

**LOUISIANA DEPARTMENT OF TRANSPORTATION & DEVELOPMENT  
OFFICE OF PUBLIC WORKS & WATER RESOURCES**

**GENERAL PROVISIONS  
2020**

Table of Contents

<b>1.</b>	<b>DEFINITIONS AND TERMS .....</b>	<b>4</b>
1.01	Voice/Mood and Reference .....	4
1.02	Acronyms and Abbreviations .....	4
1.03	Definitions of Terms .....	5
1.04	Understood Expressions .....	12
<b>2.</b>	<b>PROPOSAL PREPARATION &amp; BIDDING REQUIREMENTS.....</b>	<b>14</b>
2.01	Pre-qualification of Bidders .....	14
2.02	Contractors' Licensing Laws .....	14
2.03	Contents of Bidding Documents .....	14
2.04	Interpretation of Pay Items, Unit Prices, and Quantities in Schedule of Items .....	15
2.05	Examination Bid Documents and Site of Work .....	15
2.06	Preparation of Bid .....	16
2.07	Rejection of Proposals Containing Alterations, Erasures or Irregularities .....	16
2.08	Proposal Guaranty .....	16
2.09	Delivery and Opening of Proposals .....	17
2.10	Withdrawal of Proposals .....	17
2.11	Disqualification of Bidders .....	17
2.12	Right to Reject Bids .....	18
2.13	Irregular Proposals .....	18
2.14	Proposal / Bid Guaranty .....	18
2.15	Bid Withdrawal Consequences	18
<b>3.</b>	<b>AWARD AND EXECUTION OF CONTRACT .....</b>	<b>19</b>
3.01	Consideration of Bids.....	19
3.02	Rejection of All Bids.....	19
3.03	Award of Contract .....	19
3.04	Cancellation of Award .....	19
3.05	Return of Proposal Guaranty .....	19
3.06	Requirement of Payment and Performance Bonds .....	19
3.07	Execution and Approval of Contract .....	20
3.08	Failure to Execute Contract .....	20
3.09	Notice to Proceed .....	20
<b>4.</b>	<b>SCOPE OF WORK.....</b>	<b>21</b>
4.01	Intent of Contract .....	21
4.02	Alteration of the Contract .....	21
4.03	Maintenance of Traffic .....	24
4.04	Final Cleaning Up .....	24
4.05	Guarantee and Warranty of Contractor's Work .....	25

<b>5.</b>	<b>CONTROL OF WORK .....</b>	<b>27</b>
5.01	Authority of Engineer .....	27
5.02	Plans and Working Drawings .....	27
5.03	Conformity with Plans and Specifications .....	27
5.04	Coordination of Plans and Specifications.....	28
5.05	Cooperation by Contractor .....	28
5.06	Cooperation with Utilities .....	28
5.07	Cooperation Between Contractors .....	29
5.08	Construction Stakes, Lines and Grades .....	30
5.09	Authority and Duties of the Engineer .....	30
5.10	Duties of the Inspector .....	30
5.11	Inspection of Work .....	30
5.12	Inspector’s Stamp for Shipment .....	31
5.13	Removal of Unacceptable and Unauthorized Work .....	31
5.14	Load Restrictions .....	32
5.15	Maintenance During Construction .....	32
5.16	Failure to Comply with Subsection 5.15 .....	32
5.17	Substantial Completion .....	32
5.18	Partial Utilization .....	33
5.19	Final Inspection .....	34
5.20	Final Application for Payment .....	34
5.21	Final Payment and Acceptance .....	34
5.22	Contractor’s Continuing Obligation .....	35
5.23	Waiver of Claims .....	35
5.24	Claims for Additional Compensation .....	35
5.25	Suspension of the Work .....	38
<b>6.</b>	<b>CONTROL OF MATERIALS .....</b>	<b>40</b>
6.01	Source of Supply and Quality Requirements .....	40
6.02	Local Material Sources .....	40
6.03	Samples, Tests, Cited Specifications .....	41
6.04	Certificates .....	41
6.05	Contractor Quality Control .....	42
6.06	Plant Inspection .....	42
6.07	Foreign Materials .....	42
6.08	Material Storage and Plant Site .....	43
6.09	Handling Materials .....	43
6.10	Unacceptable Materials .....	43
6.11	Contracting Agency-Furnished Material .....	43
6.12	Misplaced Material .....	43
<b>7.</b>	<b>LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC .....</b>	<b>44</b>
7.01	Laws to be Observed .....	44
7.02	Permits, Licenses, Taxes and Insurance .....	44
7.03	Patented Devices, Materials and Processes .....	47
7.04	Sanitary, Health and Safety Provisions .....	47
7.05	Public Convenience and Safety .....	47
7.06	Railway-Highway Provisions .....	48
7.07	Navigable Waters and Wetlands .....	52
7.08	Barricades and Warning Signs .....	53
7.09	Use of Explosives .....	53
7.10	Preservation of Property, Landscape, and Survey Monuments .....	53

7.11	Forest Protection .....	54
7.12	Prevention of Soil Erosion and Water Pollution .....	54
7.13	Environmental Protection .....	54
7.14	Air Navigation .....	55
7.15	Hazard Zones .....	55
7.16	Damage Claims .....	55
7.17	Contractor's Responsibility for Work .....	55
7.18	Utility Property and Services .....	56
7.19	Furnishing Right-of-Way .....	56
7.20	Personnel Liability of Public Officials .....	56
7.21	No Waiver of Legal Rights .....	56
7.22	Third Party Liability .....	56
7.23	Antitrust Violations .....	56
7.24	Archeological and Historical Findings .....	56
<b>8.</b>	<b>PROSECUTION AND PROGRESS.....</b>	<b>58</b>
8.01	Subletting of Contract .....	58
8.02	Commencement of Work .....	58
8.03	Construction Progress Schedule .....	58
8.04	Prosecution of Work .....	58
8.05	Limitation of Operations .....	59
8.06	Labor, Methods and Equipment .....	59
8.07	Determination and Extension of Contract Time .....	60
8.08	Failure to Complete on Time .....	61
8.09	Default and Termination of Contract .....	62
8.10	Termination of Contractor's Responsibility .....	63
8.11	Termination of Contract .....	63
8.12	Termination of Contract for Convenience .....	64
<b>9.</b>	<b>WARRANTY AND GUARANTEE.....</b>	<b>65</b>
9.01	One Year Correction Period .....	65
<b>10.</b>	<b>MEASUREMENT AND PAYMENT .....</b>	<b>66</b>
10.01	Measurement of Quantities .....	66
10.02	Scope of Payment .....	67
10.03	Compensation for Altered Quantities .....	67
10.04	Compensation for Alterations of the Contract .....	68
10.05	Eliminated Items .....	70
10.06	Partial Payments .....	70
10.07	Payment for Stockpiled or Stored Material .....	71
10.08	Adjustment for Changes in Common Carrier Rates .....	72
10.09	Acceptance and Final Payment .....	73

## 1. DEFINITIONS AND TERMS

**1.01 Voice/Mood and Reference:** This specification book uses the active voice, imperative mood when describing the contractor's responsibility. For example:

**101.01.1 Active Voice/Imperative Mood:** Provide competent supervision.

The subject of a sentence written in the active voice/imperative mood is not explicitly stated. In these specifications, the implied subject of such a sentence is typically the contractor, although in certain situations, the subject may also be a vendor, fabricator, or manufacturer engaged by the contractor to supply material, products, or equipment for use on the project. Prior to award of a contract, the imperative statements are directed to the bidder; it is only after the contract has been awarded that the imperatives are directed to the contractor.

Section and Subsection titles, and headings provide reference only, not interpretation.

A cross-reference to a specific Subsection of these specifications include all general requirements of the Section of which the Subsection is a part.

Unless specified by year or date, cited publications refer to the most recent issue, including interim publications, in effect on the first date of advertisement for bids.

**1.02 Acronyms and Abbreviations:** Wherever the following abbreviations are used in these specifications, project specifications, or the plans, they are to be construed to be the same as the respective expressions represented:

AA	Aluminum Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AGMA	American Gear Manufacturers Association
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AML	Approved Materials List (DOTD)
ANSI	American National Standards Institute
API	American Petroleum Institute
ARA	American Railway Association
AREAMA	American Railway Engineering Association and Maintenance Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers Association
AWWA	American Water Works Association
AWS	American Welding Society
CPM	Critical Path Method
COE	U.S. Army Corps of Engineers
DBE	Disadvantaged Business Enterprise
DEQ	Department of Environmental Quality (Louisiana)
DOTD	Department of Transportation and Development (Louisiana)
EDSM	Department's Engineering Directives and Standards Manual
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration, Department of Transportation

FHWA	Federal Highway Administration, Department of Transportation
FSS	Federal Specifications and Standards, General Services Administration
ICC	Interstate Commerce Commission
ICEA	Insulated Cable Engineers Association
IMSA	International Municipal Signal Association
IRI	International Roughness Index
ISO	International Organization for Standardization
ITE	Institute of Transportation Engineers
LAPELS	Louisiana Professional Engineering and Land Surveying Board
LRS	Louisiana Revised Statutes
LSSRB	Louisiana Standard Specifications for Roads and Bridges
LTRC	Louisiana Transportation Research Center
MIL	Military Specifications
MASH	Manual for Assessing Safety Hardware
MUTCD	Manual on Uniform Traffic Control Devices (Louisiana)
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEMA	National Electric Manufacturers Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
PCCP	Portland Cement Concrete Pavement
QC/QA	Quality Control/Quality Assurance
RMA	Rubber Manufacturers Association
SAE	Society of Automotive Engineers
SI	Systeme Internationale or International System of Units
SCS	U.S. Soil Conservation Service. See NRCS.
SSPC	Steel Structures Painting Council
STB	Surface Transportation Board
TIMED	Transportation Infrastructure Model for Economic Development
UL	Underwriters Laboratories, Inc.

**1.03 Definitions of Terms:** Wherever the following terms appear in the plans, project specifications or other contract documents, they shall be defined as follows:

- a. **Acts of God:** A cataclysmic phenomenon such as an earthquake, tidal wave, tornado, hurricane, or any other occurrence of nature beyond the control of the Contracting Agency and contractor when the project is in a geographic area that has been declared by the government as a disaster area.
- b. **Adjustment:** A change in contract time or compensation provided in accordance with Subsections 8.07 and 10.04
- c. **Advertisement:** A public announcement inviting bids containing the location and description of the work, time and place of opening bids.
- d. **Assembly Period:** Time the Contractor is given to acquire approvals of required drawings, brochures and other submittals, and to begin the purchase and assembly of materials, and to perform specified preconstruction activities. Contract time will not be charged during an assembly period
- e. **Award of Contract:** Official written notice to the Contractor that the Contracting Agency has accepted the Contractor's proposal.

- f. **Base Course:** The layer or layers of specified material of designed thickness constructed on the subgrade to support a surface course.
- g. **Bid:** The binding offer of a responsible bidder that was submitted to the Contracting Agency on the bid forms, or via approved electronic media, in accordance with the bidding documents
- h. **Bid Forms:** The portion of the bidding documents required to be submitted, in accordance with the bidding documents, in order to constitute a bid.
- i. **Bidder:** An individual, partnership, firm, corporation, or any acceptable combination thereof, or joint venture submitting a proposal.
- j. **Bidding Documents:** The advertisement, plans, specifications, bid forms, bidding instructions, addenda, special provisions, and all other written instruments prepared by or on behalf of the Contracting Agency for use by bidders.
- k. **Bond, Bid:** The security designated in the Proposal to be furnished by the bidder as evidence of good faith to enter into a contract with the Contracting Agency if such contract be awarded to such bidder.
- l. **Bond, Payment:** The approved form of security furnished by the Contractor and his surety as security for the faithful payment for all labor, materials, or other obligations incurred by him in the prosecution thereof.
- m. **Bond, Performance:** The approved form of security furnished by the Contractor and his surety as security for the faithful performance of the work by him in the prosecution thereof.
- n. **Bridge:** A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, which has a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments, spring lines of arches, or extreme ends of openings for multiple boxes. A bridge may include multiple pipes where the clear distance between openings is less than ½ the smaller contiguous opening.  
**Bridge Length:** The greater dimension of a structure measured along the center of the roadway between backs of abutment backwalls or between ends of bridge floor.  
**Bridge Roadway Width:** The clear width of structure measured at right angles to the center of the roadway between the bottom of curbs or if curbs are not used, between the inner faces of parapet or railing.
- o. **Calendar Day:** Every day on the calendar, beginning and ending at midnight.
- p. **Change Order (Plan Change) or Special Agreement:** The standard form normally used to describe and detail changes to the contract. When approved and fully executed, the document becomes a part of the contract.
- q. **Commissioner:** The Commissioner of Multimodal Commerce of the Louisiana Department of Transportation and Development.
- r. **Conditional Notice to Proceed:** Written notice to the contractor to proceed with ordering

of materials, and when specified, performing other activities which would hinder progress in the beginning stages of construction.

s. **Construction Proposal:** Document furnished to prospective bidders by the Contracting Agency consisting of, but not limited to, the notice to contractors, special provision, supplemental specifications, and bid forms.

t. **Contract:** The written agreement between the Contracting Agency and the Contractor setting forth obligations of the parties there under for performance of the prescribed work.

The contract includes the notice to contractors, proposal, contract form, payment and performance bonds, general provisions, supplemental specifications, special provisions, specifications, general and detailed plans; also, any plan changes and supplemental agreements that are required to complete the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

u. **Contracting Agency:** Any affected City, Town, Village, Levee Board, Police Jury, or other governing authority of any Parish, State Department, State Agency, Board, Commission, Public Corporation, or any other political subdivision of the State of Louisiana, in whose name the contract will be executed. The Contracting Agency will be further defined in the Notice to Contractors.

v. **Contract Item (Pay Item):** A specific unit of work for which a price is provided in the contract.

w. **Contract Modification:** See Plan Change or Change Order

x. **Contractor:** The individual, partnership, firm, corporation or any acceptable combination thereof, or joint venture entering into a contract duly awarded for performance of prescribed work.

y. **Contract Time:** The number of working days or calendar days allowed for completion of the contract, including authorized time extensions. When a calendar date of completion is shown in the contract in lieu of a number of working or calendar days, work shall be completed by that date.

z. **Controlled Access Highway:** Any highway to or from which access is denied or controlled from or to abutting land or intersecting streets, roads, highways, alley, or other public or private ways.

aa. **Controlling Item(s) of Work:** Item(s) of work that should be in progress at the time, essential to the orderly completion of the work within the time limit specified, in accordance with the contractor's approved construction progress schedule.

bb. **Control of Access:** The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is controlled by public authority.

-Full Control: Preference is given to through traffic by providing access connections with selected public roads only, and by prohibiting crossing at grade or direct driveway connections.

-Partial Control: Preference is given to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade, and some private driveway connections.

- cc. Critical Path Method (CPM):** The method of network scheduling that utilizes computer programs to (i) arrange the sequence of project activities based on activity relationships and durations, (ii) show early and late activity start and completion dates, (iii) determines the longest continuous sequence of activities, the critical path, that establishes the minimum overall project duration and identifies the activities on that path, and (iv) facilitate allocation of resources and estimates of contract earnings.
- dd. Culvert:** Any drainage structure under a roadway or other facility not defined as a bridge.
- ee. Dedicated Stockpile:** A stockpile assembled for a specific project.
- ff. Department:** The Louisiana Department of Transportation and Development, Office of Multimodal Commerce.
- gg. Department of Transportation and Development:** The Louisiana Department Transportation and Development, through its offices and officers, responsible for developing and implementing programs to ensure adequate, safe, and efficient transportation, and other public works facilities and services in the state in accordance with Chapter 11 of LRS Title 36 as amended.
- hh. Disadvantaged Business Enterprise (DBE):** A DBE is a for-profit small business concern that is at least 51 percent independently owned and controlled, in both substance and form, by one or more individuals who are both socially and economically disadvantaged and participating in the DBE Program mandated by the U.S. Department of Transportation Financial Assistance Programs.
- ii. Electronic Bid Bond:** An instrument by which a contractor and surety can submit a bid guarantee with a bid electronically in lieu of a written signed paper.
- jj. Electronic Bidding:** The process by the Contracting Agency and the bidder can utilize the Internet to facilitate the bidding process.
- kk. Electronic Signature:** A secure and verifiable alpha-numeric code assigned to an individual, replacing or acting instead of a traditional signature.
- ll. Engineer of Record (EOR):** The person or firm licensed to practice engineering in Louisiana and employed by the Contracting Agency for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other engineering services necessary to develop the criteria and concept of the project, perform design analysis, prepare project plans and specifications, and who seals, signs, and dates the plans and documents certifying that the work thereon was done by the licensee or under his/her responsible charge and/or administer the construction contract. The person or firm named as stated in the Notice to Contractors.
- mm. Equipment:** All machinery, implements and power-tools, together with the necessary supplies for the operation, upkeep and maintenance of the same and also all other tools and apparatus necessary for the proper construction and acceptable completion of the work.



- nn. Extra Work:** Work not provided for in the contract as awarded but found essential by the Contracting Agency for satisfactory completion of the contract within its intended scope.
- oo. Extension of Contract Time:** Any extension of the time for completion of work beyond the contract time specified in the contract for an item not provided for in the contract as awarded but found essential by the contracting agency for satisfactory completion of the contract within its intended scope. Such extension being granted by the Contracting Agency upon recommendation of the Engineer.
- pp. Falsework:** temporary construction work on which a main work is wholly or partly built and supported until it is strong enough to support itself; a temporary framework used to support part or all of a structure during demolition.
- qq. Fresh Concrete:** Concrete in the plastic state before achieving initial set.
- rr. Highway, Street, or Road:** A public way for vehicular travel, including the entire area within the right-of-way.
- ss. Incidental Work:** Work required by the contract that is not directly measured and for which no specific pay item is provided, including all work necessary to satisfactorily complete all pay items.
- tt. Inspector:** An authorized representative of the Engineer assigned to make any and all inspections of the work performed and materials furnished by the Contractor.
- uu. Invitation for Bids:** See “Advertisement.”
- vv. Item:** See “Pay Item.”
- ww. Laboratory:** The official testing laboratories as designated by the Engineer.
- xx. Local Street or Local Road:** A street or road not in the state maintained system.
- yy. Major Item:** A pay item included in the contract with a total cost equal to or greater than 10 percent of the original total contract amount.
- zz. Materials:** Any substance used in the work.
- aaa. Median:** The portion of a highway separating traveled ways for traffic in opposite directions.
- bbb. Minor Item:** A pay item included in the contract as awarded with a total cost of less than 10 percent of the original total contract amount.
- ccc. Notice to Contractors:** The advertisement for bids for all work on materials on which bids are required. Such advertisements will indicate the location and description of the work, and time and place of opening bid proposals.
- ddd. Notice to Proceed:** Written notice to the contractor to proceed with the contract work which will stipulate the dates that work shall commence and contract time shall begin.
- eee. Parish:** A political subdivision corresponding to a county in other states.

- fff. Pavement Structure:** The combination of base courses and surface course placed on a subgrade across the roadbed.
- ggg. Plan Change / Contract Modification:** A written agreement signed by the Contractor and the Contracting Agency, as recommended by the Engineer, involving changes or additional work within the provisions of the contract and not considered of sufficient importance to require a “Supplemental Agreement”. Also see “Change Order”.
- hhh. Plans:** The approved plans, profiles, typical cross-sections, general cross-sections, working drawings and supplemental drawings, or exact reproductions thereof, prepared or designated by the Engineer, which show the locations, character, dimensions and details of the work to be done, and which are to be considered as a part of the contract together with these specifications.
- iii. Proposal:** The offer of a bidder, on the prescribed form, to perform the stated work and to furnish the labor and materials at the prices quoted. Also see “Bid”.
- jjj. Proposal Form:** The prescribed form on which the offer of a bidder shall be submitted. Also see “Bid Forms”.
- kkk. Proposal Security or Guarantee:** The security designated in the Proposal to be furnished by the bidder as evidence of good faith to enter into a contract with the Contracting Agency if such contract be awarded to such bidder.
- lll. Quality Assurance:** The combined efforts of quality control and acceptance processes to ensure that a project adheres to the contract requirements.  
 -Quality Control is the process used by the contractor to monitor, assess, and adjust material selection, production, and project construction to control the level of quality so that his product continuously and uniformly conforms to specifications.  
 -Acceptance is the process of sampling, testing and inspection to determine the degree of compliance with the specifications for acceptance of materials and/or the contractor’s work.
- mmm. Right-of-Way, Servitude and/or Easements:** Land, property or interest therein, acquired for or devoted to the intent and purpose of the project.
- nnn. Roadbed:** The graded portion of a roadway prepared as a foundation for the pavement structure within the top of the side slopes, including the shoulder.
- ooo. Roadside:** The area adjoining the outer edge of the roadbed. Extensive areas between roadways of a divided highway may also be considered roadside.
- ppp. Secretary:** The Secretary for the Louisiana Department of Transportation and Development.
- qqq. Service Road or Frontage Road:** A street or road on the side of the mainline roadway for service to abutting property and adjacent areas, and for control of access.
- rrr. Small Business Enterprise (SBE):** As defined by Section 3 of the U.S. Small Business Act and S.B.A. regulations, a for-profit business that is at least 51 percent owned by one

or more individuals who are economically disadvantaged, and whose company is a small business concern in accordance with 49 C.F.R. 26.65.

- sss. Special Condition or Special Provision:** The part of the Contract which emphasizes, specifies or advises the Contractor of special items or circumstances particular to the project which amends or supplements the General Conditions, special provisions and Supplemental Specifications.
- ttt. Specialty Item:** A pay item designated in the contract that may be performed by subcontract and the cost of such may be deducted from the total contract cost before computing the amount of work required to be performed by the contractor with the contractor's own organization.
- uuu. Specifications:** The directions, provisions and requirements contained in the Contract Documents that describe the work under the Contract. The specifications are further defined as follows:
- Standard Specifications: The "Louisiana Standard Specifications for Roads and Bridges" a bound book or electronic media, applicable to all contracts.
  - Supplemental Specifications: Additions and revisions to the Standard Specifications.
  - Special Provisions: Specific requirements that amend the Standard Specifications or supplemental specifications, applicable to a specific project.
  - Non-Standard Special Provision: A specification that describes requirements for an unusual item or one that should not be part of the Standard Specifications.
  - Technical Special Provisions: Specifications, of a unique or highly technical nature, prepared, signed, and sealed by an Engineer or Architect registered in the State of Louisiana with recognized expertise in the field, that are made part of the Contract as an attachment to the Contract Documents.
  - Project Specifications: All Standard Specifications, Supplemental Specifications, Special Provisions and other provisions applicable to the project.
- vvv. Specified:** Required or stipulated in the contract documents
- www. Standard Plans:** Louisiana Department of Transportation and Development drawings approved for repetitive use, showing the details to be used where appropriate.
- xxx. State:** The State of Louisiana, acting through its authorized representative.
- yyy. Storm Drain:** A fully contained and connected set of drainage structures, which capture the rain water runoff.
- zzz. Structures:** Bridges, tunnels, culverts, catch basins, junction boxes, headwalls, retaining walls, cribbing, manholes, end-walls, dams, floodgates, buildings, docks, etc. and other miscellaneous construction which may be encountered in the work and not otherwise classified herein.
- aaaa. Sub-contractor:** An individual, partnership, corporation, joint venture, other legal entity or acceptable combination thereof, to which the contractor sublets part of the work. Any individual, partnership, corporation, joint venture, other legal entity or acceptable combination thereof shall not be considered to be a subcontractor if it is a subsidiary, wholly owned or majority owned by the contractor or the principals of the contractor, or an affiliate of the contractor or affiliated or otherwise controlled by the contractor or the

principals of the contractor such that a true and independent subcontractor-contractor relationship reached by bidding or arms-length negotiation does not result there from.

- bbbb. Submittals:** Detailed drawings and documents provided by the contractor as required by the contract.
- cccc. Superintendent:** The Contractor's authorized representative in responsible charge of the work.
- dddd. Surety:** The corporation, partnership or individual, other than the Contractor, executing a bond furnished by the Contractor.
- eeee. Temporary Works:** Any temporary structure or any stream crossing required to maintain traffic while engaged in the prosecution of the contract. The temporary structures shall include the earth approaches thereto.
- ffff. Technician:** The contractor's or the engineer's representative who shall be either certified or authorized as required in the specifications.
- gggg. Unit:** A quantity adopted as a standard for measurement of work.
- hhhh. Work:** The furnishing of labor, materials, services, equipment, and incidentals necessary for successful completion of the project and the carrying out of all obligations imposed by the contract.
- iiii. Work Order:** See Notice to Proceed:
- jjjj. Working Day:** A calendar day on which weather or other conditions not under control of the contractor will permit construction operations to proceed in accordance with Subsection 8.07
- kkkk. Working Drawings:** Drawings produced and submitted by the contractor to the engineer in accordance with 5.02 that describe the contractor's work, means, and/or methods of construction, including, for example, supplemental design sheets, shop drawings, bending diagrams, and construction joint locations.

- 1.04 Understood Expressions:** Where the party responsible for the work, testing, or sampling described is not specifically identified, the work is to be performed by the contractor.

In order to avoid cumbersome repetition of expressions in the contract or plans, it is provided that whenever anything is, or is to be done, if, as, or, when or where "contemplated, required, determined, directed, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, condemned, waived, or written consent," it shall be understood as if the expression were followed by the words "by the engineer" or to the engineer".

Whenever the contract or plans contain the expressions "no direct pay, no direct payment, not measured for payment, at no additional cost or expense to the Contracting Agency, will not be measured for payment, considered incidental to other items of work, no payment will be made for this work, shall not be entitled to extra payment," or any variation of one of these expressions it shall be understood by the bidder that the

designated work is to be considered incidental work and the cost of such work shall be included in the price bid on other pay items.

When plans, including “as-built” plans from previous projects, specifications, plans notes, general notes, special or supplemental provisions, or other bid or contract documents provide information or data with a notation indicating that the information or data is provided “For Information Purposes” or “For Information Purposes Only,” the Contracting Agency provides such information, representations, or data only for illustrative purposes.

## 2. PROPOSAL PREPARATION & BIDDING REQUIREMENTS

**2.01 Pre-qualification of Bidders:** To qualify for submission of a bid, the bidder shall comply with all rules and regulations of the Louisiana State Licensing Board for Contractors.

**2.02 Contractors' Licensing Laws:** Attention is directed to the rules and regulations of the State Licensing Board for Contractors. Information relative to licensing may be obtained from the offices of said Board in Baton Rouge.

If the estimated project cost is \$50,000 or more, only licensed Contractors may receive bid forms, unless federal funds are involved. When federal funds are involved, non-licensed Contractors may receive bid forms and submit bids; however, if the Contractor's bid is \$50,000 or more, the successful non-licensed bidder will be required to obtain the proper license before beginning work under the contract.

When the estimated project cost is greater than \$50,000, the Contractor shall show his license number on the bid envelope unless the contractor submits the bid via approved electronic bidding process. If the subcontract amount is \$50,000 or more, both the Contractor and Subcontractor are subject to rules and regulations of the State Licensing Board for Contractors.

When landscaping is the predominant work on the project and no federal funds are involved, prior to receiving bid forms, the prospective bidder will be required to possess a current Landscape Contractors license from the horticulture Commission of the Louisiana Department of Agriculture and Forestry.

The contractor will be required to ensure all work performed conforms to Louisiana licensing laws and permit requirements.

**2.03 Contents of Bidding Documents:** Upon request, the prospective bidders will be furnished with bidding documents by the Engineer. The construction proposal will state the location and description of the contemplated work, will show the approximate estimate of the quantities and kinds of work to be performed, and will include the bid forms to be completed and returned by the bidder. The proposal will state the time in which the work must be completed, the amount of the proposal guaranty, and the date, time and place of opening proposals. The proposal will also include any supplemental specifications, special provisions, or requirements, which vary from or are not contained in the Standard Specifications. The plans, specifications and other documents designated in the proposal form will be considered a part of the proposal whether attached or not.

The prospective bidder will be required to pay the Engineer the sum stated in the Notice to Contractors for each set of plans, if so stated. The prospective bidder may use the approved electronic bidding process. The use of such services may require payment by the contractor of additional fees to the service provider. Unless the contractor properly submits the bid forms electronically, the bid forms bound with or attached to the construction proposal should be detached, completed, and returned by the bidder.

Unless explicitly stated otherwise in the contract, when the name of a certain brand, make, manufacture, or definite specifications limit the product or source to supplied under or pursuant to a specification in this contract to a single product or source, that specification shall not restrict bidders to the specified brand, make, manufacture, product or source, but to set forth and convey to prospective bidders the general style, type, character, quality and salient performance criteria desired by the Engineer of the product or source specified. The specified product or source shall be a standard by which substitute products or sources will be compared to determine if the substitute product or source will be approved for substitution as equal to or superior to the general style, type, character, quality and salient performance criteria of the product or source specified. Bidders are informed that substitute products or sources shall be submitted to the Engineer for prior approval

no later than seven working day prior to the opening of bids in accordance with LRS 38:2295(C). The Engineer will approve or deny substitution of the product or source specified within three days, exclusive of holidays and weekends. If a product or source sought to be used as a substitute for the product or source specified is not submitted prior to the opening of bids as provided in LRS 38:2295(C), the Engineer has the right to require the product or source specified. Substitution of a product or source submitted in substitution of the product or source specified after the seven-day period prior to the opening of bids may only be allowed after that time in the Engineer's sole discretion pursuant to 5.01.

**2.04 Interpretation of Pay Items, Unit Prices, and Quantities in Schedule of Items:** The quantities listed in the proposal form are to be considered as approximate and are to be used only for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and material furnished in accordance with the contract, and if upon completion of construction the actual quantities show either increase or decrease from the quantities given in the approximate estimate, the unit bid prices mentioned in the proposal will still prevail, except as otherwise herein provided. Nothing in the proposal, or anywhere else in the contract, is intended to amend, prohibit, or release the contractor from performance of the work specified in the plans and specifications for which no direct pay item is included (i.e., without compensation), in addition to that in the Schedule of Items. The contract unit price for a scheduled item shall include all direct costs, all overhead, any profit, and all indirect, incidental, and subsidiary costs, necessary to complete the item, and any incidental work not measured for payment as described under the individual pay items listed in the Schedule of Items. The contractor shall perform all work required to complete the project.

**2.05 Examination Bid Documents and Site of Work:** The bidder is required to examine carefully the site of the proposed work, proposal, plans, specifications, and contract and bond forms for the work contemplated and it will be assumed that he has investigated and satisfied himself as to the conditions to be encountered and as to the character, quality and quantities of work to be performed, and materials to be furnished, and as to the requirements of these specifications, special provisions and contract. Bidders are assumed to have made themselves familiar with all Federal and State laws, local laws, ordinances and regulations which in any manner affect the work or its prosecution. The intent of the Contract is to provide an equitable basic of payment for the actual work performed, in accordance with the Contract. Total payment to the Contractor will be determined by multiplying the quantities of work completed, in accordance with the Contract and as determined by the Engineer, by the applicable unit price for the pay item as show on the schedule of items. Lump sum items will be considered to have a quantity of one. Payment shall equal the summation of the individual pay item extension.

Written instructions necessary to use the electronic bidding service and prepare and submit a bid electronically are provided by the bidding service website. Fees payable to the bidding service may be required of the contractor to use the service and to establish electronic signatures. The contractor is advised to timely make all necessary arrangements with the bidding service and to familiarize himself with the system and process requirements prior to using the service to submit a bid.

If after review of the plans, specifications and site of the proposed work. The bidder believes that work will be required but there is no logical pay item for the work, then the bidder will notify the Engineer in writing at least seven days prior to opening of the bids so that the Engineer may determine if an addendum is required. The bidder's notification shall contain a description of the work that is required, suggested pay item and an explanation why the bidder believes the required work is not included in one of the items of work on the schedule of items. The filing of a bid shall be presumptive evidence that the bidder has complied with these requirements.

Any subsurface tests and boring data which have been compiled by the Contracting Agency and furnished to the bidder shall not be considered as fully representative of subsurface conditions existing throughout the area tested nor shall they in any way be binding upon the Contracting Agency.

By submitting a bid, the bidder represents and warrants that bidder has carefully and thoroughly reviewed and examined all bid documents, including all project plans and specifications; and examined and inspected the project site for the purpose of identifying, assessing, and determining all observable or apparent site conditions that may have an impact on the performance of the work.

By submitting a bid, the bidder further represents and warrants that (1) review and examination of the bid documents, including all project plans and specifications, has not revealed or otherwise indicated, and bidder is otherwise unaware of, any error, omission, ambiguity or deficiency of any kind in any of the bid documents or the information reflected by the bid documents; (2) examination and inspection of the project site has not revealed or otherwise indicated, and bidder is otherwise unaware of, any apparent or otherwise observable site condition that may have an impact on the performance of the work; and (3) that Bidder has provided to the Contracting Agency written notice identifying and detailing any site condition or error, omission, ambiguity or deficiency of any kind in any of the bid documents or the information reflected by the bid documents that may have a significant impact on the performance of the project, including the cost of the project or the time required to complete the work.

- 2.06 Preparation of Bid:** Bids shall be submitted on bid forms provided by the Engineer or accessed online through a bidding service. If submitting a paper bid, the bidder must record his bid in ink and the unit prices shall be stated in figures and only in figures on the “Louisiana Uniform Public Work Bid Form **Unit Price Form**”. The total bid amount in words and figures must be written in the proper places provided for on the “Louisiana Uniform Public Work Bid Form”. In the case of a discrepancy, the “Louisiana Uniform Public Work Bid Form **Unit Price Form**” for unit price will govern. The actual low bidder will be verified by multiplying the quantities and unit on the “Louisiana Uniform Public Work Bid Form Unit Price Form” to establish the total.

The bidder is required to examine carefully the proposal form before submitting same, in order to see that a unit price is submitted on each and every item for which a bid is requested.

The bidder will be responsible for all errors or omissions in his proposals. The bidder shall sign his proposal correctly. Proposals must be signed either with an authorized electronic signature or in ink. If the proposal is made by an individual, his name and address must be shown. If made by a corporation, partnership, or other entity the name and position or title of the individual signing the proposal must be shown. A resolution authorizing the signature should be attached to the proposal except as set forth on the form.

- 2.07 Rejection of Proposals Containing Alterations, Erasures or Irregularities:** Proposals may be rejected if they show an alteration of form, additions not called for, conditional or unauthorized alternate bids, incomplete bids, erasures, or irregularities of any kind. If not accompanied by a proposal guaranty, proposals will be rejected, unless said is not required.

- 2.08 Proposal Guaranty:** The proposal will be rejected unless bid guaranty in the required amount is received at the address designated for receiving bids prior to the closing time fixed in the bid invitation, except that security received after such fixed time will be treated in the same manner as late bids.

The bidder, at his option, may furnish a bid bond, postal money order, certified check, or cashier’s check, as security in the amount required. In case security is in the form of a postal money order, certified check, or cashier’s check, the Contracting Agency may make such disposition of the same as will accomplish the purpose for which submitted.

The following conditions shall be met:

- a. Bidders shall attach a certified check, cashier’s check, or bid bond for five percent of the contract price of work to be done as evidence of good faith of the bidder.



- b. If bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of Treasury Financial Management Service list of approved bonding companies to write Bonds in Louisiana. Said list is published annually in the Federal Register.
- c. All signatures required on the bid bond may be original, mechanical reproductions, facsimiles or electronic.
- d. If a bid bond is used, it shall be written on the form provided herein and shall be executed and completed so as to comply with all terms, conditions and instructions set forth on said form.
- e. If bidding through an online service the contractor is responsible for investigating and complying with electronic bid bond submission with and through the service.

**2.09 Delivery and Opening of Proposals:** Unless delivered electronically through the approved electronic bid submission service, each proposal shall be submitted, together with the proposal guaranty, in a properly addressed, sealed and labeled envelope. If submitted by mail, the envelope shall be addressed to the Contracting Agency at the address given in the “Notice to Contractors”, and should preferably be registered. If submitted otherwise than by mail, it shall be delivered to the proper place designated in the “Notice to Contractors”. Bids submitted any other way will be considered informal. Proposals will be received up to the time stated and must be delivered to the contracting agency at the designated place before the expiration of the time stipulated for the receipt of bids. Proposals received after the stipulated time will be returned to the bidder unopened. Electronic bids transmitted by the bidder after the time set for bid opening will not be accepted.

Proposals, whether electronic or paper, will be opened and read publicly at the time and place indicated in the “Notice to Contractors”. Bidders or their authorized agents are invited to be present.

**2.10 Withdrawal of Proposals:** A bidder may withdraw his proposal provided the request is made in writing and is received by the Contracting Agency within forty-eight hours of the bid opening excluding Saturdays, Sundays, and legal holidays. The withdrawal of the bid shall not prejudice the right of a bidder to file a new bid. Electronic bids submitted using the bid service may be withdrawn prior to the specified bid opening time by the authorized bidder. The withdrawal of proposals will be in accordance with the following:

- a. A mistake was in fact made in preparation of the bid; and,
- b. The mistake in the bid is of a mechanical, clerical or mathematical nature and not one of bad judgment, careless inspection of the work site, or in reading the plans and specifications; and,
- c. The mistake is found to be in good faith and was not deliberate or by reason of gross negligence; and,
- d. The mistake is patently obvious on the face of the bid; and,
- e. The mistake, request for withdrawal of the bid by reason of the mistake, and written evidence of the mistake, is delivered to the Contracting Agency within 48 hours excluding Saturdays, Sundays, and legal holidays. The written evidence of the mistake supplied to the Contracting Agency shall be duly sworn before a Notary Public as original, unaltered documents used in the preparation of the bid or any other facts relevant to the bidder’s request to withdraw the bid as evidence of the existence of a mistake; and,
- f. The sworn, written evidence furnished to the Contracting Agency within 48 hours excluding Saturdays, Sundays, and legal holidays, constitutes clear and convincing evidence of the bidder’s mistake.

**2.11 Disqualification of Bidders:** If more than one proposal is submitted by an individual, firm or partnership, corporation or association, under the same or different names, all proposals so submitted shall be considered irregular and shall be rejected. Reasonable ground for believing that any bidder had an interest in more than one proposal for the work contemplated will cause the rejection of all proposals in which such bidder has an interest. Any or all proposals will be rejected if there is reason for believing that collusion exists among the bidders and all participants in such collusion will not be considered in future proposals for the same work. Unbalanced proposals may be rejected. No contract will be awarded except to responsible bidders capable

of performing the class of work contemplated, and having sufficient equipment, financial resources and experience to properly perform such work.

In the event of failure or refusal on the part of the bidder to whom the award is made to execute the contract and furnish satisfactory bond within ten (10) days after such contract and bonds are submitted to said successful bidder for execution, the right is reserved by the Contracting Agency to annul the award and to award the contract to the next lowest bidder, or advertise for new proposals, or reject all bids. In the event the bidder to whom the award is made fails or refuses to execute the contract and furnish satisfactory bonds within the ten (10) days above specified, the "Proposal Security" accompanying his bid shall become the property of the contracting agency.

**2.12 Right to Reject Bids:** Until the final award of the contract is made, the right is reserved to reject any and all proposals.

**2.13 Irregular Proposals:** Proposals will be considered irregular and will be rejected for any of the following conditions:

- a. If the proposal is on a form other than that furnished by the Contracting Agency or by the bidding service, or if the form is altered.
- b. If there are unauthorized additions, conditional or alternate bids or irregularities which make the proposal incomplete, indefinite or ambiguous as to its meaning.
- c. If the bidder adds provisions reserving the right to accept or reject the award or to enter into the contract pursuant to the award.
- d. If the proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items.
- e. If the proposal is submitted as a bid by a bidder other than the one to whom the proposal was issued.
- f. If an owner or a principal officer of the bidding firm which has been declared by the Contracting Agency to be ineligible to bid.
- g. If the proposal guaranty does not meet the requirements of Subsection 2.08.
- h. If the bidder fails to initial any revisions to the unit bid prices.
- i. If more than one proposal for the same work is received from an individual, partner, firm, corporation, joint venture or combination thereof under the same or a different name.
- j. If unit prices are obviously distorted to reflect an advantage to the Contractor which would result in undue expenditure of public funds and/or overrun of total cost of project.
- k. When the plans, specifications or proposal contain an obvious error or omission which could have been cause for non-uniform bidding.

**2.14 Proposal / Bid Guaranty:** When notice of a bid mistake and a request to withdraw the bid is made, the proposal/bid guaranty will be returned to the bidder once it has been determined that a mistake had been made in accordance with Subsection 2.10.

**2.15 Bid Withdrawal Consequences:** If it has been determined that an error has been made and the bidder is allowed to withdraw a bid, the individual, partnership, corporation, or any other legal entity or joint venture submitting the bid will not be allowed to resubmit a bid on the project a bid on the project, perform work on the project as a subcontractor or sub-subcontractor, or to supply any material or labor to the entity to whom the contract is ultimately awarded.

If all bids are rejected after a bid is successfully withdrawn, the withdrawn bidder shall not be eligible to bid on the project unless the advertisement and opening of bids for the work is at least on hundred eighty days after the date the bid is withdrawn.

### 3. AWARD AND EXECUTION OF CONTRACT

- 3.01 Consideration of Bids:** After paper or electronic bids are opened and read, they will be compared on the basis of the summation of the products of the quantities and the unit bid prices in the schedule of items. Results of such comparisons will be available to the public.

The right is reserved to reject proposals or advertise for new proposals.

- 3.02 Rejection of All Bids:** All bids may be rejected for just cause consisting of any of the following:
1. The Contracting Agency's unavailability of funds sufficient for the construction of the project or the unavailability of funding participation in the project by anticipated funding sources.
  2. The failure of all bidders, not considered as irregular, to submit a bid within the established threshold of the construction estimate for the project by the Contracting Agency' Engineer.
  3. A substantial change in scope or design of the project occurring prior to award.
  4. A determination of the Contracting Agency or the funding agency not to build the proposed project within twelve months of the letting date.
  5. The discovery, by the Contracting Agency prior to award, that an error, defect, or ambiguity was contained within the bidding documents, that these defects may have affected the integrity of the competitive bidding process or may have led to a potential advantage or disadvantage to one or more of the bidders.

- 3.03 Award of Contract:** The award of contract, if awarded, will be made to the lowest qualified bidder whose proposal complies with all requirements prescribed within 45 calendar days after opening bids unless extended by mutual agreement between the Contracting Agency and successful low bidder. The successful bidder will be notified by letter mailed to the address shown in the proposal that the bidder is awarded the contract.

- 3.04 Cancellation of Award:** The Contracting Agency reserves the right to cancel the award of contract at any time before execution of said contract by all parties without liability against the Contracting Agency or Department.

- 3.05 Return of Proposal Guaranty:** Proposal guaranties of unsuccessful bidders will be returned to them within 15 calendar days after opening bids. The proposal guaranty of the successful bidder will be returned after satisfactory payment and performance bonds have been furnished and the contract has been executed.

- 3.06 Requirement of Payment and Performance Bonds:** The successful bidder, at the time of the execution of the contract, must deposit with the Contracting Agency a performance bond of a surety company authorized to do business in Louisiana, in the amount of the total bid, conditioned that such work shall be performed in accordance with the plans, specifications and terms of the contract, and no surety company in which the bidder for the work has an interest will be accepted as surety on the bond. In addition, the successful bidder will furnish at the same time a payment bond in the penal sum of one hundred (100) percent of the original amount of the contract as a guarantee that all payments covering labor and material used or reasonably required for use in the performance of the contract will be promptly made to laborers and material men. Bonds shall be given on forms provided by the Contracting Agency.

The following conditions shall be met:

- a. Surety bond written for a public works project shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies to write Bonds in Louisiana. Said list is published annually in the Federal Register.

- b. For any public works project, no surety or insurance company shall write a bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list.

**3.07 Execution and Approval of Contract:** The successful bidder will be required to execute the contract and furnish bonds satisfactory to the contracting agency within ten (10) days after such contract is submitted to said successful bidder for execution. In the case of a corporation, the officer or agent to execute the contract must be designated in a Corporate Resolution executed by the Board of Directors, duly certified by the Secretary, and bearing the seal of the corporation. When the successful bidder is a partnership, a Power of Attorney designating one member of the firm to execute the contract shall be filed with the contracting agency. This Power of Attorney must bear the signature of all partners and must be duly executed before a Notary. Any officer or agent signing on behalf of the surety bonding the Contractor will be required to file Power of Attorney and will be required to affix the seal of the surety to all bonds executed.

If the contract is not executed by the Contracting Agency within 30 calendar days following receipt from the bidder of the signed contract and bond, the bidder shall have the right to withdraw his bid without penalty.

**3.08 Failure to Execute Contract:** Failure by the bidder to execute the contract and file acceptable payment and performance bonds within 10 calendar days after the contract has been mailed to the bidder will be cause for cancellation of the award and forfeiture of the proposal guaranty which shall become the property of the Contracting Agency not as a penalty, but in liquidation of damages sustained. Award may then be made to lowest responsible bidder or the work may be re-advertised for bids, at the Contracting Agency discretion.

**3.09 Notice to Proceed:** The Contracting Agency will issue the Notice to Proceed or a Conditional Notice to Proceed not later than 30 calendar days after execution of the contract unless it is in the best interest of the Contracting Agency to issue an extension.

If the Notice to Proceed is not issued within 60 calendar days after execution of the contract, the Contractor may at any time thereafter demand cancellation of the contract, unless an extension is approved in writing by the Contracting Agency and Contractor.

After award of the contract, the project engineer will schedule a preconstruction conference. The preconstruction conference will be held prior to performing any work on the project, preferably during the assembly period, but not later than the first day of field operations. The engineer will schedule the conference sufficiently in advance to permit the attendance of all parties concerned. The contractor is urged to have all subcontractors and major suppliers in attendance at the preconstruction conference.

#### 4. SCOPE OF WORK

**4.01 Intent of Contract:** The intent of the contract is to provide for performance and completion of the work described. The Contractor is obligated to complete the project in accordance with the contract documents.

The Scope of Work consists of, but is not limited to, the following:

- a. All Work necessary to perform, construct, and complete the items described by the Contract, which may include extra work;
- b. All Work made necessary by an increase in the quantity of a major or minor pay item;
- c. All other Work incidental and necessary to perform, construct, and complete the Work specifically referenced or described by the Contract and necessary for delivery of a completed Project conforming to the Contract and suitable for its intended purpose;
- d. The performance of any testing as directed by the engineer to determine if any work or any finished product complies with the Contract, and;
- e. Except as provided in 5.03, to correct and/or replace deficient or nonconforming work, materials, or finished product at no additional cost or expense to the Contracting Agency with work, materials, or finished product that does conform to the Contract.

To that end, the Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with best industry practices and the Contract, with the Contract taking precedence over industry practices. Performance methods and sequences are described in the contract documents when considered necessary for the successful completion of the project.

When an item in the contract contains a choice to be made by the Contractor, the Contractor shall indicate the choice to the Engineer in writing.

When the project specifications reference or require the use of “manufacturer’s recommendations or specifications”, the Contractor shall supply the Engineer with a current copy of these recommendations or specifications.

The contractor acknowledges, and expressly agrees, that this public works project is based on estimates of anticipated work; that changes in the work, item quantities, planned work sequences, or methodology can be expected; that the contract does not guarantee any bid profit margin, any bid overhead recovery, or scope of work; and that payment, in accordance with 10.02, will be made only for fully completed work that is accepted, and for the materials incorporated therein.

As work on the Project progresses and in accordance with Section 10.06, the Contracting Agency shall make partial payments of the Contract Price, as adjusted in accordance with the Contract. The Contracting Agency shall adjust the Contract Amount as necessary to compensate the Contractor reasonably and fairly for any extra work ordered by the Contracting Agency and/or Engineer.

Subject to the Contractor’s right to bring legal action against the Contracting Agency, the Contractor shall deliver the project to the Contracting Agency within the contract time as adjusted in accordance with the Contract.

**4.02 Alteration of the Contract:** The Contracting Agency reserves the right to order such alterations in quantities and plans, within the general scope of the contract, including alterations in grade and alignment, as deemed necessary or desirable in order to complete the work as contemplated. Contract items affected by such alterations shall be performed in accordance with the project specifications and payment will be made at the same unit prices as other parts of the work, except as provided in Subsection “Measurement and Payment”.

The Contracting Agency reserves the right to order work not provided for in the contract whenever such work is found essential or desirable to satisfactory completion of the contract within its intended scope. Such work shall be performed in accordance with specifications and as directed. Payment for such work will be made as provided in Subsection "Measurement and Payment".

The Contracting Agency reserves the right to order changes in details, including changes in materials, processes and sequences, whenever such changes are in the best interest of the public or are necessary or desirable to satisfactory completion of the work. Such changes in details shall be performed in accordance with the specifications and as directed, and payment will be made as provided in Subsection "Measurements and Payment". Changes ordered in details, when such changes are allowed or required by the contract, are not alterations to the contract and payment for the affected work will be made at the contract unit prices.

An approved change order will be executed by the Contracting Agency and the contractor to alter the contract in accordance with these and other similar provisions of the contract when any alteration is more than incidental, as determined by the Contracting Agency, to other work specified in the contract. The change order will describe the nature and scope of the contract alteration and the increase or decrease in the contract amount or time. A change order is fully executed and a binding amendment to the contract.

The adjustment in Contract Amount and/or Contract Time stated in a change order shall comprise the total price and/or time adjustment due or owed the contractor for the work or changes defined in the change order.

In the event the contractor refuses to execute a disputed change order, the Contracting Agency reserves the right to execute a change order without the contractor's assent in order to document the contract alteration and adjust the contract amount and/or time accordingly.

Alterations to the contract as provided for by this Subsection shall not invalidate the contract nor release the surety, and the Contractor agrees to accept the work as altered, as if it had been part of the original contract. The Contractor shall notify the surety of any alterations to the contract.

Alterations of the contract shall not involve work beyond the termini of the proposed work except as necessary to satisfactorily complete the project.

No change order will be assumed to be approved until the signed and approved change order is returned to the originator.

**(a) Differing Site Conditions.**

(1) 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 contractor discovering such conditions shall promptly notify the Contracting Agency in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the Contracting Agency will investigate the conditions and if he determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Agency will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment, which results in a benefit to the contractor, will be allowed unless the contractor has provided the required written notice.

**(b) Suspensions of Work Ordered by the Contracting Agency.**

(1) If the performance of all or any portion of the work is suspended or delayed by the Contracting Agency/Engineer in writing for an unreasonable period of time (not originally anticipated, customary or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the Contracting Agency in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(2) Upon receipt, the Contracting Agency will evaluate the contractor's request. If the Contracting Agency agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors, and not caused by weather, the Contracting Agency will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Agency will notify the contractor of his determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

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

**(c) Significant Changes in the Character of Work.**

(1) The Contracting Agency reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made wither for or against the contractor in such amount as the Contracting Agency may determine to be fair and equitable.

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

(4) The term "significant change" shall be constructed to apply only to the following circumstances.

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

b. When a major item of work, as defined elsewhere in the contract, is increased, or decreased, in excess of 25 percent of the contract quantity as awarded. Any adjustment in unit price will be made on only that portion of the major item exceeding the 25 percent increases, or, in the case of a decrease of the item by 25 percent or more the remaining portion will be adjusted.

**(d) Eliminated Items.**

Should any items contained in the contract be found unnecessary for proper completion of the work, the engineer may, upon written order to the contractor, eliminate such items from the contractor. Such action shall not invalidate the contract.

When an item is eliminated, the contractor will be reimbursed for authorized work done toward completion of the item. No allowance, except as provided herein, will be made for any increase expense, loss of expected reimbursement or loss of anticipated profits claimed by the contractor resulting either directly from such elimination or indirectly from unbalanced allocation among the

pay items of overhead expense by the contractor and subsequent loss of expected reimbursements therefore or for other reasons.

The change order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the Contracting Agency, such derivation shall show breakdowns of costs as detailed in Subsection 10.04, Headings (a) through (g).

**(e) Extra Work**

When necessary or desirable to complete the project, the Contracting Agency may direct the contractor to perform unforeseen work for which there is no pay item or unit price in the contract. The Contracting Agency will pay for such work in accordance with Subsection 10.04 based on an approved change order.

**4.03 Maintenance of Traffic:** The contractor shall provide for and maintain through and local traffic at all times and shall conduct his operations in such manner as to cause the least possible interference with traffic at junctions with roads, streets and driveways in accordance with Section 402, unless otherwise noted in plans or special provisions.

The contractor shall keep the portion of the project being used by public traffic, whether through or local traffic, in such condition that traffic (including mail delivery) will be adequately accommodated. The contractor shall furnish, erect and maintain barricades, warning signs and delineators, and shall provide flaggers and pilot cars in accordance with the plans and the MUTCD. The contractor shall maintain existing drainage and also provide and maintain in a safe condition all temporary approaches or crossings, intersections with roads, streets, businesses, parking lots, residences, garages and farms, at no direct pay.

When the engineer directs additional measures for the benefit of the traveling public, payment to the contractor will be made at the contract unit prices in the contract or as provided in 109.04. The engineer will be the judge of work to be classed as additional measures.

All lane closures, including ramps, shall be authorized by the engineer. Unless otherwise authorized, lane closures will only be allowed while work is being performed. The contractor shall provide the engineer a five calendar day notice, prior to any lane closure unless a shorter notification period is allowed by the engineer. A late lane opening rental will be charged to the contractor for any lane closure on any roadway or ramp that extends beyond the allowed closure times. The rental shall be computed in hourly increments only, with fractions of an hour rounded up to the next whole hour. The rental will also apply to any unauthorized lane closures by the contractor, whether short term or long term. Any rental monies assessed for a late lane opening or for an unauthorized lane closure will be deducted from payments due the contractor. The late lane opening rental or unauthorized lane closure rental will be in accordance with Table 104-1 for a maximum of four continuous hours per instance.

**Table 104-1**  
**Unauthorized Lane Closure or Late Lane Opening Rental**

Current Average Daily Traffic (Vehicles per Day) stated in contract Documents	Hourly Rate (\$/Hour)
<10,000	250
10,000 – 20,000	1,250
20,000 – 35,000	5,000
35,000 – 50,000	11,500
>50,000	15,000

**4.04 Final Cleaning Up:** Before final acceptance, the right-of-way, borrow and local material sources, and areas occupied by the contractor in connection with the work shall be cleaned of rubbish, excess materials,



temporary structures, haul roads and equipment. All parts of the work, including property adjacent to the right-of-way, which have been damaged or rendered unsightly during the work shall be left in satisfactory condition and when required, the right-of-way shall be mowed, all at no direct pay.

- 4.05 Guarantee and Warranty of Contractor's Work:** By signing the contract the contractor guarantees and gives full warranty (1) of the quality of materials incorporated into the work, (2) that all work will be performed in a good and workmanlike manner, (3) that the finished product will be fit for its intended use and purpose and constructed in conformity with the Contract, and (4) that the contractor's work will be otherwise free of all defects.

For the purpose of this subsection, defect shall be understood to mean and to include all conditions or characteristics of the contractor's work not in conformity with the project plans and specifications including, without limitation, any nonconformity with the project plans and specifications that (1) renders the contractor's work inconsistent with applicable design standards, (2) that the contractor has not declared prior to Final Acceptance, or (3) that the Contracting Agency has not observed or detected in the course of Final Inspection. Defect shall be understood to exclude reasonably anticipated depreciation or deterioration of the contractor's work and all other conditions arising exclusively from the intended use of the finished product and not caused by a defect as defined in this paragraph.

At no direct pay and in accordance with the instruction of the engineer, the contractor shall remediate or replace any work which the Contracting Agency determines to be defective during the guarantee and warranty term.

If it should be found that portions of the Project failed due to defective material or faulty workmanship and if such defective portions cause any breakdown or accident, the contractor will not only be required to furnish and install the replacement portion, but will also be held responsible to the Contracting Agency for all expenses due to accident or breakdown caused by such a failure, including the repair or replacement of any other portion damaged by the failed portion, and/or the replacement of any other portion or equipment when such replacement is necessitated by the replacement of the portion which is the subject of the warranty.

This guarantee does not include an obligation by the contractor, or the Contracting Agency, to maintain the contractor's work during the guarantee and/or warranty period, or otherwise.

- 4.05.1 Equipment, Instruction Sheets:** For the purpose of this subsection, equipment shall be understood to mean and to include all equipment, project component, apparatus, and/or all parts of such equipment (1) purchased or acquired by the contractor subject to an express warranty provided by the manufacturer of the equipment, and (2) installed by the contractor in accordance with project plans and specifications.

Instruction sheets that are required to be furnished by the manufacturer for installed project equipment, apparatus, materials, supplies, and operation shall be delivered by the contractor to the engineer prior to final acceptance of the project, with the following written warranties and guarantees:

1. Unless otherwise specified, the manufacturer's standard warranty for each piece of installed project equipment, project component, or apparatus furnished under the contract.
2. The contractor's guarantee that, during the guarantee period, necessary repair or replacement of the warranted equipment, project component, or apparatus will be made by the contractor at no direct pay.

3. The contractor's guarantee for satisfactory operation of installed project equipment including, but not limited to, the mechanical and electrical systems furnished and constructed under the contract for the guarantee period.

To extent possible, contractor shall acquire all such warranties in the name of and for the benefit of contractor and the Contracting Agency. Otherwise, Contractor shall assign and subrogate all of contractor's rights under all express warranties of such equipment or project components, or parts of thereof, to the Contracting Agency and deliver such to the Contracting Agency before acceptance of the work.

The term of the warranty or guarantee period shall commence upon the final acceptance date of the project. If it should be found that parts or portions of equipment failed due to defective material or faulty workmanship and if such parts should, within the manufacturer's warranty period, cause any breakdown or accident, the contractor, during the term of its guarantee period, will not only be required to furnish and install the replacement part, but will also be held responsible to the Contracting Agency for all expenses due to accident or breakdown caused by such a failure, including the repair or replacement of any other equipment damaged by the failed equipment, and/or the replacement of any other equipment when such replacement is necessitated by the replacement of the equipment or part which is the subject of the warranty.

The contractor shall insert one copy of all warranties and guarantees into the maintenance manuals specified. Routine maintenance during the guarantee period will be performed by the Contracting Agency.

## 5. CONTROL OF WORK

- 5.1 Authority of Engineer:** The Engineer will be the Contracting Agency's representative during construction. The Engineer shall be authorized to inspect all work and all materials. Such inspection may extend to all or any part of the work and to the preparation or manufacture of materials to be used.

The Engineer will decide all questions which arise as to the quality or acceptability of materials furnished and work performed, rate of progress of the work, interpretation of plans and specifications, and acceptable fulfillment of the contract by the Contractor.

The Engineer will have the authority to suspend the work wholly or in part due to failure of the Contractor to correct conditions unsafe for workmen or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as deemed necessary due to unsuitable weather; for conditions considered unsuitable for prosecution of the work; or for other conditions or reasons deemed to be in the public interest.

Orders to suspend the work will be in writing and will include the reasons for the suspension. The order to resume work will also be in writing.

The approval or acceptance by the Engineer of submissions by the Contractor will be subject to satisfactory installation and performance. Such approval shall not relieve the Contractor of responsibility under the contract for successful completion of the work or responsibility for compliance with the terms and conditions of the contract.

- 5.2 Plans and Working Drawings:** Plans will show lines, grades, typical sections, location and details of structures, and a summary of bid items. The Contractor shall keep one set of plans available at the work site at all times.

Working drawings, unless included in the plans, shall be furnished by the Contractor and shall consist of detailed plans required to adequately control the work. They shall include stress sheets, shop drawings, erection plans, falsework plans, form drawings, cofferdam plans, bending diagrams for reinforcing steel, proposed location of construction joints or other supplementary plans or data required of the Contractor. Working drawings will be approved by the Engineer and such approval will not relieve the Contractor of responsibility under the contract for successful completion of the work or responsibility for details shown on the working drawings to conform to the contract.

- 5.3 Conformity with Plans and Specifications:** All work and materials shall conform to the lines, grades, sections, dimensions and material requirements of the contract.

When the Engineer finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the contract but that reasonably acceptable work has been produced, the Engineer will determine to what extent the work will be accepted and remain in place. If accepted, the Engineer will document the basis of acceptance by plan change and/or special agreement. The plan change and/or special agreement will contain appropriate documentation for an adjustment in the contract price for the work or materials as necessary to support the Engineer's determination. Reduced pay schedule will be used when such schedules are a part of the project specifications.

If the Engineer finds the materials, work performed, or the finished product not within reasonably close conformity with the contract and have resulted in an unsatisfactory or unacceptable product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor to the satisfaction of the Engineer at no direct pay.

If due to the Contractor's negligence or selected method of operation in performing the work, the Engineer deems it necessary to make changes, the Contractor will be liable for the additional design cost to the Contracting Agency. The amount of such design cost will be the salary cost of design personnel plus 110 percent. The amount thus determined will be deducted from payments for the work.

- 5.4 Coordination of Plans and Specifications:** These specifications, the supplemental specifications, the plans, special provisions and supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions govern over scaled dimensions; plans govern over standard specifications, supplemental specifications and technical specifications; supplemental specifications govern over standard specifications; technical specifications govern over supplemental specifications and standard specifications; and special provisions govern over plans, technical specifications, supplemental specifications and standard specifications.

The Contractor shall take no advantage of any error or omission in the plans or project specifications. If the Contractor discovers such an error or omission, he shall immediately notify the Engineer. The Engineer will then make such corrections and interpretations as deemed necessary to fulfill the intent of the plans and project specifications.

- 5.5 Cooperation by Contractor:** The Contractor will be supplied a maximum of five sets of plans and contract assemblies without charge. Additional copies will be furnished upon request at the appropriate charge for reproduction services. The Contractor shall keep one complete set of plans and other contract documents available at the worksite.

The Contractor shall give the work the attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, Inspectors and other Contractors.

The Contractor shall have on the work at all times, as the Contractor's agent, a competent superintendent capable of reading and understanding the plans and project specifications and experienced in the type of work being performed, who is English speaking and who shall receive instructions from the Engineer. At the pre-construction conference or upon request, the Contractor shall furnish the Engineer written notice of the name and home telephone number of the superintendent. The superintendent shall have authority to execute orders or directions of the Engineer without delay and to promptly supply such materials, equipment, tools, labor and incidentals as required. The superintendent shall be furnished regardless of the amount of work sublet.

The Contractor shall furnish the Engineer written notice of the names of persons authorized to sign for him in matters pertaining to plan changes, force account or extra work, contract time charges and other documents. No work shall commence on the project until the Contractor has complied with this requirement. Such written notice shall also be furnished when a person so designated is removed and replaced.

- 5.6 Cooperation with Utilities:** The Contracting Agency will notify all known utility companies, pipeline owners or other parties affected by the work and endeavor to have the necessary adjustments of public or private utility fixtures, pipelines and other appurtenances within or adjacent to the limits of construction made as soon as possible.

Upon award of the contract, utility companies affected will be advised by the Contracting Agency of the name and address of the Contractor, the approximate date work will begin and other pertinent information.

Except as hereinafter provided, and regardless of whether the utility is shown on the plans or referred to in the project specifications, all water lines, gas lines, wire lines, fiber optic cables, telephone lines, cable

television lines, service connections, water and gas valve boxes, light standards, cableways, signals and other utility appurtenances within construction limits which prevent completion of the Contractor's work will be relocated or adjusted by the owners at no expense to the Contractor. The contract will indicate utility items to be relocated, adjusted or constructed by the Contractor.

Where a utility crosses or otherwise occupies an area within construction limits of the project and the utility will not have the Contracting Agency's required clearance when the work is completed, it shall be the Contracting Agency's responsibility to arrange for necessary relocation to the required clearance. When the required clearance will exist when the work is completed, but relocation is considered necessary by the Contractor for construction purposes, the Contractor shall make arrangements with the utility owner for any relocation or adjustment necessary to the operations at no direct pay. In such cases, upon completion of the work and prior to final acceptance, the final location of the utility will be acceptable to the Contracting Agency. Nothing herein shall be interpreted to mean that the Contracting Agency waives its rights to control entrance onto, or location on, its right-of-way of any utility or appurtenance.

It is agreed that the Contractor has considered in the bid all permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for delays, inconvenience or damage sustained due to interference from the said utility appurtenances or the operation of moving them.

When the Engineer determines that the Contractor is experiencing significant delays in the controlling items of work because of delays by others in removing, relocating or adjusting utility appurtenances, contract time credits will be considered for such delays.

On the date stipulated in the Notice to Proceed, the Contractor shall begin work in connection with fencing, clearing, grubbing, removal of structures and obstructions, and relocation and demolishing of other structures, and shall prosecute such work to completion to avoid delays in removal or adjustment of utilities. The Contractor shall cooperate with the utility companies to avoid delays in completion of work due to non-removal or non-adjustment of utilities.

When the contractor's work involves excavating or underground demolition activity, the contractor is required to reach Louisiana One Call, 48 hours prior to starting any work, by calling (225) 275-3700 or toll-free 1-800-272-3020, or by fax (225) 272-1967 in order to comply with the Louisiana Underground utilities and Facilities Damage Prevention Law.

**5.7 Cooperation Between Contractors:** The Contracting Agency reserves the right to contract for and perform additional work on or near the work covered by the contract.

When separate contracts are let within, adjoining, or adjacent to the limits of the project, each Contractor shall conduct the work not to hinder the progress of work by other Contractors and shall cooperate with each other as directed.

The Contractor shall arrange the work and shall place and dispose of materials being used not to interfere with the operation of other Contractors within, adjoining, or adjacent to the limits of the project. The Contractor shall acceptably join the work with that of other Contractors and shall perform the work in proper sequence to that of the others and without causing disruption or delay to the schedule of project completion.

The Contractor shall assume all liability, financial and otherwise, in connection with the contract and shall hold the Contracting Agency harmless and indemnify the Contracting Agency from all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor or caused to other Contractors due to the presence and operations of other Contractors working within, adjoining or adjacent to the limits of the projects.

- 5.8 Construction Stakes, Lines and Grades:** The Engineer will furnish and establish in the field control points suitable to establish line and grade. A minimum would be two points to establish line and one point to establish grade. If a baseline has been established, it will be shown on the plans and the Engineer will provide to the Contractor a copy of the field notes pertaining to this baseline. Bench mark or temporary bench mark shall be shown on the plans.

After the control points have been established by the Engineer, the Contractor shall be responsible for proper execution of the work to such lines and grades, and preservation of the line and grade stakes. The Contractor shall be responsible for construction layout.

- 5.9 Authority and Duties of the Engineer:** As the direct representative of the Contracting Agency, the Engineer is responsible for administration of the contract. The Engineer shall have authority to give directions pertaining to the work and for consideration of the public, to reject defective materials and equipment, and to suspend work in accordance with Section 5.01. Except as permitted and instructed by the Contracting Agency, the Engineer is not authorized to alter or waive provisions of the contract, alter quantities; order extra and force account work, or accept any portion of the project. In no case will the Engineer perform any duties for or act as the representative of the Contractor.

When the work is being done by force account, the Engineer shall direct the work as necessary. The authority to direct will include, but is not limited to, sequence and location of work; number, category and caliber of workers; number and type of equipment; and hours of work. These directions shall not relieve the Contractor of responsibility to supervise the work and provide a product meeting the requirements of the contract.

- 5.10 Duties of the Inspector:** Inspectors representing the Contracting Agency will be authorized to inspect all work. Such inspection extends to any part of the work and to preparation, fabrication or manufacture of materials to be used. The inspector will not be authorized to issue instructions contrary to the contract; however, the inspector will have authority to reject work or materials until any question can be referred to and decided by the Engineer. In no case will the inspector perform any duties for, or act as a representative of the Contractor.

- 5.11 Inspection of Work:** All material and each part or detail of the work shall be subject to inspection by the Engineer and/or inspectors shall be allowed safe and convenient access to all parts of the work and shall be furnished with such information and assistance by the Contractor as required to make a complete inspection. Such inspection will not relieve the Contractor from the obligation to furnish acceptable materials or to perform all work in accordance with the contract.

If ordered by the Engineer, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as directed. After examination, the Contractor shall restore said portions of the work to the standard required by the project specifications. Should the work thus exposed prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but, should the work so exposed prove unacceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, will be at no direct pay.

Work done or materials used without supervision or inspection by an authorized Contracting Agency's representative may be ordered uncovered for examination and recovered, or removed and replaced, all at the Contractor's expense.

When a unit of government or political subdivision or other public or private entity is to pay a portion of the cost of the work covered by the contract, its representatives shall have the right to inspect the work. Such inspection shall not make any unit of government, political subdivision or corporation a party to the contract and shall not interfere with the rights of either party there under.

Inspection by the Engineer or by any of his duly authorized representatives; any order, measurement or certification by the Engineer; any order by the Contracting Agency for the payment of money; any payment for or acceptance of any work; any extension of time; or any possession taken by the Contracting Agency shall not operate as a waiver of any provisions of the contract, or any power therein preserved to the Contracting Agency, or of any right to damages therein provided. Any waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contracting Agency reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract and specifications. Upon conclusive proof of collusion or dishonesty between the Contractor or his agents and the Engineer in charge of the work or his assistants being discovered in the work after final payment has been made, the Contracting Agency reserves the right to claim and recover by process of law, sums as may be sufficient to correct the error or make good the defects in the work resulting from such error, dishonesty or collusion.

#### **5.12 Inspector's Stamp for Shipment:**

- a. **Approval for Shipment:** When materials requiring shop or plant inspection are ready for shipment, the Contracting Agency's Inspector shall indicate his approval. Each shipment piece, keg, box or bound pallet shall be marked by the inspector.

Application of the Inspector's approval implies that at the time of inspection it was the opinion of the Inspector that the product was fabricated or manufactured from accepted materials by approved processes and painted, if required, in accordance with the contract. The Inspector's approval for shipment does not imply that the products will not be rejected by the Engineer if subsequently found to be defective.

- b. **Rejection:** The Inspector will reject material and workmanship that does not conform to the contract.

Approval of products by the Inspector shall not preclude further testing and inspection by the Engineer.

Defective materials and workmanship, whenever discovered, will be rejected and shall be repaired or replaced at no direct pay. All repair procedures shall be approved.

- c. **Shipment of Material Not Approved:** Materials and fabricated items subjected to shop inspection will not be accepted at the project site if they do not bear the Inspector's approval for shipment. If the products are not approved because they were not offered for shop inspection, or were shipped after rejection at the shop, the products shall be returned to the shop for inspection and correction as necessary.

In lieu of this requirement, the Engineer may allow inspection to be performed at the project site at the Contractor's expense.

#### **5.13 Removal of Unacceptable and Unauthorized Work:** Work not conforming to the contract will be considered unacceptable, unless otherwise determined acceptable under the provisions in Subsection 5.03.

Unacceptable work found to exist prior to final acceptance of the work shall be removed and acceptably replaced, by the Contractor.

No payment will be made for work done contrary to instructions of the Engineer, work done beyond lines shown on the plans or as given, or extra work done without authority. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure of the Contractor to comply with any order of the Engineer made under the provisions of this Subsection, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from payments for the work.

- 5.14 Load Restrictions:** The Contractor, Subcontractors and suppliers shall comply with legal load restrictions in hauling of materials or equipment on completed bridge structures, bases and pavements. A special permit will not relieve the Contractor of liability for damage resulting from moving of material or equipment. In no case shall the legal load limits be exceeded unless permitted in writing.

Operation of equipment of such weight or height or so loaded as to cause damage or overstress to structures, roadways or other construction will not be permitted. Hauling of materials over the base or surface course under construction shall be limited as directed. The Contractor shall be responsible for all damage done by hauling equipment. The Contracting Agency may withhold payment equal to the damages. The Contractor is responsible for all damages done by his operation both on and off the right-of-way.

- 5.15 Maintenance During Construction:** The Contractor shall satisfactorily maintain the entire area within the right-of-way limits of the project, from the effective date of the Notice to Proceed until the date of final acceptance. The work shall consist of any existing roadways which are adjacent and parallel to the roadway under construction. This maintenance responsibility includes, but is not necessarily limited to, maintaining drainage, periodic mowing and removing of debris and remains, to the satisfaction of the Engineer, as well as such striping, patching and shoulder maintenance which will provide safe and convenient conditions at all times for motoring public. The Contractor shall continuously and effectively satisfy his maintenance responsibilities with such equipment and forces as may be necessary to maintain a safe and satisfactory condition for the duration of the project.

- 5.16 Failure to Comply with Subsection 5.15:** If the Contractor fails to comply with Subsection 5.15, the Engineer will immediately notify the Contractor in writing of such noncompliance. If the Contractor fails to remedy the condition within 24 hours after receipt of the written notice, the Engineer may immediately remedy the condition, and the cost thereof will be deducted from payments for the work.

When the condition requires more immediate remedy due to hazard to life, health and property, the Engineer may immediately remedy the condition and the costs thereof will be deducted from payments for the work.

- 5.17 Substantial Completion:** When the Contractor considers the entire work ready for its intended use, the Contractor shall notify the Contracting Agency and Engineer in writing that the entire work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Contracting Agency, Contractor and Engineer shall make an inspection of the work to determine the status of completion.

If the Engineer does not consider the work substantially complete, the Engineer will notify the Contractor in writing giving the reasons therefore. If the Engineer considers the work substantially complete, the Engineer will prepare and deliver to the Contracting Agency a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Contracting Agency shall have seven days after receipt of the tentative certificate during which to make written objection to the Engineer as to any provisions of the certificate of attached list. If, after considering such objections, the Engineer concludes that the work is not substantially complete, the Engineer will within fourteen days after submission of the tentative certificate to the Contracting Agency notify the Contractor in writing, stating the reasons therefore. If, after consideration of the Contracting Agency's objections, the Engineer considers the work substantially



complete, the Engineer will within said fourteen days execute and deliver to the Contracting Agency and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the Engineer believes justified after consideration of an objections from the Contracting Agency.

At the time of delivery of the tentative certificate of Substantial Completion the Engineer will deliver to the Contracting Agency and the Contractor a written recommendation as to division of responsibilities pending final payment between the Contracting Agency and the Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless the Contracting Agency and the Contractor agree otherwise in writing and so inform the Engineer prior to the Engineer's issuing the definitive certificate of Substantial Completion, the Engineer's aforesaid recommendation will be binding on the Contracting Agency and Contractor until final payment.

The Contracting Agency shall have the right to exclude the Contractor from the work after the date of Substantial Completion, but the Contracting Agency shall allow the Contractor reasonable access to complete or correct items on the tentative list.

**5.18 Partial Utilization:** Use by the Contracting Agency of any finished part of the work, which has specifically been identified in the Contract Documents, or by which the Contracting Agency, Engineer and Contractor agree constitutes a separately functioning and useable part of the work that can be used by the Contracting Agency without significant interference with the Contractor's performance of the remainder of the work, may be accomplished prior to Substantial Completion of the work subject to the following:

- a.** The Contracting Agency at any time may request the Contractor in writing to permit the Contracting Agency to use any such part of the work which the Contracting Agency believes to be ready for its intended use and substantially complete. If the Contractor agrees, the Contractor will certify to the Contracting Agency and Engineer that said part of the work is substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the work. The Contractor at any time may notify the Contracting Agency and Engineer in writing that the Contractor considers any such part of the work ready for its intended use and substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the work. Within a reasonable time after either such request, the Contracting Agency, Contractor and Engineer shall make an inspection of that part of the work to determine its status of completion. If the Engineer does not consider that part of the work to be substantially complete, the Engineer will notify the Contracting Agency and Contractor in writing giving the reasons therefore. If the Engineer considers that part of the work to be substantially complete, the provisions of Subsection 5.17 will apply with respect to certification of Substantial Completion of that part of the work and the division of responsibility in respect thereof and access thereto.
- b.** The Contracting Agency may at any time request the Contractor in writing to permit the Contracting Agency to take over operation of any such part of the work although it is not substantially complete. A copy of such request will be sent to the Engineer and within a reasonable time thereafter the Contracting Agency, Contractor and Engineer shall make an inspection of that part of the work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If the Contractor does not object in writing to the Contracting Agency and Engineer that such part of the work is not ready for separate operation by the Contracting Agency, the Engineer will finalize the list of items to be completed or corrected and will deliver such list to the Contracting Agency and Contractor together with a written recommendation as to the division of responsibilities pending final payment between the Contracting Agency and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the work which will become binding upon the Contracting Agency and the Contractor at the time when the Contracting Agency takes over such operation (unless they shall have otherwise agreed in writing and so informed the

Engineer). During such operation and prior to Substantial Completion of such part of the work, the Contracting Agency shall allow the Contractor reasonable access to complete or correct items on said list and to complete other related work.

- c. No occupancy or separate operation of part of the work will be accomplished prior to compliance with the requirements in respect of property insurance.

**5.19 Final Inspection:** Upon written notice from the Contractor that the entire work or an agreed portion thereof is complete, the Engineer will make a final inspection with the Contracting Agency and Contractor and will notify the Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

**5.20 Final Application for Payment:** After the Contractor has completed all such corrections to the satisfaction of the Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents and other documents - all as required by the Contract, and after the Engineer has indicated that the work is acceptable (subject to the provisions of Subsection 5.23), the Contractor may make application for final payment following the procedure for progress payments. The final Application for payment shall be accompanied by all documentation called for in the Contract, together with complete and legally effective releases or waivers (satisfactory to the Contracting Agency) of all liens arising out of or filed in connection with the work. In lieu thereof and as approved by the Contracting Agency, the Contractor may furnish receipts or releases in full; an affidavit of the Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Contracting Agency or Contracting Agency's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a Bond or other collateral satisfactory to the Contracting Agency to indemnify the Contracting Agency against any lien. The Contractor's application for final payment shall also be accompanied by consent of the surety to final payment and a clear lien and privilege issued by the clerk of court and ex-officio recorder or mortgages of the parish.

**5.21 Final Payment and Acceptance:** If, on the basis of the Engineer's observation of the work during construction and final inspection, and the Engineer's review of the final application for payment and accompanying documentation - all as required by the Contract, the Engineer is satisfied that the work has been completed and the Contractor's other obligations under the Contract have been fulfilled, the Engineer will, within ten days after receipt of the final application for payment, indicate in writing the Engineer's recommendation of payment and present the application to the Contracting Agency for payment. Thereupon the Engineer will give written notice to the Contracting Agency and the Contractor that the work is acceptable subject to the provisions of Subsection 5.23.

Otherwise, the Engineer will return the application to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the application. After the presentation to the Contracting Agency of the application and accompanying documentation, in appropriate form and substance, and with the Engineer's recommendation in accordance with Louisiana State Public Contract Statute and notice of acceptability, the amount recommended by the Engineer will become due and will be paid by the Contracting Agency to the Contractor.

If, through no fault of the Contractor, final completion of the work is significantly delayed and if Engineer so confirms, the Contracting Agency shall, upon receipt of the Contractor's final application for payment and recommendation of the Engineer, and without terminating the agreement, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by the

Contracting Agency or work not fully completed or corrected is less than the retainage stipulated in the agreement, and if bonds have been furnished as required the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Engineer with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**5.22 Contractor's Continuing Obligation:** The Contractor's obligation to perform and complete the work in accordance with the Contract will be absolute. Neither recommendation of any progress or final payment by the Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by the Contracting Agency to the Contractor under the Contract, nor any use or occupancy of the work or any part thereof by the Contracting Agency, nor any act of acceptance by the Contracting Agency nor any failure to do so, nor any review and approval of a shop drawing or sample submission, nor the issuance of a notice of acceptability by the Engineer pursuant to Subsection 5.21, nor any correction of defective work by the Contracting Agency will constitute an acceptance of work not in accordance with the Contract or a release of the Contractor's obligation to perform the work in accordance with the Contract (except as provided in Subsection 5.23).

**5.23 Waiver of Claims:** The making and acceptance of final payment will constitute:

- a. A waiver of all claims by the Contracting Agency against the Contractor, except claims arising from unsettled liens, from defective work appearing after final inspection pursuant to Subsection 5.19 or from failure to comply with the Contract or the terms of any special guarantees specified therein; however, it will not constitute a waiver by the Contracting Agency of any rights in respect of the Contractor's continuing obligations under the Contract; and
- b. A waiver of all claims by the Contractor against the Contracting Agency other than those previously made in writing and still unsettled.

**5.24 Claims for Additional Compensation:** If the Contractor deems that additional compensation is due for work or material not covered in the contract or not ordered as extra work by plan change or contract modification, the Contractor shall notify the Engineer in writing of intention to make claim for such additional compensation before beginning the work on which the claim is based or immediately upon encountering the conditions or effects which the contractor claims entitle him to additional compensation. Claims shall conform to the requirements as follows:

**a. Claims for Adjustment and Disputes under Project Specifications:**

- 1) If a Contractor deems that additional compensation may be due for work, material, delays, inefficiencies, disruptions, or other additional costs/or expenses not covered in the contract or ordered as extra work, the Contractor must notify the Engineer, in writing, of his intent to make a request for such additional compensation before beginning the work on which the claim is based or immediately upon encountering the conditions or effects which the contractor claims entitle him to additional compensation.
- 2) This request must be filed with the Engineer so that an accounting can be made of any potential additional cost. If after review by the Engineer an agreement is reached on the issue, a Plan Change should be prepared by the Engineer and submitted through channels for consideration. If the issue cannot be satisfactorily settled, the question should be submitted through channels for adjudication.

**b. Claims not Covered by Project Specifications:**

- 1) If the Contractor deems that other circumstances, not usually governed by the project specifications, have resulted or may result in damages, the Contractor may file for equitable adjustment of the dispute. These circumstances may be delays resulting from action or inaction of the Contracting Agency, plan errors, disagreements with the Engineer's interpretation of the plans and specifications and other causes.
- 2) A copy of a notification to be titled "Contractor's Notification of Contract Dispute" shall be sent by the Contractor to the Engineer.
- 3) After filing the "Contractor's Notification of Contract Dispute" form, the Contractor may file a request for equitable adjustment. However, except in special cases, the Contracting Agency will send the request to the Engineer for first review. The request should contain insofar as is known at the time complete details of the dispute and an estimated cost.
- 4) Upon receipt of request, the Engineer shall immediately (within one week) address the issue. If not resolved, within one month the Engineer shall provide a written analysis of the request, along with supporting documentation and recommendations, to the Contracting Agency. If a claim is anticipated the Engineer shall immediately keep a detailed diary relating to the area in question. (Include personnel, equipment, etc.)
- 5) After review and discussion with the Contracting Agency, the Engineer (within one month) will notify the Contractor, in writing, of the Contracting Agency's decision.
- 6) Upon amicable resolution of the request, a Plan Change (if needed) shall be initiated by the Engineer within one week after notification.

**c. All Claims Will Be Documented:** In the claim, or upon cessation of the activity giving rise to the claim allowing documentation of the entirety of the costs asserted by the Contractor as entitling him to additional compensation under this Subsection, the Contractor shall furnish to the Engineer a statement in schedule form showing (a) all the items and figures which the contractor intends to prove from books of account or other records; and (b) all the items and figures which the Contractor intends to prove by means other than (a) above. The statement shall be sworn under oath by the Contractor to be true and correct as to all facts, records, representations and amounts claimed therein.

- 1) **Record Keeping:** With respect to items and figures to be proven from books of account or other records, each statement shall be prepared in accordance with the requirements set out in the following subparagraphs of this paragraph 1).
  - a) The basic figures, costs and rates from which any claim is computed shall be tabulated in such detail that the statement may be quantified in lieu of producing the books and records from which the pertinent data was taken.
  - b) The statement shall include a complete computation of the total amount of each claim that is based upon or derived from books of account or other records.
  - c) Each separate portion of the statement shall contain a reference showing the particular books and records from which it was taken.
  - d) Where the statement includes a claim for field overhead, office overhead, general or administrative expense, or similar items based upon allocations of entries

shown in books or records, the statement shall itemize such expenses for the period involved, and shall show the accounting method or principle upon which the allocations were made.

e) Where a claim includes an item for machinery or equipment expense, the statement shall show the type, class, capacity, or other identifying description of each major piece of machinery or equipment involved and date of purchase, acquisition cost and book value of each item. If book values are not separately shown in the records, or if some basis of value other than book value is used, the statement shall show how the value is determined. The statement shall contain a complete computation of the equipment and expenses claimed; and unless the costs incurred or the expenses claimed are fully set forth in the books or records, the statement shall show the accounting method, principal or authority upon which such computation is based.

f) The statement shall be accompanied by;

(1) A declaration that the books and records, or any other part thereof upon which the statement is based (including ledgers, journals, payrolls, and the original invoices, vouchers, checks, and other records and documents needed for a verification of the amount claimed or for a determination of the basis upon which the claim was computed) will be made available for examination;

(2) A notice showing the address where such books and records may be examined, together with the name and address of the bookkeeper or accountant who prepared the statement and who will be available for the furnishing of information regarding such books and records in connection with the contractor's claim; and,

(3) A sworn statement by the Contractor or his bookkeeper or accountant certifying that the statement and the records from which they were derived are true and correct.

2) **Items of claim which are not to be proven by record:** With respect to figures to be proven pursuant to above, the Contractor shall comply with the following:

a) The Contractor shall furnish to the Contracting Agency a statement specifying by what means or theories, and the witnesses through whom, the Contractor intends to prove the amount claimed.

b) With respect to prospective witnesses, the Contractor's statement shall indicate as to each witness his name, address and occupation, and the subject or subjects to which the witness's statements will be directed.

c) If due to the nature of the claim and the reliance upon oral evidence of the basis of the claim or quantification of damages asserted, it is necessary that these oral statements be received by the Contracting Agency in order to properly evaluate the claim, the Contracting Agency will notify the Contractor of a date at which the oral statement sought to be submitted will be received under oath and transcribed for evaluation by the Engineer or later judicial review as to the validity of the claim.

- d) If such notification is not given and the Engineer is not afforded proper facilities by the Contractor for keeping account of actual cost, the Contractor agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost aforesaid shall not be construed as proving or substantiating the validity of the claim. If the claim, after consideration by the Engineer or judicial determination is found to be just, payment will be made as specified in Subsection "Measurement and Payment". Nothing in this Subsection shall be construed as establishing any claim contrary to Subsection "Alteration of the Contract".

**5.25 Suspension of the Work:**

**General:**

- a. The Engineer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Contracting Agency.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Engineer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.
- c. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Engineer in writing of the act or failure to act involved (but this requirement shall not apply as a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the contract.

**Weather:**

- a. The Engineer may order suspension of the work in whole or in part commencing with the day after receipt of the Notice to Proceed by the Contractor, due to weather or the effects of weather at the site, for such time as he considers it unfavorable for satisfactory prosecution of the work.
- b. When the Engineer orders suspension under "a" of this clause, the contract completion date shall be extended a full contract day for each calendar day during suspension of the work if:
  - 1) All work is suspended except minor items as may be designated in this contract (work of an emergency, protective or maintenance nature may be performed at any time), and
  - 2) The hours lost in any one workday of the authorized work week through suspension equal one-half or more of the hours of an authorized workday.
- c. If the Engineer orders suspension of work as provided in "b" of this clause and the hours lost in the workday immediately preceding a non-workday equal one-half or more of the hours in an authorized workday, the contract completion date shall be extended a full calendar day for each non-workday during suspension of the work.

- d.** When the Engineer orders any suspension of the work under this clause, the Contractor shall not be entitled to any cost or damages resulting from such suspension.
- e.** When the contract completion date is extended under this clause, the contract shall be modified in writing accordingly.

**Noncompliance with Contract Requirements:**

- a.** The Engineer may order suspension of the work in whole or in part for such time as he deems necessary because of the failure of the Contractor to comply with any of the requirements of this contract, and the contract completion date shall not be extended on account of any such suspension of the work.
- b.** When the Engineer orders any suspension of work under “a” of this clause, the Contractor shall not be entitled to any costs or damages resulting from such suspension.
- c.** The rights and remedies of the Contracting Agency provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## 6.CONTROL OF MATERIALS

- 6.01 Source of Supply and Quality Requirements:** Materials used in the work shall meet all quality requirements of the contract. To expedite inspection and testing of materials, the Contractor shall notify the Engineer of his proposed sources of materials prior to delivery. With written authorization, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources or make necessary changes to provide acceptable materials.

Wherever the name of a certain brand, make, manufacturer, or definite specification is utilized, they are used only to denote the quality standard of product desired and they do not restrict bidders to the specific brand, make, manufacturer, or specification named; they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of product desired; and equivalent products will be acceptable. It shall be the responsibility of the Engineer to determine what is considered an equivalent product.

**6.02 Local Material Sources:**

- a. Designated Sources:** Possible sources of local materials may be designated in the plans or specifications. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine the amount of equipment and work required to produce a material meeting specifications. It shall be understood that it is not feasible to ascertain from samples the limits for an entire deposit and that variations are to be expected. The Engineer may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The Contracting Agency may acquire and make available to the Contractor the right to take materials from the sources designated in the plans or specifications, with the right to use such property as specified for plant site, stockpiles or haul roads.

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

- b. Contractor Furnished Sources:** When material deposits are not designated in the plans or specifications, the Contractor shall provide sources of acceptable material. When sources of materials are provided by the Contractor, the Contracting Agency may assume the cost of processing samples to determine suitability of material.
- c. Use of Materials Found on the Work:** The Contractor, with written approval, may use on the project such stone, gravel, sand, top-soil or other material determined acceptable by the Engineer found in the excavation. The Contractor shall replace at no direct pay with acceptable material all removed material which was needed for embankments, backfills, approaches or otherwise. No charge for materials so used will be made against the Contractor. The Contractor shall not excavate or remove material from within the right-of-way which is not within construction limits, as indicated by slope and grade lines, without written authorization from the Engineer. If authorization is obtained, payment will not be made for excavation beyond slope and grade lines, nor will payment be made for any required replacement.



Materials from existing structures may be used temporarily by the Contractor in erection of new structures. Modification of such material will not be permitted without written approval.

Prior to requesting the borrow pit to be bored, the Contractor shall furnish the Contracting Agency a written agreement with the property owner to allow the Contracting Agency access to the property. The written agreement shall also state that the Contractor has agreed to purchase the borrow material from the property owner for this particular site if the material meets contract specifications. A separate agreement shall be obtained from each property owner through which access will be necessary.

Sites from which material has been removed shall, upon completion of the work, be left in an acceptable condition.

Unless otherwise authorized in writing, borrow pits, gravel pits and quarry sites shall be located at least 300 feet from the right-of-way.

When sources of borrow are located adjacent to a stream or river listed on the National System of Wild and Scenic Rivers or the Louisiana Natural and Scenic Rivers System, borrow pits, and any stockpiled materials shall be located at least 300 feet from the natural stream or river bank.

**6.03 Samples, Tests, Cited Specifications:** Materials will be inspected, tested and approved before incorporation in the work. Work in which untested and unapproved materials are used shall be performed at the Contractor's risk. Payment will not be made for materials found to be unacceptable and unauthorized and, when directed, shall be removed by the Contractor at no direct pay. Sampling and testing will be performed as directed by the Engineer. Payment to the Contractor will not be made for materials found to be unacceptable and unauthorized and, when directed, shall be removed by the Contractor at no direct pay. Sampling and testing will be performed in accordance with the cited standard method. Acceptance testing will be made by and at the expense of the Contracting Agency. Samples will be taken by an authorized representative of the Contracting Agency. Materials being used will be subject to inspection, test, retest or rejection at any time prior to final acceptance. Copies of test reports will be furnished to the Contractor's representative upon request. The Contractor shall be notified of any failing test. A copy of the failing test report will be furnished to the Contractor.

**6.04 Certificates:** Certificates shall include Certificates of Analysis, Certificates of Compliance, and Certificates of Delivery. These certificates shall be furnished prior to use of materials for which certificates are required. They shall be signed by the material manufacturer, the manufacturer of assembled materials of the material supplier.

Materials used on the basis of these certificates may be sampled and tested at any time. The fact that material is used on the basis of a certificate shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the plans and specifications.

Distribution of certificates and requirements for further sampling and testing of certified materials shall be as outlined by the Engineer.

The Contracting Agency reserves the right to refuse to permit the use of material on the basis of a certificate.

**a. Certificate of Analysis:** A Certificate of Analysis shall be notarized and shall include actual test results of material properties. This certificate also includes "Mill Test Reports." A Certificate of Analysis shall be furnished with each lot of material delivered to the work. The lot certified shall be clearly identified on the certificate.

- b. **Certificate of Compliance:** A Certificate of Compliance shall be notarized and shall state that the materials conform with required specifications.

A Certificate of Compliance shall be furnished with each lot of material delivered to the work. The lot certified shall be clearly identified in the certificate.

- c. **Certificate of Delivery:** A Certificate of Delivery shall list particular materials included in the shipment. It may contain statements concerning the materials' conformance to specifications. This certificate also includes a Certificate of Release.

A Certificate of Delivery shall be furnished with each shipment of material delivered to the work.

- 6.05 **Contractor Quality Control:** The Contractor shall provide and maintain an adequate quality control system along with personnel, equipment, supplies, and facilities necessary to obtain samples, perform tests and provide quality control of the work.

The Contractor shall perform quality control sampling, testing and inspection during the work at the rate sufficient to ensure that the work conforms to the project specifications.

- 6.06 **Plant Inspection:** The Engineer may inspect plants and operations producing materials and/or materials at the source. The Contracting Agency reserves the right to retest materials, prior to incorporation into the work, which have been tested and accepted at the source of the supply. If plant inspection is undertaken, the following conditions shall be met:

- a. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- b. The Engineer shall have entry at all times to such parts of the plant as concern the manufacture or production of materials being furnished.
- c. When required, the Contractor shall arrange for an approved building for the use of the inspector. Such building shall be located conveniently near the plant, independent of any building used by the material producer.

- 6.07 **Foreign Materials:** Materials manufactured outside the United States shall be delivered to approved locations within the State, where they shall be retained until sampling and testing can be completed.

The Contractor shall, at no direct pay, arrange for any required testing which the Contracting Agency is not equipped to perform. Testing by the Contractor shall be performed within the State and be subject to witnessing by the Engineer.

Each lot of foreign material shall be accompanied by a Certificate of Compliance prepared in accordance with Subsection 6.04. Certificates of Analysis prepared in accordance with Subsection 6.04 shall be attached to the Certificate of Compliance for those materials for which Certificates of Analysis are required. These certificates shall clearly identify the lot to which they apply.

Structural materials requiring Certificates of Analysis (Mill Test Reports) will be accepted only from foreign manufacturers who have previously established to the satisfaction of the Engineer the adequacy of their in-plant quality control.

Adequacy of quality control shall be established, at the option of the Engineer, by submission of detailed written proof of adequate quality control or through a plant inspection by the Engineer.

No structural materials will be accepted which cannot be properly identified with Certificates of Analysis and Certificates of Compliance.

- 6.08 Material Storage and Plant Site:** Materials shall be so stored as to assure preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection. The Contracting Agency may approve portions of the right-of-way to be used for storage and for placing the Contractor's plant and equipment. Additional space required shall be provided by the Contractor at no direct pay. Private property shall not be used for storage or plant site without written permission of the owner and lessee. Copies of such written permission shall be furnished the Engineer. Storage and plant sites shall be restored to a condition acceptable to the owner or lessee by the Contractor at no direct pay. A Certificate of Release, signed by the owner or lessee, shall be furnished to the Engineer.
- 6.09 Handling Materials:** Materials shall be handled to preserve their quality and fitness for the work. Materials shall be transported from storage site to the work in tight vehicles constructed to prevent loss or segregation of materials after loading and measurement in order that there will be no inconsistencies in quantities of materials loaded and quantities received at the place of operations.
- 6.010 Unacceptable Materials:** Materials not conforming to specifications will be rejected and shall be removed immediately from the work unless otherwise directed. No rejected material, the defects of which have been corrected, shall be used until approval by the Engineer has been given.
- 6.011 Contracting Agency-Furnished Material:** The Contractor shall furnish all required materials to complete the work, except those specified to be furnished by the Contracting Agency.

Material furnished by the Contracting Agency will be delivered or made available to the Contractor at the points specified.

The cost of handling and placing materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used.

The Contractor will be responsible for material delivered. Deductions will be made from payments for the work to make good any shortages and deficiencies, for any damage which occurs after such delivery, and for any demurrage charges.

- 6.012 Misplaced Material:** Material that is placed or work that is performed elsewhere than in places designated on the plans, specified herein, or directed by the Engineer, will not be paid for, and the Contractor may be required to remove and deposit such material at his own expense as directed by the Engineer.

## 7.LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

- 7.01 Laws to be Observed:** The Contractor shall keep informed of and comply with all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which affect those employed on the work or which affect the conduct of the work. The Contractor shall indemnify the Contracting Agency, Engineer, and DOTD, and its representatives against any claim or liability arising from violation of any such law, bylaw, ordinance, code, regulation, order or decree, whether by the Contractor or the Contractor's employees.

Soil and soil-moving equipment operating in regulated areas will be subject to plant quarantine regulations. These regulations provide for cleaning soil from equipment before it is moved from regulated areas to prevent spread of harmful agricultural pests from areas quarantined by the State or U.S. Department of Agriculture. Complete information may be obtained from the appropriate district office of the USDA Plant Protection Division.

- 7.02 Permits, Licenses, Taxes and Insurance:** The Contractor shall procure temporary permits and licenses for the work, pay charges, fees, and taxes; and give notices necessary to due and lawful prosecution of the work.

The Contractor shall not begin work under this contract until he has obtained all insurance required by these specifications. This must be evidenced by the contractor furnishing the Contracting Agency with an original policy or a certificate of insurance, which shall provide that the original policy shall not be canceled without 30 days prior written notice to the Contracting Agency. A 30 day notice shall be given to the Contracting Agency by the contractor of any changes contemplated in any of the policies required by these specifications. All insurance must be from companies acceptable to the Contracting Agency. A copy of all insurance documentation shall be furnished to the Engineer. No direct payment will be made for providing the required insurance the cost of which shall be included in the price of mobilization.

Evidence of all insurance as required shall be furnished to the address shown in Notice to Contractors for review by the Contracting Agency.

The Contractor shall maintain at all times during the performance of the work under the contract, the following types of insurance with the specified amounts of coverage:

- a. **Worker's Compensation** in compliance with state law, with the exception that the contractor's Employer liability is to be at least \$1,000,000 when work is to be over water and involves maritime exposures. The insurance company shall waive its right of subrogation. The insurance company shall have no rights of recovery against the contractor, the owner, DOTD, or the engineer. The policy must include an all-states endorsement as well as satisfy the following requirements:  
The policy shall not be cancelled without the permission of the owner. The certificate holder shall be the Contracting Agency. If the insurance is cancelled and another policy is not obtained, the Contracting Agency has the right to obtain a new policy and to charge the contractor for the cost of this policy. The contractor shall be responsible for the deductible.
- b. **Commercial General Liability Insurance** - with a combined single limit per occurrence for bodily injury and property damage. The aggregate loss limit must be on a per project basis. This insurance shall include coverage for bodily injury and property damage, and include coverage for Premises-Operation; Broad form Contractual Liability; Products and Completed Operation; Use of Contractors and Subcontractors; Personal Injury; Broad form Property Damage; and Explosion, Collapse and Underground (XCU) coverage. The required combined single limit amount of insurance shall be as provided in Table 7-1.

- c. A separate **Owner’s and Contractor’s Protective Liability (OCP) Policy** shall be furnished by the contractor naming the Contracting Agency as the named insured. The policy period of the OCP insurance shall extend through final acceptance of the project. The required combined single OCP limit amount shall be as provide in Table 7-1.
- d. **Business Automobile Liability Insurance** – with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include bodily injury and property damage coverage for owned automobiles, hired automobiles and non-owned automobiles. The insurance company shall waive its right of subrogation. The insurance company shall have no rights of recovery against the contractor, the owner, DOTD, or the engineer.

The contractor may wish to get an endorsement for his motorized construction equipment, but this endorsement is considered optional.

The policy shall not be cancelled without the permission of the owner. The certificate holder shall be the Contracting Agency. The contractor shall be responsible for the deductible.

Table 7-1  
Insurance Requirements  
(\$ in millions)

<u>Initial Contract Amount</u>	<u>Occurrence Minimum</u>	<u>Aggregate</u>	<u>Ultrahazardous Aggregate</u>
Up to \$1	\$ 1	\$ 2	\$ 3
From \$1 to \$2	\$ 2	\$ 4	\$ 6
Over \$2	\$ 5	\$ 10	\$ 15

- e. **Maritime Insurance** - The contractor shall carry \$1,000,000.00 in coverage as required under the Longshoreman’s and Harbor’s Compensation Act or the Jones Act for Seaman for all work not covered under the Workmen’s Compensation laws.

The policy shall not be cancelled without the permission of the owner. The certificate holder shall be the Contracting Agency. If the insurance is cancelled and another policy is not obtained, the Contracting Agency has the right to obtain a new policy and to charge the contractor for the cost of this policy. The contractor shall be responsible for the deductible.

- f. **Builder’s Risk Insurance** - The policy shall be the completed value coverage and shall be issued by a surety that waives subrogation. The insurance company shall have no rights of recovery against the Contractor, the owner, DOTD, or the Engineer. The policy shall be written for the full value of the project, less the cost of foundations.

The policy shall not be cancelled without the permission of the owner. The certificate holder shall be the Contracting Agency. If the insurance is cancelled and another policy is not obtained, the Contracting Agency has the right to obtain a new policy and to charge the contractor for the cost of this policy. The Contractor shall be responsible for the deductible.

All losses shall be paid to the owner, the Contractor, and the Engineer as the case may dictate. All claims paid shall include the Contracting Agency as named insured as trustee for insured’s to receive payment.

- g. **Insurance Payment** - All insurance premiums paid by contractor shall be included under bid item Mobilization.

Aggregate coverage for projects with ultrahazardous activities shall be triple the occurrence minimum. Ultrahazardous activities include piledriving; transportation, use, storage, or removal of explosives, radioactive materials, or particularly hazardous or volatile chemicals; and asbestos or lead paint abatement; but does not include vibratory installation of sheet piles.

Each policy shall include provisions stipulating that the insurance company(ies) shall have no recourse against the State of Louisiana and the Department for payment of any premiums or for assessments under any form of the policy and that any and all deductibles in the above described insurance policy(ies) shall be assumed by and be at the sole risk of the contractor.

Insurance is to be placed with insurance companies authorized in the State of Louisiana with an A. M. Best's rating of A-: VI or higher. This rating requirement may be waived for Workers Compensation coverage only.

Should any policies be canceled, the contractor shall immediately notify the Contracting Agency.

Upon failure of the contractor to furnish, deliver and maintain such insurance for itself as required, this contract, at the election of the Contracting Agency, may be immediately declared suspended, discontinued or terminated. Upon failure of the contractor to maintain OCP insurance at any time prior to final acceptance of the project, work on this contract shall be immediately suspended until proof of such insurance is presented to and accepted by the Contracting Agency. During a suspension caused by the lack of any required insurance, contractual time charges will continue to be assessed against contract time, as will any assessment of stipulated damages, without interruption.

Failure of the contractor to maintain any required insurance shall not relieve the contractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the contractor concerning indemnification under 7.17.

The contractor is responsible for requiring and verifying that all subcontractors working on the project maintain appropriate types and levels of insurance coverage.

This contract does not authorize or appoint contractor as an agent or mandatory of the Contracting Agency, or of the State of Louisiana. Accordingly, the contractor is subject to and responsible for all taxes incurred in the performance of its contractual obligations.

**7.02.1 Reimbursement of OCP Insurance:** Contractor may submit the direct cost of OCP insurance (only) for reimbursement under Mobilization.

The Department will reimburse the actual cost of OCP coverage, with no allowed mark-up, as shown on an invoice produced by the insurance provider. Contractor must also submit an original sworn affidavit from the insurance producer/agent in which that person attests that the submitted invoice is for the required OCP coverage only, and that the invoice accurately reports the cost to contractor of that coverage. The invoice and affidavit may be submitted at the preconstruction conference or thereafter for inclusion with a partial estimate.

There will be no reimbursement for any purchase of OCP insurance policy extensions necessitated by concurrent; non-excusable; or excusable, non-compensable delays in completion of the project, whenever such delays occur, or for claimed utility delays where such days were not added to Contract Time by change order. Any policy extensions necessitated by excusable, compensable delays will be reimbursed on a pro-rata monthly.

**7.03 Patented Devices, Materials and Processes:** If the Contractor uses any design, device, material or process covered by patent or copyright, the Contractor shall provide for such use by legal agreement with the owner of the patent or copyright. The Contractor and surety shall indemnify the Contracting Agency, Engineer, and DOTD, any affected third party or political subdivision from claims for infringement due to the use of any such patented design, device, material or process, or any trademark or copyright and shall indemnify the State for any costs, expenses and damages due to any infringement during prosecution or after completion of the work.

If the contractor submits proposed plans, specifications, manufacturer's data, or any other information or documents to the Contracting Agency for a proposed change order, value engineering proposal or for any other purpose which may be protected by copyright or trade secret protection, the contractor shall first obtain permission or license from the licensor or any other party having a proprietary interest in such documents or information and shall hold harmless, indemnify and defend the Contract Agency at the contractor's sole cost from any damages, expenses or actions arising out of or related to use by the Contract Agency of information or documents supplied by the contractor to the Contracting Agency.

**7.04 Sanitary, Health and Safety Provisions:** The Contractor shall provide and maintain in a neat, sanitary condition, restrooms and other such accommodations for use of employees and the Engineer and/or Inspector. Such facilities shall comply with requirements of the State and local Boards of Health or other bodies or tribunals having jurisdiction.

The Contractor shall not require any worker to work under conditions which are unsanitary, hazardous or dangerous to health or safety. The Contractor shall maintain the work in a sanitary, safe and nonhazardous condition.

Disposal of sewage shall be as approved by the appropriate health agency.

The contractor shall comply with all Occupational Safety and Health Administration (OSHA) regulations.

If the contractor provides an Emergency, Health and Safety (EHS) plan during the preconstruction conference, all Contracting Agency and Engineer employees assigned to the project shall comply with the plan while on or adjacent to the job site. The contractor shall not be liable under 7.17 for bodily injuries, death, or damages sustained by the Contracting Agency and Engineer, or by any Contracting Agency and Engineer's employee, due directly to the Contract Agency and Engineer's employee's failure to abide by the EHS plan provided by the contractor.

**7.05 Public Convenience and Safety:** The Contractor shall conduct the work to assure the least possible obstruction to traffic. The project site and haul route shall be kept reasonably free from dust and in such condition that the public can travel in safety.

When the road under construction is to be kept open for traffic, the subgrade and surfacing shall be kept reasonably free from dust and in such condition that the public can travel in safety. Safety and convenience of the general public and the residents along the work, and protection of persons and property, shall be a primary responsibility of the Contractor.

When the Contractor works at night, adequate artificial lighting, signs, flaggers or other traffic controls shall be provided to protect workers, the work and the traveling public. When such work affects traffic safety, the Contractor shall submit to the Engineer for approval a plan of lighting, signing, flagmen or other traffic controls. If the approved plan proves inadequate after work begins, the Contractor shall make such changes as directed. If the Engineer finds that the night work is so hazardous as to preclude the beginning or require the discontinuing of such work, the Contractor shall immediately cease all such operations. Costs of providing or making changes in the lighting, signs, flaggers or other traffic controls shall be the responsibility of the Contractor.

**7.06 Railway-Highway Provisions:** All work to be performed by the Contractor in construction on railway right-of-way shall be in accordance with the applicable permit, copy available from the Contracting Agency.

It is the Contractor's responsibility to contact the railroad to determine the railroad's requirements for work within the railroad right of way and to comply with those requirements. The Contractor shall attend any safety orientation/training required by the Railroad.

All work to be performed by the contractor in construction on railway right-of-way shall be at a minimum in accordance with the following provisions.

1. The contractor shall notify the Railway's duly designated representative at least 10 days in advance of the date on which the contractor is expected to begin work on the Railway's premises.

2. During the progress of work on or about the Railway's tracks or premises, the contractor shall maintain contact and liaison with the Railway's officers or representatives designated by the Railway and Railway approved contractors so as to ascertain time of passage of trains at the work in order to clear Railway's tracks and facilities of people, equipment and obstructions to permit free flow of railway traffic. The contractor shall perform work on the Railway's premises without materially interfering with the Railway's tracks, structures and facilities or operations, or the operations of the Railway's tenants or licensees, or with communication and signal lines upon said premises, except under documented arrangement effected between the contractor and the Railway. The Contractor shall ensure all Railroad signals are returned to working order and all electronic/electrical equipment is functioning as intended before conclusion of the project work. The contractor shall protect the Railway's property and avoid accidents. The contractor shall keep the Railway's track and roadbed free of earth, rock, construction materials, debris and obstructions. The contractor shall immobilize equipment parked near the Railway's track, when such equipment is unattended, to prevent its movement by unauthorized persons.

3. The contractor shall, before entering upon the Railway's right-of-way for performance of any construction work, or work preparatory thereto, secure permission from the Railway's representative for the occupancy and use of the Railway's right-of-way outside the limits of the highway servitude area and shall confer with the Railway relative to requirements for railway clearances, operation and general safety regulations.

4. The Railway's representative will at all times have jurisdiction over the safety of railway operation. The decision of the Railway's representative as to procedures which may affect the safety of railway operation shall be final. The contractor shall be governed by such decision.

8. Should any damage occur to railway property, as a result of the contractor's unauthorized or negligent operations, and the Railway deems it necessary to repair such damage or perform work for protection of its property, the required materials, labor and equipment shall be furnished by the Railway. The contractor shall reimburse the Railway for costs incurred.

6. If the contractor's methods or equipment requires access across the Railway's right-of-way and tracks at any location which is not an existing permanent type of open public railway-highway crossing in or incident to the construction of the project, the contractor shall contact the Railway and request access across said right-of-way and tracks and execute a license agreement with the Railway, all at no direct pay. The contractor shall reimburse the Railway for the cost of providing and removing any temporary at-grade and grade-separated structure access crossing, including warning devices, watchmen expense or other costs which the Railway deems necessary for protection of Railway property and operations. The type of temporary crossing required shall be determined by the Railway. The contractor shall not cross the Railway's right-of-way and tracks with vehicles or equipment except at existing open public road crossings or at such crossings established pursuant to this paragraph. The foregoing requirements include new grade crossings which will become part of the finished highway being constructed under the contract. The contractor shall



comply with requirements for insurance in 7.06.14 below during operations hereunder. The contractor shall cooperate with the Railway during all phases of the work including sufficient advance notice for project completion in order for the Railway to remove the temporary grade crossing and perform final grade crossing improvements and/or inspections under the agreement with the Contracting Agency prior to final acceptance.

7. Any engineering, inspection, training, flagging, and watcher service required by the Railway for the safety of Railway operations because of work being performed by the contractor or in connection therewith, shall be provided by the Railway and the cost thereof shall be reimbursed to the Railway, by the contractor, on the basis of the Railway's bills, to be rendered monthly. The contractor will be reimbursed, by the Contracting Agency, for its actual incurred cost for such services with no contractor mark-up allowed. The contractor shall furnish documentation of railway invoices and evidence of payment before reimbursement. When it is determined that railroad services and/or crossings are no longer in the best interest of the Contracting Agency, the contractor will be issued written notification that no further reimbursement will be made by the Contracting Agency for railroad services. Work done or services provided for the contractor's convenience will not be reimbursed by the Contracting Agency.

Any engineering, inspection, training, flagging, and/or watcher service required by the Railway for the safety of Railway operations because of work being performed by the contractor, or in connection therewith, and which the Railway requires that the contractor provide will be reimbursed by the Contracting Agency at the actual incurred cost for such services with no contractor mark-up allowed. The contractor shall furnish documentation of railway invoices and evidence of payment before reimbursement by the Contracting Agency. The contractor shall notify the Railway 72 hours in advance of when railway services are required.

8. The contractor will be required to reimburse monthly the Railway for the cost of all services performed by the Railway for the contractor, and furnish the Contracting Agency satisfactory evidence that the Railway has acknowledged receipt of payment before final acceptance.

9. During construction of piers or other supports or structures adjacent to any track or of drainage pipe or structure under or adjacent to any track of the Railway, the contractor shall make adequate provisions against sliding, shifting, sinking or in any way disturbing the railway embankment and track adjacent to said piers, supports or structures due to construction operations by driving temporary sheeting or by other means satisfactory to the Department and Railway.

10. Before commencing work on any pier or structure adjacent to any track, or on any structure and parts thereof which carry Railway facilities, the contractor shall submit to the engineer, prints of the proposed sheeting, shoring, bracing and falsework details for protection of the Railway's track and embankment and shall submit prints of the shop drawings or other contractor's detailed plans for structures and parts thereof which will carry Railway facilities. This submittal shall include proposed methods of construction and be accompanied by supporting data, including design computations, soil descriptions and other pertinent information.

After acceptance by the engineer, four prints of the above plans, shop drawings and details bearing the seal of a registered Civil Engineer, with supporting data and documents, shall be forwarded to the Railway for approval. Prior to beginning work on Railway right-of-way, the shop drawings and details, with supporting data and documents, shall be approved by the Railway.

11. The contractor shall possess the required Railroad permits and notify the Railway's representative in writing at least one week in advance of the proposed time of the beginning of construction of piers, supports or structures adjacent to the track or of drainage pipe or structure under or adjacent to the track.

12. The following temporary clearances are the minimum which shall be maintained during construction operations:

Vertical: 22.5 feet above top of highest rail.

Horizontal: 10.0 feet from centerline of the nearest rail measured at right angles thereto.

If lesser clearances are required for any part of the work, the contractor shall secure written authorization from the Railway's representative for such lesser clearances in advance of the start of work on that portion of the project along, on, over, under or across the right-of-way or tracks of the Railway.

13. The contractor shall not store or construct falsework or store materials, supplies or equipment closer than 15.0 feet from the centerline of the nearest rail, measured at right angles thereto, or 22.5 feet vertically from top of rail.

14. Unless otherwise specified by special provisions or waived by the railroad, the contractor shall provide insurance of the following kinds and amounts:

14.1. Regular Contractor's Public Liability and Property Damage Insurance, including automobile, issued in the name of the contractor shall be written to furnish protection to the contractor respecting operations in performing work covered by the contract in regard to the liability with respect to bodily injury to or death of persons, and injury to or destruction of property, which may be suffered by persons other than the contractor's employees as a result of operations in connection with construction of highway projects located wholly or partly within railroad right-of-way.

14.2. When a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in the contractor's own behalf under Contractor's Public Liability and Property Damage Insurance policies to cover any liability imposed on the contractor by law for damages due to bodily injury to or death of persons and injury to or destruction of property as a result of work undertaken by such subcontractors.

In addition, the contractor shall provide for, and on behalf of, any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual Contractor's Public Liability and Property Damage policies. As an alternative, each subcontractor shall provide satisfactory insurance as described herein on the subcontractor's own behalf to cover the subcontractor's individual operations.

14.3. Railroad Protective Liability Insurance shall be purchased on behalf of the Railway by the contractor. The standards for Railroad Protective Liability Insurance shall be in accordance with provisions of the Federal-Aid Policy Guide (FAPG) Part 646 as amended. Proof of Railroad Protective Liability Insurance, with the policy period effective until final acceptance of the project, must be submitted in accordance with 103.06.

The limits of liability for the kinds of insurance required above shall be as follows:

**RAILROAD INSURANCE COVERAGE (other than AMTRAK)**

**(1), (2) and (3)**

Combined Single Limit for Bodily Injury Liability, Property Damage  
Liability and Physical Damage to:  
Property - \$2,000,000 per occurrence  
Aggregate Limit - \$6,000,000 for the term of the policy

## **AMTRAK COVERAGE**

### **(1), (2) and (3)**

Combined Single Limit for Bodily Injury Liability, Property Damage

Liability and Physical Damage to:

Property - \$6,000,000 per occurrence

Aggregate Limit - \$12,000,000 for the term of the policy

The name of the Railway and the ratio of the estimated cost of operations within the Railway's property to the total estimated project cost, expressed by percent, will be specified in the project specifications. No direct payment will be made for providing the required insurance coverage by the contractor.

15. The insurance specified shall be kept in force until final acceptance of the contract. Proof of Insurance is required at the project site anytime work is in progress on or near the Railroad.

16. The contractor shall indemnify the Railway, its officers and employees from all suits, actions, or claims brought because of injuries or damages sustained by any person or property due to operations of the contractor; due to negligence in safeguarding the work; or use of unacceptable materials in constructing the work; or any negligent act, omission or misconduct of the contractor; or claims or amounts recovered from infringements of patent, trademark, or copyright.

17. Upon completion of the work, the contractor shall, within 10 calendar days, remove from within the limits of the Railway's right-of-way all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings of said contractor, and restore the Railway's premises substantially to their former condition or documented proposed conditions agreed upon by the Railroad, Department, and Contractor as satisfactory to the Railway's representative.

Should the contractor fail to make such removal and restoration within 10 calendar days, the Railway shall have the right to make such removal or restoration. The expense incurred shall be chargeable to the project on the Railway's force account statement and the Department will reimburse the Railway for such work. The amount will be deducted from payments due the contractor.

All costs incurred under this subsection, other than as provided in 7.06.7, or for which payment is elsewhere provided, shall be included in the contract prices of other pay items.

Prior to final acceptance of the project, the contractor shall secure a Certificate of Final Inspection and Payment, as found on the Department's website, signed by both the Department representative and a duly authorized railroad company representative, and furnish same to the Department stating that the contractor has satisfactorily restored the Railway's premises and has completed payments for all railway services performed for the contractor's account. If the contractor is unable to secure a Certificate of Final Inspection and Payment from the Railway, the contractor shall submit to the engineer an executed Contractor's Sworn Railroad Affidavit, in which the Contractor warrants (1) the work the Contractor performed on railway right-of-way; (2) that, despite a diligent effort, the Contractor was unable to acquire the Certificate of Final Inspection and Payment from the railroad company; (3) that all work on railway right-of-way complies with and conforms to all contract documents and railway requirements; (4) that the Contractor has made all payments and reimbursements required by the railroad company and its respective right-of-access agreement; (5) that the Contractor has removed all his machinery, equipment, materials, falsework, rubbish, and temporary structures from railway right-of-way and has returned or restored railway property to a condition equal to or better than its former condition.

In addition, on said affidavit, the Contractor shall agree to (1) indemnify, defend, and hold the Contracting Agency, Department and Engineer harmless from and against all claims, demands, causes of action, or rights of action arising from or related to any negligent or intentional act, omission, or misconduct of the contractor on the railway right-of-way, and (2) in the event of a claim or legal action asserting liability covered by the

Contractor's Sworn Railroad Affidavit, regardless of the merits of the claim or legal action and whether or not the Contracting, Department and Engineer is cast in judgment based on such a claim or legal action, the Contractor agrees to indemnify the Contracting Agency, Department and Engineer in the amount of any litigation related costs, including, without limitation, attorneys' fees and expert witness fees and costs, incurred by the Contracting Agency, Department and Engineer in connection with such a claim or legal action covered by the Contractor's Sworn Railroad Affidavit.

**7.07 Navigable Waters and Wetlands:** All work in, over or adjacent to navigable waters or wetlands shall be conducted in accordance with rules and regulations of the U.S. Army Corps of Engineers and U.S. Coast Guard.

Navigable clearances on waterways shall not be infringed upon, and existing navigable depths shall not be impaired except as allowed by permits issued by the responsible agency.

The Contracting Agency will obtain a permit from the U.S. Coast Guard and U.S. Army Corps of Engineers relative to approval of construction plans for bridges, causeways, embankments, dredging, spoil disposal, etc., or work in navigable waters or wetlands. The Contractor will be furnished a copy of the permit and shall comply with all provisions and conditions of the permit.

The Contractor shall prepare reproducible drawings complying with the standards of the U.S. Coast Guard and the U.S. Army Corps of Engineers showing falsework construction, test piles or other temporary pile driving operations, erection sequence, temporary navigational lighting, location of equipment and barges in the navigable limits and other drawing required by the permit agencies. Drawing sizes shall be 8-by-10 ½ inches with a 1-inch border on the top or short side. The drawings shall be submitted to the Engineer for approval and transmittal to the appropriate agency. Construction of falsework, test pile operations and erection or operation of construction equipment within the navigable limits shall not commence until drawings are approved.

The Contractor shall display lights on equipment operating, berthed or moored in navigable streams, and provide temporary navigational lighting on temporary and permanent construction in the navigable limits as required by the U.S. Coast Guard.

Should the Contractor sink, lose or throw overboard any material, machinery or equipment which may be dangerous to navigation, it shall be immediately removed or recovered by the Contractor. The Contractor shall give immediate notice of such obstruction to proper authorities and, if required, shall mark or buoy such obstruction until it is removed.

The Contractor shall not deposit excavated material into the waterway or wetland without a permit from the appropriate agency.

All operations in connection with the work shall be in accordance with permits, rules and regulations of the U.S. Army Corps of Engineers and the U.S. Coast Guard. Deviations therefrom shall be only by special permission or special permit which shall be the responsibility of the Contractor. Failure of the Contractor to become familiar with the terms, conditions and provisions of the permits, rules and regulations applicable to the work shall not relieve the Contractor of responsibility under the contract.

The Contractor shall conduct operations to cause minimum interference with marine operations. If such interference is necessary, the Contractor shall notify the Engineer, in writing, sufficiently in advance so that the Contracting Agency may obtain approval from the U.S. Coast Guard at least 3 weeks prior to said interference.

Copies of Contracting Agency obtained permits are available from the Engineer. Copies of any special permits obtained by the Contractor shall be submitted immediately to the Engineer.

**7.08 Barricades and Warning Signs:** The Contractor shall provide, erect and maintain necessary barricades, suitable lights, danger signals, signs and other traffic control devices, including flaggers, and shall take all necessary precautions for protection of the work and safety of the public. Roads closed to traffic shall be protected by effective barricades. Obstructions shall be illuminated at night. Suitable warning signs shall be provided to direct traffic.

The Contractor shall erect and maintain warning signs in advance of any place on the project where operations may interfere with traffic and at intermediate points where new work crosses or coincides with an existing road.

Barricades, warning signs, light, temporary signals and other protective devices shall conform to the details shown on the plans and the MUTCD.

**7.08.1 Certification:** Prior to installation, the contractor shall furnish the engineer a listing of all the Category II and III devices to be used on the project, including a reference to the FHWA Work Zone letter number for each device. FHWA letters of approval shall serve as verification that these devices comply with the crash testing requirements of NCHRP Report 350 or MASH. Provide a certificate of compliance indicating the producer/supplier code for all barricades and warning signs delivered to the project.

**7.09 Use of Explosives:** Explosives shall not be used without written approval. When explosives are used, the Contractor shall not endanger life or property. The use of explosives shall be in compliance with all laws and ordinances. The Contractor shall be responsible for all damage resulting from the use of explosives.

Explosives shall be securely stored, in compliance with all laws and ordinances. Such storage places shall be clearly marked. When no local laws or ordinances apply, satisfactory storage shall be provided not closer than 1,000 feet from any road, building or place of human occupancy.

The Contractor shall notify, in writing, each utility company and affected property owner having facilities in proximity to the site of work of the intention to use explosives. Such notices shall be given sufficiently in advance to enable them to protect their property from damage.

**7.010 Preservation of Property, Landscape, and Survey Monuments:** The Contractor shall be responsible for preservation of public and private property and shall protect from disturbance and damage all land monuments, property line markers or horizontal and vertical control monuments such as those established by the U.S. Coast and Geodetic Survey, National Geodetic Survey, Louisiana Geodetic Survey, Louisiana DOTD, Corps of Engineers, U.S. Geological Survey, or the Engineer.

Before removing and resetting any survey monuments, the Contractor shall give sufficient advance notice, in writing, to the appropriate agency responsible for the monument and to the Engineer of the intention to perform the work so that such agency may have a representative present if it so desires. The Contractor shall not disturb or move any such monument without approval. The Engineer will designate the location and manner in which these monuments are to be reset.

The Contractor shall be responsible for damage to property during the work due to any negligent act, omission or misconduct in executing the work, or due to defective work or materials. This responsibility will not end until final acceptance.

When damage is done to public or private property by the Contractor due to negligent act, omission or misconduct in execution of the work, or in consequence of non-execution thereof by the Contractor, such property shall be restored at no direct pay by the Contractor, to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding or otherwise acceptably restoring as directed, or make good such damage in an acceptable manner.

**7.011 Forest Protection:** In carrying out the work within or adjacent to State of National Forests, the Contractor shall comply with all regulations of the Department of Public Safety Office of the State Fire Marshall Department of Wildlife and Fisheries/Wildlife Division, and the Department of Agriculture and Forestry or other authority having jurisdiction governing protection of forests and performance of work within forests. The Contractor shall observe all sanitary laws and regulations with respect to performance work in forest areas. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with requirements of the forest supervisor.

The Contractor shall take reasonable precaution to prevent and suppress forest fires and shall require employees and Subcontractors, both independently and at the request of forest officials, to do all reasonable within their power to prevent and suppress forest fires and to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

**7.012 Prevention of Soil Erosion and Water Pollution:** The Contractor shall protect the project and adjoining properties from soil erosion and siltation by effective and continuous erosion control methods. The area of bare soil exposed by construction operations shall be kept to a minimum.

**7.013 Environmental Protection:** The Contractor shall comply with federal, state and local laws and regulations controlling pollution of the environment, including air, water and noise. The Contractor shall take precautions to prevent pollution of waters and wetlands with fuels, oils, asphalts, chemicals or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

The contractor certifies under penalty of law that he understands and will abide by the terms and conditions of the Storm Water Pollution Prevention Plan (SWPPP) and the National Pollution Discharge Elimination System (NPDES) General Permit that require the discharges from construction sites be managed to prevent pollutants from entering waters of the United States in accordance with the Environmental Protection Agency's (EPA) regulations for storm water discharges with respect to 33 U.S.C. ~ 1342 (Section 402 (p) and 405 of Public Law 100-4).

The use of erosion control features or methods other than those in the contract shall be as directed.

The Storm Water Pollution Prevention Plan shall be comprised of all components specified in the U.S. Environmental Protection Agency document entitled, "Storm Water Management for Construction Activities".

**The contractor is advised that if a Storm Water Pollution Prevention Plan (SWPPP) is not incorporated into the plans and specifications, the Contractor will be required to develop a SWPPP plan before the start of construction.**

Construction operations in rivers, streams, lakes, tidal waters, reservoirs, canals and other impoundments will be restricted to areas where it is necessary to perform filling or excavation to accomplish the work and areas which must be entered to construct temporary or permanent structures. As soon as conditions permit, streams and impoundments shall be cleared of obstructions placed therein or caused by construction operations.

Frequent fording of streams with construction equipment will not be permitted.

No residue from dust collectors or washers shall be dumped into a stream.

Attention is further directed to the federal, state and local air pollution control programs and their rules and regulations regarding air pollution, especially open burning, fugitive dust, asphaltic concrete plant restrictions.

The Contractor shall maintain and operate equipment to minimize noise. Engines shall be equipped with properly functioning mufflers. The Contractor shall limit activity near noise sensitive areas, such as churches, hospitals and schools, so normal activities are not unduly disrupted.

**7.014 Air Navigation:** The Contracting Agency will obtain a permit (or a determination of no hazard to air navigation) from the FAA for all permanent structures, if needed. The Contractor will be furnished a copy of the permit, if requested. If the Contractor's equipment, falsework, etc. is classified as a hazard to aerial navigation, the Contractor shall prepare, on tracing cloth or approved reproducible medium, drawing complying with the FAA current requirements for temporary lighting for protection of aerial navigation. These drawings shall be submitted to the Engineer for review and transmittal to the FAA for approval. Operations in connection with the work for protection of aerial navigation shall be in accordance with the approved drawings and applicable federal regulations. Failure of the Contractor to be familiar with applicable rules and regulations of the FAA will not relieve the Contractor of responsibility under the contract.

**7.015 Hazard Zones:** If any portion of the work is determined to be within a known hazard zone, the presence of such hazards will be noted in the plans or project specifications by the Engineer to the extent that definite information can be obtained on these situations.

It shall be the responsibility of the Contractor to arrange with the agency concerned for any adjustments relative to the work in the area. Any liability or expense of these arrangements shall be borne by the Contractor.

The Contractor shall submit to the Engineer a Release Form signed by the agency involved stating that the Contractor has satisfactorily discharged the obligations under terms of the arrangements. This form shall be submitted with the required signatures.

Failure of the Contracting Agency to determine the presence of all hazards and to so note in the plans or project specifications shall not relieve the Contractor of performing the work in accordance with the project requirements at contract unit prices.

**7.016 Damage Claims:** The Contractor shall indemnify the Contracting Agency, the Engineer and DOTD, their officers, employees, consultants and agents from all suits, actions or claims brought because of injuries or damage sustained by any person or property due to operations of the Contractor; due to negligence in safeguarding the work; or use of unacceptable materials in constructing the work; or any negligent act, omission or misconduct of the Contractor; or claims or amounts recovered from infringements of patent, trademark or copyright; or from claims or amounts arising or recovered under the Workmen's Compensation Act or other law, ordinance, order or decree. Money due the Contractor under the contract as considered necessary by the Contracting Agency for such purpose, may be retained for its use. In case no money is due, the surety bond may be held until such suits, actions, claims for injuries or damages have been settled and suitable evidence to that effect furnished to the Contracting Agency; except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that adequate Workman's Compensation, Public Liability, and Property Damage Insurance, as required are in effect.

**7.017 Contractor's Responsibility for Work:** Until final acceptance, the Contractor shall have the charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements, vandalism, theft or from other cause, whether arising from execution or non-execution of the work. The Contractor shall rebuild, repair, restore or make good damages, including theft and vandalism, to the work before final acceptance and shall bear the expense thereof, except damage to the work due to unforeseeable causes beyond the control of the Contractor, including but not restrict to acts of God or governmental agencies.

In case of suspension of work, the Contractor shall be responsible for the project. The Contractor shall take such precautions as necessary to prevent damage to the project, provide for normal drainage and erect any necessary temporary structures, signs or other facilities at no direct pay. During such period of suspension, the Contractor shall acceptably maintain all living material in newly established plantings, seeding and soddings furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against damage.

- 7.018 Utility Property and Services:** The Contractor's operations adjacent to properties of railway and utility companies or adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, shall not commence until after all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with owners of utility lines in their removal and rearrangement, in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be minimized and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption of utility services due to accidental breakage or being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with such authority in restoration of service. If utility service is interrupted, continuous cooperation will be required until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

- 7.019 Furnishing Right-of-Way:** The Contracting Agency will be responsible for securing all necessary rights-of-way, servitudes and easements in advance of construction.

- 7.020 Personnel Liability of Public Officials.** In carrying out the provisions of these specifications, or in exercising any authority granted to them by the contract, there shall be no liability upon the Contracting Agency, the Department and Engineer, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as representatives of the State.

- 7.021 No Waiver of Legal Rights:** Upon completion of the work, the Engineer will make final inspection and notify the Contractor of acceptance. Such final acceptance shall not prevent the Engineer from correcting any measurement, estimate or certificate made before or after completion of the work, nor shall the Contracting Agency be prevented from recovering from the Contractor or the surety, or both, such overpayment it may sustain by failure of the Contractor to fulfill obligations under the contract. A waiver by the Contracting Agency of any breach of any part of the contract shall not be a waiver of any other breach.

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

- 7.022 Third Party Liability:** It is agreed between the parties executing the contract that it is not intended by any provisions of the contract to create the public nor any member thereof a third party beneficiary hereunder, nor to authorize anyone not a party to this contract to maintain a suit for personal injuries or property damage pursuant to the contract.

- 7.023 Antitrust Violations:** By execution of the contract, the Contractor conveys to the Contracting Agency all rights, title and interest in and to all causes of action it may acquire under Federal and State anti-trust laws, relating to the goods or services purchased by the Contracting Agency pursuant to the contract.

- 7.024 Archeological and Historical Findings:** If the Contractor encounters cultural artifacts or archeological or historical sites, operations shall be discontinued and he will immediately notify the Engineer. The Engineer



will contact the proper authorities in order that an appropriate assessment may be made to determine the disposition thereof and necessary actions relative to the site. When directed, the Contractor shall excavate the site to preserve the artifacts encountered. Such excavation will be paid for as extra work, including an appropriate adjustment in contract time. Borrow and muck disposal areas furnished by the Contractor will be subject to such assessment prior to use.

## 8. PROSECUTION AND PROGRESS

- 8.01 Subletting of Contract:** The Contractor shall not sublet any portion of the contract without written consent from the Contracting Agency, including work sublet to an authorized Disadvantaged Business Enterprise. If such consent is given, the Contractor will be permitted to sublet a portion of the work, but shall perform with the Contractor's own organization work amounting to at least 50 percent of the total contract cost. Work as defined in this Subsection will not include materials. Any items designated in the contract as "Specialty Items" may be performed by subcontract and the cost of such may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. No subcontract shall relieve the Contractor of liability under the contracts and bonds.

The contractor shall indemnify the Contracting Agency, the Department and Engineer, its officers, and employees from any loss of any kind, including loss of funding, resulting from its failure to perform at least 50 percent of the total contract cost, as provided above.

By executing the contract, contractor acknowledges and agrees that a subcontract shall incorporate all applicable requirements and provisions of the contract between it and the Contracting Agency, including the insurance requirements in 7.02, and that subcontracts do not relieve contractor of any of its obligations, liabilities, or guarantees under this contract or included bonds.

A Subcontractor shall not further subcontract to a third party any portion of this authorized work.

- 8.02 Commencement of Work:** The "Notice to Proceed" will stipulate the date on which the Contractor shall begin work, which date shall be the beginning of contract time charges.

- 8.03 Construction Progress Schedule:** Prior to beginning the work the Contractor shall submit to the Engineer a Construction Progress Schedule giving a satisfactory schedule of operations that provides for completion of the work within the contract time. This schedule shall be on the prescribed bar graph form and shall allocate the entire contract time. The Contractor shall have copies of the schedule available at the preconstruction conference.

If the Contractor's operations are affected by changes in the plans or amount of work, or if the Contractor has failed to comply with the approved schedule, or if requested by the Engineer, the Contractor shall submit a revised Construction Progress Schedule for approval. This revised schedule shall show how the Contractor proposes to prosecute the balance of the work. If a revised schedule has been requested by the Engineer, the Contractor shall submit the revised schedule within 14 calendar days after the date of request or progress payments may be withheld.

The approved Construction Progress Schedule will be used as the basis of establishing the controlling item of work, charging contract time and as a check on the progress of the work. The Construction Progress Schedule shall show only one controlling item of work for each contract day. If the Construction Progress Schedule has not been approved prior to the issuance of the Notice to Proceed, the Engineer will establish the controlling work item and charge contract time accordingly.

- 8.04 Prosecution of Work:** The Contractor shall provide sufficient materials, equipment and labor to complete the project in accordance with the contract and within the contract time. If the completed work is behind the approved progress schedule, the Contractor shall take immediate steps to restore satisfactory progress. Each item of work shall be prosecuted to completion without delay. The Contractor shall not transfer equipment or forces from uncompleted work without prior notice to, and approval of, the Engineer. If prosecution of the work is discontinued for an extended period of time, the Contractor shall give the Engineer written notice at least 24 hours before resuming operations.

The contractor's progress will be determined monthly at the time of each partial estimate, and will be based on the total amount earned by the contractor as reflected by the partial estimate. If the contractor's progress is more than 20 percent behind the elapsed contract time, the contractor will be notified that disqualification may occur if progress becomes delinquent by more than the percentages specified. Such additional notification will be made as deemed necessary concerning the progress delinquency of the contractor.

Prior to the elapsing of 55 percent of the contract time, the contractor will be disqualified if progress is more than 40 percent behind the elapsed contract time. After 70 percent of the contract time has elapsed, the contractor will be disqualified if progress is more than 25 percent behind the elapsed contract time. Disqualification will be applied between 55 and 70 percent contract time elapsed on the pro-rata basis; for example, when 60 percent of the contract time has elapsed, the contractor will be disqualified if progress is more than 35 percent behind the elapsed behind the elapsed contract time.

During the period of disqualification, the Contracting Agency may prevent the contractor from bidding on contracts or be approved as a subcontractor on future contracts with the Contracting Agency. Any bid submitted by the contractor during the period of disqualification will not be considered and will be returned. The period of disqualification will continue until the completed work on the contract is within the foregoing percentages or until all work on the contract has been satisfactorily completed. The Contracting Agency will still have its rights concerning the assessment of stipulated damages as specified under Section 8.08.

**8.05 Limitation of Operations:** The Contractor shall conduct the work in such manner and sequence to assure the least interference with traffic. The contractor shall have due regard to the location of detours and provisions for handling traffic. The Contractor shall not begin new work to the prejudice of work already started. The Engineer may require the Contractor to finish a section on which work is in progress before starting on additional sections if the finishing of such section is essential to public convenience and safety.

**8.06 Labor, Methods and Equipment:** The Contractor shall employ sufficient labor and equipment to prosecute the work to completion in accordance with the contract.

Workers shall have sufficient skill and experience to properly perform the work.

Any representative of the Contractor or Subcontractor who, in the opinion of the Engineer, does not perform in a skillful manner or is disorderly shall be, upon written request, immediately removed by the Contractor or Subcontractor. A person removed shall not return to the work without written approval. If the Contractor fails to remove such a person or fails to furnish suitable and sufficient personnel to properly prosecute the work, the Engineer may suspend the work by written notice.

Equipment proposed for use in the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and produce a satisfactory quality of work. No damage to the roadway, adjacent property or other highways shall result from the use of equipment.

When methods and equipment are not specified, the Contractor may use any methods or equipment that will accomplish the work in conformity with the contract.

The Contractor may request permission to use a method or type of equipment other than specified in the contract. The request shall be in writing and shall include a description of the methods and equipment proposed and the reasons for requesting the change. If approval is given, it will be on the condition that the Contractor will be responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue use of the substituted method or equipment and shall complete the work with the specified methods and equipment. The contractor shall remove the deficient work and replace it with work of specified quality or take other corrective action as directed. No change

will be made in payment for contract items involved nor in contract time as a result of authorizing a change in methods or equipment.

**8.07 Determination and Extension of Contract Time:** The number of days allowed for completion of the work will be stated in the contract.

On working day contracts, a working day will be charged when construction operations proceed for at least 5 continuous hours of the day or 65 percent of the normal work day, whichever is greater, with the normal working force engaged in performing the controlling item of work.

Should the Contractor prepare to begin work on any day in which inclement weather, or the conditions resulting from the weather, prevent work from beginning at the usual starting time, and the crew is dismissed as a result, the Contractor will not be charged for a working day whether or not conditions change during the day and the rest of the day becomes suitable for work.

No working days will be charged for the following days: 1) Saturdays and Sundays when no work is performed, 2) State recognized holidays that are defined as regular legal holidays or special holidays that are proclaimed by the Governor or fixed by the Legislature on which no work is performed, 3) Days on which delays, attributable solely to the Contracting Agency or other governmental agencies, prevent Contractor from proceeding with the controlling item of work at time of delay and 4) Days on which delays are attributable to the direct effect of strikes, riots or civil commotions.

When the contract time is on a working day basis, the Engineer will furnish the Contractor a monthly statement showing the number of days charged to the contract for the preceding month and the number of days specified for completion of the contract. The Contractor will be allowed 14 calendar days in which to file a written protest setting forth in what respect said monthly statement is incorrect; otherwise, the statement shall be considered accepted by the Contractor as correct.

If a protest is filed by the Contractor, the Contracting Agency will conduct such reviews and investigations as required to rule on the protest within 30 calendar days from the date the statement is furnished the Contractor. The number of days charged as listed, or revised within the allotted time, shall become final at the end of this 30-day period, subject to change only through legal action.

When the contract time is on a calendar day basis, it shall consist of the number of calendar days stated in the contract beginning with the date stipulated in the Notice to Proceed, including Saturdays, Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of written orders to suspend work and to resume work for suspensions not the fault of the Contractor will be excluded.

When the contract time is a fixed calendar date, it shall be the date on which all work on the project shall be completed.

The contract time for the work as awarded is based on the original quantities as defined in Subsection 2.04 and includes time to procure material, equipment and an adequate labor force to complete the work. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those specified, or requires performance of extra work, the contract time will be increased on a basis commensurate with the following: When the contract is altered in accordance with Subsection 4.02 and the Contractor requests additional contract time, the document authorizing or ordering alterations will show the number of additional days justified, the number of days added by anticipated overrun in costs (if any) due to alterations, and the difference between these two numbers. The difference between these two numbers will be added to the contract time.

If the Contractor finds it impossible, for reasons beyond the Contractor's control, to complete the work within the contract time as specified or as extended in accordance with the provisions of this Subsection,

the Contractor may, at any time prior to the expiration of the contract time as extended, make written request to the Engineer for an extension of time setting forth therein the reasons which justify granting the request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Engineer may extend the contract time in such amount as conditions justify.

When Substantial Completion has been certified, daily time charges will cease.

**a. Calendar Day Contracts:** When the contract time is on a calendar day basis, it shall consist of the number of calendar days stated in the contract beginning with the date stipulated in the Notice to Proceed. All calendar days will be charged contract time, including days elapsing between the effective dates of written orders to suspend work and to resume work for suspensions not the fault of the contractor. Contract time extensions will be granted for any delays for which the Contracting Agency is responsible.

**b. Excusable, Non-Compensable Delays:** Excusable non-compensable delays are delays that are not the contractor's or the Contracting Agency's fault or responsibility. The engineer will not grant additional payment for excusable, non-compensable delays, but will grant additional contract time.

**c. Excusable, Compensable Delays:** Excusable, compensable delays are delays that not the contractor's fault or responsibility, but are the Contracting Agency's fault or responsibility. The contractor will be granted additional contract time and payment.

**d. Non-Excusable Delays:** Non-excusable delays are delays that are the contractor's fault or responsibility. All non-excusable delays are non-compensable.

**e. Concurrent Delays:** Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the contractor is entitled to additional time but not additional payment.

**8.08 Failure to Complete on Time:** For each calendar day or working day, as specified, that the work remains uncompleted after expiration of the contract time, the sum specified in Table 1 will be deducted from payments for the work, not as a penalty but as stipulated damages.

Permitting the Contractor to continue work after expiration of the contract time will not operate as a waiver of the Contracting Agency of its right under the contract.

The Contractor may request a waiver of such portions of the stipulated damages that accrue after the work can be safely and conveniently used for its intended purpose. The written request may be submitted to the Engineer at any time after expiration of the contract time, but shall be submitted within 14 calendar days after final inspection, and shall set forth the reasons which the Contractor believes justify the waiver and the effective date thereof. The Contracting Agency will be the sole judge of damages suffered and will waive damages accordingly.

Based on the amount of the original contract, the charges given in Table 1 will be made for each contract date after expiration of the contract time.

**Table 1**

**Stipulated Damages**

<b><u>Original Contract Amount</u></b> (Million Dollars)	<b><u>Daily Charge</u></b> (Dollars)
0 – 1	\$ 500
>1 – 5	1,000
>5 – 10	2,000
>10 – 15	4,000
>15 – 20	8,000
>20	10,000

The contractor will automatically be subject to an assessment of stipulated damages by the expiration contract time on the project. At any time stipulated damages are assessed, such damages shall be assessed continuously until the cause of such assessment ends, regardless of intervening circumstances.

The amount of stipulated damages will be deducted from payments for the work under the contract or any other contract the Contractor has with the Contracting Agency. The contractor hereby waives any requirement of written notice of default prior to any deduction for stipulated damages from any payments. When the amount of stipulated damages exceeds the sum which would have been payable under the contract, the Contractor and surety shall be liable and pay the Contracting Agency the amount of such excess.

**8.09 Default and Termination of Contract:**

- a. The Contractor will be in default if the Contractor:
- 1) Fails to complete the project within contract time,
  - 2) Becomes insolvent or a petition is filed in the Bankruptcy Courts of the United States under Chapters 7 or 13 of the Bankruptcy Code naming the Contractor as debtor or conversion of a proceeding or petition from Chapter 11 to Chapter 7 of 13 of the Bankruptcy Code or seeks a forced respite under the laws of this State or similar debtor protection by courts of other states,
  - 3) Allows any final judgment to stand unsatisfied for a period of 14 calendar days,
  - 4) Makes an assignment or arranges for performance by others of all or part of the performance of the contract, other than by subletting pursuant to 8.01, without approval and consent in advance of the Contracting Agency, and the surety in the case of an assignment of the entire contract,
  - 5) Makes an assignment of contract proceeds for the benefit of one or more creditors without prior written approval and consent of the Contracting Agency; any such purported assignment will not be honored without evidence of compliance with this subparagraph,
  - 6) Discontinues prosecution of the work,
  - 7) Fails to begin work within 10 calendar days of the “Notice to Proceed”,
  - 8) Fails to perform with sufficient workers, equipment or materials to assure prompt completion of the work,
  - 9) Performs the work unsuitably or neglects or refuses to remove materials, or replace or repair rejected work,
  - 10) Fails to resume work which has been discontinued after notice to do so,
  - 11) Fails to maintain licenses or certifications, or to acquire permits, necessary to accomplish the work;
  - 12) Fails to perform the work in an acceptable manner or violates any provision in the contract or to follow any federal, state or local laws pertaining to performance, or

- 13) Fails to follow federal, state or local laws, rules and regulations concerning construction safety and health standards or permits conditions upon the site of the work which are unsanitary, hazardous or dangerous to the health or safety of the Contractor's workmen or the public.
  - 14) Is a party to fraud.
- b.** Except as provided in Heading (f), the Contracting Agency will give written notice to the Contractor of the Contracting Agency's determination that the Contractor is in default for any cause specified in this Subsection. The Contracting Agency may give notice to the Contractor of its intent to put the Contractor in default under this Subsection and specify a period of time in which the Contractor shall cure the deficiency or a notice of default will issue. Upon notice of default, the Contracting Agency will have authority, without violating the contract, to take prosecution of the work out of the hands of the contractor as provided in Heading (c).
  - c.** Upon the Notice of Contractor's default, the Contracting Agency may notify Contractor's surety that it shall undertake completion of the project within 10 calendar days of receipt of Notice of the Contracting Agency's request that it procure prosecution of the work by another Contractor until the contract is completed in an acceptable manner. At the end of the 10 calendar day period, or at any time if immediate action must be taken to protect the public interest or the safety of the public or workers, the Contracting Agency may take prosecution of the work out of the hands of the Contractor or surety, may appropriate or use the materials and equipment on the project, or may enter into an agreement for completion of the contract or use other methods as required for completion of the contract in an acceptable manner.
  - d.** Nothing herein shall be construed to require or obligate the Contracting Agency to suspend contract time or to release the obligation of the Contractor and surety for stipulated damages in accordance with Subsection 8.08.
  - e.** The costs incurred by the Contracting Agency due to the Contractor's default including attorney's fees, or for completing the work under contract, will be deducted from any monies due or which may become due the Contractor. When this expense exceeds the sum which would have been payable under the contract, the Contractor and surety shall be liable and shall pay the Contracting Agency the amount of such excess.
  - f.** The Contractor will automatically be in default by the expiration of contract time on the project and the Contractor hereby waives any requirement of written notice of default for failure to attain final completion of the project within the contract time. If prosecution of the work is to be taken out of the Contractor's hands for failure to complete the project within contract time, notice will be given to the Contractor and surety of the taking of the prosecution of the work out of the Contractor's hands in accordance with Heading (c).

**8.010 Termination of Contractor's Responsibility:** The contract will be considered complete when all work has been satisfactorily completed, the final inspection made, and the work accepted by the Contracting Agency. The Contractor will then be released from further obligation except as set forth in the Contractor's payment/performance bonds and Subsection 7.21 and Section 9.

**8.011 Termination of Contract:** The Contracting Agency may, by written notice, terminate the contract or any portion thereof when, for reasons beyond either the Contracting Agency's or Contractor's control, the Contractor is prevented from proceeding or completing the work as originally contracted, or when termination would be in the public interest. Such reasons for termination may include, but will not be limited to, executive orders of the President relating to prosecution of war or national defense, national emergency which creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation and restraining orders or injunctions obtained by third-party citizen action resulting

from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

When a contract, or a portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the number or units or items of work completed at the contract unit price, or as mutually agreed for items of work partially completed or not started. No claim for loss of anticipated profits will be considered.

Reimbursement for organization of the work, and other overhead expenses (when not otherwise included in the contract), and moving equipment and materials to and from the project will be considered.

Acceptable materials obtained or ordered by the Contractor for the work that are not incorporated in the work shall, at the option of the Contractor, be purchased by the Contracting Agency at actual cost as shown by receipted bills and actual cost records at such points of delivery as designated.

Termination of a contract or a portion thereof, shall not relieve the Contractor of responsibility for the completed work, nor shall it relieve the surety of obligation for any just claim arising from the work performed.

**8.012 Termination of Contract for Convenience:** The Contracting Agency may, by written notice, terminate the contract or any portion thereof for the Contract Agency's convenience and without cause. Upon receipt of written notice from the Contracting Agency of such termination, the contractor shall cease operations as directed by the Contracting Agency in the notice and complete work not terminated; take actions necessary, or those that the Contracting Agency may direct, for the protection and preservation of the Work; place no further subcontracts or order materials, services, or facilities, except as approved by the Contracting Agency to complete any remaining portion of the contract; terminate all existing subcontracts and purchase orders to the extent they relate to terminated work; deliver to the Contracting Agency any unfabricated or partially fabricated parts, work in progress, completed work, supplies, and other material produced or acquired for the work terminated; coordinate a time and date with the engineer to inventory materials obtained but not yet used for the project; deliver all completed or partially completed plans, drawings, information, and other property required to be furnished to the Contracting Agency if the contract had been completed.

In case of such termination for the Contracting Agency's convenience, the contractor shall be entitled to receive payment for (1) the quantity of units or items of work completed at the contract unit price, and, as mutually agreed, for items of work partially completed, and (2) reasonable direct labor costs and non-labor cash expenditures incurred for unplanned termination related activities described above.

The Contracting Agency will not be liable for destroyed, stolen, or damaged material; unliquidated advance or other payments to third parties under the terminated portion of the contract; or the agreed upon price or the proceeds from the sale of any materials, supplies, or other items acquired and sold, or retained, by the contractor. In addition, the Contracting Agency will deduct from any termination payment any claim the Contracting Agency has against the contractor under the Contract.

Acceptable materials obtained or ordered by the contractor for the work that are not incorporated in the work shall, at the option of the contractor, be purchased by the Contracting Agency at actual cost as shown by receipted bills and actual cost records at such points of delivery as designated.

Termination of a contract or a portion thereof, shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of any obligation for any just claim arising from the work performed.



## 9.WARRANTY AND GUARANTEE

- 9.01 One Year Correction Period:** If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the contract or by any specific provision of the contract, any work is found to be defective, the Contractor shall promptly, without cost to the Contracting Agency and in accordance with the Contracting Agency's written instructions, either correct such defective work, or if it has been rejected by the Contracting Agency, remove it from the site and replace it with non-defective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Contracting Agency may have the defective work corrected or the rejected work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the work, the correction period for that item may start to run from earlier date if so provided in the specifications or written agreement.

Correction Period: Nothing herein concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the contract. The establishment of time periods relates only to the specific obligations of the Contractor to correct the work, and has no relationship to the time within which his obligations under the contract may be sought to be enforced, not to the time within which proceedings may be commenced to establish his liability with respect to his obligations other than to specifically correct the work.

## 10. MEASUREMENT AND PAYMENT

**10.01 Measurement of Quantities:** All work completed under the contract will be measured according to United States standard measure.

The Engineer shall be the judge of the accuracy of measurements, or approximations made in lieu of accurate determinations and these decisions shall be binding upon both parties.

When specifications or plans indicate that quantities for certain pay items have been computed with sufficient accuracy for payment, the pay quantities for those items will be the design quantities subject to the following adjustments. Design quantities will be adjusted if the Engineer makes changes to fit field conditions, if plan errors are proven, or if design changes are necessary.

When measurement of excavation and embankment is based on cubic yard (net section), the design quantities will be verified or revised in accordance with Engineer's policy.

Longitudinal measurements for area computations will be made horizontally. Transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing.

A station will be 100 linear feet.

Structures will be measured according to neat lines shown on the plans or as directed.

Items measured by the linear foot, such as pipe culverts, underdrains, etc., will be measured according to neat lines shown on the plans or as directed.

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

Thickness of plates and galvanized sheet metal used in the manufacture of corrugated metal pipe and metal plate pipe culverts and arches will be measured in decimal fractions of inches.

The term "ton" will mean the short ton of 2,000 pounds avoirdupois. Materials measured or proportioned by weight shall be weighed on approved scales by qualified personnel at designated locations. If material is shipped by rail, the car weight may be accepted provided the weight of material only will be paid for; however, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid by measured weight shall be weighted empty at such times as directed; and each truck shall bear a plainly legible identification mark.

Materials specified to be measured by volume in hauling vehicles shall be hauled in approved vehicles and will be measured therein at the point of delivery on the project. Vehicles may be of any acceptable size or type, provided the body is of such shape that the volume can be readily and accurately determined. Vehicles shall be loaded to at least a predetermined permanently fixed vehicles will be measured in increments of 0.5 cubic yard, except that when tailgate spreaderboxes are used to place aggregate materials for asphaltic surface treatment, the volume of the spreaderbox will be added to the volume of the vehicle. When materials are measured by weight and converted to volume for payment, conversion will be made to the nearest 0.1 cubic yard.

Asphaltic materials will be measured by the gallon or by the ton. When specified, volumes of liquid asphaltic materials will be converted to the gallons at 60 degrees F in accordance with DOTD TR 321.

Net certified scale weights or weights based on certified volumes (in the case of shipments by rail, truck or other transport) will be used as a basis of measurement, subject to correction when material has been lost in transit, wasted or otherwise not incorporated in the work.

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

Portland cement will be measured by the hundredweight (CWT).

Timber will be measured by the thousand feet board measure (MFBM) incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The terms “lump sum” and “each” when used as an item of payment will mean complete payment for the work described in the contract.

When a complete structure or structural unit is specified as the unit of measurement, the unit of measurement will include the necessary fitting and accessories. Incidental work will not be measured for payment.

When standard manufactured items are specified, and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

When conversion is necessary from United States standard units to International System of Units (SI units) or from SI units to U.S. Standard Units the guidelines, terminology, conversion factors, and rules for rounding in the Standard Metric Practice Guide, AASHTO R1 will be used.

**10.02 Scope of Payment:** The Contractor shall receive and accept compensation as provided in the contract as provided in the contract as full payment for furnishing materials and for performing work in an acceptable manner and for all risk, loss, damage or expense arising out of prosecution of the work subject to the provisions of 7.21. All work on Pay Items must be subject to inspection by the Engineer. Any work performed without being subject to inspection by the Engineer may not be measured or paid.

Contractor accepts the summation of the product of the unit prices bid on the schedule of items, or as altered by change order, multiplied by the actual quantity placed or performed for each such item per its unit measure, as audited by the Engineer, as full, complete, and final compensation under the contract for all work, labor, materials, and other direct costs; indirect expenses and overhead; and any attained profit. Only those quantities for each item necessary to complete the project, as adjusted by any change orders approved by the Contracting Agency or designee, will be compensated.

When the “Payment” clause in the specifications relating to any unit price in the bid schedule requires that the said unit price be considered compensation for certain work, such work will not be measured nor payment made under any other pay item.

**10.03 Compensation for Altered Quantities:** When contract quantities are altered in accordance with Subsection 4.02, or when final quantities vary for other reason from the quantities in the bid schedule, the Contractor shall accept as payment in full, payment at the contract unit prices for the accepted quantities of work done. No allowance, except as provided hereinafter, will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense of the Contractor and subsequent loss of expected reimbursements therefore or for other cause.

When alterations of quantities are caused by alteration in the plans, and such alterations affect the methods or sequence of construction, an allowance will be made, either for or against the Contractor, in such amount and basis as agreed to in advance of the performance of the work. The plan change authorizing or ordering the work shall show how the allowance was derived. Except when otherwise authorized by the Engineer, such derivation shall show, as a minimum, breakdown of costs as detailed in Subsection 10.04, headings (a) through (g), except that projected costs rather than actual costs will be used.

When alterations in quantities result in an increase or decrease of more than 25 percent in the contract quantity as awarded on any major item of the contract, a supplemental agreement to the contract may be executed between the Contracting Agency and the Contractor at the request of either party, prior to performance of any work in excess of 25 percent of the contract quantity. When the supplemental agreement is executed, the consent of the Contractor's surety shall be obtained and furnished to the Engineer.

A "Major Item" is an item included in the contract as awarded with a total cost equal to or greater than 10 percent of the original total contract amount.

Any adjustment in unit price will be made on only that portion of the major item exceeding 25 percent increase or decrease. Such adjustment will be made based on the actual cost to perform that portion of the work in excess of the 25 percent increase or decrease. The actual costs shall be itemized in accordance with Subsection 10.04, headings (a) through (g), except that projected costs will be used in case of an increase in quantity. When a supplemental agreement or change order is executed for an adjustment in unit price, the consent of the contractor's surety shall be obtained by the contractor and furnished to the Engineer.

A "Minor Item" is an item included in the contract as awarded with a total cost of less than 10 percent of the original total contract amount. A minor item shall become a major item if it is increased by such an amount that its total cost is equal to or greater than 10 percent of the original total contract amount. If a minor item is increased to the extent that it becomes a major item, only that part of the item that exceeds 12.5 percent of the original total contract amount will be considered on any supplemental agreement. The supplemental agreement shall be executed prior to performance of any work in excess of 12.5 percent of the contract quantity. The requirements of the supplemental agreement shall be as described above for increases in major items. If a minor item is increased or decreased, no adjustment will be made in the unit price.

**10.04 Compensation for Alterations of the Contract:** Payment for work performed in accordance with Subsection 4.02 will be made at the unit prices or agreed prices stipulated in the plan change authorizing the work. The Contracting Agency may require the Contractor to do such work on a force account basis, except that compensations for altered quantities shall be in accordance with Subsection 10.03.

- a. Unit Prices:** When payments are made at the contract's established unit prices, and the work requires a material change in construction method or sequence, adjustment to the unit prices for or against the contractor shall be made in accordance with Subsection 4.02.
- b. Negotiated Prices:** The Contracting Agency's objective is to compensate the contractor using the same pricing formulas established by the contractor in determining the original bid contract prices. Therefore, reasonable rates for labor burden, company owned equipment internal cost recovery rates, jobsite overhead items and rates, home office overhead and profit mark-up on direct costs, and other pricing components established by the contractor at the time the original contract bid prices were determined will also be used in determining the negotiated prices for the change order work. The change order authorizing the work shall include a detail cost breakdown showing direct labor, materials, equipment, and subcontractor costs, as well as each of the pricing components listed above.

In order to facilitate the identification of the original contract bid prices and the detailed cost breakdown used in bid preparation, the contractor is encouraged to place their original bid estimate

preparation documents, working papers, and notes in “escrow” upon executing the awarded contract and provide the Contracting Agency proof of such placement in accordance with Subsection 3.07. If this action is undertaken, the contractor is required to prepare the “Summary of Key Bid Pricing Formula Elements” form, which is to be included with the escrowed bid estimate work papers and notes as its first summary document. When the contractor and the Department choose to utilize Negotiated Prices to resolve change order amounts for extra work, claims for additional compensation, or other contract price modifications, the escrowed documents and information will be open to department review to verify the original bid estimate pricing formulas and information, and then used to price the change order. The specific escrow procedures, documents to be escrowed, and the “Summary of Key Bid Pricing Formula Elements” form shall conform with the requirements of the Contracting Agency.

**c. Force Account:** When “force account” is the method of payment, the contractor shall be paid the direct cost of the work as determined and documented in (d) through (j) below. Jobsite and home office overhead indirect expenses, and profit for all parties shall be considered fully compensated by a 15 percent mark-up on allowable direct cost items described in (d) through (g) below, and the mark-up on direct cost for the subcontractor and contractor described in (h) below. The Contracting Agency may consider additional reimbursement to the contractor for indirect fixed jobsite overhead costs for excusable compensable delays as defined in 8.07 when the change order results in extension of the project’s critical work path and the 15 percent mark-up on direct costs is deemed by the Contracting Agency to be insufficient.

**d. Direct Labor:** For labor and working foremen in direct charge of operations, the contractor shall receive the wage rates agreed on in writing before beginning work for each hour that said labor and foremen are engaged in such work. Jobsite and home office supervisory personnel shall not be included as direct labor.

The contractor shall receive the actual costs paid to, or in behalf of, workers for subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits when such amounts are required by collective bargaining agreement or other employment contract applicable to the classes of labor employed on the work, but limited to a maximum daily rate for subsistence and travel allowances. This maximum shall be agreed upon prior to the contractor incurring such charges.

**e. Direct Materials:** For materials accepted by the engineer and used, the contractor shall receive the actual cost of such materials delivered to the work, including transportation charges and sales taxes if applicable.

**f. Equipment:** For authorized machinery or special equipment the contractor shall receive the rental rates agreed on in writing before such work is begun. For equipment rented from independent outside sources, the contractor will be reimbursed the reasonable actual cost as shown on paid rental invoices. For company owned equipment, the contractor will be reimbursed his internal cost recovery equipment charge rate consistent with his original bid cost estimates. The Department’s Engineering Directives and Standards Manual, EDSM III.1.1.27, entitled Equipment Rental Rates, provides additional guidance concerning allowable equipment rental rates and their application. If the contractor chooses to use a rental rate guide book instead of his internal cost recovery rates to establish rental rates for company owned equipment, adjustments to the allowable type of equipment and hours per day must be made as described in the EDSM. In addition, no 15 percent mark-up on equipment direct cost for jobsite and home office overhead expenses and profit will be allowed if the contractor chooses to use rental rate guide book prices instead of his internal cost recovery rates.

- g. Bond, Insurance and Tax:** For property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, social security taxes, and bond costs on force account work, the contractor shall receive the actual cost thereof. The contractor shall furnish satisfactory evidence of the rates paid for such bond, insurance and tax.
- h. Subcontractor Costs:** For change order work performed by an approved subcontractor, the subcontractor shall receive the subcontractor's actual and reasonable allowable direct cost of such work as described in (d) through (g) above plus a 15 percent mark-up for the subcontractor's indirect jobsite and home office overhead expenses and profit. In addition, the contractor will be paid a 10 percent mark-up on the subcontractor's total direct and indirect costs, and profit for general supervision and sequencing of the change order work.
- i. Non-allowable Costs:** No additional contractor cost reimbursement will be made for general superintendence, small tools or craft specific tool allowances, or other direct or indirect costs not specifically included in (d) through (h) above.
- j. Statements:** No payment will be made for force account work until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such work detailed as follows:
  - 1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
  - 2) Designations, dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.
  - 3) Quantities of materials, prices and extensions.
  - 4) Transportation of materials.
  - 5) Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security tax.

The contractor's representative and the engineer shall compare records of the cost of work done as ordered on a force account basis. Such comparison shall be made daily. Statements shall be accompanied by invoices for materials used and transportation charges. If materials used on force account work are not purchased for such work, but are taken from the Contractor's stock, in lieu of invoices, the Contractor shall furnish an itemized list of such materials showing that the quantity claimed was actually used, and that the price and transportation costs claimed represent the actual cost to the Contractor. Invoices shall be accompanied by the Contractor's notarized statement that payment in full has been made for the materials.

**10.05 Eliminated Items:** Should any items contained in the contract be found unnecessary for proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate such items from the contract. Such action shall not invalidate the contract.

When an item is eliminated, the Contractor will be reimbursed for authorized work done towards completion of the item. No allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement or loss of anticipated profits claimed by the Contractor resulting either directly from such elimination or indirectly from unbalanced allocation among the contract items of overhead expense by the Contractor and subsequent loss of expected reimbursements therefore or for other reasons.

The plan change authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the Engineer, such derivation shall show breakdowns of costs as detailed in Subsection 10.04, headings (a) through (j).

**10.06 Partial Payments:** Provided the work is prosecuted in accordance with the contract provisions, the Engineer will make the 1<sup>st</sup> progress estimate within 2 months from the date indicated to begin work in the Notice to

Proceed. The Contracting Agency will determine the progress estimate date. Each successive progress estimate will be made on this date of the month thereafter until completion of the contract. Each progress estimate will be an approximation of the value of work performed up to the date the estimate is made and will be based on material in place and labor expended thereon, but no more than 95 percent of the total contract price of the work will be paid in advance of final acceptance.

The amount of said estimate, after deducting retainage and all previous payments, shall be payable to the Contractor.

Retainage shall be 10 percent of the amount of work complete to date if the contract price is up to \$500,000 and 5 percent of the work complete to date, if the contract price is over \$500,000.

Monthly estimates will be approximate and subject to correction in subsequent estimates.

Should defective work or material be discovered or reasonable doubt arise as to the integrity of any part of the work prior to final acceptance and payment, an amount will be deducted from subsequent estimates equal in value to the defective or questioned work. Payment for this work will not be included in subsequent estimates until defects have been remedied or causes for doubt removed.

If the Contractor is not a corporation, the Contractor's Federal Identification Number (if a firm) or Social Security Number (if an individual) shall be furnished to the Contracting Agency before payments will be made to the Contractor for work under the contract.

Payment of the monthly estimate shall not be taken as an admission that the work is done or that its quality is satisfactory, nor as a release of the Contractor from the responsibility for any portion thereof, but the whole work and all particulars relating thereto shall be subject to revision and adjustment by the Engineer at the time of final acceptance and payment of the final estimate.

#### **10.07 Payment for Stockpiled or Stored Material:**

- a. **General:** Payment for stockpiled or stored material will be considered only for materials anticipated to be stored for periods in excess of 30 calendar days. When approved, advance payments may be made for fabricated or natural materials that are to be incorporated in the project when stockpiled materials are stored on the project or in a dedicated stockpile at an approved site outside the limits of the project within the State of Louisiana. Payments shall be limited to durable materials described herein and shall represent a significant portion of the project cost. Perishable articles and small warehouse items are not included. These materials shall meet the requirements of the specifications. Payment for stockpiled or stored materials will not constitute acceptance. It shall be the Contractor's responsibility to protect the material from damage while in storage.

Payment may be made for the invoice price for the materials, which shall not exceed 85 percent of the contract price for the items where the materials are to be incorporated. For fabricated materials purchased from commercial sources and delivered to approved storage, partial payment may be the invoice price plus freight and taxes. The quantity of material for payment will not exceed the total estimated quantity required to complete the project. The invoice values will not exceed the appropriate portion of the contract items in which such materials are to be incorporated.

The amounts advanced on stockpiled or stored materials will be recovered by the Contracting Agency through deductions made on payments as the materials are incorporated in the work.

Partial payment shall be requested by the Contractor in writing and the following documents shall be furnished: 1) written consent from the Contractor's surety, 2) a copy of the invoices from supplier or manufacturer verifying the cost and quantity of material, and 3) if storage is on private

property, a copy of the lease or agreement granting the Contracting Agency right of entry to property.

Payment for materials stored outside the State of Louisiana will be considered, subject to approval of the Engineer. This will generally be limited to adjacent states, except in cases where it will be in the best interest of the Contracting Agency to pay for these materials. If payment for stockpiled materials outside the State will affect the bid price for an item, the Contractor shall submit a written request to the Engineer prior to bidding.

Within 30 calendar days after payment by the Contracting Agency, the Contractor shall submit a certified copy of invoices from the supplier for each item for which payment has been made. All such invoices submitted shall state the amount received by the supplier as payment in full for the materials. If this certification of payment is not presented within the 30-day period, the advanced payment will be deducted from future progress payments.

Title and ownership of materials for which advancements have been made by the Contracting Agency shall not vest in the Contracting Agency until such materials are incorporated in the work and the work accepted by the Contracting Agency. The making of advancements by the Contracting Agency shall not release the Contractor from the responsibility for any portion thereof.

- b. Fabricated of Manufactured Materials:** Fabricated or manufactured materials may include but is not limited to the following: structural steel, fabricated structural steel items, steel piling; reinforcing steel; electrical equipment; mechanical equipment, precast concrete items; structural timber; timber piling; fencing and guard rail materials; fabricated sign structures and sign panels.
- c. Other Material:** These materials will normally be large quantities of natural or manufactured aggregate. The Contractor's request for payment of stockpiled natural material shall give a detailed description of the material, its intended use and location of the site. This material will be inspected and approved after placement in stockpiles on the project. Approval of the stockpiled materials will be in writing.

**10.08 Adjustment for Changes in Common Carrier Rates:** It is agreed that the accepted proposal for the work is based on common carrier rates on file with the Surface Transportation Board (STB) or with a corresponding intrastate commission or body in effect on the date of opening of bids. Payments to the Contractor will be adjusted upon request to compensate for increases in cost due to changes in common carrier rates becoming effective after the date of opening of bids and before expiration of the contract time. The adjustment shall be limited to an amount determined as follows.

The adjustment shall be the product of the increase in common carrier rates multiplied by the net quantity of material shipped at the new rates to the work and incorporated therein, all as shown by receipted common carrier bills.

If the freight cost by common carrier to the job site is included in the quotation by the supplier to the Contractor, in addition to receipted freight bills, the supplier shall furnish on each invoice a breakdown showing the freight rate, quantity of material and total freight cost. The Contractor shall furnish the supplier's written quotation made prior to the date of bid opening and a notarized statement that the increased freight rate has been paid.

The Contractor's request for payment adjustment due to increased common carrier rates shall be submitted as soon as possible after shipments to the project have been completed. Only one request for such payment adjustment shall be made for each project, and any payment adjustment due the Contractor for increased common carrier rates will be included in the final estimate for the project. No request for such payment



adjustment will be considered unless submitted to the Contracting Agency, with the required receipted bills and forms, within 30 calendar days after final acceptance.

**10.09 Acceptance and Final Payment:** Upon acceptance of the work, the Engineer will execute a certificate that the work provided for in the contract has been completed and accepted under the terms of the contract. The Certificate of Acceptance will be recorded in the office of the Recorder of Mortgages of the parish in which the work has been done. The entire balance due the contractor, including the amounts withheld as retainage in accordance with Subsection 10.06, will be paid to the contractor after the Contracting Agency and Engineer has determined that quantities shown on the final estimate are correct; however, before payment of the final estimate, the contractor shall submit to the Contracting Agency and Engineer a certificate from the Recorder of Mortgages of the parish in which the work has been done to the effect that there are no claims or liens recorded against the contract. The date of the certificate shall not be prior to the expiration of 45 calendar days, but shall be prior to the expiration of 90 calendar days, after the Certificate of Acceptance was recorded in the Mortgage Office.

Prior to payment of the final estimate, all releases or waivers on buildings, wells, utilities and railroads shall be furnished as well as any maintenance bonds, certificates from Health Department, tracings, brochures or other items required by the contract.

Payment of the final estimate shall not release the contractor or sureties from liability as provided in the Contract and contract documents or for any fraud in construction, or in obtaining progress payments, or in payment for materials, labor or other supplies or services for the work, or for any claims for damages, loss or injury sustained by any person through the fault, negligence or conduct of the contractor or any of its employees, agents, subcontractors, suppliers or representatives.