Project Work including, but not limited to, labor, materials, equipment, tools, transportation, and supplies. The Design-builder is responsible for the work performed by subcontractors. Ensure that no work is performed by a subcontractor before receiving written approval for each subcontractor from the Department. Ensure that DBEs/ESBEs have an equal opportunity to receive and participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds in performing work with the Department. Ensure that SBEs have an equal opportunity to receive and participate in the performance of contracts financed in whole with State funds in performing work with the Department. Utilize the specific DBEs, ESBEs, or SBEs listed to perform work and supply materials for which each is listed unless the written consent of DRR/AA is provided. Ensure that work reserved for a subcontractor designated as a DBE, ESBE, or SBE, is not performed by any other firm, including the Design-builder's own organization. Submit requests for approval to subcontract on Department forms to the Department at least 20 days before the anticipated start of the work with the following:

1. A certified copy of the executed subcontract agreement between the Design-builder and the subcontractor that includes all the required provisions, forms, and attachments set forth in section 108.01.3, Subcontract Requirements, below.
2. Proof of the subcontractor's valid business registration with the Department of Treasury, Division of Revenue according to N.J.S.A. 52:32-44.
3. Proof of the subcontractor's valid Public Works Contractor Registration with the Department of Labor, Division of Wage and Hour Compliance according to N.J.S.A. 34:11-56.18.

Make available on request, a copy of all DBE, ESBE, and SBE subcontracts, agreements and Form LSIs. Ensure that all subcontracts or agreements with DBEs or ESBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR 26.53.

On Federal Aid Projects, the Design-builder shall not terminate a DBE subcontractor, lower tier DBE subcontractor, DBE transaction expeditor, DBE regular dealer, DBE supplier, DBE manufacturer and DBE trucker or an approved substitute DBE firm without good cause as listed in 49 CFR 26.53(f)(1)(ii)(3), and prior written consent of DCR/AA. Prior to replacement of the DBE or ESBE firm, the Design-builder shall in writing, notify the DBE or ESBE firm and the DCR/AA of its intent to terminate and/or substitute a DBE or ESBE firm, the reason for the request, and that the DBE/ESBE has 5 days to respond to the Design-builder's notice and advise the DCR/AA and the Design-builder of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Design-builder's action. Give the DBE or ESBE 5 days to respond to the Design-builder's notice and advise the DCR/AA and the Design-builder of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Design-builder's action. If required in a particular case as a matter of public necessity (e.g., safety), the DCR/AA may provide a response period shorter than five days. At the time the Design-builder requests termination or replacement of a DBE or ESBE firm, the Design-builder must submit to the DCR/AA, documented evidence of its good faith efforts in accordance with 49 CFR Part 26.53 if they are replacing the terminated DBE or ESBE with a non-DBE or non-ESBE firm. The DCR/AA must approve the termination and substitution of all DBE or ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers prior to implementation. The Design-builder needs to show they began good faith efforts to replace or substitute with another DBE or ESBE well in advance of the request to terminate or substitute. The Department's DCR/AA has sole authority to approve the termination, replacement or

substitution of DBE and ESBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers.

On wholly State Funded Projects, the Design-builder shall not terminate a SBE subcontractor, lower tier SBE subcontractor, SBE transaction expeditor, SBE regular dealer, SBE manufacturer and SBE trucker, or an approved substitute SBE firm, without good cause and prior written consent of DCR/AA. Prior to replacement of the SBE firm, the Design-builder shall in writing, notify the SBE firm and the DCR/AA of its intent to request to terminate and/or substitute a SBE firm, the reason for the request, and that the SBE has 5 days to respond to the Design-builder's notice and advise the DCR/AA and the Design-builder of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Design-builder's action. Give the SBE 5 days to respond to the Design-builder's notice and advise the Department and the Design-builder of reasons why, if any, it objects to the proposed termination of its subcontract and why the Department should not approve the Design-builder's action. If required in a particular case as a matter of public necessity (e.g., safety), the DCR/AA may provide a response period shorter than 5 days. At the time the Design-builder requests termination or replacement of a SBE firm, the Design-builder must submit to the DCR/AA, documented evidence of its good faith efforts if they are replacing the terminated SBE firm with a non-SBE firm. The DCR/AA must approve the termination and substitution of all SBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers prior to implementation. The Design-builder needs to show they began good faith efforts to replace with another SBE well in advance of the request to terminate or substitute. The Department's DCR/AA has sole authority to approve the termination, replacement or substitution of SBE subcontractors, lower tier subcontractors, transaction expeditors, regular dealers, suppliers, manufacturers and truckers.

If requesting approval for a third tier subcontract, submit a letter from the subcontractor permitting subcontracting to a third tier, and submit the request for approval to subcontract, completed by the second tier subcontractor. Ensure that no work is performed by a third tier subcontractor before receiving written approval from the Department.

The Department will allow the Design-builder to subcontract work as follows:

1. **Values and Quantities.** The total value of the work subcontracted may not exceed 50 percent of the Total Contract Price, except as follows:
 - a. The Design-builder may deduct the value of work subcontracted to certified DBE, ESBE, and SBE firms indicated on the original Form LDB approved by the Department from the value of work subcontracted.

The total value of the work subcontracted may not exceed 70 percent of the Total Contract.

If only a portion of work of an Item is subcontracted, the Department will determine the value of work subcontracted based on the value of the work subcontracted as indicated in the subcontract agreement and as shown in a breakdown of cost submitted by the Design-builder.

If a portion of a lump sum Item, or a sign support structure is subcontracted, the Department will determine the value of work subcontracted based on the value of the work subcontracted as indicated in the subcontract agreement and as shown in a breakdown of cost submitted by the Design-builder.

2. **Limits and Restrictions.** The Department will permit subcontracting of work with the following restrictions:
 - a. The Design-builder is barred from subcontracting MOBILIZATION.
 - b. The Design-builder may only subcontract electrical, blasting, asbestos removal, landscaping, and lead paint abatement work to subcontractors having the required certificates and licenses. Submit copies of required certificates and licenses with the request for approval to subcontract.
 - c. The Design-builder is barred from subcontracting to firms and individuals suspended or debarred by the Department or included in the State of New Jersey Consolidated Debarment Report maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification. The Design-builder must certify that neither the individual, partnership, corporation, joint venture, or limited liability corporation applying to do subcontract work nor any of its corporate officers, stockholders, partners, or members are collectively or individually suspended, debarred, proposed for debarment, disqualified, declared ineligible, or voluntarily excluded from doing business

by this or any other State or sub-division thereof or listed in the Federal Government's System for Award Management (SAM), located at: <https://sam.gov/content/exclusions>.

- d. Subcontractors are barred from making claims against the Department, its agents, officers, or employees.

3. Subcontract Requirements. Ensure that subcontract agreements include the following Contract provisions:

a. Federal Aid Projects. When subcontracting work on a Federal Aid Project, physically incorporate the following in the subcontract agreement, and inform subcontractors of their requirement to physically incorporate the information in lower tier subcontract agreements.

1. Disadvantaged Business Enterprise Utilization (Federal Aid Project Attachment 1), or Emerging Small Business Enterprise Utilization (Federal Aid Project Attachment 1).
2. Specific Equal Employment Opportunity Responsibilities on NJDOT Federal Aid Projects (Federal Aid Project Attachment 2).
3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on NJDOT Federal Aid Projects (Federal Aid Project Attachment 3).
4. Federal Equal Employment Opportunity Contract Specifications for NJDOT Federal Aid Projects (Federal Aid Project Attachment 4).
5. State of New Jersey Mandatory Equal Employment Opportunity Language on NJDOT Federal Aid Projects (Federal Aid Project Attachment 5).
6. Investigating, Reporting, and Resolving Employment Discrimination and Sexual Harassment Complaints on NJDOT Federal Aid Projects (Federal Aid Project Attachment 6).
7. Payroll Requirements for NJDOT Federal Aid Projects (Federal Aid Project Attachment 7).
8. FHWA-1273 Required Contract Provisions, Federal Aid Construction Contracts as amended or supplemented (Federal Aid Project Attachment 8).
9. Reserved.
10. Federal Mandatory Equal Opportunity Language on Federal Aid Projects (Federal Aid Project Attachment 10).
11. Byrd Anti-Lobbying Certification (Federal Aid Project Attachment 11).
12. The Standard Title VI Assurance found in Subsection [107.02](#), as amended or supplemented.
13. General Wage Determinations Issued Under the Davis-Bacon and Related Acts.
14. New Jersey Department of Labor Prevailing Wage Rate Determination.
15. New Jersey Department of Transportation Code of Ethics for Vendors.
16. Subsection [107.04](#) as amended or supplemented.
17. Subsection [106.10](#) as amended or supplemented.
18. The Contract Assurance found in Subsection [107.03](#), as amended or supplemented.

b. Wholly State Funded Projects. When subcontracting work on a wholly State Funded Project, physically incorporate the following in the subcontract agreement, and inform subcontractors of their requirement to physically incorporate the information in lower tier subcontract agreements.

1. Small Business Enterprise Utilization on Wholly State Funded Projects (State Funded Project Attachment 1).
2. State of New Jersey Equal Employment Opportunity Special Provisions for Wholly State Funded Projects (State Funded Project Attachment 2).
3. Requirements for Affirmative Action to Ensure Equal Employment Opportunity on Wholly State Funded Projects (State Funded Project Attachment 3)
4. Investigating, Reporting and Resolving Employment Discrimination and Sexual Harassment Complaints on Wholly State Funded Projects (State Funded Project Attachment 4)
5. Payroll Requirements for Wholly State Funded Projects (State Funded Project Attachment 5).
6. Americans with Disabilities Act Requirements for Wholly State Funded Projects (State Funded Project Attachment 6).
7. New Jersey Department of Labor Prevailing Wage Rate Determination.
8. New Jersey Department of Transportation Code of Ethics for Vendors.
9. Subsection [107.04](#) as amended or supplemented.

10. The Standard Title VI Assurance found in Subsection [107.02](#), as amended or supplemented.

108.02 COMMENCEMENT OF WORK

Within 15 days from the date of the execution of the Contract and before beginning Work, submit to the Department's Project Manager the following in accordance with the Contract:

1. Insurance certificates as specified in [107.11.02.A](#).
2. The designated environmental manager, TCC, and safety officer contact information.
3. Safety program as specified in [108.05.02](#).

Provide written notice to the contact provided in [101.04.2](#) of the date when construction operations will begin. Provide the notice at least 21 days in advance of starting construction operations. Do not begin construction operations before the date provided.

Do not perform construction layout and FIELD OFFICE TYPE ___ SET UP until the Department has approved the insurance certificates and the safety program. Do not begin other construction operations until after the following actions:

1. A preconstruction conference with the Department has been held.
2. Approval of the progress schedule as specified in [153.03.02](#).
3. The field office has been established.
4. The ROW limits, limits of construction, environmentally restricted areas, and trees or other vegetation designated to be preserved have been laid out.

When a Request for Authorization Form for the New Jersey Pollutant Discharge Elimination System 5G3 – Construction Activity Stormwater General Permit (NJG0088323) is specified as a Contract requirement, do not perform land disturbance activity, including clearing, grading, or excavation, until 35 days after submission of the Request for Authorization Form to the Department.

Begin Work within 5 days of the date the Contract is executed by the Department. The Contract start date is the 5th day after execution of the Contract.

If the Design-builder begins Work before the execution of the Contract, the Work is at the Design-builder's own risk and as a volunteer. In the event the Department decides not to execute the Contract, the Design-builder shall at its expense perform whatever work is necessary to leave the Project Limits in an approved condition. If any work performed before the Department's decision not to execute the Contract affects any existing road or highway, the Design-builder shall at its expense restore it to its former condition or the equivalent thereof, as approved. However, all work done according to the Contract before its execution by the Department will, if the Department executes the Contract, be considered authorized work and the Department will make payment for this work as provided in the Contract.

The Design-builder is not entitled to payment or an extension of Contract Time for any delay, hindrance, or interference before the first day of Contract Time following execution of the Contract by the Department.

108.03 DAILY COMMUNICATIONS

By 9:00 a.m. every Friday, submit a written proposed work schedule for the following week (Monday through Sunday). Include at a minimum the following:

1. Work to be performed.
2. Location of the work to be performed.
3. Hours to be worked.

Confirm with the Department's Project Manager the proposed work schedule before beginning each day's operation. Do not perform any work operation without providing notice to the Department's Project Manager.

If weather restricts the controlling activity on the critical path, provide written notice identifying the date of occurrence and activities restricted to the Department's Project Manager.

Provide the Department’s Project Manager with written notice 72 hours in advance of changes in work shifts, and before restarting work after shutdowns of more than 72 hours.

108.04 WORK SITE AND STORAGE

With the approval of the Department’s Project Manager, the Design-builder may use areas within the Project Limits for storage. With the approval of the Department, the Design-builder may use portions of ROW outside of the Project Limits for storage and for work.

Store and handle materials to maintain their conformance with the Contract. Comply with manufacturers’, suppliers’, and fabricators’ storing and handling recommendations.

Do not store flammable or explosive materials near bridge structures. The Department will not allow the decks of bridges or the area under bridges, including the slopes, to be used as work sites or storage areas. Do not store equipment or material within 30 feet of the traveled way unless protected by construction barrier. If construction barrier is requested to protect a work site or storage area, submit a plan detailing the proposed installation, including required impact attenuators, to the Department’s Project Manager for approval. The Department will not make payment for traffic control devices placed to protect a work site or storage area.

Restore storage areas and work sites to their original condition or restore as directed by the Department’s Project Manager. In areas that are used for the storage of materials, temporary driveways, contractor’s yards, etc., scarify the subsoil 12 inches deep. Smooth to grade prior to topsoil spreading, fertilizing, and seeding and planting. Use wide track or wide tire equipment to minimize compaction of mixed scarified soil. Replace plant materials that may have been removed or damaged.

If the Design-builder is in default, as specified in [108.14](#), the Department has the right to take over and occupy leased or rented areas used for work sites and storage, or cause it to be occupied, for the purpose of completing the Project. If the procured space is leased, the lease shall contain a provision that in the event that the Design-builder is in default, the lease may be assigned to the Department or its nominee.

108.05 SANITARY AND SAFETY PROVISIONS

108.05.01 Sanitary

Provide sanitary facilities that comply with the requirements of the Federal, State, and local health departments for the use of anyone authorized to be within the Project Limits. Ensure that the sanitary facilities are in compliance with 29 CFR 1926.51(c). Provide separate sanitary facilities for male and female employees clearly marked MEN and WOMEN. Ensure that the maximum distance between same gender sanitary facilities is not more than one-half mile and the maximum distance between sanitary facilities and workers is not more than one-half mile. Provide the number of facilities at each facility site as specified in [Table 108.05.01-1](#).

Table 108.05.01-1 Number of Facilities

Number of Male Employees	Minimum No. of Facilities for Male Use	Number of Female Employees	Minimum No. of Facilities for Female Use
1 – 15	1	1 – 15	1
16 – 35	2	16 – 35	2
36 – 55	3	36 – 55	3
56 – 80	4	56 – 80	4
81 – 110	5	81 – 110	5
111 – 150	6	111 – 150	6
Over 150	6 ¹	Over 150	6 ¹

1. Provide one additional facility for each additional 40 employees of each sex.

From October through April, clean and sanitize sanitary facilities at least once per week. From May through September, clean and sanitize sanitary facilities at least twice per week.

108.05.02 Safety Program

Observe all rules and regulations of the Federal, State, and local health officials, including regulations concerning construction safety and health standards.

Submit a hard copy of a written safety program that meets or exceeds the minimum requirements of the Contract and applicable State or Federal regulations to the Department’s Project Manager for approval. Include at a minimum the following:

1. **Description.** Describe in detail how the safety program is implemented and monitored. Provide guidelines for protecting personnel from hazards associated with Project operations and activities. Establish the policies and procedures for safety practices that are necessary for the Work to be in compliance with the requirements of OSHA and other State and Federal regulatory agencies with jurisdiction, rules, regulations, standards, or guidelines in effect at the time the Work is in progress.
2. **Certification, Responsibility, and Identification of Personnel.** Identify the qualified safety professional responsible for developing the safety program and provide that person’s qualifications for developing the safety program including, but not be limited to, education, training, certifications, and experience in developing this type of safety program.

Provide a certification, executed by the qualified safety professional that developed the safety program, stating that the safety program complies with the rules, regulations, standards, and guidelines in effect at the time the Work is in progress, of OSHA, and other applicable Federal, State, and local regulatory agencies having jurisdiction.

Identify a safety officer and designate the on-site supervisory-level personnel responsible for implementing and monitoring the safety program until Acceptance and having the authority to take prompt corrective measures to eliminate hazards, including the authority to stop work. Include documentation of training provided to the on-site supervisory-level personnel.

For work that requires a competent person as defined by OSHA, ensure that the person is capable of identifying existing and predictable hazards and has the authority to take prompt corrective measures to eliminate the hazards, including the authority to stop work. Include documentation of the qualifications of such competent persons identified, including certifications received.

3. **Elements of the Program.** Include information and procedures for the following elements:
 - a. **Chain of Command.** Include the responsibilities of the management, supervisor, safety officer, and employees.
 - b. **Traffic Control Coordinator.** Include the name and contact information. Ensure that the traffic control coordinator meets the requirements specified in [159.03.01](#).
 - c. **Environmental Manager.** Include the name and contact information. Ensure that the environmental manager meets the requirements specified in [158.03.01](#).
 - d. **Local Emergency Telephone Numbers.** Include police, fire, medical, and, NJDEP hotline 1-877-WARN DEP (1-877-927-6337).
 - e. **Procedures for Handling Emergencies.** Provide guidelines for handling emergencies, including emergency action plans for accidents involving death or serious injury, property damage, fires, explosions, and severe weather. Include the emergency contact information of the Design-builder’s personnel responsible for handling emergencies.
 - f. **Training Topics.** Include regulatory and jobsite toolbox meetings. Include the documentation from the training and an attendance sheet for each.
 - g. **Design-builder’s Safety Rules.** Include housekeeping procedures and personal protective equipment requirements.
 - h. **Employee Disciplinary Policy.** Include the violation forms.

- i. **Safety Checklists.** Include project safety-planning, emergency plans and procedures, documentation, and protective materials and equipment.
- j. **Forms.** Include OSHA 300 Log and New Jersey Department of Labor L&I-1.
- k. **Security Policy Guidelines.** Provide a copy for the office and for the Project Limits.
- l. **Hazard Communication Program.** Provide the following:
 - 1. The location of and instructions for understanding the MSDS. Ensure that the location and instruction are available to anyone within the Project Limits.
 - 2. The person responsible for the hazard communication program and the method of informing personnel of the hazardous communication program. Include attendance sheets of hazard communication meetings.
 - 3. When performing work that generates airborne crystalline silica, include engineering and work practice controls to limit exposure levels to at or below the permissible exposure limit according to 29 CFR 1910.1000 Table Z-3. Ensure that the program includes employee training and respiratory protection measures according to 29 CFR 1910.134 and control of the area when the permissible exposure limit is exceeded. Provide a trained and competent person, according to 29 CFR 1926.30, within the Project Limits at all times when performing work that produces airborne crystalline silica.
- m. **Additional Requirements.** Provide additional procedures for Project specific topics including:
 - 1. Compressed gas cylinders.
 - 2. Confined spaces.
 - 3. Cranes.
 - 4. Electrical.
 - 5. Equipment operators.
 - 6. Fall protection.
 - 7. Hand and power tools.
 - 8. Hearing conservation.
 - 9. Highway safety.
 - 10. Lead.
 - 11. Lock out/tag out.
 - 12. Materials handling, storage, use, and disposal.
 - 13. Night work.
 - 14. Personal protective equipment.
 - 15. Project entry and exit.
 - 16. Respiratory protection.
 - 17. Sanitation.
 - 18. Signs, signals, and barricades.
 - 19. Subcontractors.
 - 20. Trenching.

Within 15 days of receiving the safety program, the Department will determine if the safety program meets the requirements of the Contract. If the safety program does not meet the requirements, the Department will return the safety program for revision. Do not begin work within the Project Limits until the Department has approved the safety program.

The Design-builder is responsible for implementing, monitoring, updating, and revising the safety program until Acceptance. Submit updates and revisions to the safety program to the Department's Project Manager for approval when new information, new practices or procedures, or changing site and environmental conditions necessitate modifications to protect site personnel.

Maintain a copy of the updated safety program, including the appropriate documentation associated with each element, within the Project Limits so that it is available to workers and other authorized persons entering the Project Limits. Provide copies of updates to the safety program to the Department's Project Manager.

If an incident occurs that requires a New Jersey Department of Labor Form (L&I-1) to be submitted, send a copy to the Office of Capital Project Safety, New Jersey Department of Transportation, 1035 Parkway Avenue, P.O. Box 600, Trenton, NJ 08625-0600.

108.06 NIGHT OPERATIONS

Night operations comprises work performed from 30 minutes before sunset to 30 minutes after sunrise. The release for construction documents shall specify the method of meeting the specified illuminance levels and visibility requirements for workers and equipment for each planned operation. The Department will determine illuminance levels by taking light meter readings horizontally to the road surface facing the light source. Do not begin night operations until the Department’s Project Manager confirms the specified illuminance levels and visibility requirements are met.

- Lighting Requirements and Illuminance Levels.** Maintain the minimum illuminance level throughout the required lighting area as specified in [Table 108.06-1](#). Provide lighting for all areas of the Work.

Table 108.06-1 Minimum Illuminance Levels for Night Operations

Work Description	Minimum Level (Foot-Candles)	Minimum Lighting Area
Embankment Excavation Landscaping (seeding and sodding) Mechanical sweeping and cleaning Subgrade	5	General lighting throughout area of operation
Traffic Control setup and removal (excluding barrier curb)	5	Lighting on task
Traffic Director	5	Lighting on task plus minimum of 50 feet ahead and 50 feet behind employee
Milling ¹ HMA paving operation ¹ HMA roller operation ¹	10	Lighting on task and around equipment plus minimum of 25 feet ahead and 25 feet behind equipment plus 10 feet to each side of equipment
Crack Sealing Sawcutting and Sealing Joints Electrical work Intelligent Transportation System work	20	Lighting on task
All work not listed in this table ¹	10	Lighting on task

1. Provide 5 foot-candles for the indicated lighting area outside the limits for 10 foot-candles to a minimum of 100 feet ahead and 100 feet behind equipment

Ensure that lighting equipment is in good operating condition, and in compliance with applicable NEC and NEMA codes. Use freestanding portable or trailer-mounted towers capable of being moved as needed to keep pace with construction operations.

For moving operations, ensure that lighting and illuminance requirements are maintained where the work is in progress and that lighting keeps pace with the operation. Provide sufficient fuel, spare lamps, generators, and qualified personnel to ensure that required illuminance levels are maintained continuously during night operations. If at any time minimum illuminance levels are not met, cease night operations until the required illuminance levels are attained.

- Visibility Requirements for Workers and Equipment.** Ensure that workers wear a 360 degree high-visibility retroreflective safety garment meeting ANSI/ISEA Class 3, Level 2 standards.

Uniformly light the hopper, auger, and screed areas of pavers as well as the operator’s controls on all machines.

Conventional vehicle headlights do not meet illuminance requirements. Ensure that moving lighting equipment used for night operations has lights directed ahead and behind the equipment.

Equip moving equipment with 2 inch wide, alternating red and white, conspicuity tape meeting the National Highway Transportation Safety Administration standards. Equip off-road equipment with conspicuity tape along the full length of all 4 sides. Equip on-road vehicles, including trailers and trailer-mounted devices, with conspicuity tape along the full length of both sides, excluding the cab, and across the rear of the vehicle.

Prevent or minimize glare that may interfere with traffic or disturb local residents. Perform glare control to the Department's Project Manager's satisfaction. Glare control may require relocating, aiming, or adjusting lights or providing screens, shields, visors or louvers on lights.

108.07 TRAFFIC CONTROL

108.07.01 Interference

Do not occupy a lane, shoulder, median, or sidewalk area adjacent to traffic with equipment, material, personnel, or employee vehicles without the Department's Project Manager's approval.

Schedule and perform the Work so that successive construction operations and lane or roadway openings follow preceding operations as closely as possible. Limit work zones according to the Special Provisions. Confine construction operations adjacent to traffic to one side of the roadway at a time unless otherwise specified by the Contract. Where the Work is performed in stages adjacent to traffic, ensure that the road opened to traffic adequately accommodates traffic. Do not interfere with existing traffic access, except when required to perform the Work or as approved by the Department's Project Manager.

Do not work above vehicular or pedestrian traffic, except as specified in the Contract. Where construction interferes with existing pedestrian access, provide temporary pedestrian access as directed by the Department's Project Manager. Where necessary, install and maintain temporary sidewalks and curb ramps. Remove temporary access measures when no longer required.

Provide temporary approaches to maintain traffic access to private and public property as directed by the Department's Project Manager. When the work interferes with property owners' normal passage, provide written notice to the Department's Project Manager and the property owners at least 3 days before beginning work.

The Department's Project Manager has the right to reject or rescind approval of lane or shoulder closures because of the following:

1. Weather conditions.
2. The closure is unnecessary to perform the work.
3. Emergency conditions either on or off the Project that result in an unacceptable impact to the traveling public.

The Department will only make payment for delays or costs arising from the Department's Project Manager's rejecting or rescinding of lane or shoulder closure resulting from emergency conditions.

If the Work is stopped for more than 7 days or if the Work is suspended, restore excavated areas within or adjacent to the traveled way as directed by the Department's Project Manager.

108.07.02 Changes to the Traffic Control Plan (TCP)

When proposing detours, include a copy of the signed agreement with the local government authority having jurisdiction. The signed agreement shall document the local government authority's approval of the proposed detour and indicate that the Design-builder is solely responsible for the maintenance and restoration of the roadway.

Remove traffic control devices when no longer required. If detours were used, restore the roadway to its original condition or as required by the agreement with the local government. The Department will not make payment for costs to restore the roadway.

108.08 OCCUPANCY CHARGES

The closure schedule shown in the contract documents indicates the time periods for allowable closures as specified in the Contract. Allowable closures are permitted for, but not limited to; roadways, lanes, shoulders and ramps. If the Design-builder's closures exceed these time periods, the Department will deduct from the monthly estimate an occupancy charge for the use and occupancy beyond the time periods shown in the closure schedule until such time that the closure is reopened to traffic or until such time that the closure is allowed to take place again under the closure schedule. The Department will recover the cost of occupancy charges as specified in [107.16](#).

The Department's Project Manager will keep record of each occurrence as well as the cumulative amount of time that a closure exceeds the time periods shown in the closure schedule and provide the record to the Design-builder. The Department will calculate an occupancy charge by multiplying the length of time of each delayed opening, in minutes, by the rate of \$10 per minute, unless otherwise specified in the Special Provisions. The total amount per day for occupancy charges that the Department will collect will not exceed \$10,000.00.

The Department will waive an occupancy charge where a closure is not reopened to traffic as specified in the closure schedule directly and solely by reason of extraordinary, exigent circumstances not under the control of or reasonably foreseeable by the Design-builder. Equipment breakdowns, supplier deliveries, and weather related hindrances are not extraordinary, exigent circumstances. However, the Department has the right to assess an occupancy charge for any period of time that a closure remains closed beyond the reasonable period of time needed by the Design-builder to reopen a closure due to an extraordinary, exigent circumstance.

108.09 MAINTENANCE WITHIN THE PROJECT LIMITS

Continuously perform maintenance requirements within the Project Limits until Acceptance. The Project Limits to be maintained include the limits of all temporary and permanent construction, excluding those sections of highways, streets, and roads where only signs are placed. Maintenance includes but is not limited to the following:

1. Picking up and disposing of trash and debris, including trash and debris not generated by the Design-builder. However, the Design-builder is not responsible for the disposal of dead animals.
2. Keeping the roadway clear of dust, soil, and cleaning up non-hazardous spills.
3. Maintaining a safe and unobstructed passageway through the construction area for public traffic, including but not limited to constructing escape ramps at the edges of pavement.
4. Maintaining surface drainage, including the removal of debris, ice, and snow around inlets, to ensure that it is functioning as intended.
5. Removal of ice and snow from bridge sidewalks open to pedestrian access.

If the Work requires the Design-builder to modify existing electrical systems including highway lighting and traffic signal systems, perform maintenance of the electrical system within the Project Limits and perform such maintenance beyond the Project Limits to the extent such systems reasonably support service within the Project Limits.

If the Work requires the Design-builder to modify existing Intelligent Transportation Systems (ITS), perform maintenance of the ITS within the Project Limits and perform such maintenance beyond the Project Limits to the extent such systems reasonably support service with the Project Limits.

The Design-builder is not responsible for removal of ice and snow from sections of the roadway opened to traffic. The Design-builder is not responsible for the repair of existing facilities, including guide rail, signs, crash cushions, and structures that are damaged by a public traffic accident or otherwise in a state of disrepair. The Design-builder is not responsible for the replacement of existing pavement markings.

If the Design-builder at any time fails to fully perform maintenance, the Department's Project Manager will immediately notify the Design-builder of the noncompliance, and direct a time by which the Design-builder must perform the maintenance. If the Design-builder fails to remediate unsatisfactory maintenance within the time directed by the Department's Project Manager after receipt of such notice, the Department has the right to proceed to maintain the Project and recover costs incurred for this maintenance from the Design-builder.

108.10 CONTRACT TIME

Time is of the essence as to all time frames stated in the Contract. Complete the work required for Interim Completion and Completion requirement as specified in the ITP Form SCD.

108.11 MODIFICATIONS TO CONTRACT TIME

108.11.01 Extensions to Contract Time

- A. Qualifications for Extensions.** The Department will only extend Contract Time if an excusable delay, as specified in [108.11.01.B.2](#) or [108.11.01.B.3](#), delays work on the critical path beyond the Contract Time as specified in [108.10](#) using the approved progress schedule that is current at the time the delay occurred.

The Department will not extend Contract Time due to Extra Work or other type of delay unless an approved progress schedule and updates are current as specified in [153.03](#). The Department will not make payment for delay damages, as specified in [104.03.09](#), unless an approved progress schedule and updates are current as specified in [153.03](#).

The Department will not extend Contract Time for failure of the Department to furnish interpretations of the Contract unless such request for an interpretation of the Contract is reasonable and made in good faith, and was provided more than 5 days after the written request was received by the Department's Project Manager and the failure to respond within this 5 day period was unwarranted.

The Department will not extend Contract Time for a delay that was or should have been anticipated by the Design-builder at the time the Contract was awarded.

- B. Types of Delays.** The Department recognizes the following types of delays:

- 1. Non-Excusable Delays.** Non-excusable delays are delays that are the Design-builder's fault or responsibility. The Department will not extend Contract Time or make payment for delay costs incurred due to non-excusable delays.

For work performed by Utilities, delays up to 30 percent of the estimated duration specified in [105.07.02](#) are considered non-excusable. The duration includes both the advance notice and the completion of the work by the Utility.

For delays caused by Railroads, delays up to 30 percent of the estimated availability specified in [105.07](#) are considered non-excusable.

- 2. Excusable, Non-Compensable Delays.** Excusable, non-compensable delays are delays that are not the Design-builder's or the Department's fault or responsibility. The Department will extend Contract Time but will not make payment for the delay costs incurred by the Design-builder for the following excusable, non-compensable delays:

a. Others. Delays caused by work done by Others, excluding the Department.

b. Utilities. Delays caused by Utilities, excluding the Department, when the actual duration to complete the utility work is more than 30 percent greater than the estimated duration specified in [105.07.02](#). The duration includes both the advance notice and the completion of the work by the Utility.

For delays caused by Railroads, when the availability to access is reduced by more than 30 percent greater than the estimated availability specified in [105.07](#).

c. Extreme Weather. The Department will only extend Contract Time for weather if the Design-builder cannot perform work on the controlling activity on the critical path due to weather and the cumulative delay due to weather each month exceeds the number of days specified in [Table 108.11.01-1](#). The work on the controlling activity on the critical path is considered delayed if the Design-builder is prevented from proceeding on such activity for at least 60 percent of the total daily time planned for the activity for all shifts scheduled for that day. Submit daily documentation, as specified in [108.03](#), for activities that are delayed by weather.

Table 108.11.01-1 Anticipated Number of Days Lost per Month for Weather Sensitive Activities

Month	Number of Days Lost
January	31 ¹
February	28 ^{1,2}
March	20
April	15
May	10
June	10
July	10
August	10
September	10
October	15
November	15
December	20

1. For concrete placements Items, as specified in [Division 500](#), other than approach slabs, the number of days restricted is 20 days.
2. For leap years, the number of days restricted is 29.

- d. **Cataclysmic Natural Phenomena.** Delays caused by lightning strikes, wild fires, floods, tidal waves, earthquakes, tornadoes, hurricanes, or other cataclysmic phenomena.
- e. **Sovereign Acts of the State.** Delays caused by the State in its sovereign capacity, including but not limited to epidemic or quarantine restrictions, states of emergency, and State shutdowns.
- f. **War and Unrest.** Delays due to war or civil disturbances.
- g. **Labor Disputes.** Delays due to strikes or labor disputes beyond the control of the Design-builder.
- h. **Shortage of Materials.** Extraordinary delays in material deliveries that the Design-builder or suppliers cannot foresee or forestall resulting from freight embargos, government acts, or area wide material shortages. Shortage of materials applies only to raw and fabricated materials, articles, parts, or equipment that are standard and does not apply to materials, parts, articles, or equipment that are processed, made, constructed, fabricated, or manufactured to meet the specific requirements of the Contract. The Department will only consider the physical unavailability of the material as constituting a shortage, and shall not consider cost factors as constituting a shortage. Provide documented proof to the Department’s Project Manager that every effort to obtain the materials from all known sources within a reasonable distance from the Project Limits was made. Also provide proof to the Department’s Project Manager that the inability to obtain such materials when originally planned, could not be remedied by revising the sequence of the construction operations.

If approved excusable, non-compensable delays exceed a total of 180 days, the time in excess of 180 days will become excusable and compensable as specified in [108.11.01.B.3](#).

3. **Excusable, Compensable Delays.** Excusable, compensable delays are delays that are the Department’s fault or responsibility. For excusable, compensable delays, the Department will grant an extension of Contract Time and will make payment for delay damages as specified in [104.03.09](#).
 4. **Concurrent Delays.** Concurrent delays are separate delays on the critical path that occur at the same time. When an excusable, non-compensable delay is concurrent with an excusable, compensable delay, the Department will grant an extension of Contract Time but will not make payment for delay damages as specified in [104.03.09](#). When a non-excusable delay is concurrent with an excusable delay, the Department will not grant an extension of Contract Time or make payment for delay damages.
- C. **Submitting Time Impact Evaluation.** If an excusable delay occurs, notify the Department’s Project Manager, as specified in [104.03.04](#), detailing how the event or cause is affecting the approved progress schedule that is current at the time the delay occurred. When the full extent of the impact on the approved progress schedule can

be determined, submit a request for an extension of Contract Time to the Department's Project Manager with a Time Impact Evaluation Form and a CPM fragnet diagram including all additional work, and the fragnet's relationship to the approved progress schedule that is current at the time the delay occurred. Clearly identify how each change or delay is represented by an activity or group of activities. Ensure that the fragnet shows logic revisions, duration changes, and new activities, including the predecessor and successor relationships.

The Design-builder is considered to have waived its rights to claim an extension of Contract Time, if the Design-builder fails to provide written notice as specified in [104.03.04](#) or fails to provide the time impact evaluation.

The Department's Project Manager will evaluate the time impact evaluation. The Department will only extend Contract Time when delay causes the work to be extended beyond the scheduled Contract Time as specified in [108.10](#). If the Design-builder is already behind schedule and an excusable delay delays the work beyond the Contract Time as specified in [108.10](#), the Department will only extend Contract Time for the amount of time that directly results from the excusable delay. If the Department determines that an extension of Contract Time is warranted, the Department will extend Contract Time by a Change Order.

For excusable, compensable delays, submit a request for and documentation supporting the entitlement to compensable delay damages associated with the delay as specified in and limited by [104.03.09](#).

108.11.02 Reductions to Contract Time

If the Work required is reduced or altered such that less time is needed to meet Contract Time, the Department has the right to reduce Contract Time by analyzing the current approved progress schedule.

108.12 RIGHT-OF-WAY RESTRICTIONS

The Special Provisions will indicate ROW that has not been secured and the anticipated dates of availability. Review the ROW Plans and obtain from the Department's Project Manager all other information regarding ROW parcels, easements, temporary easements, and temporary access to parcels acquired for the Project as well as the nature and type of title acquired.

Temporary easements and temporary access to parcels will in most cases contain a limitation as to the length of time that they are in force and effect. Schedule the Work, as specified in [153.03](#), to accommodate the time limitations associated with each parcel.

Provide written notice to the Department's Project Manager at least 30 days before entering a parcel with a temporary easement or entering a parcel with temporary access. Do not enter a parcel until the Department's Project Manager provides written notice to the property owner.

If the Design-builder needs to occupy a temporary easement or parcel beyond the time period provided by the temporary easement or access, provide a written request to the Department's Project Manager at least 15 days before the time period expires. Do not enter or continue to occupy the easement or parcel unless approved by the Department's Project Manager.

108.13 SUSPENSION OF WORK

The Department has the right to suspend the Work, wholly or in part, for such period as deemed necessary for the following:

- 1. Design-builder Fault.** Design-builder fault includes but is not limited to: failure to carry out Contract requirements; having worked in reckless or unsafe manner or failure to correct unsafe conditions; or failure to carry out the directions of the Department.
- 2. Unsuitable Weather.** Unsuitable weather is a weather condition that prevents the Design-builder from performing work as specified in the Contract. The Department also has the right to suspend work for a potential weather condition.
- 3. Convenience of the Department.** For the convenience of the Department, the Department may direct, in writing, the Design-builder to suspend all or any portion of the Work for the period of time that the Department determines to be appropriate.

If the Department suspends a portion of the Work, Contract requirements governing work on continuing portions of the Project remain in effect. When the Department suspends the Work or portions of the Work, the Design-builder is still responsible for the following:

1. Maintaining the Project Limits as specified in [108.09](#).
2. Maintaining SESC measures as specified in [158.03.02](#).
3. Maintaining traffic control devices as specified in [159.03](#).
4. Protecting the work already performed, and preventing damage and deterioration.
5. Protecting stored materials.
6. Complying with additional direction by the Department's Project Manager to secure the Project Limits and safeguard the public.

If, during suspension, the Design-builder at any time fails to comply with items 1 to 6 above, the Department will immediately notify the Design-builder of the noncompliance. If the Design-builder fails to remediate unsatisfactory conditions within 24 hours after receipt of such notice or within the time otherwise specified, the Department has the right to remediate the unsatisfactory conditions and recover the cost of this remediation from the Design-builder.

Resume work when directed by the Department. Within 7 days of receiving notice to resume work, provide the RE a written request for payment for the costs and for a modification of Contract Time for the number of days sought resulting from the suspension.

108.14 DEFAULT AND TERMINATION OF DESIGN-BUILDER'S RIGHT TO PROCEED

The Department will provide written notice to the Design-builder and the Surety of the cause for default, and demand elimination of such cause for default, if the Design-builder does any of the following:

1. Fails to begin Work within 30 days of execution of the Contract.
2. Fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure its completion within the Contract Time specified, or any modification thereof.
3. Fails to complete the Contract within the Contract Time specified, as modified.
4. Performs the Work unsuitably or neglects or refuses to remove materials or to again perform such Work as may be rejected as unacceptable and unsuitable.
5. Fails to follow the direction of the Department's Project Manager.
6. Works in a reckless or unsafe manner, or fails to correct unsafe conditions.
7. Discontinues the prosecution of the Work.
8. Fails to resume Work which has been discontinued within a reasonable time after notice to do so.
9. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency.
10. Allows any final judgment to stand against it unsatisfied for a period of 10 days.
11. Makes an assignment for the benefit of creditors.
12. Fails to acquire or maintain the required insurance.
13. Fails to comply with Contract requirements regarding minimum wage payments, 49 CFR Part 26 *et seq.*, the DBE program requirements, SBE program requirements, and equal employment opportunity requirements.
14. Is a party to fraud.
15. For any other cause whatsoever, fails to carry out the Work in an acceptable manner.

If the Design-builder or Surety, within a period of 10 days after such notice, does not proceed as specified in the notice, then the Department has full power and authority, without violating the Contract, to declare the Design-builder in default and notify the Design-builder to discontinue the Work. The Department will provide, in writing, the declaration of default to the Design-builder and Surety. The Department has the right to appropriate any or all materials and equipment within the Project Limits to complete the Contract. The Department has the right to direct the Surety to complete the Contract or may enter into an agreement for the completion of the Contract with the Surety or another contractor, or use such other methods required for the completion of the Contract, including completion of the Work by the Department.

If the Department directs the Surety to complete the Contract, the Department will provide to the Surety the Contract as defined in 101.03 and the completion status of the Contract. If the Surety elects to use a completion-contractor to perform the Work, the Surety must promptly submit to the Department a request for approval of the proposed

completion-contractor as a subcontractor as specified in [108.01](#) within 45 days of receipt of the Contract provided by the Department pursuant to this Section. The Department, in its sole discretion, has the right to reject a request by the Surety to use the Design-builder or another Design-builder as the completion-contractor, either directly or under the direction of a consultant to the Surety.

If the Department approves the Surety's request to use the Design-builder as the completion-contractor, the Surety shall cause the Design-builder to begin Work, as defined in 101.03, within 45 days of notice of the Department's approval or as directed by the Department based on factors including but not limited to weather, seasonal restrictions, permits or at its sole discretion. The failure of the Surety to comply with the deadlines set forth in this Section shall be deemed a material breach of the Contract.

If the Department does not approve the Surety's proposed completion-contractor, the Surety must submit to the Department a request for approval of an alternative completion-contractor within 60 days of notice of the Department's disapproval. If the Department does not approve the Surety's alternative completion-contractor, the Department may continue to request approval of another alternative completion-contractor. Within 60 days of notice of the Department's approval of the Surety's proposed completion-contractor, the Surety shall cause the completion-contractor to begin Work, as defined in 101.03, or as directed by the Department based on factors including but not limited to weather, seasonal restrictions, permits or at its sole discretion. The failure of the Surety to comply with the deadlines set forth in this Section shall be deemed a material breach of the Contract.

The Design-builder and Surety are not relieved of the assessment of liquidated damages, as specified in [108.20](#), because of the Design-builder's default.

The Department will recover the costs and charges incurred by the Department, together with the cost of completing the Work from the Design-builder or Surety.

The rights and remedies of the Department are in addition to any other rights and remedies provided by law or under the Contract and the bonds.

If, after declaration of default, the Department determines for any reason that the Design-builder was not in default or that the delay was excusable, the rights and obligations of the parties are the same as if the Department had issued an order of termination for convenience as specified in [108.15.01](#).

If, after declaration of default, a court determines for any reason that the Department's default of the Contract was legally improper, the rights and obligations of the parties are the same as if the Department had issued an order of termination for convenience as specified in [108.15.01](#).

108.15 TERMINATION OF CONTRACT

108.15.01 For Convenience

The Department has the right to, by written order, terminate the Contract for convenience.

Upon receipt of an order of termination for convenience, only perform the work required in the order of termination. The Department may add work in order to secure the Project. Perform the work required in the order of termination as specified in the Contract. The Department has the right to declare the Design-builder in default, as specified in [108.14](#), if the Design-builder fails to carry out the conditions set forth in an order of termination for convenience.

When the Department orders termination for convenience, the Department will make payment for the work completed as of the date of termination at the Contract price. The Department will make payment for the work in the order of termination, including work that was not in the Contract.

108.15.02 For Cause

The Department has the right to, by written order, terminate the Contract for cause after determining the Design-builder has been declared in default as specified in [108.14](#).

Upon receipt of an order of termination for cause, only perform the work required in of the order of termination. The Department may add work in order to secure the Project. Perform the work required in the order of termination as specified in the Contract. If the Design-builder fails to carry out the conditions set forth in an order of termination for

cause, the Department will recover the costs and charges incurred by the Department, together with the cost of completing the Work from the Design-builder or Surety.

The rights and remedies of the Department are in addition to any other rights and remedies provided by law or under the Contract and the bonds.

When the Department orders termination for cause, the Department will make payment for the work completed as of the date of termination at the Contract price. The Department will make payment for the work in the order of termination including work that was not in the original Contract.

The Department will not make payment for profit and overhead not included in the Contract price for work completed or partially completed except that the Department may make payment for profit and overhead on force account work as specified in [104.03.08](#).

If the Department's termination for cause is found by a court to be legally improper, the Department will rescind the termination for cause and order a termination for convenience. The Department will then make payment as if the termination for cause had been a termination for convenience as specified in [108.15.01](#).

108.16 PARTIAL ACCEPTANCE

If the Design-builder completes a portion of the Work, the Design-builder may request that the Department's Project Manager inspect that portion. If the Department's Project Manager finds that the portion has been completed, as specified in the Contract, the Department may accept that portion as being completed. If the portion is accepted, the Department may relieve the Design-builder of the responsibility of maintaining that portion of the Work as specified in [108.09](#). The Department's Project Manager may reject the request made by the Design-builder if the Department's Project Manager determines that the portion of the Project should not be subject to partial acceptance.

108.17 INTERIM COMPLETION

When an Interim Completion requirement is specified, notify the Department's Project Manager in writing when the work for the milestone is complete. If the Department's Project Manager determines that the work for the milestone appears to be complete, the Department's Project Manager will notify the Design-builder. If the Department's Project Manager determines that the work for the milestone has not been completed, the Department's Project Manager will give the Design-builder the necessary instructions to correct or complete the Work to meet the Interim Completion requirement. Notify the Department's Project Manager upon compliance with the Department's Project Manager's instructions. Repeat this procedure until the Department's Project Manager determines that the work for a milestone has been completed.

108.18 SUBSTANTIAL COMPLETION

Notify the Department's Project Manager, in writing, when the Work is substantially complete. When the Department's Project Manager receives written notice, the Department will perform an inspection. If the inspection indicates that the Work is not substantially completed to the Department's satisfaction, the Department's Project Manager will respond within 14 days and provide the Design-builder the necessary instructions for completion and correction. Upon completion and correction of the Work, the Design-builder shall renotify the Department's Project Manager that the Work is substantially complete, and the Department's Project Manager will perform another inspection. Repeat this procedure until the Department determines that the Work is substantially complete.

The date of the Design-builder's acceptable notice is the date of Substantial Completion.

108.19 COMPLETION AND ACCEPTANCE

Notify the Department's Project Manager, in writing, when the Work is complete. When the Department's Project Manager receives written notice, the Department will perform an inspection. If the Department determines that the Work is complete, the Department will issue a Certificate of Completion.

If the Department determines that the Work is not complete, the Department's Project Manager will respond within 30 days and provide the Design-builder with the necessary instructions for completion and correction. Complete the

Work and renotify the Department's Project Manager. Repeat this procedure until the Department issues a Certificate of Completion.

The date of the Design-builder's acceptable notice is the date of Completion.

108.19.01 Acceptance. Prior to the Acceptance of the Work by the Department's Project Manager, the Work may be inspected by other agencies and municipalities who will have jurisdiction of the Work after Acceptance.

The Design-builder shall satisfy all of its obligations under the Contract Documents, including:

1. Design Acceptance;
2. Delivery of all Design Documents, right-of-way record maps, surveys, material certifications, test data and other deliverables required under the Contract Documents, including as-built plans, in electronic format on digital media and one reproducible hard copy set;
3. Delivery of all certifications from Design-builder's Design Manager, Project Manager and Quality Manager required under the Contract Documents;
4. Delivery of all written warranties required under the Contract Documents;
5. Delivery of all manuals required under the Contract Documents;
6. All of Design-builder's other obligations under the Contract Documents have been satisfied in full or waived in writing by the Department; and
7. Design-builder has identified a single point of contact to address the Warranty requirements hereunder throughout the duration of the Warranty period.

The Department will notify the Design-builder of the date of Acceptance. After Acceptance, the Design-builder is relieved of the duty of maintaining and protecting the Project. In addition, the Design-builder is relieved of its responsibility for damage to the Work that may occur after Acceptance.

The Design-builder, without prejudice to the terms of the Contract, is liable to the Department at any time, both before and after Acceptance, for latent defects, fraud, such gross mistakes as may amount to fraud, or actions affecting the Department's rights under any warranty or guarantee.

108.20 LIQUIDATED DAMAGES

The Design-builder and the Department recognize that delays to Contract Time result in damages to the Department including the effect of the delay on the use of the Project, public convenience and economic development of the State, and additional costs to the Department for engineering, inspection, and administration of the Contract. Because it is difficult or impossible to accurately estimate the damages incurred, the parties agree that if the Design-builder fails to complete the Contract or portion of the Contract within the Contract Time, the Design-builder shall pay the Department the liquidated damages specified in Form SCD.

The Department will assess liquidated damages for each and every day that the Design-builder has failed to complete the Work or portion of the Work within the Contract Time requirements as specified in [108.10](#). If the Department discovers that the work required to meet an Interim Completion requirement is unacceptable after the Department's Project Manager notified the Design-builder that the work appeared to be complete, the Department has the right to assess liquidated damages for the time period required to correct the unacceptable work.

When the Design-builder may be subjected to more than one rate of liquidated damages established in this Section, the Department will assess liquidated damages at the higher rate.

108.21 WARRANTIES

A. Warranties. The Design-Builder warrants as follows:

1. That all design Work performed pursuant to the Contract Documents, including that done by its Subcontractors and manufacturers, shall conform to all professional engineering principles generally accepted as standards of the industry;

2. That all non-design Work shall be free of defects and that the Project shall be fit for use for the intended function; and
3. That all materials and equipment furnished under the Contract Documents shall be of good quality and new.
4. That the engineering services shall be performed or approved by an engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.
5. That the field survey services shall be performed or approved by a surveyor licensed by the New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.
6. If the Design-builder offers to provide engineering and/or land surveying services in New Jersey and the Design-Builder is a corporation, but not a corporation established pursuant to the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et. seq.), the Design-builder hereby warrants that it is currently authorized by the New Jersey Board of Professional Engineers and Land Surveyors to provide such engineering and/or land surveying services.

In addition, the Department may require, subject to express agreement in writing between the Department and the Design-Builder, with approval from the FHWA when required, warranties associated with the contract for limited circumstances. The product warranty will be developed between the Department and the Design-Builder, and incorporated into the contract via Change Order. The warranty may be used in situations including, but not limited to, work performed not in full compliance with the contract documents, where initial testing does not indicate any deficiency in the end product.

Within seven days of receipt by the Design-Builder of notice from the Department that any of the Work fails to satisfy the Design-Builder's Warranties, or of any Subcontractor representation, warranty, guarantee, or obligation which the Design-Builder is responsible to enforce, the Design-Builder and the Department shall mutually agree when and how the Design-Builder shall remedy such violation, provided, however, that in case of an emergency requiring immediate curative action, the Design-Builder shall implement such action as it deems necessary and shall notify the Department of the urgency of a decision. The Design-Builder and the Department shall agree on a remedy immediately upon notice by or to the Department of such emergency. If the Design-Builder does not use its best efforts to proceed to effectuate such remedy within the agreed time, or if the Design-Builder and the Department fail to reach such an agreement within such seven-day period (or immediately, in the case of emergency conditions), then the Department, upon notice to the Design-Builder, shall have the right to order the Design-Builder to perform the Work or to perform or have performed by third parties the necessary Department-approved remedy, and the costs thereof shall be borne by the Design-Builder.

B. Warranty Period. Warranties for all Work shall commence upon Completion and Acceptance and shall remain in effect until two years after the date that Acceptance is achieved. If the Department determines that any of the Work has not met the standards set forth at any time during the Warranty period for such Work, then the Design-Builder shall correct such Work as specified below even if the performance of such correction Work extends beyond the stated Warranty period.

C. Non-Exclusive Remedy. Any Warranties shall be in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Design-Builder's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud provided.

D. Damages for Breach of Warranty. In addition to all rights and remedies available under the Contract Documents or applicable law, if the Design-Builder fails or refuses to provide the Warranty remedy, notwithstanding a valid request by the Department, the Design-Builder shall be liable for the cost of performance of the Warranty Work by others. The Department may also call on the Surety and/or Guarantor to perform the warranty obligations.

E. Exclusions. The Warranties shall not require the Design-Builder to perform repair or replacement work to the extent necessitated by the following:

1. Normal wear and tear, provided that damage and/or deterioration outside allowable limits specified in the Contract Documents shall not be considered normal wear and tear;

2. Failure to perform routine maintenance consistent with polices and/or procedures established by the Department or other maintenance agencies, including Utility Owners, or in the absence of such polices and/or procedures, in accordance with industry standards of maintenance for similar projects in the United States;
3. Rebellion, war, riot, act of sabotage, civil commotion, acts of vandalism, acts of terrorism, nuclear events or ionizing radiation causing direct physical damage;
4. Wind, flood and/or earthquakes and other acts of God which exceed the severity or intensity specified in the Standards applicable to the design as specified in the Contract Documents;
5. Fire, except when fire results from, or is exacerbated by, failure of a component otherwise covered by the Warranty provisions; and/or

**6. SPILL OR RELEASE OF HAZARDOUS OR CONTAMINATED SUBSTANCES,
UNLESS CAUSED BY THE DESIGN-BUILDER’S ORGANIZATION OR OTHERWISE
CONSIDERED THE DESIGN-BUILDER’S RESPONSIBILITY. SECTION 109 –
MEASUREMENT AND PAYMENT**

109.01 MEASUREMENT OF QUANTITIES

For Work paid on a lump-sum basis, progress and payment shall be determined as follows:

A. Construction Progress Payment. Except for payment of mobilization and Force Account Work, payment will be made monthly for the portions of Work Items identified in Contract Document, Part 3 – Project Requirements, that have been completed that month. To be considered complete all the tests, certifications and approvals of that portion of the Work Item as required by the Contract and the Specifications shall have been performed, documented and accepted by the Department’s Construction Quality Assurance Engineer and the Department’s Project Manager. Any inspections or tests required to be performed by the Department’s Quality Assurance Engineer or other Department staff to verify the Work has been completed in conformance with the contract requirements shall also have been completed and documented.

Where the Contract requires the submittal of a specified Plan or similar document prior to payments, the requirement is met when the Plan has been submitted and the Department’s Project Manager acknowledges in writing that the Plan or document meets Contract requirements.

Where the Contract requires an audit or update or both of a specified Plan prior to payments, the requirement is met when the report of the audit or Plan update or both is submitted to the Department’s Project Manager and the Department’s Project Manager acknowledges or Approves (if specified) the submittal in writing, that the submittal meets the Contract requirements.

If the Design-builder and the Department’s Project Manager cannot come to agreement on the percent complete of the Work Item or the amount due, the determination of the Department’s Project Manager shall be used as the basis of the request for periodic payment. The Department’s Project Manager shall submit a written statement to the Design-builder outlining the rationale behind any substantial adjustment.

Payment will be based on the Price bid (which has been incorporated into the Contract – Design-builder’s Proposal, upon Award of the Contract).

B. Engineering, Construction Inspection and Testing Services Payments. Payment for Design Engineering Services shall be on a Lump Sum basis. The schedule for the payments shall be: 25% of the lump Sum amount paid the first month after the Notice to proceed. The remaining payments shall be structured as follows, provided the Design-builder can establish equal percentage of design completion and it is verified by the Department's Project Manager: 15% following the second month after Notice to Proceed; 10% following the third month after Notice to Proceed, and 5% of the Lump Sum amount paid upon the Final Acceptance of the Project which includes delivery of all engineering drawings, calculations, shop drawings, as-built drawings, quality control documents and all other design documents pertaining to the Project. The remaining 45% of the Lump Sum amount shall be paid in equal amounts per month over the established duration of the Contract. However, if the design drawings, specifications and calculations are completed and accepted by the Department, sooner than the scheduled Project Completion Date, the unpaid portion of the remaining 45% of the Lump Sum amount shall be paid.

Payment for the Independent Professional Engineering Construction Inspection Services shall be on a Lump Sum Basis. The schedule for the payments shall be: 10% of the lump Sum amount paid the first month after Design-builder mobilization and the beginning of construction work, and 10% of the Lump Sum amount paid upon the Final Acceptance of the Project which includes delivery of all engineering drawings, calculations, shop drawings, asbuilt drawings, quality control documents and all other construction inspection, and other required documents pertaining to the Project. The remaining 80% of the Lump Sum amount shall be paid in equal amounts per month, from Design-builder mobilization and the beginning of construction work to the scheduled Project Completion Date. If the Final Acceptance occurs sooner than the scheduled Project Completion Date, all remaining payments shall be made upon Final Acceptance of the Project.

Payment for the Independent Quality Control Services Firm (Materials Testing / Laboratory Services Firm) shall be on a Lump Sum basis. The payments shall be made in equal amounts per month, following the time of first laboratory or field test performed by the Independent Quality Control Services Firm (Materials Testing / Laboratory Services Firm) to the scheduled Project Completion Date. If the Final Acceptance occurs sooner than the scheduled Project Completion Date, all remaining payments shall be made upon Final Acceptance of the Project.

C. Periodic Payments. As the Work progresses in accordance with this Contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Design-builder for Work completed, based upon the Project Scope and Design-builder's Proposal, as follows:

1. The Design-builder shall, upon such schedule or upon the completion of such Work as may be fixed by the Design-builder and the State, make a progress report of work done and of Material which has actually been put in place in accordance with the terms and conditions of the Contract during the preceding period, and compute the value thereof in accordance with the Contract documents.

D. Requests for Periodic Payment. The Design-builder shall submit all requests for periodic payment to the Department's Project Manager with the monthly progress report (see 153.03.04) signed by the Design-builder's Project Manager or Deputy Project Manager, except that the Final Invoice must be signed by the Design-builder's Project Manager. The Design-builder shall submit the request by the fifth day of each month (if a holiday, the next work day) or other mutually agreed upon date.

The Design-builder's Project Manager or Deputy Project Manager and the Design-builder's Quality Manager shall sign the draft request for payment, which will have no effect until countersigned by the Department's Project Manager.

Each request for Periodic Payment shall contain the following:

1. The amount claimed to be payable, including amounts due under Force Account and Change Orders;
2. Any other amount claimed to be payable or deducted pursuant to a determination of the Department's Project Manager, identifying the relevant determination; and
3. A certificate certifying progress reported and compliance with Contract requirements. The certification shall be signed by the Design-builder's Project Manager/Deputy Project Manager, Quality Manager, and Design Manager.

109.02 SCOPE OF PAYMENT

The Department will make payment for the elements of work described under the corresponding work item in Form SP.

109.03 PAYMENT FOR FORCE ACCOUNT

For work done under force account, the Department will make payment for the costs allowed as specified in [104.03.08](#) based on the following documentation submitted by the Design-builder at the completion of each force account:

1. Copy of all Department's Project Manager preapprovals for: extraordinary labor as specified in [104.03.08.1](#); specific extraordinary expenses as specified in [104.03.08.6](#); and equipment as specified in [104.03.08.7](#).
2. Copy of daily and shift reports submitted as specified in [104.03.07](#).
3. Copies of the associated certified payrolls for all eligible labor and foreman charges.
4. Certified records documenting all eligible labor fringe benefit rates.
5. Certified records documenting all eligible indirect labor costs.
6. Certified records documenting additional insurance rates.
7. Copies of the vendor's paid invoices for eligible materials, including breakout for handling, transportation, discounts, and allowable sales tax.
8. Copies of paid invoices for all allowable specific extraordinary expenses.
9. Certified records of the eligible hours of Design-builder-owned equipment and documentation of rates as specified in [104.03.08](#).
10. Copies of the fully executed rental agreements and the paid invoices for eligible rental equipment. For operating costs not covered by the rental agreement, provide certified records of the eligible hours and documentation of costs.
11. For each subcontractor, provide and certify the subcontractor's documentation for items 1 through 10 above to be complete, accurate, and true.

Provide to the Department's Project Manager a summary of costs for the force account in an electronic format provided by the Department, and a certification stating the following:

All costs submitted have been incurred as a result of the force account, and all vendor invoices have been paid.

The Department will adjust force account payment for those costs incurred that the Department determines to be the fault of the Design-builder. The Department will further adjust the force account payment where the Design-builder's prices in its Proposal for any affected original Items did not include all the costs to complete the affected work as originally provided in the Contract.

109.04 PAYMENT FOR DELAY DAMAGES

For eligible extensions, the Department will make payment for the costs allowed, as specified in [104.03.09](#), based on the following documentation submitted by the Design-builder:

1. Copy of daily and shift reports signed off by Design-builder's authorized representative.
2. Certified payrolls for all eligible labor and foreman charges.
3. Certified records on all eligible labor fringe benefits.
4. Certified records on all eligible indirect labor costs.
5. Certified records of additional insurance costs.
6. Certified records of the eligible hours of Design-builder-owned equipment for payment at the rates approved by the Department's Project Manager.
7. Copy of the fully executed rental agreement and the paid receipt or canceled check for eligible rental equipment. For operating costs not covered by the rental agreement, provide certified records of the eligible hours at the rates approved by the Department's Project Manager.
8. Certified records of the eligible transportation costs for any equipment removed from the Project Limits.
9. Certified record of the eligible overhead

10. Documentation in the same format as above for each subcontractor with certification by the Design-builder that the documentation is complete, accurate, and true.
11. Certification stating that all costs submitted have been incurred because of the delay, and all vendor invoices have been paid.

109.05 ESTIMATES

The Department will make monthly payments to the Design-builder for work performed and for materials delivered, as specified in [109.06](#). If not otherwise described in the Contract, the Department's Project Manager will be the sole judge of the amount of progress payment due for partially completed work.

Pay subcontractors and suppliers for satisfactory performance of their work no later than 10 days from receipt of each payment made by the Department.

Pay subcontractors and suppliers the full amount of retainage no later than 10 days from receipt of payment made by the Department for the subcontractor's or supplier's work.

Before the issuance of each payment, certify, on forms provided by the Department, whether:

A. On Federally Funded Projects

1. No subcontractor or supplier was used on the project; or
2. Each subcontractor and supplier used on the project has been paid the amount due, from the previous progress payment, retainage is not being held, and
3. Each subcontractor and supplier used on the project will be paid the amount due, from the current progress payment, for the subcontractor or supplier's work that was paid by the Department; or
4. There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payments from the subcontractor or supplier. Therefore, the subcontractors and suppliers listed on the DL-72 Contractor Certification of Payment to Subcontractors and Suppliers have not been paid for work performed or materials supplied to the project from the proceeds of the previous progress payment or will not be paid for work performed or materials supplied to this project from the proceeds of the current progress payment, or both.

B. On State Funded Projects

1. No subcontractor or supplier was used on the project; or
2. Each subcontractor and supplier used on the project has been paid the amount due, excluding retainage, from the previous progress payment and
3. Each subcontractor and supplier used on the project will be paid the amount due from the current progress payment, excluding retainage, for the subcontractor or supplier's work that was paid by the Department; or
4. There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payments from the subcontractor or supplier. Therefore, the subcontractors and suppliers listed on the DL-72 Contractor Certification of Payment to Subcontractors and Suppliers have not been paid for work performed or materials supplied to the project from the proceeds of the previous progress payment or will not be paid for work performed or materials supplied to this project from the proceeds of the current progress payment, or both.

If the certification indicates that the Design-builder has withheld or will withhold payment from a subcontractor or supplier, provide written notice, according to N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, of such non-payment to the subcontractor or supplier. Provide a copy of the notice to the Department and to the Surety that holds the performance bond. Include the reason for withholding payment and state the amount of payment withheld in the notice.

The date that the Department receives the certification will initiate the 20 day approval period under N.J.S.A. 2A:30A-1, *et seq.* The Department will not accept the certification before being requested by the Department's Project Manager.

If the Design-builder fails to pay the subcontractor or supplier within 30 days after the subcontractor or supplier satisfactorily completes the specified work, the Department may withhold progress payments from the Design-builder,

until the Design-builder pays the subcontractor or supplier all delinquent amounts due, or the Contract is terminated, or the matter is resolved under N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41.

If the Department receives an allegation from a subcontractor or a supplier that the Design-builder has not paid the subcontractor or supplier the amount due from a previous progress payment, including retainage, submit to the Department's Project Manager within 10 days of a request made by the Department's Project Manager, evidence that payment has been made.

If no valid basis exists for withholding payment, N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41 authorize any subcontractor or supplier from whom payment is withheld to receive from the Design-builder, in addition to any amount due, interest at a rate equal to the prime rate plus 1 percent if the subcontractor or supplier is not paid within 10 days after receipt by the Design-builder of payment by the Department for completed work that is the subject of a subcontract or a material supply agreement. This interest begins to accrue on the tenth day after receipt of payment by the Design-builder.

If court action is taken by a subcontractor or supplier to collect payments withheld by a Design-builder and it is determined that a valid basis existed for the withholding of those payments, the subcontractor or supplier shall be liable for any court costs incurred by the Design-builder in connection with the action.

The Department will not make payment for an Estimate having a value less than \$5,000.00, unless it is for the Final Certificate.

The Department will deduct and withhold 2 percent in retainage from the total Estimate amount for State Funded Projects. On State Funded Projects, the Design-builder may not withhold subcontractor retainage that exceeds the amount of retainage that the Department withholds from the Design-builder.

Regarding Federally Funded Projects, the Department will deduct and withhold 2 percent in retainage from the total Estimate amount, excluding amounts for subcontracted work, until Substantial Completion. Pursuant to 49 C.F.R. § 26.29(b)(1), the Design-builder may not withhold retainage from a subcontractor on Federally Funded Projects.

In the first Estimate following Substantial Completion, the Department will reduce the retainage withheld to one percent of the Total Adjusted Contract Price, excluding subcontracted work on Federal Aid Projects, unless it has been determined by the Department that the withholding of additional retainage is required. If retainage is held in cash withholdings, the reduction is to be accomplished by payment under the next Estimate. If retainage is held in bonds, the Department will authorize a reduction in the escrow account.

The Department's Project Manager has the right to not process an Estimate when, in the judgment of the Department's Project Manager, the Work is not performed or proceeding as specified in the Contract or following the Department giving the Design-builder and Surety notice of default as specified in [108.14](#).

The Department's processing or payment is not an approval of defective or improper work. The Department, upon determining that any payment under a previous payment was improper or unwarranted for any reason, has the right to recover erroneous payment from the Design-builder.

109.06 MATERIALS PAYMENTS AND STORAGE

The Design-builder may request payment for the cost of materials, including the storage cost, not incorporated into the Work. If approved by the Department's Project Manager, the Department will make payment for the cost of materials, including storage costs if such payment exceeds \$25,000.00; however, the amount of payment may not exceed 85 percent of the work price for the associated work. The Department may also direct the Design-builder to purchase materials ahead of schedule for this purpose. The Department will not make payment for such materials until the Department's Project Manager is satisfied that:

1. The Design-builder has properly stored and protected materials within the Project Limits or at locations owned or leased by the Design-builder or the Department within the State, except that the Design-builder may store structural steel outside the State with the prior approval of the Department. Provide and comply with manufacturers', suppliers', and fabricators' storing and handling recommendations for each material, as specified in [108.04](#).

2. The ME has inspected the materials and they appear to be acceptable based upon available supplier's certification and materials test reports.
3. The Design-builder has provided the Department's Project Manager with the paid invoice or paid bill of sale for the materials, a certification from the supplier that the material was paid for, and a fully executed Release of Liens for Materials Stored for Incorporation in Department of Transportation Project Form, including the transfer of ownership to the Department.
4. For material stored on property not belonging to the Department, the material is stored in a fenced area with access limited to the Department and the Design-builder. Additionally, the Design-builder has posted a sign at the location clearly identifying, and printed in large letters, that the materials are without encumbrances and are to be solely used for the Project.
5. When materials are stored in a leased area, the lease is made out to the Design-builder and provides that it shall be canceled only with the written permission of the Department. Submit a copy of the lease to the Department's Project Manager.

Payment for materials does not constitute Department approval or Acceptance of the materials or work. If materials paid for are damaged, stolen, or prove to be unacceptable, the Department has the right to recover the costs from the Design-builder. Stored materials are not to be removed from storage except for incorporation into the project. The Department will not make payment for plant materials until they are planted or installed.

109.07 BONDS POSTED IN LIEU OF RETAINAGES

The Design-builder may deposit negotiable bonds of the State or any of its political subdivisions, which have been approved by the Department, in an escrow account to secure release of all or a portion of the retainage withheld as specified in [109.05](#). Establish the account under the provisions of an escrow agreement to be entered into between the Design-builder, the Department, and a bank located in the State that is an authorized depository with a trust department. Pay the charges of the bank for services rendered according to the terms and conditions of the escrow agreement.

The Design-builder may obtain agreement forms and a list of approved bonds from the Department. Obtain bonds that have a rating of at least "B A A" by Moody's Investor Service or "B B B" by Standard and Poors Corporation.

If the market value of the bonds on deposit in the escrow account falls below the amount of retainage required by the Contract, deposit additional bonds of sufficient value in the escrow account to secure the release of retainage, or the Department will deduct from current payments amounts sufficient to ensure that the total bond value on deposit plus retainage withheld will equal the total retainage requirement for the Contract.

Ensure that the bonds deposited in the escrow account remain acceptable to the Department. If the Design-builder does not replace unacceptable bonds with acceptable bonds, the Department will withhold from future payments amounts equal to the amount of retainage, the release of which was based upon the value of the now unacceptable bonds.

In the event of a declaration of default or an Order of Termination of the Contract, the Department will notify the bank in writing of the declaration of default or the Order of Termination. Following said written notification, the bank shall not dispose of, release, or compromise any bonds or the proceeds of called or mature bonds, without written instructions from the Department. If directed by the Department, the bank shall sell any bonds in the escrow account and pay the proceeds of such sale or the proceeds held in the account from called or matured bonds to the Department or to any payee designated by the Department. The Department will send a copy of the instructions to sell to the Design-builder.

109.08 AS-BUILT QUANTITIES

The Design-builder shall note as built quantities in the record plans. Refer to Request for Proposals, Part 3, for additional As-Built Plans requirements.

109.09 AUDITS

All claims filed as specified in 107.12 and force account work are subject to audit at any time following the filing, whether or not part of a suit pending in the courts of this State pursuant to N.J.S.A. 59:13-1, *et seq.* The audit may

begin after the Department has given 15 day notice to the Design-builder, subcontractor, or supplier. If an audit is to be commenced more than 60 days after Acceptance, the Department will provide the Design-builder with reasonable notice of the time when such audit is to begin. Provide adequate facilities that are acceptable to the Department for such audit during normal business hours. Make a good faith effort to cooperate with the auditors. Failure to retain and maintain sufficient records to allow the Department's auditor to verify a claim submitted by the Design-builder, subcontractor, or supplier constitutes a waiver of such claim and bars any recovery; if the Department has already made payment, the Design-builder shall refund to the Department the amount so disallowed.

At a minimum, provide the auditors the following documents unless their availability is otherwise limited by the custody agreement specified in [103.05](#):

1. Daily time sheets and foreman's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment).
10. Vendors', rental agencies', and subcontractors' invoices.
11. Subcontractors' payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost report.
14. Job payroll ledger.
15. General ledger.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on the Project.
18. Income tax returns for all years reflecting the operations on the Project.
19. Depreciation records on company equipment whether such records are maintained by the company involved, or its accountant, or others.
20. If a source other than depreciation records is used to develop costs for the Design-builder's internal purposes in establishing the cost of owning and operating equipment, all such other source documents.
21. All documents that reflect the Design-builder's actual profit and overhead during the years the Project was being performed and for each of the 5 years before the commencement of the Project.
22. All documents related to the preparation of the Design-builder's proposal, including the final calculations on which the proposal was based.
23. All documents that relate to each and every request or claim together with all documents that support the amount of damages as to each.
24. Worksheets used to prepare the request or claim establishing the cost components for items of each including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents that establish the time periods, individuals involved, and the hours and rates for these individuals.

Where payment for materials or labor is based on the cost thereof to forces other than the Design-builder, the Design-builder shall ensure that the cost records of such other forces are open to inspection and audit by the Department on the same terms and conditions as the records of the Design-builder.

Pursuant to N.J.S.A. 52:15C-14(d), relevant records of private vendors or other persons entering into contracts with the Department are subject to audit or review by the New Jersey Office of the State Comptroller. Therefore, the Design-builder shall maintain all documentation related to products, transactions or services under the Contract for a period of 5 years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

109.10 DESIGN-BUILDER’S COMPLIANCE

Provide the Department’s Project Manager with a written statement on a form provided by the Department certifying that all employees employed by the Design-builder or by any subcontractor have been paid wages not less than those required by the Contract in compliance with N.J.S.A. 34:11-56.25, *et seq.*

109.11 FINAL PAYMENT AND CLAIMS

The Final Certificate may result in either a Final Payment to the Design-builder or a credit (payment) due the Department. After Acceptance and the as-built work is finalized, the Department’s Project Manager will process an Estimate and the Department will issue the Proposed Final Certificate to the Design-builder.

Within 7 days after receiving this Proposed Final Certificate, submit a release or conditional release to the Department on a payment voucher provided by the Department. If the Design-builder has no reservation of claims and accepts the Proposed Final Certificate, provide a written release to the Department stating the following:

In consideration of the above payment, I hereby release the State of New Jersey, Commissioner of Transportation, the Department, their agents, officers, and employees from all claims and liability of whatsoever nature for anything done or furnished or in any manner growing out of the performance of the Work.

If the Design-builder has a reservation of specific claims, but otherwise has released all claims not specifically reserved and accepts the Proposed Final Certificate, state the following:

In consideration of the above payment, I hereby release the State of New Jersey, Commissioner of Transportation, the Department, their agents, officers, and employees from all claims and liability of whatsoever nature for anything done or furnished in any manner growing out of the performance for the Work except for _____.

Include in the release the specific monetary amounts and the specific nature of the claims being reserved. Failure to state specific monetary amounts and the specific nature of the claim shall result in a waiver of such claims. The Design-builder may reserve only those claims properly filed with the Department as specified in [107.12](#) and not previously resolved. If the Design-builder reserves claims, proceed as specified in [107.12](#). The Design-builder waives all claims for which the required notice has not been filed with the Department.

The Design-builder’s failure to submit written release or conditional release within said 30 days constitutes acceptance of the Proposed Final Certificate without exception and a waiver of all claims.

Upon receipt of the Design-builder’s written acceptance of the Proposed Final Certificate without exception or conditional release, or when the Design-builder fails to provide the Department written acceptance of the Proposed Final Certificate within 30 days of issuance, the Department will pay the entire sum due there under as provided by the N.J.S.A. 52:32-32, *et seq.*, provided the Final Certificate indicates a payment is due the Design-builder. However, where the Final Certificate indicates a credit (payment) is due the Department, the Design-builder shall remit said credit (payment) to the Department.

If the Design-builder fails to remit the credit due the Department, as indicated on the Proposed Final Certificate, within 30 days of issuance of the Proposed Final Certificate, the Department has the right to recover the credit from the Design-builder.

109.12 ETHICS STANDARDS AND CONFLICTS OF INTEREST

Both the Department and the Design-builder have a duty to prevent conflicts of interest or the appearance of conflicts of interest. Ensure that all officers, employees, agents, and representatives are aware of these requirements. Obtain information regarding the State’s Business Ethics Guide at <https://www.nj.gov/treasury/purchase/ethics.shtml>.

Do not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Department employee, or agent as defined by N.J.S.A. 52:13D-13b. and N.J.S.A. 52:13D-13e., or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee or agent, or any partnership, firm or corporation with which they are employed or associated, or in which such employee or agent has an interest within the meaning of N.J.S.A. 52:13D-13g.

Immediately report in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor to the Attorney General and the Executive Commission on Ethical Standards.

Do not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contract to any Department employee or agent having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

Immediately report any relationships subject to this provision to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Department's employee or agent and finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

Do not influence, or attempt to influence or cause to be influenced, any Department employee or agent in his or her official capacity in any manner, which might tend to impair the objectivity or independence of judgment of said employee or agent.

Do not cause or influence, or attempt to cause or influence, any Department employee or agent to use, or attempt to use their official position to secure unwarranted privileges or advantages for the vendor or any other person.

The provisions cited above in this Subsection shall not be construed to prohibit a Department employee or agent from receiving gifts under the same terms and conditions as are offered or made available to members of the general public, subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

Provide to the Department's Project Manager at the preconstruction meeting, on a form provided by the Department, a certification that the Design-builder understands these obligations, has adhered to these ethics standards and shall continue to adhere to these ethics standards.

DIVISION 150 – CONTRACT REQUIREMENTS

SECTION 151 – PERFORMANCE BOND AND PAYMENT BOND

151.01 DESCRIPTION

This Section describes the requirements for providing a performance bond and a payment bond.

151.02 MATERIALS

(Intentionally Blank)

151.03 PROCEDURE

151.03.01 Performance Bond and Payment Bond

Using bond forms issued by the Department, provide a performance bond and a payment bond to the Department within 5 days of the date of Award or Conditional Award. Ensure that the penal sum of the bond is equal to at least the Total Contract Price. With the bond, provide a certification authorizing the attorney-in-fact to commit the Surety and a true and correct statement of the Surety's financial condition. With the bond, submit the schedule of broker's fees, the certified rate schedule, paid invoices and the report of execution for the bond to the Department's Project Manager.

Obtain bonds from sureties listed in the US Treasury Department Circular 570 and authorized to do business in the State. Reinsurance is prohibited as per N.J.A.C 16:44-6.1(b)6. If the Surety becomes insolvent before Acceptance, provide a performance bond and a payment bond issued by another surety to the Department.

The Department may adjust Contract Time, require extra work, or issue other changes authorized by the Contract without obtaining the consent of the surety of the bonds.

151.04 MEASUREMENT AND PAYMENT

(Intentionally Blank)

SECTION 152 – INSURANCE

152.01 DESCRIPTION

This Section describes the requirements for providing and maintaining insurance until Acceptance.

152.02 MATERIALS

(Intentionally Blank)

152.03 PROCEDURE

152.03.01 Railroad Protective Liability Insurance

If required by the Special Provisions, procure Railroad Protective Liability Insurance according to 23 CFR 646, Subpart A, as a combined single limit for bodily injury and property damage with minimum limits of liability in the amounts of \$2,000,000 per occurrence and \$6,000,000 per annual aggregate. Ensure that the Railroad Protective Liability Insurance meets the policy requirements specified in [107.11.02.A](#). Ensure the policy is endorsed to include per project aggregate.

Additionally, ensure Comprehensive General Liability policy is endorsed to provide for independent contractors' coverage and deletes any exclusions applying to liability arising out of operations in proximity to railroad property. Ensure that the Railroad Protective Liability Insurance policy is endorsed to provide written notice by certified mail to the railroad company 30 days before changes to and cancellation of the policy.

Ensure the policy is endorsed to include Severability of Interest/Separation of Insureds clause. Submit the policy for Railroad Protective Liability Insurance and endorsements to the Comprehensive General Liability Insurance to the railroad company for approval. The Department will list the name and address of the railroad company representative in the Special Provisions. Do not perform construction operations on railroad property before the railroad company approves the insurance. Reconcile all policy requirements to the satisfaction of the railroad company and the Department's Project Manager.

The Special Provisions will contain an estimate of the percentage of the Contract cost located within or adjacent to the railroad ROW. The percentage is provided for informational purposes only and does not affect the amount of risk or coverage.

Submit an updated DC-175, Insurance Certificate, to demonstrate continued renewal of insurance. During any period when the required insurance is not in effect, the Department's Project Manager may suspend the Work. The Department may refuse to make payments due under this Contract or any other contracts with the Department until the required insurance coverage is in effect. The Department may use monies withheld to renew the insurance for the periods and amounts referred to above. Alternatively, the Department may default the Contractor and direct the Surety to complete the Project.

152.03.02 Pollution Liability Insurance

Procure Contractor's Pollution Liability Insurance for bodily injury and property damage with minimum limits of liability in the amounts of \$5,000,000 per occurrence and \$10,000,000 aggregate. Ensure that the Pollution Liability Insurance meets the policy requirements specified in [107.11.02.A](#).

If the policy is written on an occurrence form, ensure it will remain in effect until Acceptance, and ensure that completed operations coverage is provided for a period of no less than 2 years after Acceptance. If the policy is written on a claims-made basis, ensure an Extended Reporting Provision coverage is maintained for a period of no less than 2 years after Acceptance.

Ensure the policy provides coverage for:

1. Bodily injury and property damage to third parties.
2. Natural resource damages.
3. Environmental cleanup including restoration or replacement costs.
4. Legal defense.
5. Transportation of waste material by or on behalf of the Contractor away from the Project Limits.
6. Disposal liability for pollution conditions on, at, under, or emanating from any disposal site, location or facility used by or on behalf of the Contractor for disposal of waste.
7. Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles.
8. Severability of Interest/Separation of Insureds.
9. Per project aggregate.

Ensure the policy does not contain any exclusions or limitations for:

1. Liabilities Assumed under an insured contract.
2. Lead, silica, or asbestos.
3. Underground storage tanks.
4. Insured versus insured exclusion that restricts coverage to the State.

Ensure the policy names the State, its officers, employees, and agents as additional insured. Provide documentation from the insurance company indicating the coverage, limitation of coverage, term of coverage.

152.04 MEASUREMENT AND PAYMENT

(Intentionally Blank)

SECTION 153 – PROGRESS SCHEDULE

153.01 DESCRIPTION

This Section describes the requirements for providing a progress schedule to monitor Contract progress and to evaluate impacts on Contract Time.

153.02 MATERIALS

(Intentionally Blank)

153.03 PROCEDURE

153.03.01 CPM Progress Schedule

The Design-builder shall create, provide and maintain a progress schedule using Oracle/Primavera scheduling software. This progress schedule shall be prepared using the critical-path method (CPM) and based on the principles in the latest edition of the Construction Planning and Scheduling Manual published by the Associated General Contractors of America, except where superseded by the Contract Documents. The Design-builder and the Department shall use this schedule to manage the Work, including the activities of Subcontractors, fabricators, the Department, other involved Governmental Persons, other entities such as utilities and municipalities, and all other relevant parties.

Acceptance of a Progress Schedule by the Department's Project Manager shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Design-builder of providing sufficient materials, equipment, and labor to guarantee completion of the Project in accordance with the Contract. Acceptance shall not be construed to modify or amend the agreement or the date(s) of completion therein.

Failure by the Design-builder to include in the Progress Schedule any element of Work required for the performance of the Contract shall not excuse the Design-builder from completing all Work required within the completion date(s) specified in the Contract, notwithstanding acceptance of the schedule by the Department's Project Manager.

Float contained in the Progress Schedule is not for the exclusive use and benefit of either the Department or the Design-builder.

Events, actions, and progress that cause delays or gains to the Progress Schedule will be analyzed solely by the "Contemporaneous Period Analysis" method.

In developing the schedule, with respect to any submittals requiring a response from the Department for which the Contract Documents do not specify a time for the Department's response, the Design-builder shall include a reasonable time for the Department to provide a response.

All costs related to developing, updating, revising and submitting the Progress Schedule shall be solely the Design-builder's obligation and will be at no additional cost to the Department unless specifically provided for in other Contract provisions.

The purpose of the Progress Schedule is to ensure adequate design, planning and execution of the Work and to evaluate the progress of the Work.

153.03.02 Progress Schedule Submittals

Submit the Progress Schedule Submittals in accordance with RFP Part 5, including:

1. Draft Baseline Progress Schedule
2. Baseline Progress Schedule
3. Final Baseline Progress Schedule
4. Monthly, Bi-Weekly, or Weekly Progress Schedule
5. As-Built Progress Schedule

In addition, submit regularly Look-Ahead Schedules to Department's Project Manager in accordance with the requirements of RFP Part 5.

153.03.03 Review of the Progress Schedule

The Department's Project Manager, or designee, will review the Progress Schedule submissions and then hold a discussion meeting with the Design-builder after each submission. The Department will endeavor to provide review comments within ten days for a Baseline Progress Schedule submission and five days for a regular Progress Schedule submission. Within two weeks of this meeting, the Design-builder shall adjust the Progress Schedule to resolve any issues noted by the Department's Project Manager. The Design-builder shall submit for review the revised schedule materials as described above.

Upon completion of the final review by the Department's Project Manager, or their designee, the Design-builder shall incorporate the final revisions and submit the Progress Schedule within one week of the Design-builder's receipt of the Department's comments.

Changes to the Progress Schedule: The Progress Schedule shall accurately reflect the manner in which the Design-builder intends to proceed with the Project and shall incorporate the impact of delays and Change Orders when these factors can be accurately determined. All changes to the schedule, e.g., the addition of activities, changes in logic, or changes in activity durations, shall be identified in the monthly narrative report for review by the Department's Project Manager.

153.03.04 Progress Schedule Updates

Update the Progress Schedule, at a minimum, on a weekly basis. Show changes to the Progress Schedule that reflect the status of activities that have commenced or have been completed, including the following items: (a) Actual Start date and or Actual Finish date as appropriate; (b) Remaining Duration for activities commenced and not complete; and (c) Suspend or Resume dates for activities commenced and not complete.

Submit to the Department's Project Manager electronically and on printed charts in the format specified by the Department's Project Manager, along with a narrative report per Part 5, Special Provision, SP-3 – Critical Path Method Schedule.

The Department's Project Manager will discuss schedule submissions and updates at the regularly scheduled progress meetings. The Design-builder's appropriate design, construction, and scheduling personnel shall attend.

153.03.05 Project Schedule Narrative

Submit with each Progress Schedule submission, a Progress Schedule Narrative in Microsoft Word, or Adobe Acrobat format. Summarize the following information, at a minimum:

1. The contract number, project name, project location, and name of the Design-builder.
2. Actual contract Award Date, current contract Completion Date, and scheduled completion of all project work.
3. Any contract Interim Milestone dates (I/D, B-Clock, LD, etc.), and scheduled Start and Finish dates for those Milestone activities.

4. A list of all activities on the Critical Path (include Activity ID's and Activity Descriptions) where Work is currently being delayed, and for each such activity provide detailed information including:
 - the events that caused the delay.
 - the party(s) responsible for the delay event(s).
 - the number of days the activity has been delayed (negative float).
 - the activities in the construction schedule affected by the events.
 - the reasonable steps needed to minimize the impact of the delay, and which party needs to take the action(s).
5. A list of any other problems experienced during this Progress Schedule submission period, the party responsible for the problems, and the Design-builder's intentions to resolve the problems.
6. A list of all activities for procurement of long lead time materials that are behind schedule and the reason(s) why.
7. For major work items describe the differences between the actual work performed and the work planned for the period as represented in the preceding Progress Schedule submission, including explanations for the deviations.
8. For all suspended work activities that could otherwise logically be progressed, identify the responsible party prohibiting the progression of the Work, as well as the detailed reasons why.
9. Description of any changes to the Critical Path since the last Progress Schedule submission and the impacts of such changes.
10. A list of all added or deleted activities included in this Progress Schedule submission, and the reason(s) for and the impact(s) of such changes.
11. A list of all changes in activity Original Durations, the justification for such change(s), and the impact(s) of such changes.
12. A list of all changes in relationships between activities included in this Progress Schedule submission, and the reason(s) for and the impact(s) of such changes.
13. A list of any addition or deletion of activity or project constraints, and the reason(s) for and the impact(s) of such changes.
14. A list of all changes to the project calendars, and the reason(s) for and the impact(s) of such changes.
15. The major work elements, as defined in the Work Breakdown Structure, to be accomplished during the next monthly work period.
16. Any potential problems that are anticipated for the next monthly work period and the proposed solutions to such problems. Identify potential problems or risks that either the Department or Design-builder may be potentially responsible for. Explain what action the responsible party (i.e. - Department or Design-builder) needs to take and the date by which time the action needs to be taken to avoid the problem.
17. Any planned acceleration of activities that the Design-builder anticipates undertaking within the next work period that either the Department directed, or that the Design-builder believes is necessary.
18. Quality Control efforts, including results of any Design Reviews and/or quality audits; and status of all design & construction NCRs issued and outstanding status of NCR dispositions.
19. Issues which may need the Department's Project Manager's attention or action for the next month, including Design Reviews.
20. If the Work falls behind the Progress Schedule such that the scheduled completion of the Work is beyond the Contract Time, take such actions as necessary to improve its progress and indicate what measures will be taken in the next 30 days to put the Work back on schedule so as to meet all milestone dates specified in the Contract. In preparing the revised schedule, consider increasing the work force, construction plant and equipment, the number of work shifts, etc. If the Department's Project Manager finds the proposed schedule not acceptable, the Department may require the Design-builder to submit a new schedule.

153.03.06 Monthly Progress Report

The Design-builder shall submit a monthly progress report with each payment request, consisting of the following:

1. Quality Requirements (106.11);
2. An Accident Report;
3. A Security Report (Part 3 – Project Requirements, Section 22), if required;
4. A monthly Progress Schedule update;

5. A Change Order Status Report (104.03.10);
6. A monthly Subcontract report, including Civil Rights Reporting (105.03);
7. Updated Submittals List (Part 5, 5.1.3.4.2 (d) xxi); and
8. A summary of hazardous and contaminated substance activities.

153.04 MEASUREMENT AND PAYMENT

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SECTION 154 – MOBILIZATION

See RFP Part 8 for mobilization requirements

154.01 DESCRIPTION

(Intentionally Blank.)

154.02 MATERIALS

(Intentionally Blank.)

154.03 PROCEDURE

(Intentionally Blank.)

154.03.01 Mobilization

(Intentionally Blank.)

154.04 MEASUREMENT AND PAYMENT

(Intentionally Blank.)

SECTION 155 – CONSTRUCTION FIELD OFFICE

155.01 DESCRIPTION

This Section describes the requirements for set up and maintenance of the Department’s construction field office.

155.02 MATERIALS

(Intentionally Blank)

155.03 PROCEDURE

155.03.01 Field Office

Provide and maintain a safe and secure field office for the exclusive use of the Department, until no longer required by the Department, at a location within or in the immediate vicinity of the Project Limits and approved by the Department’s Project Manager. Do not lock out, or make the Field Office inaccessible to, the Department’s Project Manager or any Department employees, consultants, or representatives at any time. Do not use any building scheduled

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for demolition under the Contract as a field office. If the field office is a temporary structure within State ROW, secure necessary permits from the New Jersey Department of Community Affairs, and remove the structure when directed by the Department’s Project Manager.

Ensure that the field office is weatherproof with a minimum ceiling height of 7 1/2 feet and conforms to the requirements specified in [Table 155.03.01-1](#). Ensure that 1 of the rooms of the field office has a minimum area of 288 square feet. Ensure that the other rooms have a minimum area of 144 square feet, except for conference rooms, which require a minimum area of 288 square feet. Ensure that the field office doors and windows have locks. Provide the keys to the Department’s Project Manager. Ensure that the field office has one or more closets of sufficient capacity for the office’s size.

1. **Office Size Requirements.** Provide the following, at a minimum, for the field office type specified:

Table 155.03.01-1 Office Size Requirements						
Description	Field Office Type					
	A	B	C	D	E	F
Total Area (SF)	288	482	626	720	864	1008
Number of Rooms ¹	1	2	3	4	4	5
Conference Room	0	0	0	0	1	1
Desks with Swivel Chairs	2	4	6	8	8	10
Tables and chairs to seat	8	12	16	20	24	28
File Cabinets ²	2	4	4	4	4	8
Plan Racks ³	1	2	2	3	3	4
Parking spaces ⁴	4	5	6	8	8	10

1. Including conference room.
2. Having a UL rating of 350 °F – 1 hour, 4 drawers, legal-size with lock and 2 keys.
3. Capable of holding 1,200 plan sheets.
4. Free parking on a paved or hard surfaced area adjacent to the building.

2. **Utilities and Lighting.** Provide all utility services and connections including water, sewer, gas, electricity, telephone, and broadband internet. Provide a separate telephone line for each telephone, computer modem, and fax machine specified in [155.03.01.4](#). Provide a field office with sufficient natural and artificial light. Provide adequate insulation, heat, and air-conditioning to maintain an ambient temperature of 68 to 80 °F.
3. **Lavatory.** Provide a separately enclosed and properly ventilated room with washing and toilet facilities suitable for use by male and female employees. Ensure that the facilities have hot and cold running water. Equip the doors and windows with locks.
4. **Communication Equipment.** Provide the following communication systems:
 - a. **Telephones.** Provide a phone system as specified in the Special Provisions. Ensure that each phone is connected to the answering system.
 - b. **Fax Machine.** Provide a fax machine with built-in telephone, auto-dial, auto-re-dial, and auto-receive, and out-of-paper reception features.
 - c. **Cell Phones.** Provide cell phones as specified in the Special Provisions.
 - d. **Computer System.** Provide a computer system as specified in the Special Provisions.

Do not procure the computer system until reviewing the system requirements with the Department’s Project Manager. Ensure that the computer system is compatible with the Department’s construction management software and other specified software.

When the computer system is no longer required by the Department’s Project Manager, the Department will remove and retain the hard drive, and return the computer system to the Contractor. The Department will retain other data storage media.

5. **Office Furnishings.** Provide the following:

- a. Two book cases.
- b. A drafting table and stool.
- c. A supply cabinet.
- d. A water cooler having both hot and cold water dispensers, and bottled water service.
- e. A type ABC fire extinguisher having UL-approval.
- f. A 24 person first-aid kit according to ANSI Z308.1, 1 tick removal tweezers, and 4 aerosol cans of insect repellent containing DEET. Restock first aid supplies and insect repellent as needed.
- g. A wastepaper basket for each room.
- h. Two 3 × 4 foot bulletin boards.
- i. A 1.7 cubic foot refrigerator.

6. Office Equipment. Provide the following:

- a. A copier with automatic document feed, 15 pages per minute copy speed, variable reduce/enlarge capability, and letter, legal, and ledger size capabilities. Erase the copier hard drive before removing the copier from the field office and provide the Department's Project Manager with a certification stating that the copier hard drive has been erased.
- b. A digital camera as specified in the Special Provisions.
- c. A video camcorder as specified in the Special Provisions.
- d. A printing adding machine.
- e. A paper shredder with a minimum throat of 8.75 inches, and a feed capacity of at least 10 sheets.

7. Inspection Equipment. Provide as specified in the Special Provisions.

155.03.02 Field Office Maintenance

Maintain the field office including furnishings, equipment, lavatories including toiletries, and utilities until no longer required by the Department. Provide services for utilities specified in [155.03.01.2](#). Provide for utility disconnection when the field office is no longer required by the Department's Project Manager. Assume that the field office will be required for a minimum of 3 months after Completion. Provide weekly janitorial and waste disposal service, and snow removal service as needed. Provide 1 case of letter, legal, and ledger sized paper every 2 months.

Repair or replace inoperable or defective communication, office, and inspection equipment within 24 hours. The Contractor is not responsible for replacing or repairing Items that are lost or damaged due to misuse.

155.04 MEASUREMENT AND PAYMENT

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SECTION 156 – MATERIALS FIELD LABORATORY AND CURING FACILITY

156.01 DESCRIPTION

This Section describes the requirements for set up and maintenance of the Department's materials field laboratory and curing facility.

156.02 MATERIALS

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156.03 PROCEDURE

156.03.01 Materials Field Laboratory

Do not provide or procure the materials field laboratory or associated equipment until the Department's Project Manager notifies that this item is required.

Within 15 days of Department's Project Manager notification, provide and maintain a materials field laboratory for the exclusive use of the Department, until no longer required by the Department, at a location approved by the ME. Do not lock out, or make the Materials Field Laboratory inaccessible to, the Department's Project Manager or any Department employees, consultants, or representatives at any time. Do not use buildings scheduled for demolition under the Contract as a materials field laboratory. The ME will not conduct testing until the materials field laboratory is ready for use.

If the field laboratory is a temporary structure within State ROW, secure the necessary permits from the New Jersey Department of Community Affairs, and remove the structure as directed by the Department's Project Manager.

Provide a Uniform Code Type Four Fire Permit according to the New Jersey Department of Community Affairs regulations. The Contractor may obtain information concerning the permit fees and the permit application process from the Department's Bureau of Materials.

Ensure that the materials field laboratory is weatherproof with a minimum ceiling height of 7 1/2 feet. Ensure that one of the rooms has a minimum area of 450 square feet. Ensure that there is an additional room or enclosure with a concrete floor with a minimum area of 600 square feet. Ensure that each room has at least four 3 prong electrical outlets, having a minimum of two 20 ampere, 120 volt circuits.

Ensure that the materials laboratory doors and windows have locks, and provide the keys to the ME. Ensure that the materials field laboratory has one or more closets of sufficient capacity for the office's size. Provide the following for the materials field laboratory:

1. **Utilities and Lighting.** Provide all utility services and connections including water, sewer, gas, electricity, telephone, and broadband internet. Provide a separate telephone line for each telephone and computer modem as specified in [156.03.01.4](#). Provide a field office with sufficient natural and artificial light. Provide adequate insulation, heat, and air-conditioning to maintain an ambient temperature of 68 to 80 °F.
2. **Lavatory.** Provide a lavatory as specified in [155.03.01.3](#).
3. **Parking.** Provide 6 free parking spaces on a paved or hard surfaced area adjacent to the materials field laboratory.
4. **Communication Equipment.** Provide the following communication systems:
 - a. **Telephones.** Provide 2 cordless phones with auto-switching.
 - b. **Computer System.** Provide a computer system meeting the following requirements:
 1. Processor having a clock speed of 3.5 GHz or faster, 8 GB RAM, 896 MB Video RAM, 250 GB hard drive designated as drive C. Ensure the system is USB 2.0 compatible and has at least two front USB ports.
 2. Wireless Ethernet Hub Switch with appropriate number of ports and cables and a print server. Ensure there is at least one (1) Ethernet switch.
 3. High-speed broadband connection and service with a minimum speed of 250 Megabytes per second (mbps) with dynamic IP address for the duration of the project.
 4. Twenty inch or larger Flat Screen LCD monitor with tilt/swivel capabilities.
 5. Forty-two inch or larger flat screen wall mounted television with integrated or attached video camera with microphone capabilities.
 6. Two Hundred Fifty Gigabyte or larger external drive with backup software for MS-Windows, and fifteen (15) corresponding formatted data cartridges corresponding to the tape drive size.
 7. Twelve USB 64 GB (or larger) Flash/Jump memory drives.
 8. One Flatbed USB version 2.0 Color Scanner with automatic document feed.
 9. Uninterruptible power supply (UPS).

10. Surge protector for the entire computer configuration to be used in conjunction with the UPS.
11. Six computer workstations as needed, chair, printer stand, and/or table having both appropriate surface and chair height.
12. Six cans of compressed air and screen cleaning solution every other month for the duration of the contract.
13. Computer Software Requirements.
 - a. Microsoft Windows, latest version, with upgrades for the duration of the entire project.
 - b. Microsoft Office Professional, latest version.
 - c. Norton's System Works for Windows, latest version, or compatible software package with future upgrades and latest virus patches.
 - d. Anti-Virus software, latest version with monthly updates for the duration of the project.
 - e. Adobe Acrobat Professional, latest version, or compatible software.

If more than one computer configuration is specified, provide one wireless network card for the base computer configuration, and hardwire connections between computer configurations as directed by the ME.

Do not procure the computer system until reviewing the system requirements with the ME. Ensure that the computer system is compatible with the Department's construction management software and other specified software.

When the computer system is no longer required by the ME, the Department will remove and retain the hard drive, and return the computer system to the Contractor. The Department will retain other data storage media.

- c. **Printer.** Provide a printer meeting the following requirements:

Discuss with Bureau of Construction for printer specifications.

5. Office Furnishings. Provide furnishings, as specified in [155.03.01.5](#), and the following:

- a. Four desks with 4 desk chairs and 4 chairs, as needed.
- b. A work bench having a minimum area of 2 1/2 × 10 feet, and 2 stools.
- c. Shelving having a minimum area of 45 square feet.
- d. One water cooler having both hot and cold water dispensers, and bottle water service.
- e. A 24-person first-aid kit according to ANSI Z308.1, tick removal tweezers, and 4 aerosol cans of insect repellent containing DEET. Restock first aid supplies and insect repellent as needed.
- f. A wastepaper basket.
- g. One type ABC, fire extinguisher having UL approval.

6. Office Equipment. Provide the following:

- a. A copier with scanning capabilities and automatic document feed, 15 pages per minute copy speed, variable reduce/enlarge capability, and letter, legal, and ledger size capabilities. Erase the copier hard drive before removing the copier from the field office and provide the Department's Project Manager with a certification stating that the copier hard drive has been erased.
- b. A calculator, with trigonometric function capability.
- c. A paper shredder with a minimum throat of 8.75 inches, and a minimum feed capacity of 10 sheets.
- d. File cabinets as specified in Table 155.03.01-1.
- e. Legal size hanging folders, as needed.
- f. Legal size manila file folders – three tabs, as needed.

7. Laboratory Equipment. Provide the following:

- a. **Primary Laboratory Room.** Equip the primary laboratory room with the following as needed:
 1. A 12 inch diameter exhaust fan or alternative means for venting heat, dust, and fumes.
 2. Two gas stoves, each having at least 2 burners.
 3. Either commercially bottled gas service or gas supplied by a Utility with at least 2 connections to be located as directed by the ME.

4. A sink with hot and cold running water, having adequate pressure, and equipped with 2 drain boards, and a drain-disposal system (silt trap or similar) capable of handling elutriable material.
 5. A metal stand to hold sieves used in washing elutriable material.
 6. Two wheelbarrows.
 7. A light duty oil-less air compressor listed by UL with a 2.5 gallon storage tank, a start/stop switch –94 pounds per square inch over 125 pounds per square inch, a 115 volt universal motor, an ASME safety valve, and a 25 foot air hose, equipped with a quick-change blow gun kit and nozzle kit consisting of a high-flow safety nozzle, a 6 inch extension safety nozzle, a rubber tip nozzle, a needle tip nozzle, and an air screen safety nozzle.
 8. An exhaust vent hood enclosed on 3 sides, top, and bottom, of such size to enclose the operations of drying and weighing a recycled concrete aggregate sample, and other operations in which a vapor or gas is emitted. Design and construct the hood so that any operation involving testing within the hood does not require the insertion of any portion of the tester’s body, other than hands and arms. Ensure that the exhaust system is capable of producing an air speed of 80 to 120 feet per minute at the face of the opening.
 9. Shovels and scoops for sampling soil aggregate and concrete.
 10. Provide a nomograph. Supply the instruments necessary to measure air temperature, relative humidity, and wind speed, including 2 battery operated psychrometers, 2 concrete thermometers, and 2 wind gauges. Obtain certification from an independent, ME-approved laboratory that all instruments are in good working order and have been calibrated as requested by the ME.
- b. Additional Room or Enclosure.** Equip the additional room or enclosure with the following as needed:
1. Two 12 inch diameter exhaust fans or alternative means for venting heat, dust, and fumes.
 2. A 7 day spring-driven temperature recording device capable of producing a permanent record of the room temperature, with a supply of recording charts and pens.
 3. Install a concrete block weighing a minimum of 200 pounds and measuring approximately 10 × 10 × 24 inches with a 10 × 10 × 1 inch steel plate fastened to the top. Install the block on a firm foundation at a location directed by the ME.
 4. Two sound-dampened and dustproof cabinets constructed of at least 3/4 inch plywood or other suitable material and of sufficient size to house the mechanical sample shaker and the mechanical sieve shaker.
 5. A separate cabinet for the purpose of housing and storing a nuclear density gauge. Ensure that the cabinet is constructed of 3/4 inch plywood or particle board and lead sheathing, or any other acceptable materials, to ensure that a radiation reading of no higher than 2 nanorads per hour is obtained by contact measurement of the outside wall of the storage cabinet. This second cabinet must be securable and have a door equipped with a heavy-duty lock with 2 keys provided. Before this cabinet is constructed, obtain approval from the ME of the exact location, materials to be used for its construction, and locking system.
 6. Water tanks capable of storing three hundred 4 × 8 inch concrete cylinders fully submerged and in an upright position. Provide a 5/8 inch water hose at least 50 feet in length. Equip the water tank with a heater capable of maintaining a water temperature of 73 ± 3 °F.
- 8. Laboratory Testing Equipment.** Provide testing equipment and apparatus conforming to that listed in AASHTO R 60, T 11 (including a mechanical washing machine), T 23, T 27, T 99, T 119, T 121, T 152, T 248, and T 309. Provide 4 units or the number specified by the ME, of the testing apparatus to satisfy the inspection and testing frequency anticipated. In addition, ensure that scales are electronic, except for those required for AASHTO T 121. Ensure that scales are inspected and certified by an independent scale company accredited according to the International Organization of Standards/International Electrotechnical Commission 17025, or a State or county Office of Weights and Measures. Provide the ME with a copy of the certification at the time of installation. Ensure that the scales are re-certified annually, or every 6 months if directed by the ME.
- 9. Inspection Equipment.** Provide as needed:
- a. Six Hardhats - orange, reflectorized hard hats according to ANSI Z89.1.

- b. Six Safety garments – orange, reflectorized, 360° high visibility safety garments according to ANSI/ISEA Class 3, Level 2 standards. To be replaced yearly for the duration of the contract.
- c. Six Sets of rain gear with reflective sheeting.
- d. Six Sets of hearing protection with a NRR rating of 22 dB.
- e. Six Sets of eye protection according to ANSI Z87.1.
- f. Six Lantern flashlight, 6V with monthly battery replacements.
- g. Three Magnetic Mount 12 V LED amber lights for Private Vehicles.
- h. Six Working gloves.
- i. Six Heat resistant gloves that will withstand up to 1000° F.
- j. Six Hard Bound Daily Diaries, 5 1/2" X 8" minimum with one day per page. To be provided yearly for the duration of the contract.

156.03.02 Materials Field Laboratory Maintenance

Maintain the materials field laboratory including furnishings, equipment, lavatories including toiletries, and utilities until no longer required by the Department. Provide services for the utilities specified in [156.03.01.1](#). Provide for utility disconnection when the field office is no longer required by the ME. Provide weekly janitorial and waste disposal service, and snow removal service as needed. Provide 1 case of letter, legal, and ledger sized paper every 2 months.

Repair or replace inoperable or defective communication equipment, office furnishings, office equipment, laboratory equipment, and laboratory testing equipment within 24 hours. The Contractor is not responsible for cost of replacing or repairing items that are lost or damaged due to misuse.

156.03.03 Curing Facility

Do not provide or procure the curing facility or associated equipment until the Department's Project Manager notifies that this item is required.

Within 15 days of Department's Project Manager notification, provide and maintain a curing facility for the exclusive use of the Department, until no longer required by the Department, at a location approved by the ME. Do not lock out, or make the Curing Facility inaccessible to, the Department's Project Manager or any Department employees, consultants, or representatives at any time. Do not use buildings scheduled for demolition under the Contract as a materials field laboratory. The ME will not conduct testing until the curing facility is ready for use.

Maintain the curing facility until no longer required by the ME. Assume that the curing facility will be required for a minimum of 1 month after Completion. If the curing facility is a temporary structure, secure the necessary permits from the New Jersey Department of Community Affairs, and remove the structure as directed by the Department's Project Manager.

Ensure that the curing facility is weatherproof with a minimum ceiling height of 7 1/2 feet. Ensure that the curing facility has a concrete floor and a minimum area of 300 square feet. The room shall have a minimum of three 3 prong electrical outlets.

Ensure that the curing facility doors and windows have locks, and provide all keys to the ME. Provide the following for the curing facility:

1. **Utilities and Lighting.** Provide all utility services and connections including water, sewer, gas, and electricity. Provide a curing facility with sufficient natural and artificial light. Provide adequate insulation, heat, and air-conditioning to maintain an ambient temperature of 68 to 80 °F.
2. **Furnishings.** Provide the following:
 - a. One work bench having a minimum area of 2 1/2 × 10 feet, and 2 stools.
 - b. One type ABC, fire extinguisher having UL approval.
 - c. Two desks with two desk chairs and one chair.
 - d. One water cooler having both hot and cold water dispensers, and bottle water service.
 - e. A 24-person first-aid kit according to ANSI Z308.1, tick removal tweezers, and 4 aerosol cans of insect repellent containing DEET. Restock first aid supplies and insect repellent as needed.

f. A wastepaper basket.

3. Equipment. Provide the following:

- a. One sink with hot and cold running water.
- b. One wheelbarrow.
- c. One light duty oil-less air compressor listed by UL with a 2.5 gallon storage tank, a start/stop switch –94 pounds per square inch over 125 pounds per square inch, a 115 volt universal motor, an ASME safety valve, and a 25 foot air hose, equipped with a Quick-Change Blow Gun Kit and Nozzle Kit consisting of a high-flow safety nozzle, a 6 inch extension safety nozzle, a rubber tip nozzle, a needle tip nozzle, and an air screen safety nozzle.
- d. One 7 day spring-driven temperature recording device capable of producing a permanent record of the room temperature.
- e. Two 12 inch diameter exhaust fan or alternative means for venting heat, dust, and fumes.
- f. Water tanks capable of storing 300, 4 × 8 inch concrete cylinders fully submerged and in an upright position. Provide a 5/8 inch water hose at least 50 feet in length. Equip the water tank with a heater capable of maintaining a water temperature of 73 ± 3 °F.
- g. A copier with automatic document feed, 15 pages per minute copy speed, variable reduce/enlarge capability, and letter, legal, and ledger size capabilities. Erase the copier hard drive before removing the copier from the curing facility and provide the RE with a certification stating that the copier hard drive has been erased.
- h. A paper shredder with a minimum throat of 8.75 inches, and a minimum feed capacity of 10 sheets.

4. Communication Equipment. Provide the following communication systems:

- a. Computer System. Provide a computer system meeting the following requirements:
 - 1. Processor having a clock speed of 3.5 GHz or faster, 8 GB RAM, 896 MB Video RAM, 250 GB hard drive designated as drive C. Ensure the system is USB 2.0 compatible and has at least two front USB ports.
 - 2. Wireless Ethernet Hub Switch with appropriate number of ports and cables and a print server. Ensure there is at least one Ethernet switch.
 - 3. High-speed broadband connection and service with a minimum speed of 250 Megabytes per second (mbps) with dynamic IP address for the duration of the project.
 - 4. Twenty inch or larger Flat Screen LCD monitor with tilt/swivel capabilities.
 - 5. Two Hundred Fifty Gigabyte or larger external drive with backup software for MS-Windows, and fifteen corresponding formatted data cartridges corresponding to the tape drive size.
 - 6. Four USB 32 GB (or larger) Flash/Jump memory drives.
 - 7. One Flatbed USB version 2.0 Color Scanner with automatic document feed.
 - 8. Uninterruptible power supply (UPS).
 - 9. Surge protector for the entire computer configuration to be used in conjunction with the UPS.
 - 10. Six computer workstations as needed, chair, printer stand, and/or table having both appropriate surface and chair height.
 - 11. Six cans of compressed air and screen cleaning solution every other month for the duration of the contract.
 - 12. Computer Software Requirements.
 - a. Microsoft Windows, latest version, with upgrades for the duration of the entire project.
 - b. Microsoft Office Professional, latest version.
 - c. Norton's System Works for Windows, latest version, or compatible software package with future upgrades and latest virus patches.
 - d. Anti-Virus software, latest version with monthly updates for the duration of the project.
 - e. Adobe Acrobat Professional, latest version, or compatible software.

If more than one computer configuration is specified, provide one wireless network card for the base computer configuration, and hardwire connections between computer configurations as directed by the ME.

Do not procure the computer system until reviewing the system requirements with the ME. Ensure that the computer system is compatible with the Department's construction management software and other specified software.

When the computer system is no longer required by the ME, the Department will remove and destroy the hard drive and return the computer system to the Contractor. The Department will retain other data storage media.

- b. Printer. Provide a printer meeting the following requirements:

Discuss with Bureau of Construction for printer specifications.

5. Lavatory. Provide a lavatory as specified in 155.03.01.3.

156.03.04 Curing Facility Maintenance

Maintain the curing facility including furnishings and curing facility equipment for the duration of the Contract or until no longer required by the ME. Provide services for utilities specified in [156.03.03.1](#). Provide for utility disconnection when the curing facility is no longer required by the ME. Provide weekly janitorial and waste disposal service and snow removal service as needed.

Repair or replace inoperable or defective furnishings and curing facility equipment within 24 hours. The Contractor is not responsible for cost of replacing or repairing items that are lost or damaged due to misuse.

156.03.05 Nuclear Density Gauge

Provide for the Department's exclusive use and for the duration of the Project a nuclear density gauge calibrated to the manufacturer's specifications, with the following minimum features and capabilities:

1. Conformance to AASHTO T 310.
2. Backscatter and direct transmission modes.
3. 8 inch minimum length of probe.
4. Automatic warm-up and self-test.
5. Automatic data storage and data transfer features, including an RS232 interface cable, specifically configured to transfer data from the density gauge to the microcomputer system and with data communication software.
6. Count times of 0.25, 1.0, and 4.0 minutes.
7. 0.25 pounds per cubic foot dry density precision in direct transmission at 120 pounds per cubic foot and at 1.0 minute, with ± 0.3 percent accuracy.
8. 0.32 pounds per cubic foot moisture precision at 1.0 minute, with ± 2.0 percent accuracy.
9. Type A certified package.

Provide a nuclear density gauge for the exclusive use of the ME using one of the following methods:

1. Purchase a nuclear density gauge under the Contractor's New Jersey Department of Environmental Protection (NJDEP) License or the Contractors United States Nuclear Regulatory Commission (USNRC) license.
2. Lease a nuclear density gauge from a New Jersey Department of Environmental Protection (NJDEP) or United States Nuclear Regulatory Commission (USNRC) licensed third party on the Department's New Jersey Department of Environmental Protection (NJDEP) License.

The Contractor is barred from purchasing gauges on the Department's New Jersey Department of Environmental Protection (NJDEP) license. Perform calibration and servicing of the gauge, other than routine wipe tests, every 24 months. The ME may direct additional calibrations, when necessary. Supply a replacement gauge for the Department's use during the calibration and servicing period.

156.03.06 Flexural Beam Testing Equipment

Provide the following testing equipment and apparatus:

1. A Flexural Beam Tester according to AASHTO T 97.
2. Twelve 6 × 6 × 21 inch reusable steel beam molds with handles according to AASHTO T 23.
3. Leaf type feeler gauges and carpenter’s square.
4. Calipers capable of measuring inside and outside dimensions ranging from 0 to 300 millimeters in maximal calibrations of 0.25 millimeters.
5. A hand-held 180 millimeter Heavy-Duty Angle Grinder (120V, 15A, 6000 rpm) with an initial supply of 3 masonry grinding wheels. Provide additional grinding wheels within 48 hours of request.

Maintain and calibrate the testing equipment annually.

156.03.07 Concrete Compression Testing Equipment

Provide a Concrete Compression Tester according to AASHTO T 22. Ensure the testing equipment is maintained and calibrated annually.

156.04 MEASUREMENT AND PAYMENT

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SECTION 157 –MONUMENTS

157.01 DESCRIPTION

This Section describes the requirements for constructing monuments and monument boxes.

157.02 MATERIALS

Provide materials as specified:

Sand	901.06.02
Concrete	903.03
Reinforcement Steel	905.01

Provide monument markers according to ASTM B 19 and monument boxes according to AASHTO M 105, Class 20A or 20B.

157.03 PROCEDURE

157.03.01 Monument

Comply with the Map Filing Law N.J.S.A. 46:26B-1 through 8 and N.J.A.C. 13:40-5.1 through 2. Set non-Department monuments according to the requirements of the agency. Set Department monuments at the specified location and elevation, and ensure that the monuments are held firmly in place. Excavate so that concrete for the monument base and sides can be placed against undisturbed in-situ material, ensuring that the base is wider than the shaft. If rock is encountered, drill into the rock to provide a rock socket to the satisfaction of the Department’s Project Manager. Reuse excess excavated material as specified in [202.03.03.C.1](#). Place concrete, as specified in [504.03.02.D](#), and set the reinforcement steel and the monument marker at the time of the concrete pour. Ensure that the top surface of the monument is level, and the disk is in the true position. After the concrete has attained strength, punch the disk.

After the monuments have been set obtain the current horizontal and vertical control datum values on the monument and submit these values, signed and sealed by the land surveyor, to the Department’s Project Manager.

157.03.02 Monument Box

Excavate so that concrete can be placed against undisturbed in-situ material, except place a layer of felt or tar paper along with a layer of sand around the top of the monument. Set the monument box frame so that the top of the box is flush with the proposed finished grade. Place concrete as specified in [504.03.02.D](#). Backfill as needed. Reuse excess excavated material as specified in [202.03.03.C.1](#).

157.04 MEASUREMENT AND PAYMENT

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SECTION 158 – SOIL EROSION AND SEDIMENT CONTROL AND WATER QUALITY CONTROL

158.01 DESCRIPTION

This Section describes the requirements for: providing pollution control measures to maintain water quality; constructing and maintaining permanent SESC measures; and constructing, maintaining, and removing temporary SESC measures.

158.02 MATERIALS

Provide materials as specified:

Coarse Aggregate (No. 2 and No. 8).....	901.03
Temporary Riprap (6 to 9 inches).....	901.08
Soil Aggregate (I-14).....	901.11
Welded Wire Reinforcement.....	905.01.03
Temporary Slope Drain Pipe.....	909.02.03
Chain-Link Fence.....	913.02.01
Caution Fence.....	913.02.02
Posts.....	913.02.02.2
Seed Mixtures.....	917.03
Mulch.....	917.06
Sod.....	917.07
Miscellaneous Landscape Materials.....	917.09
Geotextiles.....	919.01
Inlet Filter, Type 1.....	919.01
Inlet Filter, Type 2.....	919.01
Sediment Control Bag.....	919.02
Haybales.....	919.03
Polyethylene Sheeting.....	919.12
Floating Turbidity Barrier.....	919.13

Provide wood stakes and wood posts that are solid, reasonably knot free and conform to the nominal size shown on the Plans.

Provide absorbent booms, towels, and blankets made from UV-resistant, spunbond polypropylene skin and filler.

158.03 CONSTRUCTION

158.03.01 Environmental Manager

Assign a supervisory-level employee experienced in all aspects of soil erosion and sediment control, water quality control, and work site waste control. Submit the name and applicable experience of this employee to the Department’s Project Manager for approval at least 15 days before beginning any construction operations, except construction

layout, on the Project. Submit written notification and obtain approval from the Department's Project Manager before changing the environmental manager.

The environmental manager shall have the responsibility and sufficient authority for implementing the approved SESC and water quality methods of operations. The environmental manager shall coordinate, oversee, and supervise SESC and water quality operations on the Project. This includes both on-site and off-site activities, including those involving subcontractors. The environmental manager shall oversee and supervise all site waste control operations for the Project.

The environmental manager shall attend SESC and water quality meetings. The environmental manager, with the Department's Project Manager, shall inspect SESC and site waste control measures at least weekly. Perform additional inspections immediately after precipitation and other weather events that may damage SESC measures or cause uncontrolled erosion to occur. During extended periods of precipitation, perform inspections every 24 hours until the precipitation has ended. Submit original Environmental Compliance Check List and Inspection Form to the Department's Project Manager the same day that the inspection is performed. Perform corrective actions, if required, within 24 hours of the inspection, and resubmit the Environmental Compliance Check List and Inspection Form to the Department's Project Manager within 2 days indicating that the corrective action has been completed.

158.03.02 SESC Measures

Construct SESC measures, as required, before starting construction operations. With the approval of the Department's Project Manager, the Contractor may fell trees or cut other vegetation not designated to be preserved using hand methods before constructing SESC measures. Coordinate temporary SESC measures with the permanent measures and with other construction operations to ensure effective and continuous erosion and sediment control. Construct temporary SESC measures to correct unforeseen conditions that develop during construction. If the Design-builder fails to comply with SESC or site waste control provisions, the Department's Project Manager will suspend the Work as specified in [108.13](#).

Maintain SESC measures regardless of construction season or other times when the Project is closed down or suspended to ensure that the SESC measures function properly. Immediately correct or replace non-functioning SESC measures to meet the specified functionality. If the Design-builder fails to maintain SESC or site waste control measures, the Department's Project Manager will suspend the Work as specified in [108.13](#).

Ensure that clearing and grubbing does not interfere with the construction of permanent SESC measures or other operations. When unstabilized areas caused by site development, grading, or other soil disturbing activities exist beyond 14 days, seed and mulch the disturbed areas. The Department's Project Manager may limit the size of unstabilized areas due to clearing, grubbing, grading, or other soil disturbing activities based on site conditions and the Contractor's ability to install and maintain SESC measures. Upon completion of soil disturbing activities, permanently stabilize disturbed areas within 7 days as specified in [807.03.01](#). If seasonal limitations preclude permanent stabilization, provide temporary SESC measures as approved by the Department's Project Manager.

When excavation or embankment construction reaches the finished subgrade, areas where pavement is to be placed are exempt from the above stabilization requirements. Roadways and haul roads actively used for daily conveyance of equipment, as well as areas between temporary berms, except median areas, are also exempt.

Employ construction methods to minimize airborne dust and prevent soils and other materials from being deposited on existing roadways. Apply water or other Department's Project Manager approved materials to unpaved areas to control dust caused by hauling or other construction operations. Reuse, as specified in [202.03.03.C.1](#), dirt and other materials that have been spilled, washed, or tracked onto existing roadways by hauling or other construction operations.

Remove temporary SESC measures when necessary to allow for the installation of permanent measures, or as permanent measures become functional. Notify the Department's Project Manager 10 days before removing temporary SESC measures. Between Substantial Completion and Completion, remove temporary SESC measures unless the Department's Project Manager directs that specific Items remain in place.

Construct SESC measures as follows:

1. **Caution Fence.** Install caution fence at locations shown on the Plans to delineate wetlands and other environmentally sensitive areas. Space posts at least every 10 feet.
2. **Silt Fence.** Install silt fence with geotextile buried securely in the existing soil. Join sections of the geotextile so that they work effectively as a continuous fence. The Contractor may install haybales instead of silt fence when approved by the Department.
3. **Heavy-Duty Silt Fence.** Install heavy-duty silt fence with geotextile securely buried in the existing soil. Join sections of the geotextile so that they work effectively as a continuous fence. Install fence posts at a slight angle toward the anticipated runoff source. Install the color of heavy-duty silt fence in locations as shown in the Plans. Do not substitute orange for black or black for orange.
4. **Haybale.** Embed haybales in the ground and place end to end to form a continuous line without gaps. Anchor haybales in place with wood stakes.
5. **Haybale Check Dams With Temporary Stone Outlets.** Embed haybales into the ground and anchor in place with wood stakes. Place temporary riprap in the center of each flow line. Place temporary No. 2 coarse aggregate immediately updrift of each stone outlet. Place temporary riprap and No. 2 coarse aggregate on geotextile. When joining sections of geotextile, overlap the sections a minimum of 18 inches in the direction of flow.
6. **Temporary Stone Check Dams.** Construct temporary stone check dams in ditches to reduce flow velocity. Place No. 2 temporary coarse aggregate immediately updrift of each check dam. Place temporary riprap and No. 2 coarse aggregate on the geotextile. When joining sections of the geotextile, overlap the sections a minimum of 18 inches in the direction of flow. Construct temporary stone check dams with limestone rock in areas of acid producing soils as directed by the Department's Project Manager.
7. **Temporary Slope Drains.** Install temporary drainage pipe, minimum of 8 inches in diameter, on embankment slopes to intercept surface runoff where concentrated runoff will cause excessive erosion of the slope. Stake the drainpipe to the slope or secure it with temporary riprap to prevent movement or displacement. Attach a flared end section at each end of the pipe, and install elbows that conform with the existing changes in slopes. Ensure that end sections and elbows are of the same material as the pipe to which they are joined.

Construct a temporary berm using suitable material, and place haybales at the top of slope in the vicinity of the slope drain to intercept runoff and channel the runoff to the slope drain. Embed the haybales into the ground, and anchor them with wood stakes.

Place temporary riprap loosely on geotextile at both ends of the pipe to prevent scour. Drape the geotextile over the top of the earth berm and anchor it as necessary. When joining sections of the geotextile, overlap the sections a minimum of 18 inches in the direction of flow.

8. **Inlet Filters.** Provide Type 1 and Type 2 inlet filters as follows:
 - a. **Type 1.** For a new inlet structure without a casting, mold welded steel wire fabric around the inlet walls. Extend the welded steel wire a minimum of 6 inches down each side of the structure. Secure geotextile to the welded wire fabric. Place No. 2 coarse aggregate against the inlet structure to hold the inlet filter in place.

For an inlet structure with a casting and exposed exterior walls, place geotextile under the casting and extend it a minimum of 6 inches below the top of the exposed walls. Place No. 2 coarse aggregate around the drain hole opening.

For an existing inlet structure without exposed exterior walls, place geotextile under the grate and extend the geotextile for a minimum of 6 inches beyond the grate.

For an inlet with a curb piece and without exposed exterior walls, ensure that the opening in the curb piece has a height of 2 inches. If the opening is greater than 2 inches, achieve the 2 inch opening size by wrapping the geotextile around an appropriately sized piece of lumber. Place the lumber against the vertical opening.

- b. **Type 2.** Remove the inlet grate and place the inlet filter in the opening, holding out approximately 6 inches of the filter outside the frame. Replace the inlet grate to hold the filter in place. Empty the filter according to the manufacturer's recommendations. When removing the filter, ensure that sediment does not enter into the drainage system. Clean out the filter, dispose of the sediment as specified in [202.03.03.C.2](#), rinse and return the filter to its original shape, and replace the filter inside the inlet.

- 9. **Temporary Inlet Sediment Traps.** Construct temporary inlet sediment traps when the elevation of the surface runoff is lower than the inlet structure. Create a 6 inch diameter opening in the inlet and place a 3 × 3 foot piece of Type 1 inlet geotextile and No. 2 coarse aggregate over the opening to prevent sediment from entering the inlet. Place temporary inlet sediment traps in each flow line upgrade of the inlet structure.

Before raising the elevation of the surface runoff, remove and dispose of the temporary inlet sediment trap and repair the opening in the inlet.

- 10. **Temporary Stone Outlet Sediment Traps.** Construct temporary stone outlet sediment traps with temporary basins and riprap spillways, within existing, new, and temporary ditches. Place No. 2 coarse aggregate immediately upgrade of the spillways. Place the riprap stones and coarse aggregate on geotextile that is anchored in the soil. If sections of geotextile need to be joined, overlap the sections a minimum of 18 inches in the direction of flow.

- 11. **Floating Turbidity Barriers.** At least 10 days before installation, submit floating turbidity barrier design and placement locations for Department approval. Install floating turbidity barrier in streams or other waterbodies to contain discharge from drainage pipes and construction operations before beginning work in that area. Install floating turbidity barriers radially from the point of discharge of drainage pipes, or from construction operations that could potentially impact the waterbody. Install floating turbidity barriers parallel and as close to the shore as possible while still enabling it to float. Ensure that at least 5 feet of each end of the floating turbidity barrier is anchored on shore. When floating turbidity barrier will not work in shallow water because of fluctuating water levels or heavy currents, stake the floating turbidity barrier in a fixed position which may also include a fixed height. Provide detail for Department approval.

Clean out floating turbidity barriers and keep them free from debris. Ensure floating turbidity barriers remain in place until all of the work in the area is completed, the cofferdam is removed (if applicable), and the adjacent ground area has established a firm stand of vegetation (if applicable). Remove floating turbidity barriers in such a manner as to minimize the release of sediment and debris.

- 12. **Dewatering Basin.** At least 10 days before installation, submit to the Department's Project Manager for approval a plan detailing the size, materials, and location for all dewatering basins. Size dewatering basins to contain the expected discharge of water and sediment based on the flow rate of the pump to be used and the volume of area to be dewatered. Contain the turbid discharge from dewatering activities in a dewatering basin to control sediment and provide water filtration. As specified in N.J.A.C 7:9B or other applicable jurisdictional regulations, provide filtration to release clean and clear water into adjacent streams or other waterbodies. Install floating turbidity barriers where the basin outfall flows into a receiving waterbody. Ensure that the outfall of the basin does not cause erosion to or scour of the area onto which the water is being discharged.

At the end of dewatering operations, remove the dewatering basin. Restore the disturbed area to the original condition.

- 13. **Sediment Control Bag.** At least 10 days before installation, submit to the Department's Project Manager for approval a plan detailing the size, location, details of aggregate base, anticipated discharge flow, and manufacturer's catalog cuts. If the outfall of the sediment control bag flows into receiving waterbody, ensure that floating turbidity barriers are installed as specified in [158.03.02.11](#).

Install and maintain sediment control bags according to the manufacturer's recommendations. Size sediment control bags to accommodate anticipated sediment and flow rates. Place the sediment control bag on the slope to allow water to flow downhill through the bag. Place the discharge hose into the neck of sediment control bag and fasten to ensure that water does not leak at the connection. To increase the efficiency of filtration, place the bag on an aggregate bed to maximize water flow through the surface area

of the bag. Size aggregate to prevent puncture of sediment control bags. Ensure that the discharge from the sediment control bag does not cause erosion to, or scour of, the area onto which the water is being discharged.

When the sediment control bag is 90 percent full, can no longer efficiently filter sediment, or does not allow water to pass at a reasonable rate, remove and replace.

Remove sediment control bags according to the manufacturer's recommendations and dispose as specified in [202.03.09](#). Restore the disturbed area to the original condition.

- 14. Sediment Control Tank.** At least 10 days before installation, submit sediment control tank design and proposed location for Department approval. Design sediment control tanks to contain or control the expected discharge of water and sediment based on the flow rate of the pump to be used, the volume of area to be dewatered, and the frequency of removal of water, sediment, or both. Provide a sediment control tank to capture sediment and floating debris from dewatering activities. Provide filtration to release clean and clear water into adjacent streams or other waterbodies. Relocate the tank as needed to dewater other locations. Inspect the tank daily for level of sediment, debris, and water. Remove tank contents before the tank reaches 50 percent of its capacity or when the tank no longer efficiently captures sediment or floating debris. Dispose of tank contents as specified in [202.03.03.C.2](#). If water from the tank is being discharged into a waterbody, install floating turbidity barriers to corral the discharge area. Protect the discharge area from erosion and scour.
- 15. Construction Driveway.** To minimize tracking of dirt and other materials onto existing roadways, provide a construction driveway at each location where vehicles exit the work site as approved by the Department's Project Manager. Construct driveways using No. 2 coarse aggregate placed on geotextile. Ensure that the driveway is at least 15 feet wide. The Contractor may make driveways wider if approved by Department's Project Manager. Maintain the driveway by top dressing or by excavating and top dressing, as directed by the Department's Project Manager, with additional No. 2 coarse aggregate. When the driveway is no longer required, remove the driveway, backfill to the adjacent ground elevation, and restore the disturbed area to the original condition.
- 16. Concrete Washout System.** At least 10 days before the first concrete placement, submit to the Department's Project Manager for approval a plan for the concrete washout system. Design the concrete washout system to fully contain the concrete washout needs, concrete slurry, and the Department's concrete testing of the Work.

Ensure that each concrete washout facility prevents discharge from concrete trucks and equipment cleaning from entering into inlets and into surface or groundwater. Ensure that the location of concrete washout facilities are no closer than 50 feet from environmentally sensitive areas such as streams, wetlands, or other areas shown on the Plans. Use signs to designate concrete washout areas. Ensure that concrete washout facilities are limited to the designated areas.

Ensure that the concrete washout system is in place before delivery of concrete to the site. Ensure that a secure, non-collapsing, non-water collecting cover over each concrete washout facility is in place during precipitation so that precipitation does not accumulate and cause the washout areas to overflow. If the concrete washout facility becomes 50 percent full, discontinue pouring concrete until the concrete washout facility is cleaned out. Remove hardened concrete and reuse as specified in [202.03.03.C.1](#). Allow slurry to evaporate, or dispose of as specified in [202.03.03.C.2](#).

If a lined basin is used, replace the liner if it becomes damaged or compromised. Remove concrete washout facilities when no longer needed. Restore the disturbed area to original condition.

- 17. Absorbent Boom.** Install the absorbent boom inside turbidity barrier or as shown on Plans to ensure that oil products do not escape the work site. If an oil spill occurs, remove absorbent boom after absorption of oil and dispose of as specified in [202.03.09](#). Replace as necessary to continually protect the waterbody.
- 18. Oil-Water Separator.** At least 10 days before beginning the work, submit to the Department's Project Manager for approval a plan detailing the size, location, anticipated discharge flow and manufacturer's

catalog cuts of the oil-water separator before installation. Provide an oil-water separator for removal of free product generated in dewatering excavations in each area of petroleum contaminated groundwater.

Use a self-contained factory assembled oil-water separator meeting the following requirements:

- a. Capable of removing free petroleum product as required by Contractor-obtained discharge permits.
- b. Designed for intermittent, varied, or continuous flows of water, oil, or combinations of non-emulsified oil-water mixtures.
- c. Designed to minimize solids buildup in the separator's oil-water collection chamber.
- d. Capable of being moved about within the Project Limits as needed.

Dispose of oils and sediments collected in the oil-water separators as specified in [202.03.09](#).

19. Oil-Only Emergency Spill Kit. Before start of construction operations, place Oil-Only Emergency Spill Kits within the Project Limits, with each kit capable of cleaning up at least 95 gallons of spill. Include Oil-Only Emergency Spill Kit, Type 1 consisting of the following:

- a. An instruction manual and emergency response guide.
- b. Ten 5 inch × 1 foot oil-only absorbent booms.
- c. Ten 3 inch × 10 foot oil-only absorbent booms.
- d. One hundred 20 × 16 inch oil-only absorbent pads.
- e. Twenty temporary disposal bags and ties.
- f. A 40 pound bag of loose absorbent pellets.
- g. A wheeled container for the above.

If a spill occurs, immediately contain the spill and notify the NJDEP Hotline (1-877-927-6337) and the Department's Project Manager. Clean up and remediate the spill as directed by the NJDEP. Separately stockpile, as specified in [201.03.03.3](#), the contaminated material and dispose of the contaminated material as specified in [202.03.09](#). Submit an incident report to the Department's Project Manager within 10 days after clean-up that includes a summary of the incident, the clean-up and containment measures taken, the time and date of the incident, and the NJDEP case number.

Replenish the kits to ensure that the specified number of complete kits are on-site at all times during construction operations.

20. Tree Protection. Before start of construction operations, install tree protection by surrounding trees and other vegetation with chain-link fence. Place the tree protection a minimum of 2 feet outside the dripline of tree or vegetation canopy. Do not park vehicles or equipment, or store materials within the area of tree protection. In situations where tree protection conflicts with excavation or other construction, request permission to modify tree protection and provide a protection plan for approval by the Department.

158.03.03 Erosion Control Sediment Removal

Remove sediment from sediment traps and dewatering basins when they are 50 percent filled. Remove sediment from silt fences, stone outlet structures, dams, and haybales when the sediment reaches 50 percent of the height of the SESC measure. Remove the coarse aggregate and riprap from check dams when removing the sediment. Reuse the removed material as specified in [202.03.03.C.1](#). Replace the coarse aggregate and riprap removed from check dams.

158.04 MEASUREMENT AND PAYMENT

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SECTION 159 – TRAFFIC CONTROL

159.01 DESCRIPTION

This Section describes the requirements for implementing controls to protect vehicular and pedestrian traffic. Traffic control includes providing, installing, placing, relocating, maintaining, and removing traffic control devices.

159.02 MATERIALS

159.02.01 Materials

Provide materials as specified:

Tack Coat 64-22.....	902.01.01
Tack Coat:	
Emulsified Asphalt, Grade RS-1, SS-1, SS-1h, Grade CSS-1 or CSS-1h.....	902.01.02
Hot Mix Asphalt (12.5M64)	902.02
Construction Barrier.....	904.01
Signs.....	911.01
Sign Posts.....	911.02.01
Timber Sign Supports	911.02.03
Top and Side Mounted Delineators.....	911.03
Latex Paint	912.04.01
Temporary Pavement Marking Tape.....	912.04.02.A
Removable Black Line Masking Tape	912.04.02.B
Temporary Pavement Markers	912.04.03
Box Beam for Construction Barrier Curb	913.04
Polymerized Joint Adhesive.....	914.03

Provide temporary crash cushions, inertial barrier systems as specified in [611.02](#). Provide temporary compressive crash cushions as specified for compressive crash cushions in [611.02](#).

159.02.02 Equipment

Provide equipment as specified:

Arrow Board	1001.01
Portable Variable Message Sign	1001.02
Traffic Control Truck with Mounted Crash Cushions	1001.03
Vibratory Drum Compactor	1003.06
Bituminous Material Distributor	1003.07
HMA Plant.....	1009.01
HMA Trucks	1009.02

159.03 PROCEDURE

159.03.01 Traffic Control Coordinator

Before starting Work, submit to the Department’s Project Manager the name, training, work experience, and contact information of an employee assigned as the on-site Traffic Control Coordinator (TCC). The TCC must be certified as having successfully completed the Rutgers CAIT Traffic Control Coordinator Program, or an equivalent course as approved by the NJDOT Office of Capital Project Safety. The TCC must also successfully complete an approved Traffic Coordinator refresher course every 2 years. The TCC is a full-time position and the employee designated as TCC must be available on a 24 hour a day, 7 days a week basis. The TCC shall have the responsibility for and authority to implement and maintain all traffic operations for the Project on behalf of the Contractor. Ensure that the TCC is present at the work site at all times while the Work is in progress. The TCC’s responsibilities and duties shall include the following:

1. Overseeing traffic control operations, including those performed by subcontractors.
2. Coordinating traffic control with subcontractors, other contractors, and Utilities.
3. Ensuring that set-up and removal is performed according to the Contract.
4. Performing daily traffic control inspections and providing written reports to the Department's Project Manager documenting the inspections, including detailed findings and corrections made.
5. Performing inspections at night and on weekends to ensure compliance with the TCP and providing written reports to the Department's Project Manager documenting the inspections, including detailed findings and corrections made.
6. Ensuring that traffic control devices are correctly positioned and spaced.
7. Ensuring that signs are properly covered or uncovered.
8. Maintaining or replacing traffic control devices to ensure traffic control devices are in an acceptable condition and good working order. Maintenance also includes replacing lights bulbs and electrical components and refueling, recharging, or replacing batteries.
9. Ensuring that excavations and lateral drop-offs greater than 2 inches in depth are eliminated or protected by barrier or emergency escape ramps during non-working periods.
10. Ensuring that routine road maintenance is performed, including debris removal and road cleaning.
11. Ensuring that construction operations do not create flooding or icing conditions for lanes open to traffic.
12. Identify and correcting traffic control deficiencies immediately. Correct traffic control deficiencies directed by the Department's Project Manager within 2 hours of notification.
13. Ensuring that vehicles, equipment, and material stored adjacent to the road are behind barriers or stored at least 30 feet from the traveled way.
14. Ensuring that Contractor vehicles for material delivery enter or exit the traveled way in a safe manner.

Provide additional employees to assist the TCC as approved by the Department's Project Manager. The Department's Project Manager may request the TCC or additional employees to demonstrate their competency at any time. Notify the Department's Project Manager before performing daily inspections to provide the Department's Project Manager with the opportunity to observe the inspections.

159.03.02 Traffic Control Devices

Ensure that FHWA category 1, 2, 3, and 4 traffic control devices (TCDs) conform to the requirements of the 2016 Edition of the Manual for Assessing Safety Hardware (MASH), except that TCDs manufactured on or before December 31, 2019 must have been purchased by the Contractor on or before December 31, 2019, and conform to the requirements of NCHRP 350, MASH 2009, or MASH 2016. Provide each device's applicable MASH 2016, MASH 2009, or NCHRP 350 test results and FHWA Eligibility letter, if issued by the FHWA, to the Department's Project Manager. Provide the Department's Project Manager with the purchase date certification for devices not meeting the MASH 2016 requirements upon delivery to the site. Ensure that traffic control devices meet or exceed an acceptable condition as described in the ATSSA Guide Quality Standards for Work Zone Traffic Control Devices. Traffic control devices need not be new but must be in good condition. Provide traffic control devices according to MUTCD.

Erect traffic control devices before beginning construction operations. Trim vegetation that obscures the sight distance of traffic control devices. Keep the traffic control devices clean, and maintain in acceptable condition until no longer required. Relocate traffic devices as directed by the Department's Project Manager. Place traffic control devices as directed to provide traffic control for Department personnel doing inspections, sampling, testing, and taking measurements required for the Project.

- 1. Construction Signs.** Install anchor posts with soil anchor plates, except when installing in rock or in concrete.

If construction signs are required for less than 3 days, the Contractor may place construction signs on portable sign stands instead of sign posts with the approval of the Department's Project Manager.

When construction signs or existing signs do not reflect work zone traffic conditions, cover the signs with black polyethylene sheeting. Ensure that the cover is opaque under all lighting conditions and completely conceals the entire front of the sign panel. Securely attach the cover to the back side of the sign without damaging the reflective sheeting. Do not tape the cover to the face of the sign. Ensure that the cover remains secure in all weather conditions. Overhead signs and large guide signs with areas greater than 200

square feet do not need a cover over the entire sign, but require a cover over the conflicting information. Do not alter the face of a sign with revised messages. Remove construction signs when no longer required, and restore the post hole to match the surrounding conditions.

2. **Construction Barrier Curb.** Alternate A or B construction barrier curb may be used interchangeably in any location. The Contractor may use construction barrier curb that is constructed using gray or white concrete. Do not place different colors of construction barrier curb in a continuous run. Do not use construction barrier curb having any of the following deficiencies:
 - a. Exposed steel at the connector flangeway.
 - b. Exposed reinforcement steel.
 - c. Cracking through the cross section.
 - d. An area of concrete missing larger than a 3 inch by 3 inch right triangle.
 - e. Debris in the keyway.
 - f. Non-functioning anchor bolt holes.
 - g. Non-functioning anchor rod hole.
 - h. Paint applied to the surface.
 - i. Objects protruding from the surface.
 - j. Previous repairs.
 - k. Damaged, kinked, or bent connection key or box beam stiffener.

At least 30 days before delivering construction barrier curb to the Project Limits, provide the Department's Project Manager notice that the barrier curb is available for inspection. Ensure the barrier curb is not stacked for this inspection. The Department's Project Manager will inspect the barrier curb, along with a Contractor representative, to determine what pieces are not approved for delivery to the Project Limits. Final determination of construction barrier approval will be made at the time of placement at the Project.

Ensure that anchor pins do not project above the plane of the barrier curb. Install the Construction Barrier Curb stiffened with box beams as indicated in the Contract documents.

Replace construction barrier curb that does not meet the specified requirements. Do not patch or repair construction barrier curb.

Provide top and side mounted flexible delineators on the construction barrier curb. For delineators located on the right side when facing in the direction of traffic, ensure that the retroreflective sheeting is white. For delineators located on the left side when facing in the direction of traffic, ensure that the retroreflective sheeting is yellow. Attach flexible delineators according to the manufacturer's recommendations.

Starting at the beginning of the construction barrier curb section mount top delineators at 100 foot intervals on tangent sections, or curves of radii greater than 1,910 feet, and at 50 foot intervals on curves of radii of 1,910 feet or less.

Mount side delineators at the lead end of each barrier segment with the top of the delineator 3 inches from the top of the barrier.

3. **Arrow Board.** Provide an arrow board as specified in [1001.01](#).
4. **Portable Variable Message Sign (PVMS).** Place the PVMS at the locations directed by the Department's Project Manager. Ensure that a designated representative familiar with the operation and programming of the unit is available on the Project. Only display messages authorized by the Department for the Project. Repair or replace malfunctioning PVMS within 12 hours of notification by the Department's Project Manager.
5. **Temporary Crash Cushion.** Install inertial barrier systems as specified in [611.03.01](#). Install temporary compressive crash cushions as specified in [611.03.02](#). Immediately repair or replace crash cushions that become damaged or become inoperable. Begin repair or replacement of the temporary crash cushion within 1 hour of receiving notice of damage from the Department. Ensure that workers assigned to such repair or replacement work continuously until the temporary crash cushion is repaired or replaced. If the Contractor fails to respond to a damage notification and begin work within 1 hour of notification, or does not continue to work until the temporary crash cushion is repaired or replaced, the Department, will require closure of

the adjacent live lane. Lane occupancy charges will be imposed as specified in [108.08](#) for the period of time the adjacent lane is closed. Should the Department have to respond to a repair with its own forces because of a Contractor's lack of response to a damage notification, the Contractor agrees to pay the Department a sum of \$3,000 for costs of mobilizing its forces and equipment. In addition, the Contractor must pay the Department the actual cost of material used for the repair and pay the actual costs of police traffic protection. Maintain an adequate number of replacement parts to repair damaged units at all times. Keep the areas in front, atop, and around the crash cushions clear of snow accumulation of more than 4 inches in depth.

Upon removal of the crash cushion, cut anchor bolts at least 3 inches below the surface of the surrounding roadway. Repair HMA pavement as specified in [401.03.03](#). Repair concrete pavement as specified in [Section 452](#).

6. **Traffic Control Truck with Mounted Crash Cushions.** Provide the Department's Project Manager with a copy of the crash cushion manufacturer's recommendations. Provide the Department's Project Manager a certified weigh ticket of the Traffic Control Truck with arrow board and mounted Crash Cushion. Position the traffic control truck to ensure that there is adequate stopping distance after impact and to prevent errant vehicles from traveling around the truck and endangering workers. When used in a fixed position, place manual transmission vehicles in second gear and place automatic transmission vehicles in park. Ensure that the parking brake is set and the wheels are set straight. Do not use traffic control trucks in place of other temporary impact attenuators for more than 24 hours. Relocate the traffic control truck as specified by the TCP, or as directed by the Department's Project Manager. Do not use the truck to carry additional equipment, materials, or debris. When using ballast, ensure that it is secured to the truck. Submit drawings to the Department's Project Manager detailing the manner of securing the ballast, signed and sealed by a Professional Engineer, certifying that it is capable of withstanding the impact forces for which the impact attenuator is rated.
7. **Channelizing Guide Posts.** Prepare the pavement surface to provide a clean, sound area to affix the post. Apply an epoxy or butyl adhesive according to the manufacturer's recommendations and bond the base of the post to the pavement surface. Provide only 4 inch diameter tubular channelizing markers. Remove when no longer required.
8. **Portable Variable Message Sign with Remote Communication (PVMSRC).** Place the PVMSRC at the locations directed by the Department's Project Manager for the duration of the project. Ensure that a designated representative familiar with the operation and programming of the unit is available on the Project for On-Site Configuration. Only display messages on the PVMSRC authorized by the Department for the Project in accordance with the plans or as directed by the Department's Project Manager and make the signs available for use remotely from the Traffic Operation Center (TOC) specified in [105.07.01.B](#). Program within 8 hours, any message requested by the Department's Project Manager to be displayed on the PVMS at a scheduled time and verify that the message is displayed correctly and notify the Department's Project Manager. If the PVMSRC fails to function, repair the equipment within 48 hours of receiving notice from the Department that the PVMSRC is not functioning.

Integrate the PVMSRC for remote operation from TOC using Vanguard DMS software or the Department's central DMS control software at the time of installation as directed by the Department's Project Manager.

Provide for 1 week of testing by the TOC for remotely operating the PVMSRC before the start of construction operations that require lane or shoulder closures, or other impacts to traffic. At least 10 days before testing, submit to the Department's Project Manager for approval a plan for any work to be completed in the TOC. Submit a request to the Department's Project Manager at least 4 days in advance to access the TOC for any work.
9. **Portable Trailer Mounted CCTV Camera Assembly (PTMCCA).** Place the PTMCCA at the location directed by the Department's Project Manager. Ensure that a designated representative familiar with the operation and programming of the unit is available on the Project for initial installation. If the PTMCCA fails to function, repair the equipment within 48 hours of receiving notice from the Department that the PTMCCA is not functioning.

Provide a system that includes a robotic network camera remotely controllable, including Pan, Tilt and Zoom (PTZ). Provide broadband internet service connection and On-Site Camera Configuration for remote operation and control of the camera via the Department's existing Head-End Camera Control System, Genetec. No other Head-End Camera Control System substitution is permitted. A Management user system is also to be provided for remote system programming to the camera sites. This includes a website that is to be provided and hosted by the vendor. This website is to have secure authentication and is to show the current devices with their location, status, and display links for each device. Provide continuous viewable image at a minimum of 320H x 240V resolution and 1 frame per sec (fps) through the website. As directed by the Traffic Operation Center (TOC) specified in [105.07.01.B](#), establish password level designations, camera presets, and camera image displays. Provide all incidental equipment and material required for successful remote operation and communications.

Provide for 1 week of testing by the TOC for remotely operating the PTMCCA before the start of construction operations that require lane or shoulder closures, or other impacts to traffic.

159.03.03 Removable Black Line Masking Tape

Apply black line masking tape over existing traffic stripes as specified in [159.03.05](#). Ensure that the black line masking tape completely covers existing stripes. Replace black line masking tape that becomes loose after placement within 2 hours. When black line masking tape is no longer required or directed by the Department's Project Manager, carefully and completely remove without using heat, solvents, grinding, sanding, or water.

159.03.04 Temporary Pavement Markers

Apply temporary pavement markers with butyl adhesive pads to clean, dry pavement surfaces free of cracking, checking, or spalling. If the layout locates a marker at a joint or defect, relocate the marker longitudinally at least 2 inches beyond the joint or defect. Replace lost or damaged temporary pavement markers.

Only remove temporary pavement markers that will be replaced by striping in the same day. If striping cannot be finished in the same day, reinstall temporary pavement markers before opening the road to traffic.

159.03.05 Temporary Pavement Marking Tape

Install tape according to the manufacturer's recommendations when the weather is favorable as determined by the Department's Project Manager. Do not install the tape during wet conditions. Immediately before marking the pavement surface, clean the surface of dirt, oil, grease, and foreign material, including curing compound on new concrete. Clean the surface 2 inches beyond the perimeter of the marking to be placed.

Install tape on dry surfaces having a surface temperature between 50 °F and 150 °F, when the ambient temperature is at least 50 °F and rising as determined by the National Weather Service (<http://www.nws.noaa.gov/>). When splicing is required, install the tape using butt splices. Do not overlap the tape.

Tamp the tape for initial adhesion and then apply pressure by driving a truck slowly over the tape several times. Maintain tape by replacing loose or damaged tape within 2 hours. Remove tape when no longer required or when directed by the Department's Project Manager.

The surface must be dry. Do not install tape when precipitation is imminent as determined by the Department's Project Manager. The Department's Project Manager will coordinate with the Contractor to install the tape when there is no anticipated precipitation. Install the tape in continuous lengths of 20 feet or less. Any continuous length of more than 20 feet must be removed and replaced at no cost to the Department. Ensure that the removable tape is capable of being removed manually, intact or in large pieces, at temperatures above 40 ° F, without the use of solvents, burning, grinding, or blasting and without damage to the underlying surface.

If conditions do not allow for the proper adhesion of the tape, use Latex Traffic Stripes, Latex Traffic Markings Lines, and Latex Traffic Markings Symbols as specified in [159.03.06](#).

159.03.06 Traffic Stripes, Latex ,Traffic Markings Lines, Latex and Traffic Markings Symbols, Latex

Apply latex traffic stripes and latex markings when they are required for 14 days or less. Apply epoxy traffic stripes and thermoplastic markings as specified in [610.03.01](#) and [610.03.02](#) when they are required for more than 14 days. For Contractor convenience, on pavement preservation projects, the Department will allow the Contractor to refresh latex traffic stripes and latex markings for stripes and markings required to be in place for more than 14 days and for each 14 day period thereafter. Do not refresh these stripes with epoxy or thermoplastic material. Apply latex traffic stripes and latex markings when the ambient and surface temperatures are at least 45 °F and rising and the surface temperature is no more than 140 °F. Apply the latex paint in a wet film thickness of 6 ± 1 mil. Apply glass beads to the wet paint in a uniform pattern and at the rate of 12 pounds per gallon of paint.

159.03.07 HMA Patch

The Department’s Project Manager may direct the Contractor to sawcut existing HMA pavement to the depth of the area to be repaired. Sawcut lines parallel and perpendicular to the roadway baseline and 3 inches away, at the closest point, from the damaged area to be repaired. Remove loose material within the boundary of the repair, and clean the area. Reuse removed material as specified in [202.03.03.C.1](#). Ensure that the remaining pavement is not damaged.

Apply polymerized joint adhesive or tack coat to the vertical surfaces of the openings. Ensure that the temperature of the HMA when placed is at least 250 °F. Place HMA in 4 inch maximum lifts, and compact with a vibratory drum. For small areas, the Department’s Project Manager may approve hand compacting methods. Compact until the top of the patch is flush with the adjacent pavement surface.

159.03.08 Traffic Direction

- A. Flagger.** Provide a flagger that has received formal training in flagging operations and the proper use of the STOP/SLOW paddle. The flagger must be able to demonstrate the abilities indicated in the current MUTCD and, when requested, demonstrate competency to the Department’s Project Manager. Immediately replace flaggers who fail to demonstrate competency with a competent flagger. Ensure that flaggers wear a 360 degree high-visibility retroreflective orange safety garment meeting ANSI/ISEA Class 3, Level 2 standards. Ensure that the flagger is equipped with a STOP/SLOW paddle and follows MUTCD flagging procedures.
- B. Police.** Unless designated as local police at the preconstruction conference, police will be on-duty New Jersey State Police. Police are either provided by the Department’s Project Manager as employees of the State, or by the local government as a vendor to the State. The use of police services by the Department’s Project Manager does not relinquish or diminish the Contractor’s responsibilities for work zone safety.

Submit a request for police services to the Department’s Project Manager 72 hours before beginning construction operations.

Activities requiring police services include:

1. Traffic direction through signalized intersections, where the integrity of the existing traffic signal system is impacted or where an override of the signal is required.
2. Temporary closure of all lanes on state highways and interstates.

Police services may be requested as an enhancement to the TCP.

This enhancement includes:

1. Temporary closure of one or more lanes on interstates.
2. Temporary closure of one or more lanes on state highways with a posted speed of 50 miles per hour or higher.

Emergency situations may prevent police from arriving at the scheduled date or time. The Department’s Project Manager will not permit construction operations that, by law, require police services if police are unavailable. The Department will not accept claims for interruptions or delays resulting from any failure of police to arrive as requested.

The Department’s Project Manager must notify State and local police of cancellations 24 hours in advance. At least 24 hours before the scheduled start of work, notify the Department’s Project Manager of any work cancellation for which police services were requested.

159.03.09 Emergency Towing Service

At least 30 days before the start of construction operations, submit to the Department’s Project Manager for approval an emergency towing service plan for removing abandoned vehicles and vehicles that are disabled but not as the result of an accident. The police will arrange for towing services to remove vehicles that are disabled due to traffic accidents. Indicate in the plan the proposed manner of providing towing service, including the type, quantity, and location of towing equipment to be used.

Provide towing service to remove disabled and abandoned vehicles from the construction zone to the nearest location where the vehicle can be legally parked. Ensure that the towing service responds immediately upon notice of a disabled vehicle by the Department’s Project Manager or Contractor personnel.

159.04 MEASUREMENT AND PAYMENT

(Intentionally Blank)

SECTION 160 – PRICE ADJUSTMENTS

(Intentionally Blank)

SECTION 161 – FINAL CLEANUP

161.01 DESCRIPTION

This Section describes the requirements for performing final cleanup.

161.02 MATERIALS

(Intentionally Blank)

161.03 PROCEDURE

161.03.01 Final Cleanup

Clean the Project Limits, to the Department’s Project Manager’s satisfaction, of rubbish, excess materials, temporary structures, and equipment. Include borrow source areas, and equipment and material staging areas occupied in connection with the Work.

161.04 MEASUREMENT AND PAYMENT

(Intentionally Blank)